

Legal and Ethical Implications of Absentee Ownership in Agricultural Land Transactions: The Position of the Land Deed Official

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Abstract

This study aims to analyze the legal consequences of a sale and purchase deed of absentee agricultural land made by a Land Deed Official. The issue being studied is the drafting of a sale and purchase deed by a Land Deed Official for absentee agricultural land, where the ownership of such land has been prohibited as stipulated in Article 3d of Government Regulation Number 41 of 1964 concerning Amendments and Additions to Government Regulation Number 224 of 1961 on the Implementation of Land Redistribution and Compensation. Furthermore, the Land Deed Official is obliged to refuse to draft deeds that contradict the prevailing laws and regulations, particularly in relation to absentee agricultural land, as regulated in Article 39 paragraph (1) letter g of Government Regulation Number 24 of 1997 concerning Land Registration. This research employs normative juridical research using the statutory approach, conceptual approach, case approach, and historical approach. The legal materials used in this research consist of primary legal materials and secondary legal materials. The research findings indicate that the legal consequences of a sale and purchase deed drafted by a Land Deed Official for absentee agricultural land are in conflict with the prevailing laws and regulations, specifically Article 1320 of the Indonesian Civil Code (KUHP) concerning the validity requirements of an agreement, as it violates both subjective and objective requirements. As a result, the sale and purchase deed becomes null and void by operation of law, rendering it invalid or deemed never to have existed.

keywords:

Land Deed Official; Sale and Purchase Deed; Absentee Agricultural Land

A. Introduction

Land is one of the most essential needs for humans, as it is used for housing, business, and work purposes. Indonesia is referred to as an agrarian country, where land is the primary factor in meeting the needs of clothing, food, and shelter. Land is very important for human life, making the relationship between land and human life extremely close, as land itself cannot be separated

from human existence.¹ Therefore, as the demand for land increases, the availability of land becomes more limited. In accordance with the law of supply and demand, this leads to land disputes and land-related conflicts.²

Indonesia is an agrarian country where the majority of its population relies on land as their primary source of livelihood.³ The utilization of land, which is essential for human needs, is regulated under Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Constitution), which states: "*The earth, water, and natural resources contained therein are controlled by the state and utilized to the greatest extent for the prosperity of the people.*" This provision is further regulated in Article 1, Paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as the Agrarian Law), which states: "*All land, water, and airspace, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift from Almighty God, belong to the Indonesian nation and constitute national wealth.*"

Law Number 5 of 1960 concerning Basic Agrarian Principles is a legislative regulation that serves as the foundation for legal reform in the agrarian sector. It was enacted to provide legal certainty for the people in achieving equitable prosperity, as many have utilized the functions of land, water, airspace, and the natural resources contained therein for their livelihood.⁴

The Land Reform Law is a law enacted by the legislative body to distribute land tenure rights over agricultural land in such a way as to achieve a more equitable distribution of resources.⁵ Land reform or agrarian reform is a fundamental change in the structure of land ownership and use, as well as the legal relationships related to land tenure.⁶ The Land Reform program is divided into the following:⁷

1. Prohibition of owning agricultural land beyond the specified limits.
2. Prohibition of absentee ownership of agricultural land.
3. Redistribution of land exceeding the maximum limit, as well as land affected by the absentee ownership prohibition, former self-governing territory land, and other state-owned land.
4. Regulation of the return and redemption of mortgaged agricultural land.
5. Reorganization of profit-sharing agreements for agricultural land.
6. Establishment of a minimum ownership limit for agricultural land, along with a prohibition on actions that result in the fragmentation of land ownership into excessively small portions.⁸

¹ Baby Lelyvia Fitri, Fitra Deni, *Akibat Hukum Akta Jual Beli PPAT Yang Tidak Dibacakan Dihadapan Para Pihak*, Imanot: Jurnal Kemahasiswaan Hukum & Kenotariatan, Vol. 1, No. 2, Juni 2022, hlm. 536.

² Istanti, Akhmad Khisni, *Akibat Hukum Dari Akta Jual Beli Tanah Dihadapan PPAT Yang Dibuat Tidak Sesuai Dengan Prosedur Pembuatan Akta PPAT*, JURNAL AKTA, Vol. 4, No. 2, Juni 2017, hlm. 271.

³ Elfira Permatasari, dkk, *Perlindungan Hukum Kepemilikan Tanah Absentee Yang Diperoleh Akibat Pewarisan*, Varia Justicia, Vol. 14, No. 1, Juni 2018, hlm. 1.

⁴ Auliah Ambarwati, dkk, *Keberadaan Tanah Absentee Kini (Studi Kasus di Kota Parepare, Sulawesi Selatan)*, JULIA Jurnal Litigasi Amsir, Vol. 9, No. 3, Mei 2022, hlm. 231

⁵ Pidari Sinaga, *Implementasi Landreform Yang Berkeadilan Bagi Petani Tembakau*, Jurnal Hukum Progresif, Vol. 10, No. 1, April 2022, Hlm. 1.

⁶ Ni Luh Putu Eka Kusumawati, dkk, *Pola Penggarapan Tanah Pertanian Absentee di Desa Kintamani Kecamatan Kintamani Kabupaten Bangli*, Jurnal Analogi Hukum, Vol. 5, No. 1, 2023, Hlm. 42.

⁷ Sigit Budi Prabowo, *Pemilikan Tanah Pertanian Secara Absentee Dan Pertanggung Jawaban Hukum Badan Pertanahan Kabupaten Boalemo Atas Penerbitan Sertifikat (Studi Kasus Di Kecamatan Paguyaman Kabupaten Boalemo)*, Tesis, Magister Kenotariatan, Fakultas Hukum Universitas Brawijaya, 2016, Hlm. 14

⁸ Urip Santoso, *Hukum Agraria (Kajian Komperbensif)*, (Jakarta: Kencana Prenada Media, 2012) Hlm. 218.

