



Criminal Law Approach to Absentee Land Ownership as A Form of Legal Protection by The State

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ARTICLE INFO	ABSTRACT
<p>Keywords: Agrarian; Absentee; Criminal Law</p> <p>How to cite: Negara, Dharma Setiawan., & Nainggolan, Samuel Dharma Putra. (2023). Criminal Law Approach to Absentee Land Ownership as a Form of Legal Protection By the State. <i>Veteran Law Review</i>. 6(2). 149-163.</p> <p>Received: 2023-07-31 Revised: 2023-09-06 Accepted: 2023-11-26</p>	<p>The enactment of the Basic Agrarian Law (UUPA) has changed the constellation of land in Indonesia. The spirit of anti-colonialism is eliminated as much as possible in the regulation of land in Indonesia. There is land that functions as agricultural land that is owned by parties who do not even live where the land is located, known as Absentee. This can hurt the spirit of the UUPA which wants to protect land ownership by indigenous people who live where the land is located. It is felt that the criminal law approach needs to be considered in an effort to protect the spirit of the BAL, in this case absentee land ownership. This legal research is normative legal research using a statutory approach, a conceptual approach that aims to analyze the criminal law approach to absentee land ownership in realizing social justice for all Indonesian people.</p>

1. Introduction

Land can be a basis where humans can live a comfortable and peaceful life. Land cannot be separated from humans because land is a strategic natural resource for the people, nation and state. The objectives of the Indonesian state as stated in the 4th paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) require public welfare to be transformed into social welfare for all Indonesian people. The 1945 Constitution of the Republic of Indonesia also regulates state control over land through its natural resources.

In the form of the state's presence in the goals of the state which are related to land, regulations regarding the land were made through Law Number 5 of 1960 concerning Basic Agrarian Regulations (LN 1960 No.104/TLN No.2043) known as the BAL. Through the UUPA as a national agrarian law instrument it is regulated regarding land that applies in Indonesia. Agrarian itself comes from the word *ager* or field, which means field; agrarian science means field science or soil science (land law) (Wiradiputra, 1954). The correct

understanding regarding agrarian (land law) is very important to be owned by the Indonesian nation, because most of the work of its people is farming, that's why Indonesia is also known as an agricultural country. Starting from a geographical point of view, Indonesia is located in a tropical area which has high rainfall so that many types of plants can live and thrive, this is because from a geological point of view there are many volcanoes which are scattered in almost all parts of Indonesia which are rich in minerals, so that placing Indonesia's position in the world's tectonic plates.

Indonesia is known as an agricultural country, where the livelihood of the population is mostly farmers. Agriculture in Indonesia produces valuable commodities including rice, corn, soybeans, vegetables, fruits, tubers and so on. Plantations in Indonesia also produce commodities that are no less valuable than agriculture. Based on this, the state has an obligation to regulate in order to provide protection for this potential for the welfare of its people. The state must have a concept of protecting farmers as a support for food availability in Indonesia, the state must guarantee this sustainability.

One form of land regulation by the State based on Article 2 of the BAL states that:

Article 2 paragraph (1) UUPA:

On the basis of the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1. Earth, water and space, including the natural wealth contained therein, at the highest level is controlled by the State as an organization of power for all the people.

Article 2 paragraph (2) UUPA:

The right to control from the State referred to in paragraph (1) of this article gives authority to:

- a. Regulate and administer, allotment, use, supply and maintenance of the earth, water and space;
- b. Determine and regulate legal relations between people and earth, water, and space;
- c. Determining and regulating legal relationships between people and legal acts concerning earth, water, and space.

Article 2 paragraph (3) UUPA:

The authority originating from the right to control from the State referred to in paragraph (2) of this article is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous.

Article 2 paragraph (4) of the UUPA:

The implementation rights of the State mentioned above can be delegated to private areas and customary law communities, only as necessary and not contrary to national interests according to the provisions of Government

Regulations.

