

Legal Impact of the Decree Concerning Protected Rice Fields for Land Ownership Rights

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ABSTRACT

Land ownership rights are the strongest, fullest rights and can be defended by anyone. According to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the state has the right to control. The government issued a regulation regarding protected rice fields which only determines the area of rice fields for each region as determined by the Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021 concerning Protected Rice Fields without explaining in more detail the government's responsibilities towards the communities involved. The land is designated as a protected rice field. The formulation of the problem in this research are what is the impact and legal force of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 have on land ownership rights. The objectives of this research are to determine the legal impact and the legal strength of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 on land ownership rights. The research method in this study uses normative research methods, namely examining regulations and legal doctrine from legal experts. The results of this research, with the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021, have resulted in the

ownership rights to land affected by the designation of protected rice fields not being able to be fully utilized. Then the legal force of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 concerning protected rice fields becomes less strong and irrelevant because the rules are unclear and conflict with higher regulations.

Keywords: Legal Impact; Ministerial Decision; Rice Fields; Protected; Property Rights

I. INTRODUCTION

Land has a very important position in human life. A land is a place for humans to live in a certain area so that their main house can be built and to improve the economy it is used to build business premises. Land is one of the objects of property rights so it can be owned by statutory regulations. The land is so important for human life that land matters are regulated, especially in the Republic of Indonesia, in Law Number 5 of 1960 concerning Agrarian Principles (UUPA). According to Article 21 of the UUPA, land ownership rights are the strongest rights that can be inherited from generation to generation by the person who owns them. Property rights provide a strong basis for the owner to freely use and manage the property rights. Based on Article 570 of the KUHPer, it is stated that property rights are the right to enjoy an item more freely and to act on the item completely freely, as long as it does not conflict with the law or general regulations stipulated by the competent authority and as long as it does not interfere with the rights of others.

Based on Article 21 of the UUPA, it is stated that one of the subjects of land rights is an Indonesian citizen. Ownership rights to land are not only limited to yard land, apart from that there are rice fields, gardens, and so on. Indeed, based on Article 6 of the UUPA which states that land has a social function, it does not necessarily have an impact on the essence of property rights without any limitations. The limitations on property rights referring to Article 6 of the UUPA can be distorted by more pressing social interests. Then, based on Article 2 paragraph (1) of the UUPA, it is stated that based on the provisions in Article 33 paragraph 3 of the Constitution and the matters

referred to in Article 1, earth, water, and outer space, including the natural wealth contained therein, are at the level The highest authority is controlled by the State, as the organization of power for all the people.

According to Article 2 paragraph (2) of the UUPA, the meaning of control by the state mentioned above is (2) The right to control from the State referred to in paragraph 1 of this article gives the authority to: (a) regulate and administer the allocation, use, supply, and maintenance of the earth, water, and space; (b) determine and regulate legal relationships between people and earth, water and space; (c) determine and regulate legal relationships between people and legal acts concerning earth, water, and space.

State control over land according to Article 2 paragraph (3) of the UUPA must be used to achieve the greatest prosperity of the people in the sense of nationality, prosperity, and independence in society and the Indonesian legal state which is independent, sovereign, just, and prosperous.

Issuance of ATR/BPN Ministerial Decree Number 1589/SK-HK.02.01/XII/2021 concerning Determination of Maps of Protected Rice Fields in Regencies/Cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Yogyakarta Special Region Province, Province East Java, Bali Province and West Nusa Tenggara Province are among the state authorities regulated in Article 2 of the UUPA. The state, through its arm, namely the Minister of ATR/BPN, tries to regulate land management, including land with freehold status. The consideration of the Minister's decision states that to control the conversion of functions and prepare and maintain food availability, it is necessary to make regulations on protected rice fields.

Based on the Decree of the Minister of ATR/BPN Number 1589/SK-HK.02.01/XII/2021 the total area of protected rice fields in Regencies/Cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Yogyakarta Special Region Province, Province East Java, Bali Province and West Nusa Tenggara Province amounting to 3,836,944.33 ha (three million eight hundred thousand thirty-six thousand nine hundred forty-four point thirty-three hectares). Meanwhile, Raw Rice Field Land is 3,973,216.00 ha (three million nine hundred seventy-three thousand two hundred and sixteen hectares). The decision regarding the area and area of

land that is the object of protected rice fields above can be seen from the fact that the agency that made the regulation is the implementer of Law Number 41 of 2009 concerning the Protection of Sustainable Agricultural Land.

