

## **Legal Review of the Prohibition on Ownership of Agricultural Land Outside the Sub-district in the Division of Gono Gini Assets**

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### **Abstract**

This study aims to conduct a juridical review of the prohibition of agricultural land ownership by people outside the sub-district area as a result of the distribution of gono-gini property. The main problem studied is how the synchronization and legal implications between the principle of division of joint property in marriage (gono-gini) and the provisions of laws and regulations in the field of land that limit the ownership of agricultural land based on geographical domicile. The research method used is normative legal research with a statutory *approach* and a *conceptual approach*. Primary legal materials include the Basic Agrarian Law, the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN related to the limitation of agricultural land ownership, as well as the provisions of inheritance and marriage law. Secondary legal materials are analyzed qualitatively. The results of the study show that the prohibition of agricultural land ownership by people outside the sub-district area creates a conflict of norms when applied to the division of gono-gini property, especially if one or both spouses no longer reside in the sub-district where the land is located. There is a legal vacuum regarding the mechanism for the transfer of agricultural land rights due to gono-gini that exceeds the boundaries of the sub-district. This study recommends the need for extensive interpretation or regulatory changes to provide exceptions to the prohibition in the context of the distribution of common property, as well as the need for legal certainty for parties who acquire land through gono-gini but are outside the sub-district area.

**Keywords:** *juridical review, agricultural land ownership, gono-gini.*

## Introduction

As a country that is mostly engaged in agriculture, Indonesia has a wide agricultural potential from the available areas, a variety of agricultural products, and a population whose livelihood depends on agriculture. According to Boedi Harsono, agricultural land is all land, covering shrub areas that used to be fields or forests, and are now a source of livelihood for those who are entitled.<sup>1</sup>

Agriculture plays an important role in Indonesia's economic framework. According to data from the National Central Statistics Agency (BPS) for 2024, the designated area for rice cultivation has reached around 10.05 million hectares, resulting in a total production of 53.14 million tons of milled dry wheat (GKG), which is equivalent to 30.62 million tons of ready-to-consume rice. This data confirms that agricultural land is a crucial asset to maintain national food security.<sup>2</sup>

The challenges in managing agricultural land are getting more complicated. One of the problems that arises is the ownership of agricultural land by outsiders, which can threaten agricultural sustainability and cause land to become abandoned. This problem must be taken seriously so that Indonesia's national ideals, a just and developed country founded on the principles of Pancasila as stated in the second paragraph of the Preamble to the 1945 Constitution, can be realized.

Law No. 5 of 1960, published in Statute Book No. 104 of 1960 concerning Basic Regulations on Agrarian Principles, or better known as the Basic Agrarian Law (UUPA), was the first law in Indonesia that was passed on September 24, 1960. The ratification of this UUPA also replaced the "Agrarische Wet" or "Agrarische Besluit" (Stb. 1870 - 118) which was an agrarian law relic from the colonial era. The UUPA itself is the main basis for agrarian laws and regulations in Indonesia, which only regulate the principles or main points of agrarian problems. The main objectives are:<sup>3</sup>

- a. The national agrarian law was formed with the aim of becoming an instrument in creating a just and prosperous society based on the ideology of Pancasila and the 1945 Constitution.
- b. Unifying and simplifying the field of land law.

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<sup>1</sup> Boedi Harsono, *Indonesian Agrarian Law*, Djambatan, Jakarta, 1999, p. 358.

<sup>2</sup> official statistics agency. Publisher of the Central Statistics Agency (BPS). 2024. h.2.

<sup>3</sup> Staatsblad, *Van Eenige Agrarische Aanementheden*, 1870, p.118

- c. Providing legal guarantees related to land rights, which is based on Article 33 paragraph (3) of the 1945 Constitution. Declares that:

"The earth, water and natural resources contained in it are controlled by the State and used for the greatest prosperity of the people".

To achieve this goal, the Government of Indonesia, through the Ministry of the National Land Agency, has sought to prohibit the ownership of agricultural land in absentee. This means prohibiting people who are not from the local sub-district area from owning agricultural land, as stated in Government Regulation Number 224 of 1961 concerning the Implementation of Land Distribution and Compensation.

