International Journal of Social Science Research and Review

ijssrr.com
editor@ijssrr.com
Volume 9, Issue 11
November 2026
pp. 101–111

The Role of The ATR/BPN Office in the Implementation of the Prohibition on Absentee Land Ownership (A Study in Mentaya Hilir Selatan Sub-District, Kotawaringin Timur Regency)

Nadya Amelia Putri[1]; Sukarmi[2]; Endang Sri Kawuryan[2]

[1] Master of Notarial Law Student at Brawijaya University, Malang, Indonesia
[2] Lecturer in the Faculty of Law, Brawijaya University, Malang, Indonesia
[2] Lecturer in the Faculty of Law, Brawijaya University, Malang, Indonesia

Corresponding author: nadyaamelia@student.ub.ac.id
DOI: https://doi.org/10.47814/jtc9wc84

Abstract

This study examines the implementation of the prohibition on absentee agricultural land ownership and the role of the Land Office (ATR/BPN) in Mentaya Hilir Selatan Sub-District, East Kotawaringin Regency, Central Kalimantan. Anchored in Article 10 of Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), this prohibition is central to Indonesia's land-reform policy, yet faces persistent juridical and non-juridical obstacles. The research addresses two key questions: how the prohibition is implemented along with the challenges faced, and what measures the Land Office has taken to address them.Using an empirical legal (socio-legal) method combined with normative-juridical and statutory approaches, primary data were gathered through purposive-sampling interviews with the Head of the Land Office, three village heads, a land deed official (PPAT), and nine community members, analyzed descriptively. Results show ineffective implementation: operational mechanisms are limited to domicile verification at application and a rights-transfer statement when absentee land is identified, lacking post-registration monitoring.This ineffectiveness stems from outdated regulations and limited post-registration tracking (juridical), alongside weak inter-institutional coordination, minimal field supervision, low legal awareness, and entrenched kinship values tolerating cross-domicile control (non-juridical). Applying Soerjono Soekanto's legal effectiveness theory, all five factors—law, enforcers, facilities, community, and culture—are simultaneously weak. John Rawls' theory of justice further reveals a gap between formal administrative compliance and substantive fairness in land access.Resolving these issues requires regulatory evaluation and harmonization, alongside strengthened inter-institutional coordination, continuous data monitoring, and expanded, targeted public awareness campaigns. Integrating these legal and non-legal strategies can enhance implementation effectiveness, ensure legal certainty, and fulfill national land-reform goals of equitable agricultural land distribution.

Keywords: *Absentee Land Ownership; Land Office (ATR/BPN); Legal Effectiveness; Land Reform.*

INTRODUCTION

Land occupies a strategically important position in human life. For Indonesian society, land is not merely an economic asset; it also carries deep social, cultural, and even political dimensions attached to communal life. Land serves as the primary means of meeting basic needs, both as a place of settlement and as a means of production, particularly in the agricultural sector on which the livelihood of much of the rural population depends. Because of this strategic position, the control, ownership, use, and utilization of land cannot be left entirely to market mechanisms or individual will, but must be regulated wisely by the state so as to provide the greatest possible benefit for the welfare of the community.

The state's authority to regulate the control of agrarian resources finds its constitutional foundation in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which affirms that the earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This provision is not merely a political statement; it carries the juridical consequence that every land policy — including policies that restrict a person's freedom to own land in any region of their choosing — must be justifiable

as an instrument for achieving the collective prosperity of the people, rather than a mere restriction of individual property rights.

As an implementation of this constitutional mandate, the government enacted Law No. 5 of 1960 on the Basic Agrarian Regulation (Undang-Undang Pokok Agraria/UUPA), which became the milestone of national agrarian law unification and ended the colonial-era dualism of land law that had previously applied in Indonesia. The UUPA laid down several principles that form the foundation of national land regulation — the principle of nationality, the principle of the social function of land, the principle of equitable land distribution, and the principle of legal certainty. Among these principles, the social function of land under Article 6 of the UUPA has direct relevance to the issue examined in this study, because it affirms that land rights are not absolute and free from public interest: their utilization must have regard to the interests of the wider community, not merely the personal interest of the rightsholder.

A juridical consequence of the social-function principle is the obligation of agricultural landholders to actively and productively cultivate their land. Conversely, passive control of agricultural land — land that is owned but not directly cultivated by its owner — is regarded as contrary to that social function, because it has the potential to hinder land productivity and to generate imbalance in the structure of land control within society.

One of the policy instruments established by the government to achieve equitable land control while enforcing the social-function principle is the land-reform program. This program aims to improve the structure of land control so that it becomes fairer and more equitable, particularly for small farmers and tenant farmers, while abolishing feudalistic and exploitative patterns of land control. In its implementation, land-reform policy comprises several interrelated instruments: a maximum ceiling on agricultural landholding, a prohibition on land monopoly or excessive land control, redistribution of land to landless farmers, and — the primary focus of this study — a prohibition on the absentee (guntai) ownership of agricultural land by parties who do not reside in the region where the land is situated).