The problem that occurs is that the development of the human population today is dynamic.¹ This means that economic problems and housing are a problem in urban and rural areas. The dynamic development of society is the trigger for the transfer of land rights. There will always be people who want to sell their land or use their land for various situations and there are also those who need land rights by purchasing as a consequence of the dynamic development of the community itself. However, the existence of regulations regarding the prohibition of changing the function of rice fields has become a problem. This land conversion itself occurred as a result of the economic transformation of society.² People, especially those from farming families, as a result of the government's lack of role in protecting the lives of farmers, have resulted in less interest in returning to work as farmers. But behind the government's lack of guaranteeing the livelihoods of farmers, the government is forcing a policy of protecting paddy fields. Policies that could result in difficulties for society because efforts to get out of a less-than-decent life in the agricultural sector are blocked by regulations without solutions from the government.³ Freedom to use private land as regulated in Article 570 of the KUHP in conjunction with Article 20 of the UUPA is limited. This problem needs to be researched regarding the legal impact of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 concerning Protected Rice Fields on Land Ownership Rights.

By referring to the aforementioned background, there are 2 problem identifications to be addressed in this research: (1) What impact does the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 have on land ownership

¹ Misa, Dirk PP, et al. "Penggunaan Lahan Kawasan Perkotaan berdasarkan Fungsi Kawasan." *Spasial*, Vol. 5, No. 2, 2018, pp. 171-178, <https://doi.org/10.35793/sp.v5i2.20788>.

² Jean, Mayang, et al. "Faktor-faktor yang mempengaruhi alih fungsi lahan sawah di Kabupaten Bogor." *Agricore: Jurnal Agribisnis dan Sosial Ekonomi Pertanian Unpad*, Vol. 6, No. 1, 2021, pp. 77-87, <https://doi.org/10.24198/agricore.v6i1.29963>.

³ Virianita, Ratri, et al. "Persepsi petani terhadap dukungan pemerintah dalam penerapan sistem pertanian berkelanjutan." *Jurnal Ilmu Pertanian Indonesia*, Vol. 24, No. 2, 2019, pp. 168-177, <https://doi.org/10.18343/jipi.24.2.168>.

rights? And (2) What is the legal force of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 regarding land ownership rights?

Understanding legal problems requires using special tools, namely legal research methods.⁴ Every legal problem has its character. Research methods for researching legal problems can use the same or different methods depending on the character of the legal problem.⁵ The research method used in this research is normative research methods. The normative legal research method is research based on statutory rules both based on vertical hierarchy and the complementarity of equivalent legislation.⁶

II. DISCUSSION

1. The impact of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 on land ownership rights

According to Article 20 paragraph (1) of the UUPA, the definition of property rights is as follows: hereditary, strongest, and fullest rights that people can have over land by remembering the provisions in Article 6 of the UUPA. Ownership rights are one of the strongest land rights, while land rights themselves are rights that authorize the owner to use and take advantage of the land. Using land rights, for example, building houses, hotels, offices, factories. Then take advantage of land rights, for example for agriculture, fisheries, animal husbandry, and plantations.⁷ According to Soedikno Mertokusumo, there are two authorities of land rights owners, namely:⁸ (a) General authority is the authority that gives the owner the authority to use his land, including the body of earth, water, and space above it as needed for its use. (b) Special authority is the authority that grants rights to the owner by the status of his rights, such as building buildings, carrying out farming on freehold land, building hotels on building-use land, and so on.

⁴ Benuf, Kornelius and Muhamad Azhar. "Metodologi penelitian hukum sebagai instrumen mengurai permasalahan hukum kontemporer." *Gema Keadilan*, Vol. 7, No. 1, 2020, pp. 20-33, <https://doi.org/10.14710/gk.2020.7504>.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Hartanto, J. Andi. *Hukum Pertanahan*. Surabaya, Laksbang Justitia Surabaya, 2020, p. 22.