This is regulated in Article 3 paragraph (1), which states:

"Land owners who are domiciled outside the sub-district where the land is located are obliged to transfer their land rights to another person in the sub-district where the land is located, or move to the sub-district where the land is located within a period of 6 months."

Basically, agricultural land must be worked in accordance with the provisions of This is regulated in Article 10 paragraph (1) of Law Number 5 of 1960 which states:

"Basically, every person and legal entity who has the right to agricultural land is obliged to cultivate or cultivate it actively themselves, avoiding extortion practices."

The principle that agricultural land must be actively managed by its own owners underlies efforts to change the land structure that are being pursued in various countries, especially developing countries.

In a more limited context, agricultural land as part of land reform is a series of actions related to Agrarian Reform in Indonesia. The main principles and rules of land reform are also reflected in the Basic Agrarian Law (UUPA). Land reform includes changes in terms of land rights and control over them, as well as a legal framework that governs how the land is managed.<sup>4</sup>

The agrarian reform program in Indonesia is organized with the aim of:

- a. Realizing social justice by distributing land as a source of livelihood for farmers equally, so that the results obtained are equal. This is achieved through a fundamental change in the structure of land ownership.

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<sup>4</sup> Boedi Harsono, *Indonesian Agrarian Law*, Trisakti University, 2013, p. 364

- b. Uphold the principle of "land for farmers," which means land should no longer be used as a land of speculation or a tool of oppression.
- c. Strengthening and expanding land ownership rights for every Indonesian citizen regardless of gender, by prioritizing the social function of the land. The recognition and protection of private property rights is recognized as a strong, individual, and inheritable right, but still emphasizes its social responsibility.
- d. Abolish the system of large landowners and prevent excessive and unlimited land ownership. This is done by setting maximum and minimum limits on the land area that can be owned by each family, with the head of the family being male or female. Thus, the influence of the system of liberalism and capitalism in land management can be suppressed, while protecting vulnerable economic groups.
- e. Boosting national productivity and advancing collectively intensive agriculture through cooperatives and other cooperation models. The goal is to achieve equitable and equitable welfare, supported by a special loan system for farmers. The goal is to achieve fair and equitable prosperity, supported by a special credit scheme for farmers.<sup>5</sup>

The value of agricultural land is not limited to its economic aspect, but also contains deep social and cultural value, especially for communities whose lives depend on agriculture. Land ownership is often a source of conflict in the division of joint property (gono-gini) when divorce occurs. This is regulated in the Marriage Law Number 1 of 1974 Article 35 paragraph (1) which states that assets obtained during marriage become joint property, as also emphasized in Article 36 paragraph (1) which reads:

"With regard to joint property, the husband or wife can act on the basis of the agreement of both parties"

From this article, it can be concluded expressly that the assets obtained during the marriage bond are part of the common property (gono-gini). Therefore, the process of transferring ownership of the asset must obtain permission or approval from both parties, namely the husband and wife.

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<sup>5</sup> Ibid, p. 365.

Land control by people outside the territory, especially in the distribution of gono-gini property, can give rise to legal conflicts related to the validity of land rights. This problem becomes even more complex when the parties who control the land are outside the territory regulated by the applicable laws and regulations, often providing strict restrictions on land control by outsiders. This situation has the potential to cause the procedure for distributing gono-gini assets to be unclear and trigger new legal problems, both legally and outside the legal channels. Therefore, it is important to examine more deeply the legal consequences of the prohibition on the ownership of agricultural land by people outside the territory related to the division of gono-gini property. Land registration is required so that the owner can register his land at the Land Office, so that legal validity is guaranteed by the issuance of a certificate of title as proof of legal ownership.<sup>6</sup>

This study is crucial to clarify the legal consequences of the prohibition of the ownership of agricultural land by people outside the local area in the case of the division of common property (gono-gini). In the framework of Indonesian agrarian law, land ownership by parties from outside the region can cause various problems, both in terms of application in the field and the legal concept, especially related to the validity of ownership and rights to the land.

Furthermore, the distribution of joint property in the form of agricultural land must be carried out fairly based on the applicable law. This research was conducted to understand and analyze the application of the law in correcting the problem of the distribution of gono-gini property, especially agricultural land managed by parties outside the region.

