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Legal Political Implication of *Absentee* Land Exemptions for Retired Civil Servants within Agrarian Reform Framework

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ABSTRACT

The exception allowing retired Civil Servants to retain absentee agricultural land under Government Regulation No. 4 of 1977 raises concerns about agrarian justice and its consistency with Article 10 of the Basic Agrarian Law. This study aims to analyze the legal-political implications of this exemption within the framework of agrarian reform and agrarian justice. The novelty of this research lies in its legal-political analysis that positions the exemption of absentee land ownership for retired Civil Servants as a deviation from the principle of redistributive justice in agrarian reform, while comparing it with the legal-political framework of voluntary land rights relinquishment that has been recognized within agrarian law but remains underutilized in practice. This study employs a normative juridical method using statutory, conceptual, and legal-political, and historical approaches. The exception potentially perpetuates structural inequality and weakens the redistributive objectives of agrarian reform. The policy should be reformulated through stricter limitations, supervision, integrated land ownership data, and voluntary relinquishment. Presidential Regulation No. 62 of 2023 can support the identification, verification, evaluation, and redistribution of absentee land to landless or land-poor farmers, accompanied by appropriate incentives or alternative mechanisms to ensure retirees' economic security.

INTRODUCTION

Land is a vital asset in economic and social development and poverty alleviation. In addition to its economic value, land also has deep social and cultural significance.¹ Amidst limited land area and a growing population, this can not only trigger criminal acts,² but also cause serious problems of inequality in land ownership and use, including the conversion of agricultural land,³ which has the potential to trigger agrarian conflicts if not managed fairly. In this context, agrarian reform is understood as an effort to restructure agrarian structures at the regional level with the aim of rebuilding the social order of society and guaranteeing certainty of land ownership for the people as

¹ Isnaini and Anggreni A. Lubis, *Hukum Agraria Indonesia (Pelaksanaan PTSL dan Penyelesaian Konflik Agraria)*, 2020.

² Rafli Muhammad Sabiq and Nunung Nurwati, "Pengaruh Kepadatan Penduduk terhadap Tindakan Kriminal," *Jurnal Kolaborasi Resolusi Konflik* 3, no. 2 (2019): 161–67.

³ Monsaputra Monsaputra, "Analisis Perubahan Penggunaan Lahan Pertanian menjadi Perumahan di Kota Padang Panjang," *Tunas Agraria* 6, no. 1 (January 2, 2023): 1–11, <https://doi.org/10.31292/jta.v6i1.200>.

the main source of livelihood.⁴ These restructuring efforts cannot be separated from the political context of the formation of the national agrarian legal system, namely the state's policy choices in responding to pluralism and inequality in land ownership after independence.⁵

In the aftermath of Indonesian independence, agrarian legal pluralism was inherited from the colonial system.⁶ In order to address the legal dualism that persisted for approximately fifteen years between the Dutch colonial legal legacy and Adat Law,⁷ and motivated by the aspiration to abolish landlord practices Law Number 5 of 1960 concerning Basic Agrarian Principles, commonly known as UUPA, was enacted as an implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The UUPA introduced a new paradigm in which land is subject to the State's Right to Control (Hak Menguasai Negara /HMN), thereby granting the state authority to regulate land designation, land use, and land tenure in order to achieve the greatest possible prosperity of the people.⁸ The state's rights in managing land and natural resources are closely connected to the objective of improving public welfare; these constitute two core concepts that are interrelated and inseparable.⁹ One concrete derivative of this constitutional mandate is the land reform policy, which, among other objectives, aims to ensure equitable land distribution so that land may be directly and productively managed by farmers.¹⁰

It is within this context that the prohibition on *guntai* or *absentee* land ownership emerged, namely the ownership of agricultural land by individuals who do not reside at the location of the land and do not cultivate it directly.¹¹ This policy is explicitly stipulated in Government Regulation Number 224 of 1961 concerning the implementation of Land Distribution and the Provision of Compensation (Peraturan Pemerintah Nomor 224 Tahun 1961 tentang Pelaksanaan Pembagian Tanah dan Pemberian Ganti Kerugian, hereinafter referred to as Government Regulation No. 224 of 1961) and further reinforced by Government Regulation Number 41 of 1964. The objective of this policy is clear: to prevent exploitative and unproductive landholding practices and to curb the re-emergence of a

⁴ Ahmad Fauzi, "Reformasi Agraria dalam Kerangka Otonomi Daerah," *Jurnal Bina Mulia Hukum* 6, no. 2 (March 31, 2022): 218–33, <https://doi.org/10.23920/jbmh.v6i2.678>.

⁵ Ahmad Muhammad Mustain Nasoha, et al., "Politik Hukum terkait Pertanahan (Agraria) Indonesia," *Majelis: Jurnal Hukum Indonesia* 2, no. 2 (2025): 01–10, <https://doi.org/10.62383/majelis.v2i2.611>.

⁶ Bachsan Mustafa, *Sistem Hukum Administrasi Negara Indonesia* (Bandung: PT. Citra Aditya Bakti, 2001).

⁷ Desi Apriani and Arifin Bur, "Kepastian Hukum dan Perlindungan Hukum dalam Sistem Publikasi Pendaftaran Tanah di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 220–39, <https://doi.org/10.23920/jbmh.v5i2.11>.

⁸ Rosmidah Susanto, M Hosen, and Sasmiar, "Penataan Struktur Hukum Hak Atas Tanah dalam Rangka Keadilan dan Investasi," *Retical Review* 5, no. 2 (2023): 209–44.