⁸ Mertokusumo, Sudikno. *Hukum dan Politik Agraria*. Jakarta, Karunika-Universitas Terbuka, 1988, p. 45.

According to Article 499 of the KUHPer, the definition of an object (*zaak*) is anything that can become an object of property rights. The definition of objects referred to in the KUHPer is tangible objects such as land, and vehicles. The definition of objects is not regulated in the KUHPer because it is regulated more by in-laws outside the KUHPer. Objects such as copyrights and patents are not regulated by the KUHPer. Intangible objects are regulated in the law regarding intellectual property rights.⁹ According to Sri Soedewi Masjchoen Sofwan, the definition of objects is tangible items that can be perceived with the five senses, but intangible items include objects as well. According to Subekti, the word object (*zaak*) in the broad sense is everything that people can appreciate, and the word in the narrow sense is something that can only be seen.¹⁰ The system of legal regulation of objects is a closed system, meaning that people cannot create new property rights other than those already stipulated in law. It has been rigidly regulated regarding objects and the meaning of objects cannot be changed other than outside the KUHPer.¹¹

Community land ownership in Indonesia has private and public dimensions. In the private dimension, every person who owns land with freehold rights has broad authority over that land. Land ownership rights are the strongest rights and can be defended by anyone. According to Article 21 of the UUPA, it is stated that ownership rights to land are the strongest rights that can be inherited from generation to generation by the person who owns them. Property rights provide a strong basis for the owner to freely use and manage the property rights. Based on Article 570 of the KUHPer, it states that property rights are the right to enjoy an item more freely and to act on the item completely freely, as long as it does not conflict with the law or general regulations stipulated by the competent authority and as long as it does not interfere with the rights of others. In everyday life, land with ownership rights has various benefits depending on the management carried out by the owner. Some land with ownership rights is used as rice fields, gardens, yards, houses, and so on. Of course, management of land with ownership rights must be by the legal corridor, namely it must not be used for criminal

⁹ Meliala, Djaj S. *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*. Bandung, Nuansa Aulia, 2015, p. 4.

¹⁰ Simanjuntak, P.N.H. *Hukum Perdata Indonesia*. Jakarta, Kencana, 2015, p. 176.

¹¹ Sofwan, Sri Soedewi Masjchoen. *Hukum Perdata Hak Jaminan Atas Tanah*. Yogyakarta, Liberty, 1981, p. 2.

acts, unlawful acts, immoral acts, and other acts that violate statutory regulations or customary law recognized in the community.

In the public dimension, land with ownership rights must also respect the rights of the community and the interests of the nation and state. Article 6 of the UUPA states that all land rights have a social function so not all property rights to land are controlled freely by the owner. This social function can be understood in terms of the public interest. The juridical basis for the Social Function of Land Ownership Rights for the Public Interest in Indonesia refers to the provisions in article 18 of the UUPA: "For the Public Interest, including the interests of the Nation and State as well as the common interests of the People, land rights can be revoked, by providing compensation appropriate and in the manner regulated by law."¹² In research made by Dios Ferdian Herefa, Muhammad Hero Soepeno, Yumi Simbala places greater emphasis on the government's power to revoke property rights to community land based on social function. Meanwhile, this research focuses more on how the rights of people who have property rights are protected from state arbitrariness. The social function provisions in the Constitutional Court's study emphasize the superiority of the government and not in the sense that it is truly for the greatest prosperity of the people.¹³ The social function of land is related to the role of the state which has limited power. The state's limited power over land is regulated in Article 2 of the UUPA. Based on Article 2 paragraph (2) of the UUPA, the meaning of control by the state mentioned above is (2) The right to control from the State referred to in paragraph 1 of this article gives the authority to: (1) Regulate and carry out the allocation, use, supply, and maintenance of the earth, water, and space; (2) Determine and regulate legal relationships between people and earth, water and space; (3) Determine and regulate legal relationships between people and legal acts concerning earth, water, and space.

