

Analysis of *Maslahah mursalah* on the Problem of *Absentee* Land Ownership in Gresik Regency

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Abstract

Although Government Regulation Number 41 of 1964 explicitly prohibits *absentee* land ownership, the practice of agricultural land control by owners domiciled outside the sub-district remains prevalent, particularly in Gresik Regency. This study aims to analyze the factors contributing to the persistence of *absentee* land practices in Wonosari Hamlet, Banyuurip Village, and to review its implications from the *Maslahah mursalah* perspective. This research employs a juridical-empirical method with a sociology of law approach. Data were obtained through field observations and in-depth interviews with landowners, village officials, and the National Land Agency (BPN). The results indicate that the dominant factors driving absentee ownership are economic investment motives by urban residents (Surabaya) and weak land administration supervision at the village and sub-district levels. From the *Maslahah mursalah* perspective, this practice contradicts the principle of public interest as it undermines the preservation of wealth (*hifz al-mal*) and life (*hifz al-nafs*) of the local community. The abandonment of productive land deprives local tenant farmers of economic access, triggering unemployment and agrarian structural inequality. Therefore, a revitalization of the local government's role in enforcing land redistribution sanctions is necessary to achieve substantive agrarian justice.

Keywords: Agrarian Law, Absentee Land, *Maslahah mursalah* Land Reform.

Abstrak

Meskipun Peraturan Pemerintah Nomor 41 Tahun 1964 secara tegas melarang kepemilikan tanah *absentee* (*guntai*), praktik penguasaan tanah pertanian oleh pemilik yang berdomisili di luar kecamatan masih marak terjadi, khususnya di Kabupaten Gresik. Penelitian ini bertujuan untuk menganalisis faktor penyebab persistensi praktik tanah *absentee* di Dusun Wonosari, Desa Banyuurip, serta meninjau implikasinya dalam perspektif *Maslahah mursalah*. Penelitian ini menggunakan metode yuridis-empiris dengan pendekatan sosiologi hukum. Data diperoleh melalui observasi lapangan dan wawancara mendalam dengan pemilik tanah, aparat desa, dan pihak Badan Pertanahan Nasional (BPN). Hasil penelitian menunjukkan bahwa faktor dominan terjadinya kepemilikan *absentee* adalah motif investasi ekonomi oleh masyarakat perkotaan (Surabaya) dan lemahnya pengawasan administrasi pertanahan di tingkat desa hingga kecamatan. Dalam perspektif *Maslahah mursalah*, praktik ini dikategorikan bertentangan dengan prinsip kemaslahatan karena mencederai pemeliharaan harta (*hifz al-mal*) dan jiwa (*hifz al-nafs*) masyarakat lokal. Penelantaran tanah produktif mengakibatkan hilangnya akses petani penggarap terhadap sumber ekonomi, yang memicu pengangguran dan ketimpangan struktur agraria. Oleh

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karena itu, diperlukan revitalisasi peran pemerintah daerah dalam penegakan sanksi redistribusi tanah demi terwujudnya keadilan agraria yang substantif.

Kata Kunci: Hukum Agraria, *Masalah mursalah*, Tanah Absentee, Tanah Guntai.

INTRODUCTION

Land is one of the natural resources that holds a central role in social, economic, and cultural life.¹ In an agrarian country like Indonesia, land—particularly agricultural land—is the primary factor of production for farmers to meet their living needs while supporting national food security.² Therefore, the management and distribution of land must be regulated in such a way as to avoid structural imbalances that could harm the interests of the masses, especially the farming community. This is in line with the fifth pillar of Pancasila, which emphasizes the importance of social justice for all Indonesian people.

As an agrarian nation, Indonesia positions the agricultural sector as the main source of livelihood for the majority of its population.³ This field covers a broad spectrum, ranging from food crop cultivation and plantations to the livestock and fisheries sectors. Given the dominance of farm laborers in the workforce, the direction of economic development is prioritized toward strengthening the agricultural market to ensure public welfare.⁴ The urgency of this sector is reflected in data from the Central Bureau of Statistics (2023), which recorded approximately 28,419,398 agricultural households across the country.⁵

The basic philosophy contained in Law Number 5 of 1960 (UUPA) explicitly mandates that agricultural land must be managed and actively cultivated by the owners themselves.⁶ To strengthen this principle and prevent speculative practices detrimental to local farmers, the government established Government Regulation Number 41 of 1964.⁷

¹ Si Yusuf Al Hafiz, “Meninjau Ulang Kebijakan Larangan Kepemilikan Tanah Absentee Di Indonesia: Studi Komparatif Dengan Negara Jepang” (Universitas Gadjah Mada, 2025), <https://etd.repository.ugm.ac.id/penelitian/detail/263285>.

² Samudra Ivan Supratikno et al., “Pemanfaatan Neraca Penatagunaan Tanah Dalam Mendukung Penyusunan Sistem Informasi Ketahanan Pangan Pokok Wilayah (Studi Di Kabupaten Sleman Propinsi Daerah Istimewa Yogyakarta),” *Jurnal Ketahanan Nasional* 22, no. 1 (2016): 1, <https://doi.org/10.22146/jkn.10653>.