⁹ Ida Nurlinda, *Monograf Hukum Agraria: Reforma Agraria untuk Kesejahteraan Rakyat dan Keadilan Agraria* (Bandung: LoGoz Publishing, 2013).

¹⁰ Caca Kurniasari et al., "Program Landreform sebagai Upaya Perubahan Kepemilikan Lahan secara Menyeluruh untuk Mencapai Kesejahteraan yang Adil dan Merata," *Al-Dalil Jurnal Ilmu Sosial Politik dan Huk* 2, no. 1 (2024): 62–69.

¹¹ Natashia Natashia, "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," *Jurnal Gagasan Hukum* 2 (December 30, 2020): 222–55, <https://doi.org/10.31849/jgh.v2i02.8560>.

landlord system that oppresses small farmers. In addition, Article 10 of the UUPA stipulates that every owner of agricultural land is obliged to actively cultivate his or her land personally, without engaging in exploitative practices.¹² However, this policy is not absolute. Over time, several exceptions have been permitted, one of which applies to Civil Servants (Pegawai Negeri Sipil/PNS) upon retirement, as provided under Government Regulation Number 4 of 1977 concerning Agricultural Land Ownership by Retired Civil Servant (Peraturan Pemerintah Nomor 4 Tahun 1977 tentang Pemilikan Tanah Pertanian oleh Pensiunan Pegawai Negeri Sipil, hereinafter referred to as Government Regulation No. 4 of 1977). This regulation allows retired PNS to hold agricultural land through *absentee* ownership within a specified maximum limit. The underlying rationale is that PNS have rendered service to the state and are therefore entitled to post-retirement welfare.¹³ Furthermore, patterns of transfer and geographically varied duty assignments enable PNS to acquire land outside the domicile stated on their identity cards, particularly when they are assigned to predominantly agricultural regions.

Nevertheless, this exception raises both juridical and philosophical questions: whether such a policy is consistent with the principles of social justice and the mandate of agrarian reform under the UUPA. The granting of privileges based on civil service status, albeit limited, has the potential to generate new forms of inequality in land tenure that contradict the original objectives of agrarian reform. From a philosophical standpoint, justifications grounded in rewards for service cannot override the state's obligation to ensure inclusive and non-discriminatory agrarian justice. From a normative juridical perspective, this situation creates tension between the principle of equality before the law and special treatment that opens space for the accumulation of agrarian assets by the state bureaucracy. From the standpoint of legal politics, there has been no evident concrete initiative on the part of legislators to review this regulation, despite the continued promotion of agrarian reform programs as part of the sustainable development agenda.

Previous research by Chita Herdiyanti has highlighted the legality and normative limitations imposed by the state on retired PNS in relation to *absentee* land ownership.¹⁴ That study primarily focused on the interpretation of positive legal norms, particularly Government Regulation No. 4 of 1977, which provides an exception to the prohibition of *absentee* land ownership for PNS approaching retirement. While this research offers important insights into the juridical framework governing *absentee* land ownership by retired PNS, its approach remains descriptively normative and

¹² Ni Made Asri Alvionita, I Made Arya Utama, and Putu Tuni Cakabawa Landra Landra, "Penataan Kepemilikan Tanah Pertanian secara *Absentee* melalui Program Kartu Tanda Penduduk Elektronik (KTP-EL)" *Acta Comitatus* 1, no. 1 (2018): 75–91.

¹³ Chita Herdiyanti, "Kepemilikan Tanah *Absentee* oleh Pegawai Negeri Sipil Berdasarkan Peraturan Pemerintah Nomor 4 Tahun 1977," *Acta Diurnal* 1, no. 1 (2017): 103–14.

¹⁴ Herdiyanti. *Ibid.*

does not sufficiently explore the direction of legal politics or the ideological implications of such policy exceptions for the objectives of Agrarian Reform.

Based on these conditions, the issue of exceptions to *absentee* land ownership for retired Civil Servants becomes significant, as it has the potential to perpetuate structural inequality in land tenure and to deviate from the principles of redistributive justice within agrarian reform. Therefore, this study aims to analyze the legal-political implications of the policy granting exceptions to absentee land ownership for retired PNS within the framework of agrarian reform as mandated by UUPA and the values of Pancasila. The novelty of this research lies in its application of a legal-political approach that not only examines normative aspects, but also reveals the policy rationales, social interests, and power relations underlying the policy and their implications for the achievement of agrarian reform objectives, while simultaneously positioning a two-directional comparison of legal politics. Specifically, this study contrasts the permissive legal-political approach to exceptions with the legal-political framework of voluntary relinquishment of land rights that already exists within agrarian law, as a basis for formulating a more effective policy design. Within the context of the economic value of land as both a welfare asset and an inheritable resource, this study emphasizes that the optimization of voluntary relinquishment requires appropriate incentive or reward mechanisms in order for the objectives of agrarian reform to be achieved in a rational and equitable manner.