Land reform aims to enhance the productivity of agricultural land and reduce agrarian conflicts, which are often triggered by land ownership exceeding the stipulated limits, leading to low agricultural productivity. Moreover, if the agricultural land is under absentee ownership, it is not managed directly by its owner. According to Harsono, absentee land ownership refers to land owned by an individual that is located outside the area of their residence.⁹ According to Boedi Harsono, the purpose of implementing land reform is to increase the income and living standards of tenant farmers as a foundation and prerequisite for carrying out economic development toward a just and prosperous society based on Pancasila.¹⁰

In national land law, there is a principle that agricultural land must be actively and effectively cultivated by its owner to prevent all forms of coercion and exploitation.¹¹ The regulation regarding the prohibition of absentee land ownership and this principle is stipulated in Article 10 of the Agrarian Law (UUPA), which states: *"(1) Every individual and legal entity that holds rights over agricultural land is, in principle, required to cultivate or manage it actively by preventing exploitative practices; (2) The implementation of the provisions in paragraph (1) shall be further regulated by legislation; (3) Exceptions to the principle stated in paragraph (1) of this article shall be regulated by legislation."*

In ensuring legal certainty in the land sector, the government designates land for the prosperity of the people. Therefore, absentee land tenure and ownership are not permitted.¹² Article 3, Paragraph (1) of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation (hereinafter referred to as PP No. 224/1961) regulates the limits on agricultural land ownership, which states: *"The owner of land residing outside the district where the land is located is required to transfer their land rights to another person within the district where the land is located or relocate to that district within a period of six (6) months."*

Article 3d of Government Regulation Number 41 of 1964 concerning Amendments and Additions to Government Regulation Number 224 of 1961 on the Implementation of Land Distribution and Compensation regulates: *"It is prohibited to carry out any form of new transfer of rights over agricultural land that results in the landowner possessing land outside the district where they reside."*

The prohibition of absentee ownership of agricultural land aims to ensure that agricultural land is actively and effectively cultivated or managed by its owner, thereby increasing productivity and preventing land accumulation in the hands of a few landlords. This regulation requires landowners to reside in the same district as their agricultural land.¹³ Owners of agricultural land

⁹ Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Djembatan, 2007), Hlm, 372.

¹⁰ Diyan Isnaeni, *Kebijakan Landreform Sebagai Penerapan Politik Pembaharuan Hukum Agraria Yang Berparadigma Pancasila*, Jurnal Ketahanan Pangan, Vol. 1, No. 2, Desember 2017, Hlm. 92

¹¹ Veronika Roselino, dkk, *Penyebab Dan Larangan Kepemilikan Tanah Absentee Di Indonesia*, Al-Dalil Jurnal Ilmu Sosial, Politik, dan Hukum, Vol. 2, No. 2, Juli 2024, hlm. 18.

¹² Abdul Fathoni, dkk, *Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Masa Peralihan Perubaban Hak Kepemilikan Tanah Pertanian Sesuai Domisili Menjadi Tidak Sesuai Domisili (Absentee) di Wilayah Karawang*, ADIL: Jurnal Hukum, Vol. 15, No. 2, Desember 2024 Hlm. 214

¹³ Nia Rosmiati dan Amiludin, *Pelaksanaan Larangan Pemilikan Tanah Pertanian Secara Absentee Di Kecamatan Mauk Kabupaten Tangerang (Studi Kasus Di Kantor Pertanahan Kabupaten Tangerang)*, Jurnal Hukum Replik, Vol. 7, No. 2, September 2019, Hlm. 20

are prohibited from transferring or assigning land rights to individuals residing outside the district where the agricultural land is located.

To ensure legal certainty in the transfer of land rights through sale and purchase, such legal actions must be documented in a written agreement in the form of an authentic deed made before a Land Deed Official.¹⁴

The transfer of land rights is regulated under Article 37, Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as the Land Registration Regulation), which states: *"The transfer of land rights and ownership rights over a condominium unit through sale and purchase, exchange, grant, capital contribution to a company, and other legal acts of transfer of rights, except for transfers through auction, can only be registered if evidenced by a deed made by a Land Deed Official authorized under the applicable laws and regulations."* Based on Article 37, Paragraph (1) of the Land Registration Regulation, the Land Deed Official is *"granted authority in the transfer of land rights and ownership rights over condominium units, including through a Sale and Purchase Deed."* The Sale and Purchase Deed provides legal certainty to the buyer in two main aspects. The Land Deed Official ensures that the land or building being sold is not in dispute, is free from encumbrances, and that all transaction documents comply with applicable regulations.¹⁵

However, in the transfer of land rights, there are certain rejection provisions that the Land Deed Official must enforce during the transfer process. This is regulated in Article 39, Paragraph (1) of the Government Regulation on Land Registration, which prohibits Land Deed Official from drafting deeds, namely:

"(1) The Land Deed Official shall refuse to draw up a deed if:

- a. *Regarding a registered land parcel or ownership rights over a condominium unit, the original certificate of the relevant right is not presented, or the submitted certificate does not match the records available at the Land Office; or*
- b. *Regarding an unregistered land parcel, the following are not submitted to the Land Deed Official:*
 - 1) *Proof of title as referred to in Article 24 paragraph (1) or a statement letter from the Village Head/Subdistrict Head confirming that the concerned party has control over the land parcel as referred to in Article 24 paragraph (2); and*
 - 2) *A statement letter confirming that the relevant land parcel has not been certified, issued by the Land Office, or, for land located in a remote area far from the Land Office, a statement from the relevant rights holder, validated by the Village Head/Subdistrict Head; or*
- c. *One or more of the parties engaging in the legal act, or one of the witnesses as referred to in Article 38, is not authorized or does not meet the requirements to act accordingly; or*
- d. *One or more of the parties is acting based on an absolute power of attorney that essentially contains a legal act of transferring rights; or*
- e. *The required approval from the competent official or authority has not been obtained for the intended legal act, if such approval is required under the applicable laws and regulations; or*
- f. *The object of the legal act is subject to a dispute concerning its physical or juridical data; or*
- g. *Other required conditions are not fulfilled, or a prohibition stipulated in the relevant laws and regulations is violated."*