As one of the legal instruments in the agrarian sector, the UUPA is a benchmark, the UUPA is a center for regulation and compilation of various legal instruments that are closely related to agrarian affairs (land law). Furthermore, on this basis, fundamental changes emerged regarding land ownership and control in order to complement the deficiencies of the existing rules in the BAL itself, one of the legal rules intended as a complement or explanation of several sections regulated in the BAL is Law Number 56 prp Year 1960 concerning the determination of Agricultural Areas (LN 1960 No.174/TLN No. 5517) known as the Law on *Landreform*.

Based on Article 2 of the UUPA, it can be known that the form of ownership of land by the State as the highest entity in society, it is also possible for the land to be authorized to citizens (in the form of individuals or legal entities) either individually or jointly. In essence, the UUPA regulates that land in Indonesia can be owned by Indonesian citizens, and even only Indonesian citizens have the right to control land in Indonesia. Just like the concept of Property Rights in civil law, UUPA indicates that Indonesian Citizens can control a piece of land. In relation to land, the concept of mastering is a state of birth where a person masters an object as if it were his own, which is protected by law, without questioning who actually owns the property.

Possessin civil law comes from the term "*to sit*" so that *literal* means "occupy". For *possess* (two) elements are required, namely power over an object and the will to own the object. Regarding immovable objects by law it is determined that to acquire *possess* by not using the help of other people is needed, that the person who occupies a plot of land must continuously occupy it for 1 (one) year without getting interference from any party, then he is considered as *bezziter* the land (*Vide*: Article 545 BW) (Subekti, 1992).

Program *Landreform* itself aims to increase the income and standard of living of farmers, especially land cultivators. As a basis or prerequisite for the life of farmers, especially land cultivators, as a basis or prerequisite for carrying out economic development towards a just and prosperous society based on Pancasila (Perangin-Angin, 1986). *Landreform* is further clarified by the opinion of Urip Santoso, where Program *Landreform* these include:

1. Prohibition to control agricultural land that exceeds the limit;
2. Prohibition of absentee land ownership;
3. Redistribution of land that is more than the maximum limit as well as land subject to absentee prohibition, ex-self-governing land, and other state land;
4. Arrangements regarding the return and redemption of agricultural lands;
5. Re-arrangement of agricultural land production sharing agreements;
6. Determination of the minimum limit for the ownership of

agricultural land, accompanied by a prohibition to carry out actions which result in the division of ownership of agricultural land into too small parts.

Furthermore, Ady Kusnandy argues regarding the scope of the application *Landreformis* for the limitation of the maximum area of land tenure; prohibition of land ownership *absentee* or *guntai*; redistribution of the remaining lands and the maximum limit of land subject to the prohibition *absentee*, former autonomous lands, and on state lands; arrangements regarding the return and redemption of mortgaged agricultural lands; rearrangement of agricultural land production sharing agreements; stipulation of the minimum area of agricultural land ownership, accompanied by a prohibition for committed acts which resulted in the division of ownership of agricultural lands into too small parts (Kusnandi).

Related explanation *Landreform* This is normatively regulated in Article 10 paragraph (1) of the UUPA "every person and legal entity that has a right to agricultural land is basically required to work or actively work on it himself, by preventing extortion methods". Land for agriculture must be cultivated by oneself. In this way, it is possible to avoid the accumulation of land from some landowners who live in the city who are only waiting for the results of the land worked by others with the extortion system (*absently landlords*). However, certain exceptions can be waived regarding the provisions of Article 10 paragraph (1) of the UUPA as stipulated in the provisions of Article 10 paragraph (3) of the UUPA (Gautama, 1986).

The exceptions to Article 10 paragraph (1) of the UUPA are further described in Article 24 of the UUPA regarding the possibility of these exceptions. It is stated in Article 24 of the UUPA that the use of land by someone who is not the owner is limited and regulated by statutory regulations. Also in Article 41 of the UUPA which formulates usufructuary rights and temporary rights which are also referred to in Article 53 of the UUPA related to lien rights, profit-sharing business rights, boarding rights, agricultural land lease rights. These exceptions are *privillage* obtained legally to waive the provisions in Article 10 paragraph (1) of the BAL.