METHODS

This study constitutes a normative juridical legal research¹⁵ with a descriptive-analytical character. The research is conducted by examines legal norms governing *absentee* land ownership, particularly the exceptions granted to retired Civil Servants, and analyzes the legal-political implications of such regulations within the framework of agrarian reform. The approaches employed include the statutory approach and the conceptual approach,¹⁶ legal-political and historical approaches. The statutory approach examines relevant agrarian legislation, while the conceptual approach analyses the concepts of agrarian justice and legal politics. The legal-political approach examines the policy direction and rationale underlying the regulation of *absentee* land ownership, while the historical approach traces its development from the land reform framework of the 1960s to the contemporary agrarian reform framework. The legal materials used consist of primary legal materials, namely statutory regulations, and secondary legal materials, including legal literature and scholarly journals. All legal materials are analyzed qualitatively in order to draw conclusions regarding the compatibility of the policy granting such exceptions with the principles of agrarian justice and the

¹⁵ Muhaimin Muhaimin, *Metode Penelitian Hukum*, ed. Mataram University Press, Mataram (Mataram, 2020).

¹⁶ Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Jakarta: Publika Global Media, 2024).

objectives of agrarian reform.

DISCUSSION

Juridical and Philosophical Grounds for Exceptions to *Absentee* Land Ownership for Retired PNS under the UUPA and Social Justice Principles

Before examining further the exceptions to *absentee* land ownership, it is important to first trace how Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is abstract in nature, was subsequently translated into more concrete agrarian policies, particularly in the context of control over agricultural land. The concept of agricultural land was at one point clarified through a Joint Decree between the Minister of Home Affairs and Regional Autonomy and the Minister of Agrarian Affairs, Number Sekra 9/I/12 dated 5 January 1961, which defined agricultural land as encompassing all land utilized for production activities such as plantations, fisheries, livestock farming, as well as forest products that constitute sources of livelihood. In general, agricultural land is defined as individually owned land that is not designated for residential purposes or non-agricultural business activities. Where a residential structure stands on a single parcel of land, the determination of which portion constitutes residential yard land or agricultural land is adjusted according to local customs and the prevailing views of the local community.¹⁷

The commitment to agrarian justice can be traced back to the enactment of Law Number 1 of 1958 concerning the Abolition of Private Estate (Undang-Undang Nomor 1 Tahun 1958 tentang Penghapusan Tanah-Tanah Partikelir), The existence of *tanah partikelir* institutions and their associated feudal landholding rights in the past within the territory of the Republic of Indonesia was incompatible with the fundamental principle of social justice upheld by both the state and society.¹⁸ Subsequently, with the enactment of the UUPA, agrarian regulation adopted principles that are aligned with the national identity and the values of the Indonesian people. One of the fundamental principles embraced by the UUPA is that agricultural land must be directly cultivated or utilized by its owner.¹⁹ This principle is also reflected in Article 13 and Article 17 of the UUPA.²⁰ However, as the UUPA primarily regulates fundamental matters, further technical elaboration was provided through Law Number 56 of 1960 concerning the Determination of the Size of Agricultural Land (Undang-Undang Nomor 56 Tahun 1960 tentang Penetapan Luas Tanah Pertanian, hereinafter referred to as Law No. 56 of 1960). Based on these regulations, it is evident that the state plays an active role in

¹⁷ Supriadi Supriadi, *Hukum Agraria* (Jakarta: Sinar Grafika, 2008).

¹⁸ "Undang Undang Nomor 01 Tahun 1958 tentang Penghapusan Tanah-Tanah Partikelir," 1958.

¹⁹ Agus Wibowo and Siti Mariyam, "Kontekstualisasi Hukum Agraria di bidang Pertanahan setelah Otonomi Daerah di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 396–406, <https://doi.org/10.14710/jphi.v3i3.396-406>.

²⁰ H.M. Arba, *Hukum Agraria Indonesia* (Jakarta: Sinar Grafika, 2016).

regulating the control of agricultural land, such that land ownership is not permitted to be concentrated solely in the hands of certain groups or institutions, while the wider population particularly farmers faces increasing difficulty in accessing land due to limited economic capacity, despite land being fundamental to their livelihoods. This condition is reflected in empirical realities, as illustrated by the case of Pulau Mentaro Village, Kumpeh Sub-district, Jambi City, where ownership of agricultural land remains uneven and is largely controlled by landlords.²¹ Consequently, such excessive control over agricultural land is inconsistent with the spirit of land reform. This pattern of agricultural land control is highly likely to constitute *absentee* land ownership, namely ownership in which the landholder does not reside on the land and does not cultivate it directly.²² The term *absentee* in English literally refers to a person who is not present or is absent from a particular place.²³

Regulations concerning *absentee* land ownership are further elaborated in Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and the Provision of Compensation (Peraturan Pemerintah Nomor 224 Tahun 1961 tentang Pelaksanaan Pembagian Tanah dan Pemberian Ganti Kerugian, hereinafter referred to as Government Regulation No. 224 of 1961), which was subsequently amended and supplemented by Government Regulation Number 41 of 1964 concerning Amendments to and Supplementation of Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and the Provision of Compensation (Peraturan Pemerintah Nomor 41 Tahun 1964 tentang Perubahan dan Tambahan Peraturan Pemerintah Nomor 224 Tahun 1961 tentang Pelaksanaan Pembagian Tanah dan Pemberian Ganti Kerugian, hereinafter referred to as Government Regulation No. 41 of 1964). Previous studies indicate that the prohibition on *absentee* land ownership has generally not been effectively implemented in Sleman Regency, primarily because the regulatory framework constitutes a legal product of the 1960s that is no longer fully relevant to contemporary social conditions and societal needs. This ineffectiveness is attributed to various factors, including prevailing social conditions, cultural norms, regulatory weaknesses, limitations in facilities and infrastructure, weak support from local institutions, and economic motivations.²⁴

In principle, *absentee* land ownership is not permitted. Pursuant to Article 3 paragraph (1) of Government Regulation Number 224 of 1961, landowners who reside outside the sub-district in which their land is located are required, within a period of six months, to transfer their land rights to

²¹ Emir Adzan Syazali, "Akibat Hukum Redistribusi Tanah Landreform terhadap Perolehan Hak Atas Tanah," *Jurnal Yuridis Unaja* 3, no. 1 (2020).