¹⁴ Vidya Maharani, *Akibat Hukum Kelalaian Pejabat Pembuat Akta Tanah Terhadap Akta Jual Beli Yang Tidak Sesuai Dengan Ketentuan Peraturan Pendaftaran Tanah (Studi Kasus Putusan Pengadilan Negeri Padang Nomor 59/Pdt.G/2019 PN Pd)*, Indonesian Notary, Vol. 2, Juni 2020, Hlm. 278

¹⁵ Friko Rumadanu, Gunawan Djajaputra, *Kepastian Hukum Kedudukan Akta Jual Beli (AJB) Sebagai Dasar Gugatan*, Ranah Research: Journal of Multidisciplinary Research and Development, Vol. 7, No. 2, Januari 2025, hlm. 724.

Based on Article 39 paragraph (1), the Land Deed Official, as defined in Article 1 point 1 of Government Regulation Number 37 of 1998 concerning Land Deed Officials (hereinafter referred to as PP Land Deed Official), in conjunction with Article 1 point 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 on the Regulation of the Office of Land Deed Officials (hereinafter referred to as PP Amendment Land Deed Official), stipulates the following: "*A Land Deed Official is a public official authorized to draw up authentic deeds concerning specific legal acts related to land rights or ownership rights over condominium units.*"

Based on the definition and authority granted to the Land Deed Official, and in accordance with Article 39 paragraph (1) letter g, the Land Deed Official should refuse to draw up a sale and purchase deed, particularly concerning the transfer of absentee agricultural land. This is based on the provisions of Article 3(d) of Government Regulation No. 41/1964, which prohibits any form of new transfer of rights over agricultural land that results in the landowner residing outside the district where the land is located.

However, in reality, absentee ownership of agricultural land remains common in Indonesia, where the landowner's domicile differs from the location of their agricultural land. This violates the regulations established by the government, as stipulated in the Basic Agrarian Law (UUPA), Government Regulation No. 224/1961, and Government Regulation No. 41/1964, which prohibit individuals or legal entities from owning agricultural land in an absentee manner.

As in the case decided in District Court Decision Number 165/Pdt.G/2014/PN.DPK in conjunction with High Court Decision Number 346/PDT/2016/PDT.BDG and Supreme Court Decision Number 599.K/Pdt/2019, where the land with Girik HMT Bakrie Number 1730, Persil 17, covering an area of 129,500 m² (12.95 hectares), located in Rangkapan Jaya Subdistrict, Pancoran Mas District, Bogor Regency (now Depok City), was subject to absentee land ownership regulations because the landowner resided in Jakarta. However, HMT Bakrie refused to acknowledge that the land was subject to absentee ownership regulations, leading the government to take over the land.

With the transfer of the land under government control, the government redistributed it to 78 (seventy-eight) cultivators who resided on the land formerly owned by HMT Bakrie. The cultivators were granted ownership rights over the land and permission to cultivate it, provided that they fulfilled the obligations stipulated in the Decree of the Head of the West Java Agrarian Inspection Number V/B-54/Insp/1965.

However, the cultivators violated their obligations as stipulated in the Decree of the Head of the West Java Agrarian Inspection Number V/B-54/Insp/1965 by transferring ownership rights over the land through sale and purchase to employees of the Ministry of Foreign Affairs. The sale and purchase of the land were formalized in Sale and Purchase Deed Number 1/Depok/1967, before the Land Deed Official, John Leonard Woworuntu, based in Jakarta, without the approval of the Minister of Agrarian Affairs.

In the ruling of District Court Decision Number 165/Pdt.G/2014/PN.DPK, the judge declared that 13 (thirteen) employees of the Ministry of Foreign Affairs were the legitimate holders of the Ownership Certificates (Sertifikat Hak Milik) based on the Decree of the Governor of West Java Province, Casu Quo Head of the Directorate of Agrarian Affairs, Number 727/Dit/PHT/HM/1979. Meanwhile, in the ruling of the High Court Decision Number 346/PDT/2016/PT.BDG, the judge overturned the District Court Decision Number

165/Pdt.G/2014/PN.DPK, stating that the lawsuit was inadmissible because the District Court lacked the jurisdiction to examine, adjudicate, and decide the case. In Supreme Court Decision Number 599.K/Pdt/2019, the court ruled that the lawsuit was inadmissible due to a lack of necessary parties, as HMT Bakrie or his heirs were not included as plaintiffs in the State Administrative Court proceedings. This ruling reflects legal uncertainty in the resolution of the land dispute.

Based on this, if analyzed specifically in relation to farmers to ensure agricultural land can be cultivated independently and actively, the role of the Land Deed Official should be able to address this issue. In reality, based on the court decisions, the Land Deed Official did not apply the principle of prudence, leading to a dispute related to absentee agricultural land due to the Sale and Purchase Deed issued by the Land Deed Official. As a public official, the Land Deed Official is required to exercise diligence in performing their duties and should carefully verify the formal validity of the documents submitted to them.¹⁶

Given that the regulation prohibiting absentee ownership of agricultural land has long been in place and that the Land Deed Official is obligated to refuse to draft deeds that contradict the law, the issuance of such deeds has resulted in agricultural land becoming absentee-owned and not being independently managed by its new owner.