³ Suardin Abd Rasyid et al., “Ketimpangan Penguasaan Tanah, Kemiskinan, Dan Strategi Bertahan Hidup Masyarakat Petani Di Desa Langaleso Kecamatan Dolo Kabupaten Sigi,” *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 8 (2022): 10320–36, <https://doi.org/10.36418/syntax-literate.v7i8.9075>.

⁴ Priasti Nuradini dan Aminah Aminah, “Pelaksanaan Program Pendaftaran Tanah Sistematis Lengkap Terhadap Tanah Berstatus Absentee,” *Notarius* 16, no. 1 (2023).

⁵ Badan Pusat Statistik Indonesia, “Badan Pusat Statistik. (2025). Rumah Tangga Usaha Pertanian.,” accessed January 25, 2026, <https://www.bps.go.id/id/pressrelease/2025/09/01/2461/nilai-tukar-petani--ntp-agustus-2025-sebesar-123-57-atau-naik-0-76-persen-.html>.

⁶ Pasal 10 ayat (1) Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria. Dewi Larasati, “Eksistensi Tanah Absentee Karena Pewarisan Di Kabupaten Klaten” (Universitas Gadjah Mada, 2019), <https://etd.repository.ugm.ac.id/penelitian/detail/183052>.

⁷ Pasal 3d Peraturan Pemerintah Nomor 41 Tahun 1964 tentang Perubahan dan Tambahan Peraturan Pemerintah Nomor 224 Tahun 1961. Berlian Elisabeth T, “Eksistensi Pemilikan Tanah Pertanian Secara

This regulation prohibits absentee (*guntai*) land ownership, a situation where the landowner resides outside the sub-district where their agricultural land is located.⁸ This prohibition has the fundamental goal of abolishing feudal structures and creating a more equitable distribution of agrarian resources. Thus, land is no longer viewed merely as an investment commodity for capital owners who lack a sociological bond with the land. As an agrarian state, the government has a constitutional obligation to fulfill the production factor needs of farmers, with land being the most crucial instrument for their work sustainability.⁹

Etymologically, the term “absentee” refers to the absence of a person at a particular location.¹⁰ In the context of land affairs, absentee land is defined as agricultural land situated outside the owner’s area of domicile.¹¹ The prohibition against this type of land ownership is not without reason; it is an embodiment of the spirit of agrarian reform contained in Article 10 of the Basic Agrarian Law (UUPA). This policy aims to mitigate the risk of exploitation in the agricultural sector, one of which is the practice of paying extremely low wages to farm laborers.¹² However, our law is not merely restrictive. Through Article 11 paragraph (2) of the UUPA, the state affirms its commitment to continue protecting vulnerable communities. The main focus is to ensure that every agrarian regulation leads to the welfare of society, particularly in maintaining the sovereignty of farmers.

However, empirical reality shows a wide gap between regulation and implementation. In Gresik Regency, specifically in Wonosari Hamlet, Banyuurip Village, Kedamean District, the practice of absentee land ownership is thriving alongside the development of industrial and residential areas. Field data indicates that most absentee landowners in this area are urban residents (such as from Surabaya) who purchase land solely for long-term investment purposes without any intention of cultivating it.¹³ This phenomenon is exacerbated by weak administrative supervision, where such lands are

Absentee Di Kabupaten Banjar Provinsi Kalimantan Selatan” (Universitas Gadjah Mada, 2020), <https://etd.repository.ugm.ac.id/penelitian/detail/185126>.

⁸ Boedi Harsono, *Hukum Agraria Indonesia Jilid 1 Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya* (Universitas Trisakti, 2008), hlm 245.

⁹ Surya Rimba Perkasa et al., “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>.

¹⁰ Ady Kusnady, *Penelitian Tentang Efektifitas Peraturan Perundang-Undangan Larangan Tanah Absentee* (Badan Pembinaan Hukum Nasional Dept.Kehakiman dan HAM RI, 2001), Jakarta, http://perpustakaan.unkris.ac.id/index.php?p=show_detail&id=8065&keywords=.

¹¹ Boedi Harsono, *Hukum Agraria Indonesia Jilid 1 Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*.

¹² Putri, “Mengapa Dilarang Memiliki Tanah Pertanian secara Absentee?,” *KOMPAS.com*, December 7, 2023, <https://www.kompas.com/skola/read/2023/12/07/110000769/mengapa-dilarang-memiliki-tanah-pertanian-secara-absentee->.

¹³ Hasil Wawancara Pribadi dengan Syahrir Amin (Pemilik Tanah Absentee), 25 Maret 2022; Lihat juga: Hasil Wawancara Pribadi dengan Muhammad Muslihin (Sekretaris Desa Banyuurip), 22 Maret 2022.

often left as idle land waiting for market price increases, while local farmers lose access to productive land.¹⁴

The persistence of absentee land practices has serious sociological and economic implications. When agricultural land is controlled by outside investors and left unproductive, an inefficiency in the utilization of natural resources occurs, which harms the village economy.¹⁵ Farmers, who should be masters of their own land, are degraded into farm laborers or even lose their livelihoods, which indirectly creates a sharper imbalance in the agrarian structure.¹⁶ The inability of local governments to enforce land redistribution sanctions as stipulated in Article 3a of Government Regulation No. 41 of 1964 is an indicator of the weak supremacy of agrarian law at the local level.