Law Number 56 prp 1960 provides limitations regarding exceptions to Article 10 paragraph (1) UUPA by setting maximum and minimum agricultural land limits for certain areas by referring to the provisions of the Minister of Agrarian Decree No. SK 978/Ka/1960, which regulates these minimum limits, it is hoped that farmers can earn a decent living from farming without the need to try other jobs. By regulating these minimum and maximum limits, it can prevent the accumulation of land for certain groups of people.

Exceptions that can still be made are related to the culture of the people, most of whom are farmers. As a permit for the provisions in Article 10 paragraph (1) of the UUPA this is also given to civil servants (PNS Civil

Servants/PNS) and military officials as well as those who are equivalent to them, who are carrying out state duties to be able to own agricultural land limited to an area of 2/5 (two fifths) of the maximum area determined for the area concerned according to Law Number 56 prp 1960 (Vide: Article 3 paragraph (4) Government Regulation Number 224 of 1961).

It has been clearly regulated that the prohibition of ownership of land *absentee* by the State is to abolish landlord attitudes that used to prevail in the colonial period. This arrangement is theoretically made for the welfare of farmers so that they can continue and manage agricultural land where they live. However, there are exceptions related to the prohibition of land ownership *absentee*. This is arranged in such a way as to maintain the existence of farmers even though in practice it is still far from expectations. Land ownership *absentee* which unlawfully can be subject to criminal sanctions against anyone who violates it. This is due to provide protection to farming communities, especially in rural areas, from evil attempts in the form of extortion and work on agricultural land which is controlled by people who do not live in the area where the agricultural land is located.

Criminal law in the prohibition of land ownership *absentee* in the opinion of Lamintang and Djisman is to protect against acts of "mortgaging or leasing", namely crimes involving land which criminal science refers to as "*Stellionat*". This provision is to protect the rights to land owned by indigenous people based on customary law or buildings or plants on such land. Even though it is true that after the UUPA came into effect, the sub-district head was appointed as the Official for Making Land Deeds so that all legal actions concerning the land should have been carried out before the local Sub-District Head, but in practice there are still many cases where buying and selling is carried out underhanded with the reason "temporarily" before facing the Camat to carry out the official sale and purchase. There land ownership often occurs *absentee* by people who do not live where the land is located (Setiawan, 2018).

Approach of criminal sanctions as a criminal policy regarding this agrarian issue in its capacity as a means of last resort (*last resort*). *Last Remedy* is a principle contained in Indonesian criminal law which states that criminal law should be used as a last resort in terms of law enforcement. Sudikno Mertokusumo means that *Last Remedy* as the last tool that criminal sanctions can be used if other sanctions are no longer able to provide a deterrent effect for the perpetrators. The law is enacted as the last sanction after administrative sanctions and civil sanctions can no longer be taken (Sari, 2017).

Based on the brief description above, there are 2 (two) very fundamental problem formulations to study and analyze, namely:

1. How is the regulation regarding the prohibition of land ownership *absentee* in national agrarian law?;
2. How is the application of criminal sanctions against land ownership *absentee* in Indonesia?.

2. Method

This type of legal research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law. Moris L Cohen expressed the opinion of Peter Mahmud Marzuki who stated "*Legal Research is the process of finding the law that governs activities in human society*" (Marzuki, 2005). Legal research essentially starts from human curiosity expressed in the form of problems or questions, where each of these legal problems and questions requires answers and will gain new knowledge that is considered true. Besides that, this legal research is *Doctrinal Research* which provide or produce systematic explanations regarding legal norms or rules governing a particular category (Riyadi, 2017).

The problem approach in this legal research uses a statutory approach which is carried out by examining the laws and regulations that are related to the legal issues being discussed. This legal research also uses a conceptual approach which according to Peter Mahmud Marzuki is to move on the views of experts so researchers need to search *system of law* as well as the ontological basis for the birth of the law and researchers can understand the philosophical content behind the law and conclude whether or not there is a philosophical clash between the law and the issues at hand, and accompanied by a case approach.

The statutory approach as stated by Philipus M. Hadjon and Tatiek Sri Djatmiati explained that the "statute" approach begins with a constitution in terms of aspects of legal principles and concepts law and its by-laws or organic regulations. Then the conceptual approach is an approach used to obtain scientific clarity and justification based on legal concepts originating from legal principles (H.M.Hadin Muhjad, 2012).