There have been several previous studies that also discuss absentee ownership of agricultural land, including: First, a study by I Gusti Nyoman Yonatan Wiradi and Maria Hutapea titled *The Role of Land Deed Official in Preventing Absentee Ownership Through the Sale and Purchase of Land Ownership Rights on Agricultural Land*, published in 2018.¹⁷ This study shares similarities with this article in that it discusses the crucial role of the Land Deed Official in preventing absentee ownership of agricultural land. The difference, however, is that this article also discusses the legal consequences of the Sale and Purchase Deed issued by the Land Deed Official concerning absentee agricultural land. "Second, a study by Bakti Farahtika Sari titled *The Legal Consequences of Land Deed Official Negligence in Drafting Sale and Purchase Deeds That Result in the Deed Lacking Formal Evidentiary Strength (Formale Bewijskracht) (A Study of the Appeal Decision of the Medan High Court Number 115/PDT/2018/PTMDN)*, published in 2021.¹⁸ This study shares similarities in that it discusses the legal consequences of the Sale and Purchase Deed issued by the Land Deed Official, which lacks evidentiary strength or is null and void by law. The difference, however, is that this article specifically focuses on the Sale and Purchase Deed for absentee agricultural land issued by the Land Deed Official in violation of the prevailing laws and regulations.

¹⁶ Yovita Christian Assikin, dkk, *Tanggung Jawab Pejabat Pembuat Akta Tanah Berkaitan Dengan Dibatalkan Akta Jual Beli Ditinjau Dari Peraturan Perundang-Undangan Yang Berlaku*, ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan, Vol. 3 No. 1, Desember 2019, Hlm. 83.

¹⁷ I Gusti Nyoman Yonatan Wiradi, Maria Hutapea, *Peran PPAT Dalam Mencegah Pemilikan Secara Absentee Melalui Jual-Beli Hak Milik Atas Tanah Petanian*, JUSTITIA ET PAX: Jurnal Hukum, Vol. 34, No. 1 2018.

¹⁸ Bakti Farahtika Sari, *Akibat Hukum Kelalaian PPAT Dalam Pembuatan Akta Jual Beli Yang Mengakibatkan Aktanya Tidak Memiliki Kekuatan Pembuktian Formal (Formale Bewijskracht) (Studi Putusan Banding Pengadilan Tinggi Medan Nomor 115/PDT/2018/PTMDN)*, Indonesian Notary, Vol. 3, No. 3, 2021 Hlm. 564

Research Method

This study employs normative juridical research. Normative legal research is a legal study conducted by examining library materials or secondary data.¹⁹ This legal research employs a normative juridical approach by analyzing legal regulations, such as applicable laws and regulations, which are then linked to the issues discussed in this study. Based on the type of research used, the problem approach method in this study includes the statute approach, which involves “examining all laws and regulations related to the legal issues in this research”; the conceptual approach, which entails “studying doctrinal views in legal science by clarifying ideas through legal definitions, legal concepts, and legal principles relevant to the issue”; and the case approach, which involves analyzing cases related to the legal issues discussed in this study²⁰, and the historical approach is carried out by “tracing and examining the history in order to understand the changes and developments in the philosophy underlying the legal institution being studied.” The legal materials used in this study are primary legal materials and secondary legal materials. The primary legal materials used in this study are laws and regulations, as well as official documents containing legal provisions. The secondary legal materials in this study include all information about the law that is not official documents, such as books related to the legal issues in this research, articles, legal journals, opinions of scholars, jurisprudence, and legal magazines related to the issues addressed in this study.

Discussion and Analysis

Land Deed Official

The definition of a Land Deed Official as stated in Article 1, paragraph 1 of the Government Regulations Land Deed Official in conjunction with Article I, paragraph 1 of the amended Government Regulations Land Deed Official, is as follows: “Land Deed Official is a public official who is granted the authority to create authentic deeds concerning specific legal acts related to land rights or Ownership Rights over a Strata Title.” Article 2, paragraph (2) of the Government Regulations Land Deed Official regulates the legal acts that can be carried out by Land Deed Official, namely: 1) Sale and purchase; 2) Exchange; 3) Donation; 4) Contribution to a company (*inbrenng*); 5) Division of joint rights; 6) Granting of Building Use Rights/ Usage Rights over land with Ownership Rights; 7) Granting of Mortgage Rights; 8) Granting power to encumber with Mortgage Rights.

In carrying out its main duties, the Land Deed Official has the authority to create authentic deeds concerning all legal acts that have been determined by the applicable laws and regulations. This is based on Article 3 of the Government Regulations Land Deed Official, which states: “1) To carry out the main duties as referred to in Article 2, a Land Deed Official has the authority to create authentic deeds concerning all legal acts as referred to in Article 2, paragraph (2), concerning land rights and Ownership Rights over Strata Titles located within its working area; 2) The Land Deed Official is specifically authorized only to create Deeds concerning legal acts that are specifically designated for it.” An authentic deed is a proof that

¹⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: PT Raja Grafindo Persada, 2003), hal 13.