Juridically, the prohibition on absentee land ownership is rooted in Article 10 of the UUPA, which requires every holder of agricultural land rights to actively cultivate the land personally, and which expressly seeks to prevent exploitative arrangements that commonly arise when a landowner hands over land to a cultivator without a balanced legal relationship. This provision was subsequently elaborated more technically through Law No. 56 Prp of 1960 on the Determination of Agricultural Land Area and Government Regulation No. 224 of 1961 on the Implementation of Land Distribution and the Provision of Compensation, which was later amended by Government Regulation No. 41 of 1964, with certain exceptions granted to retired civil servants under Government Regulation No. 4 of 1977. At the more contemporary technical-administrative level, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2016 on the Control of Agricultural Land Tenure places the control of absentee land ownership within efforts to reduce social inequality, distribute welfare more equitably, and safeguard national food security — showing that this issue remains a live concern of land policy today, rather than a mere legacy of past regulation.

Philosophically, the prohibition is intended to prevent the accumulation of land control in the hands of parties who do not manage it directly, to encourage more productive management of agricultural land by its own owners, and to protect tenant farmers from unequal and potentially exploitative land-control relationships. The absentee prohibition is therefore not merely an administrative restriction concerning domicile, but a legal instrument that sustains the ideals of agrarian justice and the sustainable welfare of farmers.

The problem is that this legal ideal confronts a continually changing socio-economic reality. Economic development, advances in transportation technology, and increasing population mobility have altered the pattern of relations between landowners and the land they own. Not a few individuals who reside in urban areas continue to own agricultural land in rural areas, in some cases purely as an investment instrument in anticipation of future increases in land value, without any direct involvement in its management. This phenomenon has been documented in various contemporary agrarian-law studies. Prior research has found that the enforcement of the prohibition on absentee agricultural land ownership in various regions continues to face recurring implementation problems, that optimization of law enforcement is needed to reduce absentee land ownership in order to realize social justice, that problems surrounding absentee land — including the exception granted to civil servants — continue to contribute to agrarian inequality, and that regulatory harmonization concerning absentee agricultural land ownership is needed so that it aligns with the objectives of the land-reform program.

These studies reveal a consistent pattern: the legal provisions prohibiting absentee agricultural land ownership have not been fully implemented effectively, so that such ownership practices are still widely found across various

regions of Indonesia. Land owned by parties from outside the region is generally not cultivated directly by its owner, but is instead handed over to a tenant farmer, or even left unproductive altogether.

A similar condition can be found in Mentaya Hilir Selatan Sub-District, Kotawaringin Timur Regency, Central Kalimantan Province — a region whose land use is predominantly oriented toward agriculture and plantation activity, so that the issue of agricultural land control has high relevance to the local economic life of the community. Agricultural land in this region is still owned by parties who do not reside there, generally acquired through sale and purchase, inheritance, or other forms of rights transfer. In a number of cases, such land tends to be treated purely as an investment object in anticipation of future economic appreciation, rather than being actively managed as the social-function principle of land intends.

If left unaddressed, this condition has the potential to generate several serious land-related problems: an imbalance in the structure of land control between local residents and outside parties, a decline in agricultural land productivity because it is not optimally managed by its owner, obstruction of the equitable-distribution objective of the land-reform program, and the potential emergence of agrarian conflict between landowners and local communities in need of access to land for agricultural activity.

Viewed from the perspective of agrarian law, this condition essentially reflects a gap between das sollen and das sein: normatively, statutory regulation expressly prohibits absentee ownership of agricultural land, yet empirically the practice continues — and has the potential to increase alongside economic development and changing patterns of population mobility. This gap constitutes the core legal issue examined in this study: not merely questioning the existence of the norm prohibiting absentee ownership, since that norm has existed since the UUPA first came into force, but questioning why and how a norm that has been formally in effect has not succeeded in changing the social behavior that contradicts it.

This question directs attention to the institutional role legally responsible for enforcing the prohibition. Within the national land-administration system, the Land Office functions as a vertical agency of the National Land Agency that carries out, among other things, the determination and registration of land, the control and enforcement of land tenure and ownership, and the management of land data and information within its working area. Given this controlling and enforcement authority, the effectiveness of implementing the absentee land-ownership prohibition at the local level fundamentally depends on how the Land Office translates its normative authority into concrete action: conducting data collection, verifying the domicile of applicants and rightsholders, carrying out continuous supervision, and following up on indications of violation found in the field.

This issue has also not been specifically addressed by much prior research. Existing studies on the absentee land prohibition tend to focus on national regulatory reform, on the existence of and factors behind absentee practices in other regions, or on the legal protection of heirs in the context of absentee-land inheritance. To the researcher's knowledge, no prior study has specifically examined the institutional role of the Land Office in implementing this prohibition at the sub-district level, including the juridical and non-juridical obstacles it faces and the concrete legal measures that have or have not been taken to overcome them — a gap this study seeks to fill.