Several previous studies have examined the problem of absentee land from various perspectives. Marhendi (2021) in the article “Juridical Analysis of Absentee Agricultural Land Ownership Linked to Government Regulation Number 224 of 1961 and its Problems in Cirebon Regency” performed a positive legal analysis regarding the constraints of implementing regulations at the regional level.¹⁷ Meanwhile, Jatiswara (2022), through research titled “Absentee Agricultural Land Ownership in the Perspective of Maqashid Shariah,” began to touch upon macro-theological aspects.¹⁸ More recent research by Afrianda & Basri (2024), “Effectiveness of Absentee Land Ownership Rules in Gampong Suak Raya, West Aceh Regency,” shows that the sociological factors of the local community significantly influence the effectiveness of law enforcement.¹⁹ On the other hand, Perkasa et al. (2024) linked this policy to national food security,²⁰ and Widiyanto & Handayani (2025) reviewed its governance in relation to the Complete Systematic Land Registration (PTSL) program.²¹

While the aforementioned studies have provided important contributions, there are research gaps that have not been explored in depth. First, not much research has specifically dissected the sociological impact of absentee land ownership in areas undergoing rapid transformation from agrarian to industrial, such as Gresik Regency. Second, the use of *Maslahah mursalah* as an analytical tool specifically linked to the protection of property (*hifz al-mal*) and life (*hifz al-nafs*) for local tenant farmers remains

¹⁴ Deni Widiyanto dan Sri Wahyu Handayani, “Efektifitas Pengelolaan Tanah Absentee Pada Program Pendaftaran Tanah Sistematis Lengkap,” *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025).

¹⁵ Yovita Mako and Moh Saleh, “Pengaturan Tanah Absentee Dalam Efektifitas Penyelenggaraan Pendaftaran Tanah Sistematis Lengkap (PTSL),” *Jurnal Hukum* 20, no. 1 (2023): 66–75.

¹⁶ M. Khalid Gibran Syaifullah, “Prinsip Keadilan Dalam Kepemilikan Tanah Absentee,” *Iuris Studia: Jurnal Kajian Hukum* 6, no. 2 (2025): 460–64, hlm. 158.

¹⁷ Marhendi Marhendi, “Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon,” *FOCUS: Jurnal of Law* 2 (Oktober 2021): 85–109.

¹⁸ J. Jatiswara, “Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah,” *Jatiswara* 37, no. 2 (2022).

¹⁹ Afrianda Afrianda dan Basri Basri, “Efektivitas Aturan Kepemilikan Tanah Secara Absentee Di Gampong Suak Raya Kabupaten Aceh Barat,” *Jurist Argumentum: Pemikiran Intelektual Hukum* 2, no. 1 (2024).

²⁰ Perkasa et al., “Agricultural Absentee Land Ownership Rules.”

²¹ Widiyanto and Handayani, “Efektifitas Pengelolaan Tanah Absentee Pada Program Pendaftaran Tanah Sistematis Lengkap.”

very limited. The novelty of this research lies in the integration of empirical facts regarding land speculation in industrial buffer zones with a substantive benefit analysis. This research offers a different perspective by not only dissecting positive legal violations but also analyzing them using the *Maslahah mursalah* approach. This concept is used to measure the extent to which absentee land policies impact the welfare of the *ummah*, especially in the context of protecting the property and livelihoods of the farming community.²² Through a case study in Wonosari Hamlet, this article aims to analyze the problems of law enforcement and formulate the urgency of dispute resolution for the sake of achieving substantive justice.

RESEARCH METHOD

This study is an empirical juridical research (*socio-legal research*) that examines the effectiveness of law within societal reality.²³ The approach used is a sociological-juridical approach to analyze the gap between positive legal norms (Government Regulation Number 41 of 1964) and land ownership practices in the field.²⁴ The research location is centered in Wonosari Hamlet, Banyuurip Village, Kedamean District, Gresik Regency, which was selected because this area has a significant level of absentee land ownership amidst the transformation of the region from agrarian to industrial.

The types of data utilized include primary and secondary data.²⁵ Primary data were obtained directly through in-depth interviews using a purposive sampling technique.²⁶ Key informants in this study include the Head of Kedamean District (*Camat*), the Head of Banyuurip Village, the Village Secretary, staff from the Land Tenure Regulation (*PPT*) Section of the Land Office, as well as absentee landowners residing outside the sub-district. Meanwhile, secondary data were collected through a documentation study of land archives at the Banyuurip Village Office and the Gresik Regency Land Office, as well as relevant legal literature.