## **Research Methods**

The type of research I used in this research is normative juridical (or normative law). The normative legal research method is a way to identify legal rules and legal doctrines that are relevant to answer existing legal problems. The purpose of normative legal research is to produce new arguments, theories, or concepts that can provide perspective in solving the problems being faced.<sup>7</sup> This legal research was conducted to understand the principles and legal rules that govern the

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<sup>6</sup> Bambang Eko Muljono, *Sporadic First Land Registration through Recognition of Rights*, Independent Journal, Vol 4, No. 1, 2016.

<sup>7</sup> Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2021, p. 35

prohibition of ownership of agricultural land by people outside the sub-district area, as well as its relationship with the distribution of common property (gono-gini).

### **Research Results and Discussion**

Budi Harsono (2008) explained that the term "absentee land," which in Sundanese is known as "guntai," refers to the situation of land ownership by individuals who reside outside the area where the land is located. The term "absenteeism" indicates the physical absence of the owner in the place where the land is located.<sup>8</sup>

According to the Great Indonesian Dictionary, "absentee" has several meanings, namely: a person who is absent, a condition of a person's absence, or land (such as plantations, land, or companies) that is located far from the owner.<sup>9</sup>

In essence, the rules regarding absentee (absence of owners) include several important things: first, agricultural land must be actively cultivated or cultivated; Second, the owner of agricultural land must have the status of a resident of the sub-district where the land is located; Third, if the owner of agricultural land is domiciled outside the sub-district where the land is located, they are obliged to transfer their land rights or move to the sub-district. Furthermore, there is a prohibition on transferring the ownership rights of agricultural land to individuals or legal governments domiciled outside the sub-district area where the land is located.<sup>10</sup>

Based on this explanation, it can be concluded that absentee agricultural land is agricultural land that is located far from the owner's domicile. This physical distance results in less than optimal and inefficient land management.

From a cultural point of view, the existence of absentee land or guntai is often caused by inheritance. This inheritance is a common pattern of behavior in society. Although inheritance is a common legal event in the family, it is worth noting that it relates to a prohibition on agricultural ownership of the land on a guntai or absentee basis, especially if the heirs live far from the location of the land. In fact, absentee ownership of agricultural land can be prevented if the heirs are willing to

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<sup>8</sup> Boedi Harsono, *Indonesian Agrarian Law*, Djambatan, Jakarta, 1999, p.385.

<sup>9</sup> Suharno, *Kamus Besar Bahasa Indonesia*, Widya Karya, Semarang, 2014, p.12-13

<sup>10</sup> Ibid.

be transferred to the sub-district where the inherited land is located, or by transferring ownership of inherited land to the local population.

From a legal point of view, it is difficult to qualify for an alternative offer aimed at avoiding the provision of absentee/guntai land. However, even so, village officials or to the village usually also provide protection for the interests of the heirs. The considerations that are used as the basis for the action are carried out because they recognize the heirs and heirs. Usually, the heirs want to continue to have the land inherited from them to support their life in their old age. Their desire to be overseas is to improve their lives and when they are old they want to enjoy their old age in their homeland. For the same reason, the village government has never reported the existence of absentee/guntai land due to the inherited land. Even though the heirs who get an inheritance in the village, their existence outside the area because they migrated is still considered as a resident in the village. In conclusion, absentee/guntai land is real and arises because of inheritance whose data is not officially recorded, so it has the potential to become the object of land reform by the government.

### **Prohibition of Absentee Land Tenure**

One part of the agrarian reform program related to agricultural land is the prohibition of absentee land ownership. Absentee land is agricultural land located outside the sub-district where the owner lives. Despite this prohibition, the practice of absentee land ownership is still common in the community. One of the common causes is the inheritance of land by heirs who reside outside the area.

Government Regulation (PP) Number 224 of 1961, especially Article 3 paragraph (1), regulates how the Basic Agrarian Law (UUPA) is applied related to absentee or guntai land ownership. This regulation discusses the implementation of land division and the provision of compensation. Furthermore, this Government Regulation underwent changes and improvements through Government Regulation Number 41 of 1964.