Based on the foregoing, the main legal issue of this study is the real inconsistency between the legal norm prohibiting absentee ownership of agricultural land and the practice that continues to occur in society, particularly in Mentaya Hilir Selatan Sub-District. This raises fundamental questions concerning the extent to which the ATR/BPN Office has — or has not — effectively carried out its controlling and law-enforcement role, what obstacles have caused its implementation to remain sub-optimal, and what legal measures have been, or need to be, taken to close that gap.

RESEARCH METHOD

This study employs a socio-legal research methodology combining a normative-juridical approach with empirical analysis to examine the enforcement gap regarding absentee agricultural land ownership. By integrating textual analysis of primary agrarian legislation—including the UUPA, Law No. 56 Prp/1960, and Government Regulation No. 224/1961 (as amended by PP No. 41/1964)—with the social reality of land tenure, this interdisciplinary framework evaluates how legal norms governing *absentee* land operate in practice. Mentaya Hilir Selatan Sub-District in Kotawaringin Timur Regency was selected as a representative case study site due to the high prevalence and local socio-economic relevance of non-resident agricultural land ownership.

Data collection relied on both secondary statutory materials and primary field data gathered through purposive sampling. Primary empirical insights were obtained via direct, semi-structured interviews with key stakeholders, including the Head of the Kotawaringin Timur Land Office, three local village heads (Sei Jum Raya, Jaya Kelapa, and Samuda Kecil), a Notary/PPAT, and nine local community members. Using a descriptive-qualitative analytical

method, the collected data were categorized and synthesized to analyze the operational role of the Land Office, assess implementation obstacles, and examine how statutory prohibitions align with actual land management practices in the region

RESULTS AND DISCUSSION

A. Overview of the Research Location

Kotawaringin Timur Regency is one of the regencies in Central Kalimantan Province with an agrarian territory characterized by diverse forms of land tenure, ownership, use, and utilization. Land occupies an important position in community life, particularly land used for agricultural purposes, which relates not only to the community's economic needs but also to government policy on controlling the tenure and ownership of agricultural land. Mentaya Hilir Selatan Sub-District was specifically selected as the research location because of documented problems concerning absentee agricultural land ownership that warrant examination in light of applicable statutory provisions — problems that concern not only the juridical status of land ownership, but also the domicile of owners, the control and cultivation of land, and the supervision exercised by the land administration agency.

To obtain a picture of these conditions, the research involved interviews with parties connected to the implementation of the absentee land prohibition: the Head of the Kotawaringin Timur Land Office, the heads of Sei Jum Raya, Jaya Kelapa, and Samuda Kecil villages, a notary/PPAT, and nine community members. Their accounts were used to describe the factual conditions of land ownership and tenure, as well as the supervision and control of absentee land, in the research area.

B. Implementation of the Prohibition on Absentee Land Ownership

a) Legal Basis

The prohibition on absentee agricultural land ownership in Mentaya Hilir Selatan Sub-District cannot be separated from the normative construction that places it within national land-reform policy. Article 10 of the UUPA establishes the principle that every holder of agricultural land rights must, in essence, actively cultivate the land personally and thereby prevent exploitative arrangements. This principle is the philosophical and juridical point of departure for the entire body of regulation on the absentee prohibition, further elaborated through Law No. 56 Prp of 1960, Government Regulation No. 224 of 1961 — which in Article 3 requires an owner residing outside the sub-district where the land is located either to transfer the right to another party within that sub-district or to relocate — Government Regulation No. 41 of 1964, which extends this provision to owners who relocate or leave their place of residence outside the sub-district for two consecutive years, and Government Regulation No. 4 of 1977, which grants a specific exception for retired civil servants. All of these instruments, from the UUPA through Ministerial Regulation No. 18 of 2016, presuppose an institution actively verifying domicile, recording the objects and subjects of rights, and following up on indications of violation — the extent to which this normative construction is genuinely translated into land-administration practice on the ground is the central issue examined below.

b) Implementation Mechanism

Normatively, the mechanism for controlling absentee land ownership is built as a series of interrelated administrative stages: an application or transfer of rights is submitted to the Land Office; the application documents, including the applicant's identity, are examined; the applicant's domicile is verified through a certificate issued by the local village government; the land-registration or transfer process is carried out once all requirements are met; and, at a final stage, prevention or handling occurs if an indication of absentee ownership is later discovered. According to the Head of the Kotawaringin Timur Land Office, the preventive mechanism actually applied at the application/transfer stage is the requirement that every applicant attach a certificate of domicile from the local village government as an administrative condition — a mechanism that functions as a prevention instrument at the entry point of the land process, before a transfer of rights is officially recorded. At the same stage, the notary/PPAT also functions as part of the preventive mechanism, since every transfer of rights executed before a PPAT requires verification of the prospective rightsholder's certificate of domicile before the deed of transfer can be processed — positioning the PPAT as a second administrative-juridical filter after the village government, prior to the file reaching the Land Office for examination. When these stages reveal that a parcel of land has “slipped through” and acquired absentee status — for instance, because the owner relocated after acquiring the right — the handling mechanism described by the Head of the Land Office is to require the owner to execute a statement of rights transfer as a form of administrative settlement. This description indicates that the mechanism genuinely operating in the field covers only two points of examination — at the application/transfer stage and at

the settlement stage once a "slipped-through" case is discovered — while continuing supervision of land already registered is not supported by any other evidence in this study. The overall pattern is therefore administrative-preventive at the point of registration/transfer and responsive-administrative once an indication of violation is found, but not yet sustained by an active monitoring mechanism reaching land whose control changes outside formal procedure.