Then it must be emphasized that state control must have a welfare impact on the community, especially the landowners. State control over land according to Article 2

¹² Herefa, Dios Ferdian. "Fungsi Sosial Hak Milik Atas Tanah Dalam Menunjang Pembangunan Di Indonesia Menurut Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria." *Lex Administratum*, Vol. 8, No. 3, 2020, pp. 89-99, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/29756>.

¹³ Sulaiman, King Faisal. "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012." *Jurnal Konstitusi*, Vol. 18, No. 1, 2021, pp. 091-111, <https://doi.org/10.31078/jk1815>.

paragraph (3) UUPA must be used to achieve the greatest prosperity of the people in the sense of nationality, prosperity, and independence in society and the Indonesian legal state which is independent, sovereign, just, and prosperous. The state's efforts to control land for the sake of the prosperity of the people can be seen from the issuance of Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land (UUPLPPB). The purpose of issuing this regulation is to maintain the existence of agricultural land to maintain food security. Protection Based on Article 1 UUPLPPB, it is stated that sustainable food agricultural land is a system and process for planning, establishing, developing, utilizing, fostering, controlling, and monitoring food agricultural land and its areas in a sustainable manner. Sustainable food agriculture areas are agricultural cultivation areas, especially in rural areas which have stretches of sustainable food agriculture land and/or stretches of sustainable food agriculture reserve land as well as supporting elements with the main function of supporting national food independence, resilience, and sovereignty. Even though the positive side of protecting sustainable agricultural land is for food security in the future, the government cannot just designate sustainable agricultural land without following the procedures set out by the UUPLPBB.¹⁴

More technical arrangements for the protection of sustainable food agricultural land seem to be starting to be taken seriously with the issuance of Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021 concerning Determination of Maps of Protected Rice Fields in Regencies/Cities in West Sumatra Province, Banten Province, Province West Java, Central Java Province, Yogyakarta Special Region Province, East Java Province, Bali Province, and West Nusa Tenggara Province. Based on this regulation, the total area of protected rice fields in the areas mentioned above is 3,836,944.33 ha (three million eight hundred thousand thirty-six thousand nine hundred forty-four point thirty-three hectares). The impact of this number is that the number of rice fields that have been designated by the government as protected rice fields must be used and must remain in their condition as rice fields. What has always been problematic is the rigid policy of not allowing the use of rice fields to be converted into

¹⁴ Hambali, Ferdi Rifanda, et al. "Kesesuaian Kawasan Lahan Pertanian Pangan Berkelanjutan dengan Rencana Tata Ruang Wilayah di Kabupaten Sumenep." *Tunas Agraria*, Vol. 4, No. 3, 2021, pp. 276-292, <https://doi.org/10.31292/jta.v4i3.164>.

commercial land such as shops, hotels, especially rice fields in urban centers. Non-agricultural business interests will be hampered if they are still prohibited from changing the function of rice fields.¹⁵ The problem is that this rule emerged without looking at the interests of the community in the field and as if the rules were not made seriously without actually referring to appropriate procedures, resulting in this rule being far from the interests of the community.¹⁶

In reality, rice fields that are owned with land ownership status are also affected by the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021. If it is linked to Article 21 of the UUPA in conjunction with Article 570 of the KUHP, there will be a clash of norms. The total amount of land subject to protected rice fields is very large. When referring to field conditions, for example in the area of West Lombok Regency, West Nusa Tenggara Province, the protected rice fields are determined to be 14,637.62 ha (fourteen thousand six hundred thirty-seven point sixty-two hectares. The area of West Lombok Regency is 923.06 Km² (nine hundred twenty-three point zero six square kilometers) (Definitive Area Area according to Geospatial Information Agency Letter No. B-8.31/PBW-BIG/IGD.04.04/6/2021 dated June 8, 2021).¹⁷ If converted into hectares, it becomes 92,306 (ninety thousand three hundred and six hectares. So it can be concluded from this data that the number of protected rice fields in the entire West Lombok Regency area is around 16 percent of the entire West Lombok regency area. Of course, this number is quite large considering the 2019 data, the total number of people in West Lombok Regency is 685,161¹⁸ (six hundred eighty-five thousand one hundred and sixty-one) people. So people's needs for housing and business premises also need to be considered. Determining protected rice fields is part of the government's efforts to maintain future food, but it must be done with the right process. The appropriate process is to continue to accommodate in-depth responses and

¹⁵ Erwahyuningrum, Rizki, et al. "Problematika Hukum Penetapan Lahan Sawah Dilindungi (LSD) Terhadap Pelaku Bisnis Di Indonesia." *Jurnal Bisnis dan Manajemen*, Vol. 3, No. 2, 2023, pp. 329-336, <https://ejournal.penerbitjurnal.com/index.php/business/article/view/191>.