²² Ernichel S. G. Pinontoan, Harly S. Muaja, and Carlo A. Gerungan, "Pengaturan Tanah Guntai dan Hak Kepemilikan Tanah di Sulawesi Utara dan Akibat Hukumnya Ditinjau dari Undang-Undang Nomor 5 Tahun 1960," *Jurnal Fakultas Hukum Universitas Sam Ratulangi Lex Privatum* 13, no. 3 (2024): 5–6.

²³ M. Echols Jhon and Hasan Shadily, *Kamus Inggris-Indonesia (An English-Indonesia Dictionary)* (Jakarta: Gramedia, 2012).

²⁴ Annisa Thalassa Falah, Nur Adhim, and Mira Novana Ardani, "Kebijakan Kantor Pertanahan terhadap Larangan Kepemilikan Tanah 'Absentee/Guntai' di Kabupaten Sleman," *Dipenegoro Law Journal* 11, no. 3 (2022).

another person residing in the sub-district where the land is situated or to relocate their residence to the sub-district in which the land is located. Exceptions to Article 3 paragraph (1) of Government Regulation Number 224 of 1961 are provided under Article 3 paragraph (4) of the same regulation. Such exceptions apply to landowners who possess land in an adjacent sub-district, as well as to those who are permitted not to cultivate their land directly, including individuals performing state duties, carrying out religious missions or activities, and persons who have specific reasons deemed legitimate and acceptable by the Minister of Agrarian Affairs.²⁵ The maximum area permitted under these exceptions is limited to two-fifths of the maximum landholding size prescribed for the relevant region under Law Number 56 of 1960, as follows:

Table 1.
Distribution of Land Use and Number of Households by Regional Density

No	Regional Category	Paddy Field Area (ha)	Dryland Area (ha)	Number of Household
1	Non-Densely Populated Area	15	20	1
2	Densely Populated Area			
	a. Low Density	10	12	1
	b. Medium Density	7,5	9	1
	c. High Density	5	6	1

Source: Adapted from Law Number 56 of 1960

Provisions concerning the maximum landholding area for each region are also regulated under Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2016 concerning the Control of Agricultural Land (Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 18 Tahun 2016 tentang Pengendalian Penguasaan Tanah Pertanian, hereinafter referred to as Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2016), Unlike the previous regulatory framework, this regulation no longer distinguishes between paddy fields and dry agricultural land. Previous studies have identified a normative gap in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2016, particularly because it does not explicitly establish clear requirements concerning land ownership and does not provide sufficiently firm administrative sanctions for violations.²⁶ By way of illustration, the maximum landholding areas under this regulation are as follows:

²⁵ Rahmat Ramadhani, *Dasar-Dasar Hukum Agraria* (Medan: CV. Pustaka Prima, 2019).

²⁶ Adi Perwira and Bagio Kadaryanto, "Peralihan Kepemilikan Tanah Pertanian Beda Domisili (Absentee) Menurut Peraturan Menteri ATR/ BPN Nomor 18 Tahun 2016 tentang Pengendalian Tanah Pertanian di Indonesia," *Jurnal Ilmu Hukum* 10, no. 1 (2021): 1–16, <https://jih.ejournal.unri.ac.id/index.php/JIH/index>.

Table 2.
Distribution of Land Use and Number of Households by Regional Density

Individuals		Legal Entities
Population Density Level	Maximum Area (hectares)	Subject to the decision granting the land right
Non-densely populated area	20	
Less Densely populated area	12	
Moderately densely populated area	9	
High densely populated area	6	

Source: Compiled and adapted from Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2016

The exception to the prohibition of *absentee* land ownership for PNS as regulated under Government Regulation No. 4 of 1977 grants retired PNS a degree of flexibility to own agricultural land outside their place of domicile, provided that such ownership does not exceed the prescribed maximum limits and takes into account the post-service nature of the ownership. From a juridical perspective, Government Regulation No. 4 of 1977 constitutes a form of administrative regulation that introduces a normative exception to the prohibition set forth under Government Regulation Number 224 of 1961 and Government Regulation Number 41 of 1964, which prohibit indirect or non-resident ownership of agricultural land. The underlying rationale is that retired PNS are no longer structurally active within the state apparatus, and in recognition of their service to the state, the government considers it necessary to provide protection or welfare incentives in the form of land ownership rights, even when such ownership is exercised on an *absentee* basis.

From the perspective of the hierarchy of laws and regulations, a government regulation cannot negate the provisions of a statute. In other words, the granting of such privileges constitutes a normative deviation from the fundamental principles of the UUPA. The implementation of Agrarian Reform should be consistent with the land law values enshrined in the UUPA; if agrarian reform policies diverge from these values, agrarian reform itself would contradict its own essence and definition.²⁷ With regard to this hierarchical structure, Hans Kelsen's doctrine of *Stufenbau des Rechts*²⁸ posits that legal norms form a hierarchical system that is vertically binding, in which lower-level norms derive their validity from higher-level norms. In this context, Government Regulation No. 4 of 1977 cannot deviate from the imperative provisions set forth in Article 10 of the UUPA. Accordingly, the granting of exceptions to retired PNS under this regulation is, in principle, inconsistent with Kelsen's theory of normative hierarchy and, therefore, its legal validity is subject to serious legal scrutiny.