c) The Role of the ATR/BPN Office

As a vertical agency of the National Land Agency at the regency level, the Kotawaringin Timur Land Office carries out the functions of land determination and registration, control and enforcement of land tenure and ownership, and management of land data and information, as regulated under Presidential Regulation No. 177 of 2024 on the National Land Agency. This controlling and enforcement function is the institutional basis for the Land Office's role in the absentee land issue in the research area. The Head of the Land Office assessed that implementation of the absentee prohibition in his working area had been effective, resting this assessment on the administrative examination of domicile certificates at the rights-application stage; he further explained that the measures taken so far have been socialization and outreach, and openly acknowledged that Government Regulation No. 41 of 1964, one of the legal bases of the absentee prohibition, is no longer relevant to current societal conditions, so that regulatory renewal is needed. It should be noted, as a methodological matter, that the Sub-District Head of Mentaya Hilir Selatan was also interviewed for this study; however, the available interview record did not contain substantive information on the implementation of the absentee prohibition, and this gap is stated openly rather than assumed, to be completed in any follow-up research.

C. Findings from Interviews with Key Informants

a. **The Head of the Land Office** assessed the implementation of the absentee prohibition in his working area as effective, an assessment resting solely on the fulfillment of the administrative requirement of a domicile certificate at the application stage. Read critically, this assessment is not accompanied by any evidence of active monitoring of land already registered, nor of land whose control shifts outside official procedure. His acknowledgment that the 1964 regulatory basis is outdated is itself a significant finding, coming directly from the implementing institution.

b. **The village heads** of Jaya Kelapa, Sei Jum Raya, and Samuda Kecil each stated that implementation of the absentee prohibition in their respective villages had not been effective. The Head of Jaya Kelapa Village pointed to a lack of socialization and coordination from the Land Office, and reported that, as of the interview, no coordination had ever taken place between the Land Office and the village government regarding control of absentee land ownership; the village government had instead independently conducted outreach, formed farmer groups, and provided seeds and fertilizer to tenant farmers as a form of indirect guidance, and recommended that the Land Office extend coordination and outreach down to the village level. The Head of Sei Jum Raya Village likewise reported no effective implementation, attributing this chiefly to the strong kinship character of local society, whereby land control or transfer among relatives residing outside the sub-district tends to be socially tolerated even though it juridically falls within the absentee category, and observed that, for local residents, a parcel's absentee status is not a primary concern so long as the land remains cultivated and productive. The Head of Samuda Kecil Village gave a substantially consistent account. Taken together, these accounts show that ineffective implementation is not an isolated problem confined to a single village but a pattern consistent across three villages within one sub-district, reinforcing the conclusion that the core problem lies not at the village level but in the weakness of the Land Office's tiered coordination and supervision role.

c. **The Notary/PPAT** assessed implementation of the absentee prohibition as less than effective. In practice, she had never encountered or handled a client genuinely holding absentee-status land, since every rights-transfer process she handled required a certificate of domicile to confirm the status of the prospective rightsholder, and she affirmed that she would refuse to process a deed of transfer for any prospective client found to be in an absentee condition. She assessed coordination with the Land Office as still lacking and considered that the ineffectiveness of the prohibition's implementation as a whole was primarily attributable to the Land Office itself, proposing comprehensive outreach and regulatory renewal. This account carries important value: it shows that compliance with the absentee prohibition at the deed-execution stage is relatively well maintained, because the PPAT functions as an administrative-juridical filter before a transfer is recorded — but that filter is effective only for transfers conducted formally through a PPAT, and does not reach land

control or transfer occurring informally or through kinship relations, as reported by the village heads. Her statement that she had never encountered absentee land should therefore be read cautiously: it more likely reflects that irregular transfer practices never pass through a notary's desk, rather than the absence of absentee land in the area.

d. **The community informants** — nine residents of Mentaya Hilir Selatan — generally knew of agricultural land owned or controlled by parties who do not reside locally, but had not fully grasped that such a difference in domicile can give rise to the legal problem of absentee ownership. Land tends to be regarded primarily as an asset and a source of livelihood, so that an owner's domicile status has not habitually been linked to the absentee prohibition; residents are more familiar with acquiring land through sale and purchase or inheritance than with restrictions on ownership based on domicile. When an owner resides outside the region, the land continues to be managed by family members or the surrounding community, and from the community's perspective, land that remains cultivated and productive tends not to be regarded as problematic — showing that the standard of compliance developed within the community rests primarily on land productivity, whereas the absentee norm uses the owner's domicile as its legal measure. Family ties and the economic benefit of the land are considerations in maintaining control by an off-site owner, and continued cultivation by family or others is seen locally as evidence that the land has not been neglected. Several informants explicitly stated that uneven community understanding demonstrates the importance of socialization concerning the absentee provisions and clearer explanation of the boundaries of land ownership.