Data collection techniques were carried out through field observations to validate the existence of abandoned land and structured interviews to explore economic motives and the legal understanding of the parties involved.²⁷ Data analysis was conducted using a qualitative descriptive method through the stages of data reduction, data presentation, and conclusion drawing. The primary analytical tool used to dissect the legal findings is the concept of *Maslahah mursalah*, which aims to assess the benefits and harms (*mudharat*) of absentee land practices for the social welfare of the local community.²⁸

RESULTS AND DISCUSSION

²² Abd Rahman Dahlan, *Ushul fiqh*, Cet. 1 (Jakarta: Amzah, 2010), hlm. 310.

²³ Muhannad Siddiq Armia, *Penentuan Metode dan Pendekatan Penelitian Hukum* (Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

²⁴ Soerjono Soekanto, *Pengantar penelitian hukum* (Penerbit Universitas Indonesia (UI-Press), 2006).

²⁵ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Bayumedia, 2006).

²⁶ Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta : Rineka Cipta, 2010), hlm. 78.

²⁷ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Ghalia Indonesia, 1990).

²⁸ Dahlan, *Ushul fiqh*, hlm. 310.

Dynamics and Determinant Factors of Absentee Land Ownership in Wonosari Hamlet

Since the 15th century, the agrarian wealth of the archipelago has positioned Indonesia as a global trade axis,²⁹ where land functions vitally as the primary factor of production. This condition formed a social structure heavily reliant on the agrarian sector. However, over time and with modernization, a fundamental paradigm shift occurred. Land is no longer viewed solely as a tool for agricultural production but has metamorphosed into a high-value economic investment commodity.³⁰ This functional shift triggered the phenomenon of land control by capital owners who do not reside at the location of the land, known as absentee ownership.³¹

This shift is clearly visible in the case of Wonosari Hamlet, Banyuurip Village, showing an alarming intensity that has become a chronic and difficult-to-resolve phenomenon. Administratively, Banyuurip Village is an area undergoing a transformation from a rural agrarian region into an industrial buffer zone.³² Based on field data, out of the total agricultural and residential land area in Wonosari Hamlet of 70 hectares, there is a significant concentration of land control by outside parties. It is recorded that at least 21 plots of land, with a total accumulated area reaching 38 hectares, are controlled absenteeely by one major owner, Syahir Amin, who resides in Surabaya.³³

The findings in Wonosari Hamlet, showing that more than 50% of agrarian assets are controlled by outside owners for long-term investment purposes, align with the study by Perkasa et al.³⁴ They state that absentee land ownership often becomes a major inhibitor of food security programs because land is treated as an asset commodity (land banking) rather than an active production factor.³⁵ This “land withholding” phenomenon in Gresik reinforces that the shift in land value from a social function to a tool for economic speculation has become a trend in industrial buffer zones.

The primary determinant factor perpetuating this practice is the paradigm shift of land function from a production factor to an economic speculation commodity.³⁶ Based on interviews with the absentee landowner, the motivation for purchasing land in Gresik

²⁹ Muhammad Abdussalam Rafie and Willson Chandra Happier, “Sejarah Perkembangan Hukum Agraria Di Indonesia Sebelum Dibentuknya Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) Dan Dampaknya Bagi Keadilan Di Masyarakat,” *JOURNAL SAINS STUDENT RESEARCH* 2, no. 5 (2024): 340–50, <https://doi.org/10.61722/jssr.v2i5.2677>.

³⁰ Noer Fauzi, *Bersaksi untuk pembaruan agraria: dari tuntutan lokal hingga kecenderungan global* (Insist Press bekerja sama dengan Konsorsium Pembaruan Agraria (KPA) dan Lingkar untuk Pembaruan Desa dan Agraria, 2003).

³¹ Muhammad Nur Ichsan Azis, “Diaspora Dan Pembentukan Identitas Etnis Arab Di Kota Manado,” *Handep: Jurnal Sejarah Dan Budaya* 4, no. 1 (2020): 61–86, <https://doi.org/10.33652/handep.v4i1.107>.

³² Aris Munandar, “Analisis Ekonomi dan Potensi Pengembangan Wilayah Kecamatan Gemolong, Kabupaten Sragen” (Thesis, UNS (Sebelas Maret University), 2010).

³³ Hasil Observasi Lapangan dan Pemetaan Denah Tanah Pertanian Dusun Wonosari, 20 Maret 2022.

³⁴ Perkasa et al., “Agricultural Absentee Land Ownership Rules.”

³⁵ Chita Herdiyanti, “Kepemilikan Tanah Absentee Oleh Pegawai Negeri Sipil Berdasarkan Peraturan Pemerintah Nomor 4 Tahun 1977,” *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 1 (2017): 1.