3. Result and Analysis

3.1 Arrangements Concerning Absentee Land Ownership in the National Agrarian Law System

Definition of agricultural land *Absentee* etymologically comes from English, where the word "*Absentee*" which means not present or absent (Echols, 2012). According to the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs dated January 5, 1961 No. Sekra 9/1/12 defines agricultural land as all plantation land, ponds for fisheries, livestock grazing land, shrubland, former fields and forests that become place of livelihood for those who are entitled.

During the Dutch colonial era, ownership of land rights did not reflect justice and equity. This is proven by the introduction of the term "landlords" who control private lands. These landlords own land that is monopoly in nature, and these landlords have enormous rights and abuse their rights a lot, causing a lot of suffering and misery for the people. Because there is no equitable distribution of sources of livelihood. The attitude of these landlords in exercising their rights which is very detrimental to the community has hampered the progress of the population, so that of course it is contrary to the principle of social justice which is upheld by the community and the State (Soimin, 2004).

In connection with the existence of the state's right to control land which has been discussed in the previous discussion, it will raise a legal issue, namely the extent to which the existence of the provisions governing individual rights. It also raises the question of the extent to which legal entities is regulated regarding the rights to control over a plot of land. In other words, how in practice is the implementation of existing legal provisions related to their implementation and application of the law? *abstract* contained in the positive legal order with regard to land rights contained in statutory regulations into law *in konkrito*. (Effendi, 1993).

Boedi Harsono's opinion states the prohibition of private ownership of agricultural land *absentee* This is intended for agricultural land that is mostly enjoyed by rural communities where agricultural land is located, because with the land owner residing in the area of the land, the results from the agricultural land are maximized. Differing opinions regarding this matter, the exception to the ownership of agricultural land in principle *absentee* In addition to what is explained in Article 10 paragraph (3) of the BAL, it is also related to the prohibition on land ownership. Absentees do not apply to landowners whose residence is directly adjacent to the District where the land is located, provided that the distance to the landowner's residence is *Absentee* it is still possible to work the land *Absentee*.

In general, to land ownership *Absentee* this was prohibited because it was considered ineffective, because landowners who were outside the sub-district made the land unable to be actively worked on. This is in accordance with the provisions of Article 3 of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation which stipulates that:

1. "Land owners who live outside the sub-district where the land is located, within a period of 6 (six) months must transfer their land rights to another person in the sub-district where the land is located or move to the sub-district where the land is located;
2. The obligation referred to in paragraph (1) of this article does not apply to landowners who live in the district where the land is

- located, if the distance between the owner's residence and the land still allows for efficient work on the land, according to the committee's considerations. *Landreform* Level II Regions;
3. Without prejudice to the provisions referred to in paragraph (2) of this article, if the land owner moves his place of residence or leaves his residence outside the district where the land is located for 2 (two) consecutive years, he is obliged to transfer his land ownership rights to another person who is located live in that district;
 4. The provisions in paragraphs (1) and (3) of this article do not apply to those who own land in the district where they live or the district as referred to in paragraph (2) of this article, who are carrying out state duties, fulfilling religious obligations, or have reasons other special reasons that can be accepted by the Minister of Agrarian Affairs. For civil servants and military officials and their equivalent, who are carrying out state duties, the exception referred to in this paragraph is limited to the ownership of agricultural land up to 2/5 (two fifths) of the maximum area determined for the area concerned. according to Law Number 56 prp of 1960;
 5. If the obligations referred to in Article 1 and Article 3 cannot be fulfilled, then the land in question is taken by the Government, to then be distributed according to the provisions of this regulation;
 6. The former land owners referred to in paragraph (5) of this article shall be compensated according to the provisions of this regulation."

Owned agricultural land *Absentee* prohibited by Laws and Regulations because agricultural land is the main and only source of life for farmers. Absentee land, of course, the owner is a legal subject who lives outside the place where the land is located. Absentee land, the owner sometimes is not someone who works as a farmer, but someone with another profession and only owns the absentee land for use as an investment in the future. Obviously this is very detrimental for farmers and residents around where the land is located.