²⁰ *Ibid.*

is perfect, complete and binding, so that the truth of the things written in the deed must be acknowledged for its truth.²¹

With the duties and authority held by the Land Deed Official, this can serve as the basis for registering data changes or for land registration resulting from legal acts. The function of the Land Deed Official deed as a means of proof and the legal consequences of the Land Deed Official deed for the parties involved in its creation.²² Through an authentic deed, it is possible to clearly determine rights and obligations, ensure legal certainty, and at the same time, it is expected to help prevent disputes.²³ The Land Deed Official are held liable if their actions or omissions result in harm to involved parties, leading to the annulment of the deed in a court ruling.²⁴

The Transfer of Land Rights Through Sale and Purchase

Land rights are explicitly regulated under Agrarian Law.²⁵ Land rights are the rights of control over land, which consist of a series of authorities, obligations, and/or prohibitions for the holder of the rights to take certain actions regarding the land they own. What is permitted, required, or prohibited to be done, which constitutes the substance of the right of control, becomes the criterion or distinguishing factor among the land rights regulated under land law.²⁶ With the existence of the right of control by the state as regulated in Article 2, paragraphs (1) and (2) of the Basic Agrarian Law (UUPA), namely:

- 1) *Based on the provisions of Article 33, paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water, and space, including the natural resources contained within them, are controlled by the state as the organization of the power of the entire people at the highest level;*
- 2) *The state's right of control grants authority to:*
 - a. *Regulate and manage the allocation, use, supply, and maintenance of the earth, water, and space;*
 - b. *Determine and regulate the legal relationships between individuals and the earth, water, and space;*
 - c. *Determine and regulate the legal relationships between individuals and legal actions concerning the earth, water, and space.*

Based on these provisions, the state has the authority to determine the land rights that can be owned by and/or granted to individuals and legal entities that meet the specified requirements.

The various types of land rights granted are regulated in Article 16, paragraph (1) of the Basic Agrarian Law (UUPA), which defines several types of land rights, namely: *a) Ownership Right;*

²¹ Wim Fadel Azmillhuda, *The legal consequences of the criminal acts signature in the deed of land purchase in front of the land deed official*, NEGREI: Academic Journal of Law and Governance, Vol. 2 No. 2, Desember 2022, 161.

²² Junaedi, Gunawan Djajaputra, *Tanggung Jawab PPAT Sementara Dan Akibat Hukum Akta Jual Beli Yang Dibatalkan Melalui Putusan Pengadilan*, Jurnal Suara Hukum, Vol. 4, No. 1, Maret 2022, Hlm. 109

²³ Lysanza Salawati, dkk, *Akibat Hukum Pejabat Pembuat Akta Tanah (PPAT) Karena Adanya Gugatan Terkait Dokumen Palsu Dan Keterangan Palsu Dalam Pembuatan Akta*, SALAM: Jurnal Sosial dan Budaya Syar-I, Vol. 9, No. 3, 2022 Hlm. 685

²⁴ Sekar Rizqi Triroosa Putri, Afifah Kusumadara, R. Imam Rahmat Sjafi'i, *Notary's Responsibility for Making Deed of Statement Related to Sale and Purchase Deed Containing Nominee Element*, NEGREI: *Academic Journal of Law Governance*, Vol. 2, No. 2, November 2024, hal. 167.

²⁵ "Agrarian law encompasses a set of legal rules that regulate land rights, ownership, use, transfer, and utilization of natural resources both above and below the surface, as well as all forms of conflicts related to land and natural resource management." dalam Try Widiyono dan Zubair Kasem Khan, *Legal Certainty in Land Rights Acquisition in Indonesia National Land Law, Law Reform*, Vol. 1, No. 19, 2023, hal. 129.

²⁶ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya*, (Jakarta: Djambatan, 2007), hal. 283.

b) *Right to Cultivate*; c) *Right to Build*; d) *Right to Use*; e) *Right to Lease*; f) *Right to Clear Land*; g) *Right to Harvest Forest Products*; h) *Other rights not included in the above rights, which will be determined by law, as well as rights of a temporary nature as referred to in Article 53.*

According to Effendi Perangin, the transfer of land rights is the transfer of land rights that causes the rights to the land to shift from one person to another.²⁷ The transfer of rights is a legal act intentionally carried out with the purpose of transferring the land rights from the transferor to the transferee, where the legal acts in question are sale and purchase, exchange, donation, or bequest.²⁸ Thus, the transfer of land rights is a legal act between the seller and the buyer in transferring the land rights.

In conducting a land sale and purchase, the parties must create a sale and purchase deed that is drafted, prepared, and signed in the presence of the Land Deed Official as a requirement for the land sale and purchase transaction.²⁹ The sale and purchase deed must be drafted properly so that it can serve as a strong foundation for registering the transfer of land rights and the imposition of rights on the land at the land office.³⁰

Absentee land

Absentee land refers to agricultural land ownership where the owner resides outside the subdistrict where the agricultural land is located. According to Harsono, absentee land is land ownership located outside the area where the owner resides.³¹ Based on this, it means that every landowner is prohibited from owning agricultural land in a different subdistrict from their place of residence, as it may lead to inefficient land cultivation. If a piece of land is subject to the absentee land provision, the land must be transferred, or it will be directly controlled by the state.

Absentee land that is not transferred in ownership or where the owner does not move to the subdistrict where the land is located within the specified time limit will become land directly controlled by the state. The land is taken by the government and then redistributed to farming cultivators in need who reside in the subdistrict where the land is located. The former owner will be compensated according to the applicable laws and regulations. Land redistribution is a series of activities carried out by the government for the purpose of distributing and/or granting land rights originating from land under the Agrarian Reform program, controlled by the state, to the beneficiaries of the Agrarian Reform, along with the issuance of land rights certificates.

However, the prohibition on absentee land ownership may be exempted as stipulated in Article 3, paragraph 4 of Government Regulation No. 224/1961, namely: *those who are performing*

²⁷ Effendi Perangin, *Hukum Agraria di Indonesia Suatu Telaah dari Sudut Pandang Praktisi Hukum*, Cet. 4, (Jakarta: PT Raja Grafindo Persada, 1994), hal. 1.

²⁸ Effendi Perangin, *Hukum Agraria Indonesia Suatu Telaah Dari Pandangan Praktisi Hukum*, (Jakarta: Raja Grafindo Perkasa, 1986), hal. 1.