³⁶ Taufik H. Simatupang, “Tanggung Jawab Dan Kewajiban Hak Atas Tanah Bagi Pemiliknya (Kajian Land Reform: Hukum Sebagai Sarana Melakukan Perubahan Sosial Masyarakat),” *Lex Jurnalica* 12, no. 3 (2015), <https://doi.org/10.47007/lj.v12i3.1218>.

was based on expectations of land price increases (capital gains) due to national development issues. The landowner explicitly stated that the land was purchased as a “savings” or future investment, assuming that infrastructure developments in other regions (such as the New Capital City in Kalimantan or the Circuit in Lombok) would trigger a domino effect for factory and industrial construction in Gresik.³⁷ This speculative mindset causes the land to not be immediately cultivated; instead, it is intentionally left idle until market prices reach their peak.³⁸

In addition to economic motives, administrative and fiscal hurdles serve as driving factors that weaken oversight.³⁹ The village government faces serious obstacles in regulating land administration because the absentee landowners’ whereabouts are difficult to track. The Village Secretary of Banyuurip revealed that landowners residing out of town (Surabaya/Jakarta) very rarely inspect the site and have sometimes not appeared for years.⁴⁰ This condition directly impacts the stagnation of Land and Building Tax (PBB) collection, which harms regional finances.⁴¹ The administrative constraints in Banyuurip Village, where absentee owners are hard to track and thus hinder regional tax revenue, were also found in the research of Widiyanto & Handayani.⁴² They emphasize that absentee status complicates data validation in strategic programs like PTSL, which ultimately creates legal uncertainty at the village level.

From the law enforcement side, there is a void of repressive action from the authorized institutions. The Gresik Regency Land Office (BPN) and the Kedamean District Government appear passive, as there has never been any implementation of firm sanctions in the form of fines or land redistribution.⁴³ This passive attitude confirms the findings of Afrianda & Basri (2024), who argue that weak law enforcement is often caused by the justification of advancements in transportation technology, which are deemed to blur the urgency of domicile requirements.⁴⁴ Despite a clear juridical foundation, BPN reasons that current transportation technology allows landowners outside the district to continue monitoring their land (the Surabaya-Gresik travel time being relatively short), making domicile rules no longer seen as rigidly relevant. This argument is often used as an apology to maintain the status quo, even though facts on the

³⁷ Hasil Wawancara Pribadi dengan Syahrir Amin (Pemilik Tanah Absentee), 25 Maret 2022.

³⁸ Afrianda and Basri, “Efektivitas Aturan Kepemilikan Tanah Secara Absentee Di Gampong Suak Raya Kabupaten Aceh Barat.” hlm. 68.

³⁹ Kangoh Lee, “Absentee Ownership, Land Taxation and Surcharge,” *The Annals of Regional Science* 62, no. 1 (2019): 47–68, <https://doi.org/10.1007/s00168-018-0880-7>.

⁴⁰ Hasil Wawancara Pribadi Dengan Muhammad Muslihin (Sekertaris Desa Banyuurip), 22 Maret 2022.

⁴¹ Widiyanto and Handayani, “Efektifitas Pengelolaan Tanah Absentee Pada Program Pendaftaran Tanah Sistematis Lengkap.”

⁴² Widiyanto and Handayani, “Efektifitas Pengelolaan Tanah Absentee Pada Program Pendaftaran Tanah Sistematis Lengkap.”

⁴³ Marhendi Marhendi, “Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon,” *FOCUS: Jurnal of Law* 2 (Oktober 2021): 85–109, hlm 95.

⁴⁴ Afrianda and Basri, “Efektivitas Aturan Kepemilikan Tanah Secara Absentee Di Gampong Suak Raya Kabupaten Aceh Barat.”

ground show that these lands remain neglected and provide no economic benefit to local farmers who are actually experiencing a shortage of arable land.⁴⁵

Maslahah mursalah Perspective: Between Private Rights and Social Justice

Normatively, Islamic law does not regulate the prohibition of absentee land through specific textual evidence (*nash*). However, this policy finds its theological foundation in the general principles of earthly management, as stated by Allah SWT in QS. Al-A'raf verse 128:

“Seek help through Allah and be patient. Indeed, the earth belongs to Allah; He causes it to be inherited by whom He wills of His servants. And the (good) end is for the righteous.”

This verse affirms that human ownership is a right of use entrusted by God. Therefore, the relevance of prohibiting absentee land can be analyzed through the *Maslahah mursalah* approach—the determination of law based on benefits that align with the general goals of Sharia (*maqasid al-shari'ah*). In the context of the case in Wonosari Hamlet, the benefit analysis is mapped through the maintenance of the five basic elements (*al-ushul al-khamsah*) according to Imam Al-Ghazali, as well as the determination of priorities when a conflict of interest occurs (*ta'arudh al-masalih*).⁴⁶

First, in the aspect of Preservation of Wealth (*Hifz al-Mal*). Islam recognizes private ownership rights (*milkiyyah fardhiyyah*), but these rights are not absolute and are limited by social functions. The phenomenon of neglecting 38 hectares of land by absentee owners in Wonosari Hamlet is a form of wasting wealth (*idha'at al-mal*) or *tabdzir*.⁴⁷ Land that should be a productive asset (*al-mal al-nami*) to drive the village economy is instead frozen as idle land. This contradicts the spirit of Islamic economics, which prohibits the circulation of wealth only among the rich, as indicated in QS. Al-Hasyr verse 7: “...so that it may not circulate only among the rich among you...” Furthermore, in a hadith, the Prophet SAW said: “Whoever brings life to dead land, then that land becomes his” (HR. Abu Dawud). Through the logic of *mafhum mukhalafah* (inverse implication), allowing land to go neglected removes the moral legitimacy of ownership, kills the potential for agricultural zakat, and harms the economic resilience of the village community.⁴⁸

Second, the aspects of Preservation of Life (*Hifz al-Nafs*) and Intellect (*Hifz al-Aql*). The availability of agricultural land in Wonosari Hamlet is not merely a matter of assets but concerns the survival of the farmers. The loss of access to arable land forces local farmers into unemployment or precarious informal labor with uncertain income. This condition of structural poverty indirectly threatens the existence of life (due to the

⁴⁵ Perkasa dkk., “Agricultural Absentee Land Ownership Rules,” hlm 149.