²⁷ Mulyani Djakaria, "Aspek Hukum Administrasi Kependudukan Dihubungkan dengan Kepemilikan Tanah secara *Absentee*," *Bina Hukum Lingkungan* 1, no. 1 (2016): 125–33, <https://doi.org/10.24970/jbhl.v1n1.10>.

²⁸ Hans Kelsen and (penerjemah) Purwandari Siwi, *Pengantar Teori Hukum*, (Bandung: Nusa Media, 2008).

From a philosophical perspective, this regulation (Government Regulation No. 4 of 1977) also contradicts the fifth principle of Pancasila. The UUPA, which reflects the values of Pancasila, conceives land as a means of production whose use must be directed toward achieving the greatest possible welfare of the people. Pancasila constitutes the fundamental foundation underlying the entire legal system in Indonesia.²⁹ This implies that all forms of legislation must not conflict with the values embodied in Pancasila.³⁰ In this regard, exceptions based on administrative status (as retired PNS) instead create a hierarchy of land rights that is not grounded in actual need or productive capacity, but solely in past bureaucratic positions. Such an approach represents a form of administrative compensation rather than a model of equitable agrarian distribution. The principles embodied in the UUPA, which should serve as the philosophical foundation of agrarian policy, include the following:

Table 3.
Fundamental Philosophical Principles Underlying Agrarian Policy

Asas	Relevant Provisions of the UUPA	Description
Asas Nasionalitas	Article 1 paragraph (1), Article 9	Land rights are reserved exclusively for Indonesian citizens, serving to protect land from foreign control
Asas Pengakuan Hak Ulayat	Article 3	The rights of customary law communities are recognized insofar as they do not conflict with the broader national interest
Asas Keadilan Sosial	Article 2 paragraph (3), Article 7 and 17	The UUPA seeks to realize equitable land distribution, particularly through agrarian reform policies.
Asas Fungsi Sosial Hak Atas Tanah	Article 6	Land rights must serve a social function and may not be exercised in a manner that is abusive or detrimental to society
Asas Persamaan Hak	Not explicitly stated, but reflected in Articles 3, 7, and 17	Emphasizes equality, collective participation, and fairness in the utilization of land.

Source: Author's analysis based on the provisions of the UUPA

The considerations of Government Regulation No. 4 of 1977 does not contain any explicit philosophical reference to Pancasila or the 1945 Constitution of the Republic of Indonesia. The reasons advanced are merely administrative and technical in nature, such as limitations on mobility and the need to provide old-age protection, rather than being grounded in philosophical principles of structural justice. From the perspective of legal politics, this regulation therefore reflects the interests of a particular group namely retired PNS rather than the interests of the general public, especially small-scale farmers who constitute the primary subjects of agrarian reform. Within the

²⁹ Fais Yonas Bo'a, "Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional," *Jurnal Konstitusi* 15, no. 1 (2018): 27–49, <https://doi.org/10.31078/jk1512>.

³⁰ Abdul Aziz Nasihuddin et al., *Teori Hukum Pancasila*, Cetakan Pertama (Tasikmalaya: CV. Elvaretta Buana, 2021).

framework of social justice, such an exception not only deviates from the principle of equitable land distribution as mandated by the UUPA, but is also inconsistent with moral principles of justice as articulated by John Rawls. In his seminal work, *A Theory of Justice*, Rawls formulates the difference principle, which holds that social and economic inequalities are justifiable only insofar as they generate the greatest benefit for the least advantaged members of society. Accordingly, granting special land ownership rights to retired PNS without due consideration of the socio-economic conditions of tenant farmers risks perpetuating structural inequality rather than alleviating it.³¹

Reassessing *Absentee* Land Ownership in Relation to Population Density and Retired PNS Land Ownership

Land ownership by civil servants is subject to certain exceptions, given that civil servants are frequently reassigned to other regions in the course of performing governmental duties.³² However, upon retirement, the permissibility of such ownership particularly *absentee* land ownership (subject to limitations) must be given careful attention and strict supervision in order to prevent legal disputes and/or inconsistencies with the principles of land reform. In the event that the owner passes away, the land is transferred by inheritance, giving rise to juridical consequences whereby the heirs are required either to relocate to the location of the land or to transfer the land rights. Nevertheless, the provision of a one-year period for such compliance conflicts with prevailing social and cultural norms, as discussing inheritance prior to the lapse of one thousand days after death is considered taboo within the community.³³

The continued prevalence of *absentee* land ownership in Temanggung, although not all such cases involve civil servants reflects weak administrative supervision over the enforcement of *absentee* provisions, notwithstanding the fact that such prohibitions have been regulated in statutory laws and regulations.³⁴ This includes transfers of agricultural land, for example through sale and purchase (*jual beli*), grants (*hibah*), or other legal mechanisms that result in *absentee* ownership, all of which are not permitted.³⁵ Pursuant to Article 99 paragraph (1) of Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration (*Peraturan*

³¹ Aziz Nasihuddin, et al.