²⁹ Bekti Farahatika Sari, *op.cit.* Hlm. 564

³⁰ Jeihan Saphira, *Pembatalan Akta Jual Beli PPAT oleh Putusan Pengadilan Negeri (Tinjauan Yuridis Terhadap Putusan Pengadilan Negeri Jakarta Selatan Nomor 449/PDT.G/2013/PN.JKT.SEL)*, Tesis Program Studi Magister Kenotariatan Fakultas Hukum Universitas Indonesia, 2016, hlm. 2.

³¹ Boedi Harsono, *op. cit.*

state duties, fulfilling religious obligations, or have special reasons that are acceptable to the Minister of Agrarian Affairs.

Article 10, paragraph (1) of the Basic Agrarian Law regulates the prohibition of absentee land ownership, namely:

- (1) *“Every individual and legal entity that holds any rights over agricultural land is generally required to actively work or cultivate the land themselves, while preventing exploitative practices.*
- (2) *The implementation of the provisions in paragraph (1) will be further regulated by statutory regulations.*
- (3) *Exceptions to the principle in paragraph (1) of this article are regulated by statutory regulations.”*

With this regulation, the prohibition on absentee agricultural land is further regulated in Article 3, paragraph (1) of Government Regulation No. 224/1961, namely: *“Landowners who reside outside the subdistrict where the land is located are required, within a period of 6 (six) months, to transfer their land rights to another person in the subdistrict where the land is located or to relocate to the subdistrict where the land is situated.”*

It is also regulated in Article 3d of Government Regulation No. 41/1964, which states: *“It is prohibited to carry out any form of transfer of new rights over agricultural land that results in the landowner having a parcel of land outside the subdistrict where they reside.”*

Thus, there are several essential provisions regarding absenteeism, including:

- 1) Agricultural land must be cultivated or managed actively by the owner.
- 2) The owner of agricultural land is required to reside in the district where the land is located.
- 3) An owner of agricultural land who resides outside the district where the land is located must transfer their land rights or relocate to the district where the land is situated.
- 4) This applies to individuals or legal entities residing or based outside the district where the land is located.³²

The ownership of absentee land may lead to inefficient land cultivation, particularly in terms of its management, supervision, and transportation of yields. Therefore, absentee land ownership is not permitted and violates the principles set forth in Article 10 of the Basic Agrarian Law (UUPA).

The purpose of the prohibition on absentee land ownership is:

- 1) To ensure that the benefits derived from the cultivation of the land are largely enjoyed by the rural community where the land is located, as the landowner will reside in the producing area.
- 2) To ensure that every individual or legal entity holding rights over agricultural land can actively cultivate or manage it themselves and to prevent the emergence of landlords or the concentration of land ownership by a few individuals with land scattered in various locations, which could lead to social inequality.

³² Boedi Harsono, *Hukum Agraria Indonesia*, (Jakarta: Djambatan, 1994), hal. 84.

- 3) To uphold social interests and land protection, as the government is concerned that allowing absentee land ownership may result in neglected and unproductive land due to the owner's distant residence. Therefore, the government will take immediate protective measures by prohibiting absentee land ownership to ensure more efficient land cultivation.³³

The consequences of absentee land ownership (*guntai*) include ineffective management, particularly in terms of administration, supervision, and yield acquisition.³⁴ Absentee land ownership also disadvantages farmers who cultivate land owned by others with full effort, responsibility, and risk, yet only receive a portion of the yield they manage.³⁵ Landowners who do not cultivate their land, without bearing any risks or exerting effort, gain greater profits from their land.³⁶

Legal Consequences of a Sale and Purchase Deed for Absentee Agricultural Land Made by a Land Deed Official

Based on the District Court Decision No. 165/Pdt.G/2014/P.DPK in conjunction with the High Court Decision No. 346/PDT/2016/PT.BDG and the Supreme Court Decision No. 599 K/Pdt/2019, HMT Bakrie, as the owner of agricultural land subject to absentee land ownership regulations, did not accept that his land was classified as absentee and refused to pay compensation. By doing so, HMT Bakrie has violated the provisions of Article 19(1) of Government Regulation No. 224/1961, which states: "*A landowner who refuses or deliberately obstructs the government's acquisition and distribution of land, as referred to in Article 2(2), shall be subject to imprisonment for a maximum of 3 months and/or a fine of up to Rp. 10,000, while the land shall be seized by the government without compensation.*"

With the issuance of the Decree of the Minister of Agriculture and Agrarian Affairs No. SK-35/KA/1962, HMT Bakrie's land was classified as absentee, as he resided at Jalan Hang Tuah No. 4, Kebayoran Baru, Jakarta, while his land was located in Depok. Thus, in 1965, HMT Bakrie's land was redistributed to 78 (seventy-eight) tenant farmers, covering approximately 10,950 hectares for people's agriculture. Meanwhile, the remaining approximately 2.7299 hectares were allocated for infrastructure, village facilities, a polyclinic, and a sports field, based on the Decree of the Head of the West Java Agrarian Inspection No. V/B-54/Insp/1965 (SK KINAG), dated December 16, 1965.

However, after the tenant farmers, as the recipients of the land redistribution, conducted a sale and purchase transaction of the land reform object with employees of the Ministry of Foreign Affairs before the Land Deed Official, John Leonard Woworuntu, based in Jakarta, the transaction

³³ A.P. Parlindungan, *Landreform di Indonesia Suatu Studi Perbandingan*, (Bandung: Alumni, 1987), hal. 87.

³⁴ Dinalara Dermawati Butarbutar, *Mengatasi Kepemilikan Tanah Absentee/Guntai*, Pakuan Law Review, Vol. 1, No. 2, Juli-Desember 2015.