Land reform on the other hand has the meaning of changing and rearranging the order and procedures that apply in an effort to make the land tenure system more consistent with the overall requirements of economic development (Doner, 1972) (Wiriadi, 1984). Further definitions are related *Landreform* mentioned in the United Nations (UN) as follows: "*Landreform refers to integral reform of the tenure, production and supporting services structure to eliminated obstacles to economic and social development a rising out defects in the agrarian struture by redistribution of wealth, opportunity and power as manifest in ownership and control of land, water and other resources*" there is also an understanding of *Agrarian Reform* as follows: "*Agrarian reform is mean to cover all aspects institutional development including land reform. Tenure production and supporting services structure and relate institution, such as local government, public administration in rural areas, rural education and rural social welfare institution and so forth*from that

understanding *Landreform* intended to remove obstacles to the development of social economic development by way of redistribution in the field of wealth, opportunity and power as a manifestation of the ownership and control of land, water and other resources. Whereas *Agrarian Reform* intended to overcome all aspects related to development including *Landreform*. (Siburian, 2009).

As previously explained, the ownership of agricultural land is *absentee* in essence it is prohibited, various existing legal provisions are very strict in regulating this matter. The latest legal provisions related to the prohibition of land ownership in a manner *absentee* This can be seen in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land Tenure, In general, absentee land ownership is prohibited because it is considered ineffective, because landowners who are outside the sub-district make the land inactive. This is also in accordance with the provisions of Article 3 of Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation.

The provisions of Article 7 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land Tenure are stated as follows: "Agricultural landowners who live outside the District where the land is located within 6 (six) months from the date of acquisition of the rights, must: Transfer the rights over the land to another party who is domiciled in the District where the land is located; or Move to the location of the land."

In accordance with the legal provisions above, the owner of agricultural land is *absentee* within a period of 6 (six) months from September 24, 1961, he must transfer his land rights to another person in the District where the land concerned is located or move to said District. It turns out that a period of 6 (six) months is apparently not enough to transfer agricultural land *absentee* That. So the Minister of Agrarian took a policy to extend the period of transfer of his rights until December 31, 1962 as stipulated in the Decree of the Minister of Agrarian Affairs of the Republic of Indonesia No. SK VI/6/Ka/1962.

However, the existing legal regulations are often violated and not obeyed, related to the domicile of someone who wants to own the Absentee's land. For this reason, the Minister of Agriculture and Agrarian Affairs in his Guidelines No. III of 1963 provides an explanation that "moving to the district where the land is located" must be interpreted that they are truly married and carry out community life activities in daily life in a new place, so as to enable efficient cultivation of their own land. Thus it is not enough

if someone only has an Identity Card in the new place, even though in reality that person is still in his old place of residence.

3.2. Application of Criminal Sanctions Against Land Ownership Absentee in Indonesia

The legal norms are not only orders or governing, but also contain certain reasoning. That reason lies in the assessment made by society towards the behavior and deeds of people in society. In fact, the assessment of human behavior does not stand alone, but is part of a larger idea, namely about what kind of society one wants. From there, an idea was formed that law forms society according to a certain building pattern as it wishes. (Rahardjo, 1986).

Against the exception of the prohibition on agricultural land ownership *absentee* obtained by Civil Servants, provides an opportunity for Civil Servants to be able to own the Absentee's land. The legal instrument governing the ownership of Absentee land by Civil Servants / PNS is Government Regulation No. 4 of 1977 concerning Guntai Ownership of Agricultural Land (*Absentee*) For Retired Civil Servants.

Article 2 paragraph (1) PP 4/1977 :

A person who is not a civil servant or a retired civil servant. Since the entry into force of this Government Regulation, exceptions to the provisions regarding the prohibition on owning agricultural land on an absentee basis apply to civil servants as stipulated in Article 3 of Government Regulation Number 224 of 1961 (LN of 1961 Number 280) jo. Government Regulation Number 41 of 1964 (LN of 1964 Number 112) up to a limit of 2/5 (two fifths) of the maximum land ownership for the Level II Region concerned is also treated for :

- a. Civil Servant Retired; And
- b. Widows of Civil Servants and Widows of Retired Civil Servants as long as they are not remarried to a non-civil servant or retired civil servant.