The regulation of absentee land ownership is based on the legal provisions contained in Article 10 paragraph (1) of the UUPA which states that:

"Basically, every person and legal entity who has the right to agricultural land is obliged to cultivate or cultivate it themselves actively, as well as prevent extortion practices".

Basically, agricultural land should be cultivated by the owner himself. This aims to avoid excessive land ownership by landlords living in urban areas and only expect profits from land processed by others through an exploitative system (absent landlords)<sup>11</sup>

These provisions are the initial foundation in understanding and regulating absentee land ownership. Furthermore, Article 3d of Government Regulation No. 41 of 1964, which modifies Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Compensation for Losses, emphasizes that:

"It is forbidden to carry out any type of transfer of new rights to agricultural land that causes landowners to own land outside the sub-district where they live".

The prohibition in question was then known as the prohibition on absentee agricultural land ownership. Thus, the regulation expressly prohibits any type of transfer of rights to agricultural land that causes the recipient of the land title to be arbitrary.

The prohibition indicates that even though the ownership rights of agricultural land are obtained through auction purchases, buyers who become owners who want to participate in the auction must live in the same sub-district where the agricultural land to be auctioned is located.<sup>12</sup>

To follow up on the mandate of the UUPA, Article 3 paragraph (1) of Government Regulation Number 224 of 1961 stipulates that:

"If the owner of the land is domiciled outside the sub-district where the land is located, they are obliged to transfer the rights to the land to another person domiciled in the sub-district within 6 months."

The ban on absentee agricultural land ownership was enforced in the hope that agricultural land management would be more optimal. In addition, this prohibition

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<sup>11</sup> Sudargo Gautama, *Interpretation of the Basic Agrarian Law*, Alumni, Bandung, 1986, p.105.

<sup>12</sup> Ibid, p.188

is also intended to avoid massive land ownership carried out by large asset owners or land owners. Law Number 5 of 1960 stipulates that:

Article 7 which reads:

"Excessive ownership and control of land is not allowed to protect the public interest"

Article 10 paragraph (1) which reads:

"Basically, every person or legal entity that has the right to agricultural land is obliged to cultivate or cultivate it themselves actively, as well as prevent the practice of extortion".

The articles mentioned earlier are the basis for preventing the monopoly of agricultural land ownership by certain groups. Therefore, excessive ownership of agricultural land is not allowed. This prohibition aims to protect the public interest and eliminate the landlord system.

### **Exemption from Absentee Land Ownership Ban**

Although the law prohibits the possession of land in absentee (without direct care by the owner), the government gives leeway to certain parties to own agricultural land in a peaceful manner with the aim that the land can be used in accordance with the mandate of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA).

The provisions of Article 3 of Government Regulation Number 224 of 1961 state that:

- 1) If the land owner is domiciled outside the domicile of the sub-district where the land is located, they are obliged to transfer the land ownership rights to the local residents or change their domicile to the sub-district within a period of six months.
- 2) The obligations mentioned in the first point do not apply if the landowner is domiciled in a sub-district that is directly adjacent to the location of the land, provided that the distance between the residence and the land allows the owner to manage the land effectively. An assessment of the effectiveness of this management will be carried out by the Level II Regional Land Reform Committee.

- 3) If the land owner leaves his residence outside the sub-district where the land is located for two consecutive years, they are still obliged to transfer their land ownership rights to the residents of the sub-district. This provision applies while still paying attention to the exceptions set out in the second point.
- 4) The provisions in the first and third points cannot apply to individuals who own land in the sub-district in which they live or in the adjacent sub-district (as described in the second point) and are carrying out state duties, fulfilling religious obligations, or have certain reasons acceptable to the Minister of Agrarian Affairs.

### **Definition of Gono Property – Gini**

Marriage has legal and also legal repercussions in terms of ownership of gono-gini property. Joint property in marriage is inevitable, because it is obtained through the cooperation of husband and wife. This asset is wealth accumulated during the marriage period, and does not come from inheritance or family gifts. This means that the property is obtained from each other's efforts during the marriage bond. Other research also states that joint property includes wealth resulting from husband and wife's cooperation, such as business or joint purchase of land or other valuable objects, including grants received together.