³⁵ Sultan Abdurahman, *Tinjauan Yuridis Kepemilikan Tanah Absentee Dikaji Dari Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok Agraria*, Jurnal Lex Crimen, Vol. 5, No. 6, Agustus 2016, hlm. 124

³⁶ Metrika Prawita, dkk, *Urgensi Keberadaan Pengaturan Larangan Kepemilikan Tanah Secara Absentee Dalam Reforma Agraria*, Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, Vol. 6, No. 2, Desember 2021, Hlm. 549

was formalized in Sale and Purchase Deed No. 1/Depok/1967. At that time, the tenant farmers had not yet fully paid for the land, and the transfer was made without the permission of the Minister of Agrarian Affairs. Therefore, by engaging in the sale and purchase transaction recorded in the Sale and Purchase Deed, the farmers violated the provisions of SK KINAG and Article 14(4) of Government Regulation No. 224/1961, which states: *"As long as the price of the land mentioned in point (a) above has not been fully paid, the ownership rights shall not be transferred to another person, except with the permission of the Minister of Agrarian Affairs or an official appointed by him."*

The transfer of land ownership by the tenant farmers to employees of the Ministry of Foreign Affairs resulted in absentee ownership. This occurred because the buyers, who were employees of the Ministry of Foreign Affairs working at foreign embassies, had their purchased land cultivated by domestic workers under a monthly wage system. This practice contradicts the provisions of Article 10(1) of the Basic Agrarian Law (UUPA) and Article 3(d) of Government Regulation No. 41/1964.

Therefore, when viewed from a legal perspective, the sale and purchase transaction conducted between the tenant farmers and employees of the Ministry of Foreign Affairs before the Land Deed Official, John Leonard Woworuntu, as recorded in Sale and Purchase Deed No. 1/Depok/1967, does not fulfill the legal requirements for a valid agreement as stipulated in Article 1320 of the Indonesian Civil Code (KUHPERdata), namely:

"For an agreement to be legally valid, four requirements must be met:

1. *The consent of the parties binding themselves;*
2. *The legal capacity to enter into an agreement;*
3. *A specific subject matter;*
4. *A lawful cause."*

The first and second requirements are referred to as subjective requirements because they relate to the subjects of the agreement, while the third and fourth requirements pertain to the object of the agreement and are referred to as objective requirements. If the subjective requirements are not met, the agreement may be annulled. However, as long as the agreement has not been or is not annulled by a court, it remains in effect. If the objective requirements are not met, the agreement is null and void by law, meaning it is considered invalid from the outset. The law regards the agreement as never having existed. These four requirements for a valid agreement form the fundamental basis for the creation of a legally binding contract.

In this case, the subjective and objective requirements as stipulated in the article are not met, namely:

1. The consent of the parties binding themselves.

A sale and purchase agreement is consensual, meaning the agreement is formed when both parties reach an agreement on the goods and the price, even if the goods have not

yet been delivered or the payment has not been made.³⁷ Consent is considered valid as long as there is no mistake, coercion, or fraud.³⁸ Thus, in this case, this requirement was violated because, during the sale and purchase transaction, the tenant farmers as sellers did not inform the employees of the Ministry of Foreign Affairs as buyers that the sellers were tenant farmers and that the land being sold was a land reform object.

2. A lawful cause.

A lawful cause means that the cause is not prohibited by law or contrary to good morals or public order.³⁹ In this case, the sale and purchase transaction recorded in the sale and purchase deed made before the Land Deed Official contradicts the provisions of Article 3(d) of Government Regulation No. 41/1964.

Basically, agricultural land can be subject to sale and purchase transactions as long as they comply with the applicable laws and regulations and can be proven with a deed made by an authorized official. This is based on Article 19 of Government Regulation No. 10 of 1961 concerning Land Registration, which states: *"Every agreement intended to transfer land rights, grant a new right over land, mortgage land, or borrow money with land rights as collateral must be evidenced by a deed made by and before an official appointed by the Minister of Agrarian Affairs."*

The official referred to is regulated in Article 1 of Minister of Agrarian Affairs Regulation No. 11 of 1961 concerning the Form of Deeds, which states: *"The deeds referred to in Article 19 of Government Regulation No. 10 of 1961 on Land Registration (State Gazette of 1961 No. 28) must be made by a Land Deed Official using forms (register lists) whose samples are attached to this Regulation."*

As in this case, a sale and purchase transaction was conducted by and before the Land Deed Official, John Leonard Woworuntu. However, the Land Deed Official did not ensure the proper procedure in drafting Sale and Purchase Deed No. 1/Depok/1967, resulting in the non-fulfillment of material requirements (subject and object) and formal requirements (procedures and conditions) in the making of the deed, namely:

1) Material Requirements

a. For the Seller

That the tenant farmers, as the Sellers, were not authorized to conduct the sale and purchase of land obtained through redistribution without the approval of the Minister of Agrarian Affairs, as they had not yet fully paid for the land. This is as stipulated in the

³⁷ Pasal 1458, Kitab Undang-Undang Hukum Perdata (Staatsblad Tahun 1847 Nomor 23), hlm. 408, yaitu: "Jual-beli itu dianggap telah terjadi antara kedua belah pihak, seketika setelahnya orang-orang ini mencapai sepakat tentang kebendaan tersebut dan harganya, meskipun kebendaan itu belum diserahkan, maupun harganya belum dibayar."

³⁸ Pasal 1321, Kitab Undang-Undang Hukum Perdata (Staatsblad Tahun 1847 Nomor 23), hlm. 378, yaitu: "Tiada sepakat yang sah apabila sepakat itu diberikan karena kekhilafan, atau diperolehnya dengan paksaan atau penipuan."