Article 2 paragraph (2) PP 4/1977:

The provisions referred to in paragraph (1) also apply to employees and retired employees who, prior to the enactment of Law Number 8 of 1974 concerning the Basics of Civil Service, were equated with Civil Servants and at the time this Law came into effect already owned agricultural land in groups;

Article 2 paragraph (3) PP 4/1977:

In the event that an employee or retired employee as referred to in paragraphs (1) and (2) dies, the ownership of the agricultural land in sequence can be continued by the widow he left behind, as long as he is not remarried to a non-civil servant or retired civil servant.

Article 2 paragraph (4) PP 4/1977:

If the inherited land left by a state official or his widow, as also referred to in paragraph (3) falls to the heirs who do not meet the conditions to own agricultural land individually, then within 1 (one) year from the death of the owner, ownership That streak must be ended.

Seeing the provisions in the article explicitly Civil Servants can own agricultural land *absentee*. However, this exception applies as long as a person is still serving as a Civil Servant / PNS. When he retires, the said prohibition will apply to him, in the sense that within the specified time the Civil Servant/PNS is obliged to reside in the District where the land is located or to transfer ownership of the land to another party who may own it. In the general explanation of point 3 of Government Regulation Number 4 of 1977 it is stated that the facts show that because of objective difficulties it is not always easy for retired Civil Servants / PNS to fulfill the obligation to move their residence closer to the land they own. Transferring ownership of the land was meant to be a guarantee for old age after retirement.

In addition to land ownership arrangements *absentee* as stipulated in the legal provisions above, its status is prohibited and can be subject to criminal sanctions for anyone who violates it. Preventively, land ownership *absentee* this can be avoided by referring to Article 39 paragraph (1) letter g PP No 24 Year 1997 concerning Land Registration which explains that the PPAT refuses to draw up a deed and carry out the management and registration of land rights which in the process violate the prohibitions specified in laws and regulations. The PPAT may be subject to a sanction if it ignores this matter based on Article 62 of Government Regulation Number 24 of 1997.

Regarding criminal sanctions in violation of land ownership *absentee* still referring to Article 19 of Government Regulation Number 224 of 1961 which stipulates criminal sanctions for landowners who acquire or intentionally obstruct the taking of land by the Government as follows:

1. A land owner who refuses or intentionally obstructs the taking of land by the Government and its distribution as referred to in Article 2 paragraph (2) shall be subject to imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 10,000, - (ten thousand rupiah) while the land is taken by the Government without compensation;
2. Whoever intentionally obstructs the implementation of this Government Regulation shall be subject to imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 10.000,- (ten thousand rupiah);
3. The criminal acts referred to in paragraphs (1) and (2) of this article are violations.

Referring to the positivism view that land crimes regulated in laws and regulations are not exactly the same as crimes as regulated in criminal law, actions that incidentally can qualify as land crimes are as follows: *First*, land ownership exceeds the permissible limit. Unregulated land tenure can disrupt the process of equal distribution of land ownership and it is feared that it will also lead to land monopoly; *Second*, land ownership *absentee* outside the subdistrict where the subject land owner lives, this also greatly influences land optimization; *Third*, illegal land tenure will be detrimental to the interests of the state both in matters of state income and problems of orderly land administration, and *Fourth*, Unregistered lands makes it difficult to determine the tax burden and can interfere with government land inventories. (Y.J.Utama, 1995).

Criminal sanctions are not strictly regulated in the national agrarian law system. Furthermore, Article 15 of the UUPA which mandates that maintaining land, including increasing its fertility and preventing damage to it, is the obligation of every person, legal entity or agency that has a legal relationship with the land, taking into account those who are economically weak. The criminal provisions contained in Article 52 of the UUPA also provide criminal sanctions that are limited to imprisonment for a maximum of 3 (three) months and a maximum fine of Rp. 10.000,- (ten thousand rupiah) against violations in Article 15, Article 19, Article 22, Article 24, Article 26 paragraph (1), Article 46, Article 47, Article 48, Article 49 paragraph (3) and Article 50 paragraph (2) UUPA.