D. Indicative Data on Land Ownership and Tenure

The research file does not provide official data on the exact number of parcels legally proven to hold absentee status in Mentaya Hilir Selatan Sub-District; the following discussion therefore distinguishes carefully between land legally proven to be absentee, land merely showing indications or patterns of tenure that could potentially be absentee, and community perceptions of the phenomenon. Provisional data collected during the research indicate that, in Samuda Kecil Village and the Sei Ijum area, 480 certificate holders were recorded, of whom 365 resided in the village and 115 came from outside it; in Sei Ijum Raya Village, with 527 hectares of farmland and 385 hectares of plantation land, 42 of 629 certificate holders resided outside Samuda Kota; and in Samuda Besar Village, with 828 hectares of plantation land and 107 hectares of paddy field across 45 certificates, an estimated five to eight certificates were held by parties from outside the village. Across the villages for which data is available, the proportion of certificate holders residing outside the village of the land's location consistently ranges from roughly 7% to 24%. It must be stressed that residing outside the village is not automatically equivalent to residing outside the sub-district, which is the juridical element of absentee land; some owners residing outside the village may still fall within the same sub-district or within a recognized statutory exception. This data should therefore be read only as an indication of a cross-regional tenure pattern warranting attention, not as legal proof that all such parcels are absentee. Consistent with this quantitative indication, the qualitative accounts of the nine community informants reveal a uniform pattern: land whose owner resides outside the region is generally still managed by family, workers, or local residents, and this condition is socially regarded as normal so long as the land remains productive and is not neglected. This pattern — rather than a precise count of absentee parcels — constitutes the strongest factual data available in this study concerning the condition of land ownership and tenure in Mentaya Hilir Selatan Sub-District.

E. Analysis under John Rawls' Theory of Justice

John Rawls' theory of justice is applied to assess the fairness dimension of implementing the absentee land prohibition, not to displace positive law but to test whether the norm's implementation affords consistent treatment, fair opportunity, and support for the social objective of equitable land distribution. The principle of equal basic liberties is relevant to assessing that restrictions on land ownership must be applied under generally applicable and knowable rules; the obligation to demonstrate domicile at the application or transfer stage is a form of administrative restriction that must be applied consistently to owners or prospective owners in equivalent conditions. The principle of fair equality of opportunity is used to examine the local community's opportunity to access and utilize agricultural land: when agricultural land is owned by a party residing outside the region and subsequently managed by family or others, the question of justice concerns not only the owner's formal right but also whether that tenure structure affects the local community's opportunity to obtain access to land. The difference principle is applied contextually to assess the social purpose of the absentee restriction, understood as an instrument directed at preventing land-control inequality and supporting those in need of access to agricultural land; the

effectiveness of the prohibition's implementation must therefore be linked to whether its outcomes support equitable distribution rather than reinforce existing imbalance.

The findings reveal a divergence in perspective between the community and the authorities: the community tends to regard ownership by an off-site party as unproblematic so long as the land remains productive, whereas the absentee norm uses the owner's domicile as its legal measure. From a justice perspective, this divergence underscores the importance of transparent and consistent rule application accompanied by a clear explanation of the restriction's social purpose. On the part of the Land Office, the use of a domicile certificate as a preventive instrument affords equal formal treatment at the application stage; however, if supervision stops at that stage, owners who subsequently relocate or exercise control through informal mechanisms are not fully reached, raising a justice concern regarding the consistency of treatment and supervision between land entering through formal procedure and tenure practices occurring outside the reach of administration. Justice in implementing the absentee prohibition is therefore not adequately realized through administrative examination at registration alone; it requires clarity of the applied criteria, consistency of supervision, community access to legal information, and a handling mechanism applicable to equivalent conditions, while special circumstances such as inheritance or kinship relations must remain grounded in applicable law.