⁴⁶ Dahlan, *Ushul fiqh*, hlm. 312. Lihat juga: J. Jatiswara, “Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah.”

⁴⁷ Hasil Observasi Lapangan dan Pemetaan Denah Tanah Pertanian Dusun Wonosari, 20 Maret 2022.

⁴⁸ Eka Rustiana dkk., “Tanah Absentee Dari Warisan Keluarga Di Desa Daya Murni Jalur 16 Muara Sugihan Banyuasin Dalam Perspektif Hukum Keluarga Islam,” *Usroh: Jurnal Hukum Keluarga Islam* 5, no. 1 (2021): 55–72, hlm. 58.

inability to meet basic food needs) and disrupts the stability of the intellect (the emergence of social stress and despair due to loss of livelihood). Therefore, the policy of redistributing absentee land becomes a necessity (*dharuriyat*) to save the social life of the community from systemic damage.⁴⁹

Third, the resolution of conflicting interests through the Priority of Benefit principle. In this case, there is a clash between private benefit (*masalahah khashah*)—the landowner’s desire to invest—and public benefit (*masalahah ‘ammah*)—the villagers’ need for arable land. Based on the *fiqh* maxim “*Al-maslahah al-‘ammah muqaddamatun ‘ala al-maslahah al-khashah*” (public interest must take precedence over private interest), the state is obligated to limit the ownership rights of investors for the sake of the villagers.⁵⁰ Additionally, the maxim “*Dar’u al-mafasid muqaddamun ‘ala jalb al-mashalih*” (averting harm is prioritized over acquiring benefit) applies. The speculative economic gains obtained by a few absentee landowners are not proportional to the social damage (poverty and inequality) they cause.⁵¹

Fourth, the urgency of the government’s role (*Siyasah Syari’yyah*). In Islam, the policy of a leader (*imam*) must always be oriented toward the welfare of the people, according to the maxim “*Tasharruf al-imam ‘ala al-ra’iyyah manuthun bi al-maslahah.*” The passivity of the National Land Agency (BPN) and the Gresik Regency Government in dealing with absentee land violations can be categorized as negligence that harms the mandate of leadership. The government possesses the coercive authority (*sulthah*) to take over neglected land and distribute it to those entitled (tenant farmers) as a form of state intervention to uphold distributive justice. Without this firmness, the regulation prohibiting absentee land will only be a rule on paper that loses its soul of justice.⁵²

The argument that land neglect in Wonosari is a form of *idha’at al-mal* (wasting wealth) is reinforced by Jatiswara’s perspective.⁵³ In the *Maqashid Shariah* perspective, the protection of property should not stand alone without considering the broader public interest. Land neglect that triggers structural poverty for tenant farmers in Gresik clearly harms the principle of *hifz al-nafs* (preservation of life). As emphasized by Syaifullah, justice in land ownership is not measured only by the validity of the transaction, but by the extent to which that ownership provides benefit (*masalahah*) to the surrounding social ecosystem.⁵⁴

CONCLUSION

Based on the results of the research and discussion, it can be concluded that the practice of absentee land ownership in Wonosari Hamlet, Banyuurip Village, is driven by

⁴⁹ Perkasa dkk., “Agricultural Absentee Land Ownership Rules,” hlm. 150.

⁵⁰ Dahlan, *Ushul fiqh*, hlm. 198.

⁵¹ Eka Rustiana dan Kholid Hidayat, “Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah,” *JATISWARA* 37, no. 2 (2022).

⁵² Marhendi, “Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon.” hlm. 102.

⁵³ J. Jatiswara, “Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah.”

⁵⁴ Syaifullah, “Prinsip Keadilan Dalam Kepemilikan Tanah Absentee.”

a paradigm shift in land function—from an agricultural production factor to a speculative investment commodity (*capital gain*). This economic motive has led to a concentration of land control by outside investors who leave their land unproductive (*idle land*) while waiting for market prices to rise. This phenomenon is exacerbated by weak enforcement of land administrative laws and a passive stance from authorized institutions, which justify their inaction based on advancements in transportation. Consequently, this has a negative impact on regional revenue (PBB) and the access of local farmers to arable land.