¹⁶ Siagian, Ade Onny and Andrew Shandy Utama. "Penerapan Asas Hukum Dalam Pembuatan Peraturan Perundang-Undangan yang Berkeadilan dan Partisipatif." *TIN: Terapan Informatika Nusantara*, Vol. 2, No. 2, 2021, pp. 58-64, <https://ejournal.seminar-id.com/index.php/tin/article/view/812>.

¹⁷ Diskominfotik Kabupaten Lombok Barat. "Letak Geografis." *Kabupaten Lombok Barat*, <https://lombokbaratkab.go.id/sekilas-lobar/gambaran-umum/geografis/>, accessed on 12 July 2023.

¹⁸ Diskominfotik Kabupaten Lombok Barat. "Statistik Daerah Kabupaten Lombok Barat." *Kabupaten Lombok Barat*, <https://lombokbaratkab.go.id/wp-content/uploads/2020/01/Statistik-Daerah-Kabupaten-Lombok-Barat-2019>, accessed on 13 July 2023.

discussions by stakeholders in the field who know the conditions for using the spatial layout of the area. The government must not carelessly designate an area that should be an urban development area, or commercial area, in a city or district to achieve the target area of protected rice fields that has been set in each region.¹⁹

It needs to be understood that ownership of land, especially rice fields, can be obtained by buying and selling, granting, and inheriting.²⁰ The transfer of ownership rights to rice fields through the sale and purchase process can be made by making a sale and purchase agreement by the procedures for the validity of the agreement in Article 1320 of the KUHP.²¹ Many community members buy rice fields not only to cultivate the fields but simply for investment, building for the future and so on which have economic value. People who sell their rice fields to other people also have many motivations, one of which is for daily living, school fees for children, and economic urgency. Apart from that, there is the fact that many farmers do not pay enough attention to the government and farmers are part of the population who live in poverty. Of course, the weak economy of farmers means that their families and descendants may only be able to sell their rice fields to survive because their work is uncertain.²² Land ownership rights based on Article 21 of the UUPA in conjunction with Article 570 of the KUHP are the strongest rights that give the owner the authority to seek their welfare. The impact of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 resulted in owners of rice fields with property rights that fall within the protected rice field zone being unable to freely manage their land. The purpose of determining protected rice fields is very good to keep agricultural areas in existence to maintain national food security. However, the determination of protected rice fields must be by community conditions. There are still several rice fields in urban areas that

¹⁹ Adianti, Shelly Yunita. "Perencanaan Tata Ruang sebagai Upaya Mewujudkan Pembangunan Kota Berkelanjutan (Studi Analisis Rencana Tata Ruang Wilayah Kota Mojokerto)." *Jurnal Ilmiah Administrasi Publik*, Vol. 6, No. 1, 2020, pp. 108-117, <https://doi.org/10.21776/ub.jiap.2020.006.01.13>.

²⁰ Jaya, Antonius Andri Cipta. *Perolehan Sertipikat Hak Milik Atas Tanah Karena Peralihan (Jual Beli) Dalam Mewujudkan Perlindungan Hukum di Kota Samarinda*. 2015. UAJY, Thesis. <http://e-journal.uajy.ac.id/id/eprint/8554>.

²¹ Aprilla, Astri Putri, et al. "Status Hukum Hak Milik Atas Tanah Warga Negara Asing Dengan Meminjam Nama Warga Negara Indonesia." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, Vol. 3, No. 1, 2018, pp. 15-21, <http://journal2.um.ac.id/index.php/jppk>.