³² Raden Yoseph, Gembong Rahmadi, and Hery Purnomo, "Kebijakan dan Konsekuensi Yuridis bagi Kepemilikan Tanah Pertanian *Absentee* yang Didapatkan karena Pewarisan," *Jurnal Pemberdayaan Masyarakat Papua (JPMP)* 1, no. 2 (2019): 55–63.

³³ Yoseph, Rahmadi, and Purnomo.

³⁴ Nanda Putri Ariska, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Implementasi Peraturan Tanah *Absentee* dalam Hubungannya dengan Kepemilikan Tanah Pertanian di Kabupaten Temanggung," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (2024): 204–11, <https://doi.org/10.62383/terang.v1i1.88>.

³⁵ Chandra Dewangga Marditya Putra, "Penerapan Larangan Pemilikan Tanah Pertanian secara *Absentee*," *Jurnal Hukum dan Kenotariatan* 3, no. 2 (2019): 159, <https://doi.org/10.33474/hukeno.v3i2.3364>.

Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah), the Land Deed Official (Pejabat Pembuat Akta Tanah/PPAT), as a public official authorized to draw up authentic deeds, is required to explain to the applicant the legal consequences of making a declaration concerning the transfer of agricultural land.³⁶

When comparing the criteria for sparsely populated and densely populated areas as referred to in Article 1 paragraph (3) of Law Number 56 of 1960 with data from Badan Pusat Statistik (BPS), which recorded Indonesia's population density at 147.27 persons per square kilometer in 2023,³⁷ it may generally be concluded that the majority of regions in Indonesia have exceeded the threshold for sparsely populated areas as stipulated under the said law. However, this data cannot serve as the sole determining variable, as territorial classification is derived merely from the division of total land area by population figures. In determining whether an area should be classified as sparsely populated, less densely populated, or moderately populated, additional variables must be taken into account, including forests, lakes, public roads, residential yards, and land parcels whose legal status is non-agricultural. Accordingly, through the application of these criteria, a more accurate assessment of the actual extent of agricultural land can be conducted.

Article 5 of Government Regulation No. 4 of 1977 allows retired civil servants whose land has been distributed in accordance with applicable legal provisions as a consequence of violations of the prohibition on indirect (*absentee*) land ownership to be granted top priority by the Government in receiving compensation or indemnification. Furthermore, the provision stipulating a proportion of two-fifths (2/5) remains relatively substantial and may potentially hinder the equitable distribution of agricultural land, rendering such a figure no longer compatible with the present conditions and needs of society. Other studies indicate that exemptions granted exclusively to civil servants instead constitute an impediment, as farmers are unable to expand their agricultural operations, thereby undermining food security programs.³⁸

Land ownership by PNS is exempted and equated with other categories of civil servants, military officers, and other parties deemed equivalent. They are permitted to own land outside the sub-district (kecamatan) of their residence, subject to a limitation of two-fifths (2/5) of the maximum threshold prescribed by law. Based on the explanatory provisions of the relevant article, where the

³⁶ I Gusti Nyoman Yonatan and Maria Hutapea, "Peran PPAT dalam Mencegah Pemilikan secara Absentee melalui Jual-Beli Hak Milik Atas Tanah Pertanian," *Justitia et Pax* 34, no. 1 (2018): 119–35, <https://doi.org/10.24002/jep.v34i1.1627>.

³⁷ Monavia Ayu Rizaty, "Data Kepadatan Penduduk Indonesia," Data Indonesia, 2023, <https://dataindonesia.id/varia/detail/data-kepadatan-penduduk-indonesia-20132023>.

³⁸ Surya Rimba Perkasa, Imam Koeswahyono, and Mohammad Hamidi Masykur, "Agricultural Absentee Land Ownership Rules: Problem or Solution for Farmers on Food Resilience Program?," *BHUMI: Jurnal Agraria Dan Pertanahan* 10, no. 2 (2024): 142–54, <https://doi.org/10.31292/bhumi.v10i2.783>.

land is located in an area classified as highly densely populated, the maximum area of rice fields that may be owned is calculated as $2/5 \times 5$ hectares, amounting to 2 hectares. In the author's view, the provision under this article is no longer fully aligned with current developments and therefore requires reform, based on the following considerations:

- a. The proportion of two-fifths (2/5) remains relatively substantial; should this figure be retained, it ought to apply only where PNS or those deemed equivalent actively cultivate the agricultural land after retirement;
- b. The two-fifths (2/5) limitation should not be tied to the classification of areas as densely populated, sparsely populated, or moderately populated; instead, it would be more appropriate to impose an overall cap on total land ownership. However, such an approach would require valid and accurate data input into the Land Computerization System (Kegiatan Komputerisasi Pertanahan - KKP) of the Minister of Agrarian Affairs/Head of the National Land Agency;
- c. If ownership is construed as family-based ownership, revalidation of ownership data would be necessary through the input of Kartu Keluarga numbers into the KKP, thereby facilitating comprehensive management of land ownership data for all family members. This approach is consistent with the view that the KTP-El can serve as a mechanism to prevent *absentee* land ownership.³⁹

Therefore, a reformulation of the legal status of *absentee* land ownership by PNS after retirement is imperative, as several existing provisions are no longer relevant to contemporary developments and are thus inconsistent with the spirit of landreform implementation. Such reformulation, in addition to ensuring legal certainty in optimizing land utilization,⁴⁰ should also encompass clear policies regarding obligations for land management and transfer, transitional periods, and administrative sanctions, so that potential legal disputes in the future may be avoided. Following the implementation of this reformulation, PNS, both those still in active service and those who have retired, would be able to clearly understand their rights and obligations with respect to land ownership, thereby enabling landreform to be carried out optimally, ensuring land productivity and generating broader economic and social benefits.