F. Analysis of Effectiveness under Soerjono Soekanto's Theory

Soerjono Soekanto holds that the effectiveness of law is determined by five interrelated factors: the law itself, law enforcers, facilities or infrastructure, the community, and culture. Applied to the findings above:

- Legal factor: this factor appears weakest of all. The Head of the Land Office openly acknowledged that Government Regulation No. 41 of 1964, the basis for regulating the absentee prohibition, is no longer relevant to present societal conditions — an admission from the implementing institution itself showing that the effectiveness problem is not merely one of enforcement, but originates from the substance of the law, which has not been updated.
- Law-enforcer factor: the Land Office regards its implementation as effective, but this assessment is confined to fulfillment of the administrative domicile requirement at the application stage; all three village heads and the notary/PPAT consistently reported the absence of coordination between the Land Office and the sub-district and village governments. Under Soekanto's theory, this factor is measured not only by officials' adherence to existing rules but by actual field performance; the lack of coordination shows that the Land Office's enforcement function has not yet reached the stage of tiered field supervision.
- Facilities/infrastructure factor: the control mechanism relies on a single instrument — a manually verified domicile certificate at the application and deed-execution stages — with no evidence of any data system or continuous monitoring mechanism connecting the Land Office with sub-district and village governments; the absence of such infrastructure helps explain why the inter-institutional coordination reported as lacking by village heads and the notary/PPAT has never materialized.
- Community factor: the nine community informants consistently show that public understanding of the substance of the absentee prohibition remains limited and uneven, even though the community generally understands land matters from the standpoint of ownership, sale and purchase, inheritance, and everyday use; the community's standard of compliance rests consistently on the land's actual control and productivity rather than the owner's formal domicile status, marking this as one of the principal weak points in the prohibition's effectiveness.
- Cultural factor: the strong kinship character described by the Head of Sei Jum Raya Village, and confirmed by several community informants, in which land control or transfer among relatives residing outside the sub-district tends to be socially tolerated, reflects a clash between local cultural values and the values underlying the absentee prohibition itself.

Reviewing these five factors together shows that implementation of the absentee prohibition in Mentaya Hilir Selatan Sub-District faces a multifactorial and interrelated set of problems: an outdated legal basis, law enforcers not yet optimal in coordination, minimal facilities, a community whose legal awareness remains low, and a culture that clashes with the objective of the regulation. The simultaneous weakness of all five factors explains why the prohibition on absentee land ownership in the research area cannot yet be considered effectively implemented, consistent with the finding that the underlying regulation has not satisfied the principle of practical enforceability (het beginsel van uitvoerbaarheid).

G. Obstacles to Implementation

a. Juridical obstacles

Three juridical obstacles were identified. First, the regulatory basis of the absentee prohibition is outdated: Government Regulation No. 224 of 1961 and Government Regulation No. 41 of 1964 were formulated in a socio-economic context markedly different from present conditions in Mentaya Hilir Selatan, with a sub-district-boundary concept originally shaped by the transportation limitations of that era — a point confirmed directly by the Head of the Land Office, who openly regards the 1964 regulation as no longer relevant. This is the most fundamental juridical obstacle, since every other implementation instrument, including the domicile-certificate requirement, ultimately rests on this same norm. Second, the available legal instruments for supervision are limited: existing regulations impose an obligation to transfer rights or relocate domicile, but do not set out a detailed mechanism for continuous post-registration monitoring; the only instrument genuinely available to the Land Office remains the domicile-certificate examination at the application stage, leaving land already registered before a subsequent change of owner domicile effectively beyond juridical-administrative reach. Third, informal land control or transfer — occurring outside the formal registration or PPAT-deed procedure, as described in the tolerated kinship-based transfers reported by the Head of Sei Jum Raya Village and confirmed by the PPAT's account that her administrative filter applies only to formal transfers — shows that existing norms have no reach over tenure practices occurring outside the formal land-administration system, a structural problem that cannot be resolved simply by tightening registration procedure.

b. Non-juridical obstacles

These include, first, weak inter-institutional coordination: all three village heads consistently stated that no coordination has ever taken place between the Land Office and their respective village governments regarding control of absentee land ownership, and the notary/PPAT likewise assessed coordination as still lacking; the research did not obtain substantive information on coordination at the sub-district–Land Office level, and this gap is stated as unavailable data rather than assumed. Second, field supervision genuinely operating reaches only the application and deed-execution stages, without evidence of routine field visits, periodic verification, or a reporting mechanism from village to Land Office level. Third, data recording: no dedicated, actively updated database on absentee land was identified, nor any mechanism linking land data with population data to detect post-registration changes of owner domicile; the provisional proportional data on certificate-holder domicile described above was in fact compiled by the researcher, not as part of any routine Land Office data system. Fourth, administrative follow-through: the handling mechanism for a “slipped-through” absentee parcel — requiring a statement of rights transfer — is responsive only after a case is discovered, without evidence of a defined procedure, timeframe, or responsible party for following the statement through to completion. Fifth, community legal understanding and awareness remain limited and uneven, with compliance measured by land productivity rather than formal domicile status — a norm the community does not fully understand is difficult to comply with voluntarily. Sixth, social and cultural factors, namely the strong kinship character that leads to tolerance of cross-domicile land control among relatives, directly clash with the objective of the absentee prohibition, which requires geographic proximity between owner and land. Seventh, facilities remain limited to a single manual instrument — the domicile certificate — without any electronic data system or continuous monitoring mechanism connecting the Land Office with sub-district and village governments.