²² Hekmatyar, Versanudin and Fentiny Nugroho. "Pola penguasaan tanah dan distribusi kesejahteraan rumah tangga di pedesaan Jawa Timur." *BHUMI: Jurnal Agraria dan Pertanahan*, Vol. 4, No. 1, 2018, pp. 39-52, <https://doi.org/10.31292/jb.v4i1.222>.

could be designated as protected rice fields due to achieving the broad target set to become protected rice fields. Determining the central government area and economic center of a region can result in public complaints. The central government and economic area of a region should be the center of development and it would not be appropriate to use it as a protected rice field.

Designating protected rice fields in the central government area and economic center of a region can slow down the process of development and economic development. For example, it is not easy for people who own rice fields in the area to split land rights, and change the status of land rights from rice fields to homesteads. Meanwhile, by dividing land rights, people can protect their right to live by selling part of their land and maintaining the remaining land for their future and that of their families. This transfer of ownership rights is permitted and protected based on Article 20 paragraph (2) of the UUPA which states that land ownership rights can be transferred or transferred to another party either through sale and purchase, gift, or inheritance. Careless determination of protected rice fields also results in people not being able to apply for building permits on their land because building permits can be obtained if the rice fields have to be converted into homestead land. Of course, through buying and selling land, changing the status of rice fields into yards in central government areas and economic centers is more effective in improving community welfare because it is hoped that development will continue and will be accompanied by the opening of job opportunities. Article 1 number 25 of Law 26 of 2007 concerning Spatial Planning (UUPR) also states that urban areas are areas that have primary non-agricultural activities with the structure of the area's functions as a place for urban settlements, concentration and distribution of government services, social services, and activities. economy. It is further emphasized in the explanation of Article 5 paragraph (4) of the UUPR that activities that characterize urban areas include urban residential areas as well as places for the concentration and distribution of non-agricultural activities, such as government service activities, social service activities, and economic activities. Despite the reality on the ground in several areas that are still developing in Indonesia, for example, the central government area and economic center in West Lombok Regency, even though there are still rice fields, if you refer to the spatial

planning law above, the status of rice fields in these areas, as protected rice fields is simply being untrue.

2. Legal force of Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 regarding land ownership rights

Research on sustainable agricultural land regulations is more often identified with communities having to follow government regulations. It is as if determining sustainable agricultural land is for the good of the community itself. The determination of sustainable agricultural land indeed has noble goals, but orders from the UUPLPBB must go through very strict procedures so that the people affected by the determination of sustainable agricultural land are not harmed. Of course, this is related to the legal strength of the regulations made by the government because if the correct procedures have been followed, the determination will be easier for the community to implement, thus having an impact on the strength of the regulations for determining sustainable agricultural land made by the government. The legal force of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 regarding land ownership rights can be strong if it complies with existing regulations. Conformity to regulations means that they must be based on the hierarchy of statutory regulations. The formation of rules and implementation of rules must also be oriented toward the principles of legal certainty, legal benefits, and justice. If we look at the considerations of the Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021, the formation of this decision refers to UUPR and UU 41/2009. Article 1 number 23 of the UUPR states that rural areas are areas that have agricultural main activities, including the management of natural resources with the structure of the area's functions as a place for rural settlements, government services, social services, and economic activities. Article 1 number 24 UUPR metropolitan areas are Agropolitan areas are areas consisting of one or more activity centers in rural areas as a system of agricultural production and management of certain natural resources as indicated by the existence of functional linkages and spatial hierarchies of settlement system units and agribusiness systems. Article 1 number 25 of the UUPR states that urban areas are areas that have primary non-agricultural activities

with the function of the area as a place for urban settlements, concentration and distribution of government services, social services, and economic activities.

The decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 does not determine the definition of rural areas, urban areas, or the character of protected rice fields. Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 only determines the target for the number of areas of protected rice fields in Regency/City areas in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Special Region Province Yogyakarta, East Java Province, Bali Province, and West Nusa Tenggara Province. The Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 should explain the provisions relating to protected rice fields, for example, the character of protected rice fields, the character of protected rice fields, the location of protected rice fields. When referring to the UUPR, it is explained in general terms as rural, metropolitan, and urban areas. It's just that the mention of this area is still general and doesn't talk about technical issues that should be technically explained in the regulations below. Making legal rules based on Law Number 12 of 2011 concerning the Formation of Legislative Regulations in conjunction with Law Number 15 of 2009 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. The formation of Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021 should be based on the following principles:²³ (1) Does not give rise to multiple interpretations (firm and straightforward), (2) Consistent (terms/formulation/setting), (3) Systematic, (4) Predictive/implementable, (5) Easy to understand/understand (Language).