From the perspective of *Maslahah mursalah*, the practice of neglecting absentee land contradicts the principles of *Maqasid Shariah*. Allowing land to remain unproductive is categorized as the wasting of wealth (*idha'at al-mal*), which harms the preservation of property (*hifz al-mal*) and the preservation of life (*hifz al-nafs*) within the village community due to the loss of livelihoods. According to the rule of priority, the public interest (*maslahah 'ammah*)—in the form of farmer welfare and village food security—must take precedence over private interests (*maslahah khashah*) of capital owners. Therefore, government intervention is absolutely necessary as a form of leadership responsibility (*tasharruf al-imam*) to uphold distributive justice.

This study has several limitations that serve as points for academic evaluation. First, the scope of this research is limited to one specific location, Wonosari Hamlet in Banyuurip Village; therefore, the findings may not be fully generalized to describe absentee phenomena in other industrial areas with different socio-economic characteristics. Second, during the data collection process, the researcher faced difficulties in directly accessing all absentee landowners due to their distant domiciles and infrequent visits to the site, meaning data regarding owner motivations was largely obtained from representatives or secondary village data. Third, the Islamic law analysis in this study focuses on the *Maslahah mursalah* approach and has not deeply elaborated on comparative reviews from other schools of *fiqh* regarding the status of *mawat* land (dead land) in the modern era.

Accordingly, future research is encouraged to expand the research object by conducting comparative studies between villages or districts serving as industrial buffer zones. Furthermore, subsequent studies could examine this phenomenon using a quantitative approach to measure the real economic losses caused by absentee land or delve deeper into positive legal perspectives regarding regulatory loopholes exploited by land speculators.

REFERENCES

- Ady Kusnady. *Penelitian Tentang Efektifitas Peraturan Perundang-Undangan Larangan Tanah Absentee*. Badan Pembinaan Hukum Nasional Dept. Kehakiman dan HAM RI, 2001. Jakarta.
http://perpustakaan.unkris.ac.id/index.php?p=show_detail&id=8065&keywords=
- Afrianda, Afrianda, and Basri Basri. "Efektivitas Aturan Kepemilikan Tanah Secara Absentee Di Gampong Suak Raya Kabupaten Aceh Barat." *Jurist Argumentum*:

- Pemikiran Intelektual Hukum* 2, no. 1 (2024).
<https://doi.org/10.35308/jjm.v2i1.9908>.
- Azis, Muhammad Nur Ichsan. "Diaspora Dan Pembentukan Identitas Etnis Arab Di Kota Manado." *Handep: Jurnal Sejarah Dan Budaya* 4, no. 1 (2020): 61–86.
<https://doi.org/10.33652/handep.v4i1.107>.
- Boedi Harsono. *Hukum Agraria Indonesia Jilid 1 Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Universitas Trisakti, 2008.
- Burhan Ashshofa. *Metode Penelitian Hukum*. Jakarta : Rineka Cipta, 2010.
- Dahlan, Abd Rahman. *Ushul fiqh*. Cet. 1. Jakarta: Amzah, 2010.
- Fauzi, Noer. *Bersaksi untuk pembaruan agraria: dari tuntutan lokal hingga kecenderungan global*. Insist Press bekerja sama dengan Konsorsium Pembaruan Agraria (KPA) dan Lingkar untuk Pembaruan Desa dan Agraria, 2003.
- Hafiz, Si Yusuf Al. "Meninjau Ulang Kebijakan Larangan Kepemilikan Tanah Absentee Di Indonesia: Studi Komparatif Dengan Negara Jepang." Universitas Gadjah Mada, 2025. <https://etd.repository.ugm.ac.id/penelitian/detail/263285>.
- Herdiyanti, Chita. "Kepemilikan Tanah Absentee Oleh Pegawai Negeri Sipil Berdasarkan Peraturan Pemerintah Nomor 4 Tahun 1977." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 1 (2017): 1.
- Indonesia, Badan Pusat Statistik. "Badan Pusat Statistik. (2025). Rumah Tangga Usaha Pertanian." Accessed January 25, 2026.
<https://www.bps.go.id/id/pressrelease/2025/09/01/2461/nilai-tukar-petani--ntp--agustus-2025-sebesar-123-57-atau-naik-0-76-persen-.html>.
- J. Jatiswara. "Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah." *Jatiswara* 37, no. 2 (2022).
- Johnny Ibrahim. *Teori Dan Metodologi Penelitian Hukum Normatif*. Bayumedia, 2006.
- Larasati, Dewi. "Eksistensi Tanah Absentee Karena Pewarisan Di Kabupaten Klaten." Universitas Gadjah Mada, 2019.
<https://etd.repository.ugm.ac.id/penelitian/detail/183052>.
- Lee, Kangoh. "Absentee Ownership, Land Taxation and Surcharge." *The Annals of Regional Science* 62, no. 1 (2019): 47–68. <https://doi.org/10.1007/s00168-018-0880-7>.
- Mako, Yovita, and Moh Saleh. "Pengaturan Tanah Absentee Dalam Efektifitas Penyelenggaraan Pendaftaran Tanah Sistematis Lengkap (PTSL)." *Jurnal Hukum* 20, no. 1 (2023): 66–75.
- Marhendi, Marhendi. "Analisis Yuridis Kepemilikan Tanah Pertanian Secara Absentee Dihubungkan Dengan Peraturan Pemerintah Nomor 224 Tahun 1961 Dan Permasalahannya Di Kabupaten Cirebon." *FOCUS: Jurnal of Law* 2 (October 2021): 85–109. <https://doi.org/10.47685/focus.v2i1.179>.
- Muhammad Siddiq Armia. *Penentuan Metode dan Pendekatan Penelitian Hukum*. Lembaga Kajian Konstitusi Indonesia (LKKI), 2022. <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