³⁹ Pasal 1337, Kitab Undang-Undang Hukum Perdata (Staatsblad Tahun 1847 Nomor 23), hlm. 390, yaitu: "Suatu sebab adalah terlarang, apabila dilarang oleh undang-undang, atau apabila berlawanan dengan kesusilaan baik atau ketertiban umum."

Decree of the Head of the West Java Agrarian Inspection No. V/B-54/Insp/1965 (SK KINAG) and is contrary to Article 14, Paragraph 4 of Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Compensation.

b. Whether the Land in Question Can Be Sold or Is in Dispute

That the land subject to the sale and purchase transaction is absentee land still under state control, as the tenant farmers have not fully paid for the land. Therefore, it cannot be transferred to another party without the approval of the Minister of Agrarian Affairs.

2) Formal Requirements

- a. In this case, the tenant farmers, as the Sellers, likely did not submit their land ownership certificates to the Land Deed Official, John Leonard Woworuntu, at the time of drafting the deed, because they had not fully paid for the land. As a result, the land was still under government control. This is in violation of the provisions of Article 22, Paragraph 1, which states: *"Regarding registered land, the Official may refuse a request to draft a deed as referred to in Article 19, if:"*
 - a) The request is not accompanied by the relevant land certificate;
 - b) The land subject to the agreement is still in dispute;
 - c) There is no proof of payment for the registration fee.
- b. In the creation of the Sale and Purchase Deed by Land Deed Official John Leonard Woworuntu, no examination of the history and status of the land object in the transaction was conducted. This is because the content of the Sale and Purchase Deed Number 1/Depok/1967 states that the status of the land object is land with a *girik* title, whereas, in reality, the land is subject to absentee ownership regulations, which prohibit its transfer without approval from the local Land Registration Office. Therefore, this contradicts Article 14, Paragraph 4 of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation.
- c. It is also known that Land Deed Official John Leonard Woworuntu was a Land Deed Official whose working area was in Jakarta, while the object of the sale and purchase was located in Rangkapan Jaya Village, Panoran Mas District, Bogor Regency (now Depok City). Thus, this contradicts the provisions of Article 2, Paragraph 1 of the Regulation of the Minister of Agrarian Affairs Number 10 of 1961 concerning the Appointment of Officials as Referred to in Article 19 of Government Regulation Number 10 of 1961 on Land Registration, as well as Their Rights and Obligations, which states: *"An official is only authorized to make deeds as referred to in Paragraph (1) of Article 1 concerning lands located within their working area."*

Based on the analysis conducted on the Sale and Purchase Deed Number 1/Depok/1967, which was made by Land Deed Official John Leonard Woworuntu, it does not comply with the procedures stipulated in the applicable laws and regulations. Due to the non-fulfillment of both material and formal requirements, the deed made by Land Deed Official John Leonard Woworuntu contains elements of legal defect. Therefore, based on the second dictum of the

Decree of the Minister of Home Affairs c.q. Directorate General of Agrarian Affairs Number SK.81/DJA/1978, which states:

"That the sale of land carried out by the recipients of redistribution who obtained land ownership rights based on the Decree of the West Java Agrarian Inspection Number V/B-54/Insp/1965 dated December 16, 1965, insofar as the former land owned by HMT Bakrie was sold to Employee Woworuntu under Sale and Purchase Deed Number 1/Depok/1967 dated September 23, 1967, has violated the applicable requirements and legal regulations. Therefore, the sale of the land is considered invalid."

Due to the issuance of the Minister of Home Affairs Decree stating that the land sale is considered invalid, the Sale and Purchase Deed made by Land Deed Official John Leonard Woworuntu, Number 1/Depok/1967, dated September 23, 1967, is also invalid or can be deemed as never having existed, as it contradicts the applicable laws and regulations.

According to the theory of legal consequences by A. Ridwan Halim, legal consequences refer to all forms of outcomes that arise from legal acts performed by a legal subject concerning a legal object, as well as other consequences resulting from certain events that are related to law and are recognized as legal consequences.⁴⁰ Therefore, the legal act carried out by the legal subject, in this case, the Land Deed Official, concerning the legal object, namely agricultural land subject to absentee land provisions, has resulted in the nullification of a legal status. Consequently, the Sale and Purchase Deed made by the Land Deed Official is deemed null and void by operation of law, as it does not meet the valid requirements of an agreement. As a result, the deed is rendered invalid or considered as never having existed, as it contradicts the applicable legal provisions.

Conclusion

The Sale and Purchase Deed made by the Land Deed Official for absentee agricultural land is in contradiction with legal regulations, namely Article 1320 of the Indonesian Civil Code (KUHPerduta) regarding the validity requirements of an agreement, which has violated both subjective and objective requirements, Article 10 of Law Number 5 of 1960 on Basic Agrarian Principles, which prohibits absentee ownership of agricultural land, Article 3d of Government Regulation Number 41 of 1964, amending and supplementing Government Regulation Number 224 of 1961 on the Implementation of Land Redistribution and Compensation, which prohibits the transfer of new rights to absentee agricultural land, Article 39 paragraph 1 letter g of Government Regulation Number 24 of 1997 on Land Registration, which mandates that the Land Deed Official must refuse to draft a deed that contradicts applicable laws and regulations. Furthermore, the drafting of the Sale and Purchase Deed by Land Deed Official John Leonard Woworuntu did not fulfill the **material requirements** (subject and object) and **formal requirements** (procedures and conditions) in the making of the Sale and Purchase Deed. As a result, the Sale and Purchase Deed is null and void by law as it does not meet the legal requirements of a valid agreement, rendering the deed invalid or considered as never having existed, as it contradicts the provisions of the applicable laws and regulations.

⁴⁰ Ridwan Halim, *Hukum Administrasi Negara*, (Jakarta: PT Raja Grafindo Perdada, 2004), hal. 56.

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