These juridical and non-juridical obstacles cannot be regarded as separate problems; they form a single, mutually reinforcing chain of causation. The outdated legal basis leaves the Land Office without adequate instruments to demand stricter coordination from sub-district and village governments, so that the institutional-coordination obstacle is itself partly rooted in that juridical weakness; likewise, the absence of a legal instrument for post-registration monitoring is directly connected to the absence of a data system and monitoring facility, since existing norms do not require the establishment of such a system. Conversely, low community legal awareness and strong kinship culture further weaken the effectiveness of existing juridical norms, because a formally applicable norm loses its sociological binding force when the community it targets does not understand it or applies a different standard of compliance. Regulatory renewal alone, without strengthened coordination, data facilities, and community socialization, is therefore unlikely to be sufficient to improve the effectiveness of the absentee prohibition's implementation in Mentaya Hilir Selatan Sub-District; conversely, strengthened coordination and socialization without regulatory renewal will still confront a legal instrument that the implementing agency itself regards as no longer relevant.

Synthesizing the foregoing findings: normatively, implementation of the absentee prohibition is intended to proceed through a chain of domicile verification at the application/transfer stage, continuous supervision, and

tiered coordination among the Land Office, sub-district, and village governments. Factually, however, implementation genuinely operating covers only the domicile-certificate examination at the application stage and at PPAT deed-execution, without any continuous monitoring mechanism or effective inter-institutional coordination. The role of the ATR/BPN Office in implementing the absentee prohibition therefore displays a pattern of being "procedurally effective but substantively limited": administrative requirements are fulfilled, but the reach of supervision and institutional coordination remains inadequate, revealing a real gap between norm (das sollen) and practice (das sein) at the institutional, instrumental, and community-awareness levels.

H. Legal Measures Taken

a. Preventive measures

The preventive measures genuinely implemented by the Kotawaringin Timur Land Office consist of requiring every applicant for land rights to attach a domicile certificate from the local village government as an administrative condition at the application or transfer stage, and socialization and outreach that, according to the Head of the Land Office, has been conducted, although the three village heads and the notary/PPAT assessed that such socialization has not adequately reached the village level. At the deed-execution stage, the notary/PPAT also exercises a preventive function by examining the prospective rightsholder's domicile certificate before processing a deed, and will refuse to process a transfer for a prospective recipient found to be in an absentee condition. Preventive measures have also been taken independently by some village governments, such as Jaya Kelapa Village's outreach, farmer grouping, and provision of seeds and fertilizer as a form of indirect guidance. These three forms of preventive effort — the Land Office's administrative requirement, the notary/PPAT's filter, and independent village initiatives — essentially operate separately, without systemic interconnection. They are reasonably effective in preventing the emergence of new absentee ownership through the formal rights-transfer channel, but do not reach prevention of land control shifting outside formal procedure or of domicile changes occurring after a right has been acquired.

b. Repressive/handling measures

Available data on repressive measures cover only one form of action: the Head of the Land Office's account that, when land is later discovered to be "slipped-through" absentee land, the owner is required to execute a statement of rights transfer as a form of administrative settlement. The research file provides no data on the timeframe for fulfilling that obligation, the mechanism for monitoring compliance with the statement, or the form of follow-up action should the obligation not be fulfilled; these are stated as data not yet available rather than elaborated further. The absence of data on follow-up to the rights-transfer statement is itself a relevant finding: the existing repressive measure stops at the initial administrative stage (execution of the statement), without evidence confirming that the obligation is genuinely followed through to an actual transfer of rights to a party whose domicile conforms to the applicable provisions.

c. Measures to address juridical obstacles

Available data show that both the Head of the Land Office and the notary/PPAT expressed the need for regulatory renewal, without evidence that concrete steps toward evaluation or regulatory harmonization have actually been taken or formally proposed by the Land Office to the competent authority. At this point, "measures" remain at the stage of acknowledging the need (a recommendation) rather than concrete action such as an academic paper, a draft revision, or formal harmonization — a point stated openly so as not to create the impression that regulatory renewal is already under way. Viewed through Rawls' theory of justice, addressing juridical obstacles should not be directed solely at changing the norm, but must also ensure that any new rule affords consistent treatment and fair opportunity to parties in relevantly similar conditions; in the context of absentee land, evaluation of the domicile boundary, the post-registration monitoring mechanism, and provisions for special circumstances such as inheritance and kinship relations need to be formulated clearly, while still supporting the equitable-distribution objective so that ownership restrictions serve substantive community interests rather than remaining merely administrative.

d. Measures to address non-juridical obstacles

The explicit recommendation from the Head of Jaya Kelapa Village is that the Land Office extend coordination and outreach down to the sub-district and village level; the notary/PPAT likewise proposed comprehensive outreach. No data was found indicating that the Land Office has taken concrete steps to build a data system linking land data with population data. The strengthening of cooperation with village governments that has genuinely taken place — though one-sided and not yet reciprocated by the Land Office — is Jaya Kelapa Village's own initiative

in outreach, farmer grouping, and provision of seeds and fertilizer. Measures to address non-juridical obstacles thus far consist more of recommendations and unilateral village-level initiatives, rather than an integrated program initiated and coordinated directly by the Land Office as the principal authority for land control.