Weak application of criminal sanctions against land ownership *absentee* This is due to the fact that the regulation on criminal sanctions has not been renewed in the UUPA or other laws and regulations that regulate land (agrarian). Therefore, in order that criminal law enforcement can touch on agrarian issues in order to create legal certainty and justice, it can be referred to through Law Number 1 of 2023 concerning the New Criminal Code as follows:

1. Article 353 Criminal Code:

Any person who prevents, obstructs, or thwarts the actions taken by an authorized official to implement provisions of laws and regulations shall be subject to imprisonment for a maximum of 9 (nine) months or a maximum fine of category II;

a. Imprisonment for less than 6 (six) months shall be replaced by a maximum fine of category I; And

b. Imprisonment of 6 (six) months or more shall be replaced by a maximum imprisonment of category II.

2. Article 502 of the Criminal Code:

Sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of category V, any person who with the intention of unlawfully benefiting himself or others:

- a. Selling, exchanging, or encumbering with a credit bond a right to use state land or a house, plant business or nursery on the land where people use rights over said land, even though other people are entitled or share rights over said land or goods;
- b. Selling, exchanging, or encumbering with a credit bond a right to use state land or a house, a plant business or nursery on the land where a person uses the said land right, even though the land or goods have been encumbered with a credit bond, but do not notify the party concerned. other;
- c. Burden with a credit bond a right to use state land by hiding it from other parties, even though the land where the person uses the right has been guaranteed;
- d. Guaranteeing or renting out a piece of land, even though someone else is entitled or also entitled to the land;
- e. Leasing, selling or exchanging mortgaged land without notifying the other party that the land has been mortgaged; or
- f. Renting out a plot of land where people use the land rights for a certain period of time, even though the land has also been leased to other people.

As for the amount or number of punishment categories, it can be seen in Article 79 of the Criminal Code as follows:

- a. Category I Rp. 1,000,000.- (one million rupiah);
- b. Category II Rp. 10.000.000,- (ten million rupiah);
- c. Category III Rp. 50,000,000.- (fifty million rupiah);
- d. Category IV Rp. 200,000,000.- (two hundred million rupiah);
- e. Category V Rp. 500,000,000.- (five hundred million rupiah);
- f. Category VI Rp. 2,000,000,000.- (two billion rupiah);
- g. Category VII Rp. 5,000,000,000.- (five billion rupiah);
- h. Category VIII Rp. 50,000,000,000.- (fifty billion rupiah).

4. Conclusion

This UUPA adheres to the principle that land for agriculture should be cultivated by the owners themselves based on Article 10 of the UUPA. But considering the current situation, the structure of agricultural society for the time being will still require the use of agricultural land by people who are

not the owners. Coupled with the lack of awareness of the farming community about their rights, it causes enthusiasm *Landreform* in the BAL is getting far from expectations.

Criminal sanctions in the regulation regarding land ownership *absentee* this has been regulated in Article 19 of Government Regulation Number 224 of 1961 which is no longer in accordance with the times. Likewise, even though criminal sanctions regarding agrarian law have been regulated in Law Number 1 of 2023 concerning the New Indonesian Criminal Code, there is no express regulation regarding land ownership *absentee*. Against the prohibition of land ownership *absentee* should not only apply to individuals, but also should prohibit private ownership of agricultural land *absentee*. This also applies to a legal entity. Because nowadays the position of legal entities that are supported by large funds often makes farmers only as workers in their own homes. Furthermore, it is necessary to review the boundaries of the prohibition of land ownership *absentee* given the current technological advances in the field of transportation has been so advanced. It is necessary to conduct a review of criminal sanctions related to land ownership *absentee* irrelevant to the times. This is because the imposition of corporal punishment is only limited to imprisonment for 3 (three) months and a fine of Rp. 10,000,- (ten thousand rupiah) which at this time will be very easy to break.

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