Future Perspectives on the Legal Concept of Voluntary Non-Compensatory Release of *Absentee* Agricultural Land by Retired Civil Servants within Agrarian Reform

The provision under Article 5 of Government Regulation No. 4 of 1977, which grants priority

³⁹ Alvionita, Utama, and Landra, "Penataan Kepemilikan Tanah Pertanian secara *Absentee* melalui Program Kartu Tanda Penduduk Elektronik (KTP-EL)."

⁴⁰ Mario Julyano and Aditya Yuli Sulistyawan, "Pemahaman terhadap Asas Kepastian Hukum melalui Konstruksi Penalaran Positivisme Hukum," *Jurnal Crepido* 01, no. 01 (2019): 13–22, <https://ejournal2.undip.ac.id/index.php/crepido/>.

compensation to retired civil servants for agricultural land redistributed to farmers, although administratively intended as a form of post-service welfare protection, warrants deeper critical examination within the framework of agrarian justice. While previous studies have suggested that sharecropping mechanisms constitute a realistic solution for retired civil servants who own *absentee* land,⁴¹ in practice, this model continues to perpetuate unequal relations between landowners and cultivators. As an alternative, the concept of a land trust offers a viable solution for landowners namely retired or active civil servants who lack the capacity or expertise to manage their land directly, yet remain committed to contributing to its productive use.⁴²

Agrarian reform, as proclaimed under the Basic Agrarian Law, is not merely concerned with legal certainty, but more fundamentally with efforts to establish a just and productive agrarian order. Article 6 of the UUPA explicitly affirms that every right to land carries a social function, while Article 10 requires agricultural land to be directly cultivated by its owner. Accordingly, when land is held absentee, not actively cultivated, and the owner is no longer performing state duties, the continuation of such ownership requires reconsideration in light of the principles of agrarian justice and the objectives of agrarian reform. In this context, granting compensation to retired Civil Servants who retain absentee agricultural land may potentially contradict the redistributive objectives of agrarian reform, particularly where such land is merely held as a passive asset without a productive function. Therefore, the relinquishment of such land should be encouraged through a voluntary mechanism, including the possibility of relinquishment without financial compensation. In this context, non-compensatory relinquishment refers to the absence of financial remuneration, while non-material incentives, such as formal recognition or moral appreciation, may still be provided as acknowledgment of the contribution made to agrarian reform. This policy direction should, however, be situated within the contemporary framework of Presidential Regulation Number 62 of 2023 concerning the Acceleration of Agrarian Reform Implementation (Peraturan Presiden Nomor 62 Tahun 2023 tentang Percepatan Pelaksanaan Reforma Agraria), which provides a broader policy framework for restructuring land ownership and control in pursuit of agrarian justice. Its implementation may include the identification, verification, and evaluation of absentee agricultural land ownership by retired Civil Servants, particularly with regard to the size, location, use, and actual management of the land. Where continued ownership is inconsistent with the objectives of agrarian reform, voluntary relinquishment may constitute one of the policy instruments for enabling the land

⁴¹ Herdiyanti, "Kepemilikan Tanah Absentee oleh Pegawai Negeri Sipil Berdasarkan Peraturan Pemerintah Nomor 4 Tahun 1977."

⁴² Ardian Firmansyah Arifin and Oemar Moechthar, "Penerapan Konsep Trust of Land Dalam Sistem Hukum Agraria: Suatu Perbandingan Hukum Antara Indonesia Dan Britania Raya," *Media Iuris* 5, no. 3 (2022): 351–80, <https://doi.org/10.20473/mi.v5i3.34969>.

to be redirected toward redistribution to landless or land-poor agricultural households. Such an approach is consistent with the principle of social justice embodied in the fifth precept of Pancasila and the spirit of Article 33 paragraph (3) of the 1945 Constitution, while balancing the legitimate economic interests of retired Civil Servants with the broader objective of equitable land ownership and control.

The existence of an exception allowing retired Civil Servants to retain absentee agricultural land ownership should be reassessed within the contemporary legal-political framework of agrarian reform. Although the exception was originally intended to provide economic security for retired Civil Servants, its continued application may conflict with the redistributive objectives of agrarian reform when agricultural land is concentrated in the hands of persons who no longer reside in the area where the land is located. Therefore, the legal policy concerning absentee land ownership should no longer be viewed solely from the perspective of protecting individual ownership rights, but must also be assessed in relation to the State's obligation to prevent inequality in land ownership and control. In this context, Presidential Regulation Number 62 of 2023 concerning the Acceleration of Agrarian Reform Implementation provides a contemporary policy framework for addressing such agrarian inequality. The regulation should be implemented not merely through the redistribution of land that has already been identified as an agrarian reform object, but also through the identification and evaluation of land ownership and control that potentially contributes to structural inequality, including absentee agricultural land ownership maintained under the exception for retired Civil Servants. Such implementation requires coordination among relevant institutions to identify absentee agricultural land, verify the legal status and actual control of the land, and assess whether its continued ownership remains consistent with the principles and objectives of agrarian reform.