Assessed against Soekanto's five factors of legal effectiveness, existing measures have not yet corrected the legal factor, since regulatory-renewal recommendations have not reached the stage of concrete normative change; they have partially strengthened the law-enforcer factor through the domicile-requirement mechanism at registration, though the repressive measures taken do not yet show follow-through to a final outcome; they have not yet addressed the facilities factor, since no concrete steps toward a data or continuous-monitoring system were identified; they have made a step in the right direction for the community factor through socialization and outreach by both the Land Office and village governments, though informants themselves report this has not adequately reached the community, so improvement remains partial; and the cultural factor remains untouched, with no data found on any measure specifically designed to bridge local kinship values with the objective of the absentee prohibition.

CONCLUSION

First, implementation of the prohibition on absentee land ownership in Mentaya Hilir Selatan Sub-District has not been effective. The implementation genuinely operating rests on only two administrative instruments — examination of the domicile-certificate requirement at the application/transfer stage, and the obligation to execute a statement of rights transfer once land is discovered to hold absentee status. Under Soerjono Soekanto's theory of legal effectiveness, this weakness relates to the factors of law, law enforcers, facilities, community, and culture. Viewed through John Rawls' theory of justice, this condition also shows that implementation of the prohibition has not fully reached the goals of equitable land control, consistency of treatment, and community opportunity to access agricultural land. Administrative effectiveness at the initial stage is therefore not sufficient in itself to ensure that the social objectives of the absentee prohibition are achieved.

Second, the legal measures taken by the ATR/BPN Office in implementing the prohibition on absentee land ownership in Mentaya Hilir Selatan Sub-District remain partial and have not systemically addressed the root of the problem. Preventive measures that have been implemented consist of the domicile-certificate requirement and socialization, while handling of land found to hold absentee status is carried out through a statement of rights transfer. Going forward, these measures need to be strengthened through regulatory renewal, post-registration supervision, continuous data recording, coordination with village governments, and more specific socialization concerning the relationship between owner domicile and absentee status, so that implementation of the prohibition becomes not merely administratively effective but also consistent with, and supportive of, the objective of justice in land control.

REFERENCES

Arisaputra, Muhammad Ilham. Reforma Agraria di Indonesia. Jakarta: Sinar Grafika, 2015.

Chomzah, H. Ali Achmad. Hukum Agraria (Pertanahan) Indonesia, Jilid I. Jakarta: Prestasi Pustakaraya, 2004.

Harsono, Boedi. Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid I. Jakarta: Djambatan, 2008.

Hutagalung, Arie Sukanti. Program Landreform di Indonesia. Jakarta: RajaGrafindo Persada, 2005.

Koeswahyono, Imam, et al. Sosio Legal: Bekal Pengantar dan Substansi Pendalaman. Malang: Intimedia, 2014.

Marzuki, Peter Mahmud. Penelitian Hukum. Jakarta: Kencana, 2016.

Moleong, Lexy J. Metodologi Penelitian Kualitatif, Edisi Revisi. Jakarta: Remaja Rosdakarya, 2010.

Rahardjo, Satjipto. Ilmu Hukum. Bandung: PT Citra Aditya Bakti, 2004.

Rawls, John. A Theory of Justice. Cambridge, MA: Harvard University Press, 1971.

Santoso, Urip. Hukum Agraria: Kajian Komprehensif. Jakarta: Kencana, 2017.

Sitorus, Oloan, and H.M. Zaki Sierrad. Hukum Agraria di Indonesia: Konsep Dasar dan Implementasi. Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2006.

Soekanto, Soerjono. Efektivitas Hukum dan Peranan Sanksi. Bandung: Remadja Karya, 1988.

Soekanto, Soerjono. Faktor-Faktor yang Mempengaruhi Penegakan Hukum. Jakarta: PT RajaGrafindo Persada, 1993.

Sumardjono, Maria S.W. Kebijakan Pertanahan: Antara Regulasi dan Implementasi. Jakarta: Penerbit Buku Kompas, 2006.

Supriadi. Hukum Agraria. Jakarta: Sinar Grafika, 2010.

Constitution of the Republic of Indonesia of 1945.

Law No. 5 of 1960 on the Basic Agrarian Regulation (Undang-Undang Pokok Agraria).

Law No. 56 Prp of 1960 on the Determination of Agricultural Land Area.

Government Regulation No. 224 of 1961 on the Implementation of Land Distribution and the Provision of Compensation.

Government Regulation No. 41 of 1964 on Amendments and Additions to Government Regulation No. 224 of 1961.

Government Regulation No. 4 of 1977 on the Absentee (Guntai) Ownership of Agricultural Land by Retired Civil Servants.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2016 on the Control of Agricultural Land Tenure.

Presidential Regulation No. 177 of 2024 on the National Land Agency.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (CC BY 4.0).