- Munandar, Aris. “Analisis Ekonomi dan Potensi Pengembangan Wilayah Kecamatan Gemolong, Kabupaten Sragen.” Thesis, UNS (Sebelas Maret University), 2010. <https://digilib.uns.ac.id/dokumen/18127/Analisis-Ekonomi-dan-Potensi-Pengembangan-Wilayah-Kecamatan-Gemolong-Kabupaten-Sragen>.
- Nuradini, Priasti, and Aminah Aminah. “Pelaksanaan Program Pendaftaran Tanah Sistematis Lengkap Terhadap Tanah Berstatus Absentee.” *Notarius* 16, no. 1 (2023): 382–92. <https://doi.org/10.14710/nts.v16i1.42289>.
- Perkasa, Surya Rimba, 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>.
- Putri. “Mengapa Dilarang Memiliki Tanah Pertanian secara Absentee?” KOMPAS.com, December 7, 2023. <https://www.kompas.com/skola/read/2023/12/07/110000769/mengapa-dilarang-memiliki-tanah-pertanian-secara-absentee->.
- Rafie, Muhammad Abdussalam, and Willson Chandra Happier. “Sejarah Perkembangan Hukum Agraria Di Indonesia Sebelum Dibentuknya Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) Dan Dampaknya Bagi Keadilan Di Masyarakat.” *JOURNAL SAINS STUDENT RESEARCH* 2, no. 5 (2024): 340–50. <https://doi.org/10.61722/jssr.v2i5.2677>.
- Rasyid, Suardin Abd, Ritha Safithri Lapasere, and Moh Nutfa. “Ketimpangan Penguasaan Tanah, Kemiskinan, Dan Strategi Bertahan Hidup Masyarakat Petani Di Desa Langaleso Kecamatan Dolo Kabupaten Sigi.” *Syntax Literate ; Jurnal Ilmiah Indonesia* 7, no. 8 (2022): 10320–36. <https://doi.org/10.36418/syntax-literate.v7i8.9075>.
- Rustiana, Eka, and Kholid Hidayat. “Kepemilikan Hak Atas Tanah Pertanian Absentee Dalam Perspektif Maqashid Syariah.” *JATISWARA* 37, no. 2 (2022): 185–94. <https://doi.org/10.29303/jtsw.v37i2.395>.
- Rustiana, Eka, Heri Junaidi, and Antoni Antoni. “Tanah Absentee Dari Warisan Keluarga Di Desa Daya Murni Jalur 16 Muara Sugihan Banyuasin Dalam Perspektif Hukum Keluarga Islam.” *Usroh: Jurnal Hukum Keluarga Islam* 5, no. 1 (2021): 55–72. <https://doi.org/10.19109/ujhki.v5i1.9140>.
- Simatupang, Taufik H. “Tanggung Jawab Dan Kewajiban Hak Atas Tanah Bagi Pemiliknya (Kajian Land Reform: Hukum Sebagai Sarana Melakukan Perubahan Sosial Masyarakat).” *Lex Jurnalica* 12, no. 3 (2015). <https://doi.org/10.47007/lj.v12i3.1218>.
- Soekanto, Soerjono. *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press), 2006.
- Soemitro, Ronny Hanitijo. *Metodologi Penelitian Hukum Dan Jurimetri*. Ghalia Indonesia, 1990.
- Supratikno, Samudra Ivan, Armaidly Armawi, and Djaka Marwasta. “Pemanfaatan Neraca Penatagunaan Tanah Dalam Mendukung Penyusunan Sistem Informasi

- Ketahanan Pangan Pokok Wilayah (Studi Di Kabupaten Sleman Propinsi Daerah Istimewa Yogyakarta).” *Jurnal Ketahanan Nasional* 22, no. 1 (2016): 1. <https://doi.org/10.22146/jkn.10653>.
- Syaifullah, M. Khalid Gibran. “Prinsip Keadilan Dalam Kepemilikan Tanah Absentee.” *Iuris Studia: Jurnal Kajian Hukum* 6, no. 2 (2025): 460–64. <https://doi.org/10.55357/is.v6i2.955>.
- T, Berlian Elisabeth. “Eksistensi Pemilikan Tanah Pertanian Secara Absentee Di Kabupaten Banjar Provinsi Kalimantan Selatan.” Universitas Gadjah Mada, 2020. <https://etd.repository.ugm.ac.id/penelitian/detail/185126>.
- Widiyanto, Deni, and Sri Wahyu Handayani. “Efektifitas Pengelolaan Tanah Absentee Pada Program Pendaftaran Tanah Sistematis Lengkap.” *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 5 (2025): 7164–72. <https://doi.org/10.61104/alz.v3i5.2338>.