Accordingly, the exception for retired Civil Servants should be subject to stricter limitations and supervision. Retired Civil Servants should not automatically be permitted to retain absentee agricultural land without consideration of the size of the landholding, the location of the land, the purpose of ownership, and the actual use and management of the land. Where continued ownership results in excessive concentration or is inconsistent with the objectives of agrarian reform, the State should provide a mechanism for voluntary relinquishment of land rights accompanied by fair compensation or appropriate incentives. The relinquished land may subsequently be directed toward redistribution to landless or land-poor agricultural households in accordance with the objectives of agrarian reform.

At the same time, the reformulation of the policy should not disregard the legitimate economic interests of retired Civil Servants. The State's protection of retired Civil Servants can be strengthened through alternative instruments of economic security, including adequate pension benefits,

retirement savings, and other non-land-based asset mechanisms. Thus, the protection of retired Civil Servants does not necessarily have to be maintained through an exception to the absentee land ownership prohibition. This approach would enable the State to balance the protection of the legitimate interests of retired Civil Servants with the broader public interest in achieving equitable land ownership and control.

Based on the foregoing, the legal policy solution is not necessarily to abolish the exception immediately, but to reconstruct it within the framework of contemporary agrarian reform. Such reconstruction may be formulated through three complementary measures: first, limiting and supervising absentee agricultural land ownership by retired Civil Servants; second, strengthening alternative retirement-security mechanisms that do not depend on agricultural land ownership; and third, providing voluntary relinquishment mechanisms accompanied by fair compensation or incentives, with the resulting land potentially redistributed through agrarian reform programs. This policy reconstruction places the exception within a broader framework of agrarian justice and ensures that the protection of retired Civil Servants does not undermine the redistributive objectives of agrarian reform.

This approach constitutes the legal-political dimension of agrarian reform by repositioning the exception under Government Regulation Number 4 of 1977 within the contemporary policy framework established by Presidential Regulation Number 62 of 2023. The novelty of this approach lies in balancing two previously treated as separate policy interests: the protection of the economic security of retired Civil Servants and the prevention of structural inequality in land ownership and control. Consequently, agrarian reform is not understood merely as a program of land redistribution, but as a continuing legal-political process requiring the adjustment of historical land policies to contemporary principles of agrarian justice.

From the perspective of positive law, there is no legal norm prohibiting individuals from relinquishing their land rights gratuitously to the state, and instruments of land rights relinquishment are legally recognized and possess binding legal force.⁴³ Accordingly, mechanisms of voluntary release, or non-compensatory relinquishment of land rights by retired civil servants, may be opened and even adopted as a model to support the acceleration of agrarian reform programs. Such an approach would strengthen the moral position of the state in land redistribution, while simultaneously constituting a form of active civic participation in promoting structural justice and the sustainability of national agrarian governance. This concept of voluntary land relinquishment is also consistent with the legal thought of Mochtar Kusumaatmadja, who conceives law not merely as an

⁴³ Sanindia Septia Kisedi Putri, "Kedudukan Hukum Surat Pernyataan Pelepasan Hak Atas Tanah," *Notary Journal* 2, no. 2 (2022): 111–28.

instrument for maintaining order, but also as a means of social transformation (law as a tool of social engineering).⁴⁴ Within this perspective, land law regulation functions not only to preserve legal order, but also as an instrument to stimulate social change toward a more just and productive agrarian structure. By institutionalizing the voluntary release of *absentee* land by retired civil servants as a formal policy, the state exercises a proactive legal function in realizing the ideals of social justice as enshrined in Pancasila and the Basic Agrarian Law.

The state may institutionalize this mechanism through policies that:

- a. facilitate retired civil servants in voluntarily relinquishing *absentee* land through simplified administrative procedures;
- b. provide non-material incentives in the form of moral recognition and acknowledgment of their contributions to agrarian reform;
- c. ensure access to legal education and counseling for civil servants approaching retirement concerning the rights and obligations of land ownership; and
- d. integrate data on land relinquishment into the digital system of the Land Office (Kantor Pertanahan), in order to ensure transparency and accountability.

Such policies would not only accelerate land redistribution, but also strengthen the legitimacy of the state in fulfilling the mandate of the Basic Agrarian Law as a manifestation of structural justice in land tenure and utilization in Indonesia. Accordingly, this approach is not merely normatively feasible, but is in fact ideal and deserving of institutionalization as part of the future direction of agrarian legal policy.

CONCLUSION

Based on a normative analysis of the juridical and philosophical foundations of the exemption for *absentee* land ownership by retired civil servants, this study concludes that such policy is not fully aligned with the principle of social justice embodied in the fifth precept of Pancasila, nor with the principles governing agricultural land management under the Basic Agrarian Law, particularly the imperative norm of Article 10. From the perspective of legal policy, the exemption provided under Government Regulation No. 4 of 1977 reflects a compensatory administrative approach rather than the redistributive legal policy that constitutes the core of agrarian reform, thereby potentially perpetuating structural inequality in land tenure. Accordingly, this study highlights the need for policy reformulation aimed at limiting and refining post-retirement exemption requirements, strengthening oversight mechanisms, and integrating land ownership data in a more accountable manner. Furthermore, this research affirms that the legal-policy framework for the voluntary relinquishment

⁴⁴ Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: PT. Alumni, 2006).

of land rights is already available within the agrarian law system and can be optimized as a form of active civic participation. Such relinquishment should not require financial compensation, but instead be supported by the design of appropriate non-material incentives or recognition mechanisms to ensure its effective implementation and consistency with the objectives of equitable and sustainable agrarian reform.

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