The concept of joint property (gono-gini) has its roots in a tradition that unites the ownership rights of married couples.<sup>13</sup> In simple terms, "common property" is made up of two words: "property," which refers to property, both tangible and intangible, that has economic value, and "shared," which means used or enjoyed collectively.

The definition of joint property is also affirmed in Law No. 1 of 1974. According to Article 35 paragraph (1) of the Law, what is meant by common property is

"Assets acquired during the marriage bond are considered joint property."

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<sup>13</sup> Muhammad Sopiyan, *Analysis of Marriage Agreements and Their Consequences According to Marriage Law in Indonesia*, Misykat Al-Anwar Journal of Islamic and Social Studies 6, no. 2, 2023, p.175.

In marriage, all assets obtained during the marriage period are considered joint property, regardless of the party who cultivates them. This is affirmed in Article 119 of the Civil Code which states that:

"Since the marriage is carried out, the property of the husband and wife automatically becomes a whole unit according to the law, as long as there are no other provisions regulated in the marriage agreement".

In order for the husband's inherited property or property obtained during marriage to be determined in status, whether it becomes gono-gini or not, the couple needs to make a marriage agreement first.<sup>14</sup>

### **Legal Settlement Related to the Ownership of Agricultural Land by Persons Outside the Sub-district Area in the Distribution of Gono-Gini Property**

The fundamental concept of the state's right to control land in Indonesia is stated in Article 33 paragraph (3) of the 1945 Constitution, hereinafter referred to as the 1945 Constitution, which reads:

"The state has the right to control the earth, water, and natural resources in it to be used as much as possible for the welfare of the people".

Before the 1945 Constitution was amended, the reading of Article 33 paragraph (3) was clarified in the explanation of Article 33 paragraph 4, which states that:

"The earth, water, and natural resources contained in it are the foundation of the people's prosperity".

Therefore, these resources must be under the control of the state and fully utilized for the welfare of the people. In line with the basic principles that have been mentioned, the term "controlled" in the article contains the meaning of "owned," but with the understanding that the state, as a representative of the sovereignty of the Indonesian nation, has the highest authority to:<sup>15</sup>

1. Organize and carry out the designation, utilization, provision, and maintenance of resources.

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<sup>14</sup> Ahmad Royani, *Marriage Agreement Made After Marriage to a Third Party* (POST-DECISION OF THE CONSTITUTIONAL COURT NUMBER 69/PUU-XIII/2015), Jurnal Independent, Vol 5, No. 2, 2017.

<sup>15</sup> Habib Adjic, *Legal Protection of Absentee Land Ownership Obtained as a result of Inheritance*, Miscellaneous Justice 14, no. 1, 2018, pp.1–9,

2. Determine and arrange the rights that may be owned over part of the land, water, and airspace.
3. Regulate and establish legal relationships between individuals, as well as legal actions relating to land, water, and airspace.

Although the term "absentee land" is not listed in detail in the regulations, in general, this term can be interpreted as land ownership whose location is different from the domicile of the owner.

The basis for absentee land is listed in Article 10 paragraph (1) of Law Number. 5 In 1960 it was stated that:

"Basically, every individual or legal entity that has the right to agricultural land is obliged to actively cultivate or cultivate it themselves, and avoid extortion practices".

Furthermore, in Government Regulation No. 41 of 1964 concerning Amendments and Additions to Article 3 paragraph (1) of Government Regulation 224 of 1960 concerning the Implementation of Land Distribution and the Provision of Compensation, it stipulates that:

"Agricultural land owners who have left their residence outside the sub-district of the land location for 2 consecutive years without notifying the authorities are obliged to transfer their property rights to other parties".

The prohibition on absentee land ownership does not apply to landowners domiciled in areas directly adjacent to the village where their agricultural land is located. With the note, the distance between the owner's domicile and his agricultural land must allow for effective and efficient land management. Article 10 of the UUPA is coercive (dwingend recht) because it concerns the public interest. In essence, the ban on absentee land ownership only applies to agricultural land. However, a clear definition of what is meant by "agricultural land" in laws and regulations is quite difficult to find.<sup>16</sup>

According to the joint decree of the Minister of Home Affairs and Regional Autonomy and the Minister of Agrarian Affairs issued on January 5, 1961, the definition of agricultural land is as follows:

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<sup>16</sup>Ibid

"Agricultural land includes all plantation land, fishery ponds, grazing areas, bushlands of former fields, and forests that are a source of livelihood for rights owners. In general, agricultural land is all land owned by individuals, except land for housing and business activities. If a house stands on a large piece of land, then the view of the local community determines the area that is considered as the yard and the part that is agricultural land".

The prohibition on absentee land ownership is often applied because the agricultural land is located in the countryside, while the owner lives outside the sub-district or even in urban areas. This condition increases the risk that the land is not managed or used optimally to increase the prosperity of the community. As a result, the goal of community development through agrarian reform can be hampered.

Ownership of absentee land rights, i.e. land whose owner is not domiciled near the location of the land, can occur through inheritance. For example, a person who lives in an urban area inherits agricultural land in the countryside, automatically becoming an absentee landowner. Even though the inherited land is a property, the owner of agricultural land is not allowed to be an absentee land owner if the land is outside the area of the sub-district where he lives. This is prohibited by law.<sup>17</sup>

Article 10 of the UUPA explains that, in order to require agricultural landowners to actively manage their land, absentee or guntai ownership of rice fields must be eliminated. Typically, the absentee landowner lives in the city, while the land is in the village. The purpose of this ban is to optimize the management, use, and utilization of land in Indonesia to improve the quality of the environment, reduce poverty, and create jobs.

Agricultural landowners who did not reside at the site were given six months from September 24, 1961 to transfer their land ownership to the local population or move to the area. Considering that the period of six months was considered insufficient, the Minister of Agrarian Affairs extended it until December 31, 1962 (Decree of the Minister of Agrarian Affairs No. Sk. VI/6/Ka/1962).

In order to prevent attempts to evade this provision, the Minister of Agriculture and Agrarian Affairs explained in Guideline No. III of 1963 that "moving to the

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<sup>17</sup> Habib Adjie, *Legal Protection of Absentee Land Ownership Obtained as a result of Inheritance*, Various Justice, Vol 14 No 1, 2018

sub-district where the land is located" means actually building a household and actively participating in daily social activities in the new place. Simply having an identity card in a new place is not enough if the fact is still domiciled in the old place.<sup>18</sup>

Owners of agricultural land who have moved from the area where their land is located and become an absentee owner are obliged to inform the Village Head about this. Within two years of moving, they must transfer their land rights to someone else living in the area. If reported to the appropriate official, the obligation must be fulfilled within 1 year after 2 years after he leaves his place of residence. Exceptions apply to owners who move to a sub-district adjacent to their original place of residence, or who are carrying out state duties or religious obligations.

### **Conclusion**

Ownership of agricultural land by people who are not residents of the local sub-district is not allowed, including absentee ownership (by those who do not live in the land location). However, there are exceptions for landowners who live in the district that is directly bordering, are on state duty, carry out worship, or work as civil servants/military. This prohibition aims to make every agricultural land owner actively cultivate it, prevent extortion practices, and ensure that land is maximized for the prosperity of the community, in line with the 1945 Constitution. The legal basis is Law No. 5 of 1960 concerning Basic Agrarian Regulations, Law No. 1 of 1974 concerning Marriage, Government Regulation in Lieu of Law No. 56 of 1960 concerning Agricultural Land Area, Government Regulation No. 224 of 1961 concerning Land Distribution and Compensation, and Government Regulation No. 4 of 1977 concerning Absentee Agricultural Land Ownership for Retired Civil Servants.

The settlement of legal problems related to the ownership of agricultural land by people from outside the sub-district due to the division of common property becomes complicated because it concerns agrarian law and marriage law. This study found that after the division of joint property, if one of the former husbands or wives does not live in the sub-district where the land is located,

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<sup>18</sup> Boedi Harsono, *Indonesian Agrarian Law*, Trisakti University, 2013, p.385.

they are obliged to transfer the rights to the land to another person domiciled there, or they themselves have to move their domicile to the sub-district.

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