The formation of statutory regulations that do not apply the correct procedures for formation will give rise to multiple interpretations and vagueness of norms so that the application of the rules will be directionless and arbitrary. The formation of Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021 must be based on juridical recognition, namely: (1) The need for authority from makers of legal products. Every legal product must be made by an authorized official. Legal products that are not created by authorized officials will be null and void (*van rechtswetgenietig*) or deemed

²³ Rahayu, "Teknik Penyusunan Peraturan Peraturan Perundang-Undangan." [https://pusdik.mkri.id/materi/materi_234_10.%20Teknik%20Penyusunan%20Peraturan%20Perundang-Undangan%20\(Bagian%20I\)%20-%201E.pdf](https://pusdik.mkri.id/materi/materi_234_10.%20Teknik%20Penyusunan%20Peraturan%20Perundang-Undangan%20(Bagian%20I)%20-%201E.pdf), accessed on 19 July 2023.

to have never existed and all consequences will be null and void. (2) The requirement for conformity of the form or type of legal products with the regulated material, especially if ordered by statutory regulations of a higher or equivalent level. Inconsistency in form or type can be a reason to cancel or be canceled (*vernietigbaar*) of the legal product. (3) Requirement to follow certain procedures. If certain required procedures are not followed, then these legal products do not have binding legal force and can be canceled by law. (4) The requirement is that laws and regulations must not conflict with laws and regulations of a higher level. (5) Legal products made for the public can be accepted by society naturally, even spontaneously.²⁴

In Article 1 point 7 of Law Number 40 of 2009, it is stated that Sustainable Food Agriculture Areas are agricultural cultivation areas, especially in rural areas that have stretches of Sustainable Food Agriculture Land and/or stretches of Sustainable Food Agriculture Reserve Land as well as supporting elements with the main function of supporting independence, resilience, and national food sovereignty. The formation of the policy on protected rice fields is based on creating sustainable agricultural areas. Article 1 number 3 of Law Number 40 of 2009 states that Sustainable Food Agricultural Land is an area of agricultural land that is determined to be protected and developed consistently to produce staple food for national food independence, resilience, and sovereignty. Article 1 number 5 of Law Number 40 of 2009 states that Sustainable Food Agricultural Land Protection is a system and process for planning and determining, developing, utilizing, fostering, controlling, and monitoring food agricultural land and its areas in a sustainable manner. The Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021, located in the fourth decision, states that the Protected Rice Field Map is used by the Central Government and Regional Governments to determine Protected Rice Fields. Of course, the maps and targets attached to the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 must not conflict with the regulations above. It has been explained in the previous explanation that if the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 does not have clarity as to the basis for determining protected rice field areas, it will become a problem for the community. The central and regional governments that have the responsibility to designate areas to be protected rice fields are likely to act without a

²⁴ Siagian, Ade Onny and Andrew Shandy Utama, *Op.Cit.*

strong basis, thereby harming the owners of the land designated as protected rice fields. The loss that the land owner can experience is because they can no longer freely manage their land so that it is not agricultural. This argument is clarified by the statement of Minister of Atr/Bpn Decree Number 1589/Sk-Hk.02.01/Xii/2021 in the tenth decision which states that if you want to change the function of a rice field to another function, for example, a yard, you must get a recommendation from the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency. National. Of course, getting this recommendation requires a lot of time, energy, and money. After that, the right to issue recommendations also rests with the Minister of Agrarian Affairs and Spatial Planning and these are not necessarily approved. This long process has resulted in land ownership rights for rice fields being determined carelessly by the central and regional governments which can be detrimental to the interests of the community and the economic growth of the community itself.

In Law Number 41 of 2009, the determination of sustainable agricultural land must be carried out with in-depth study and preparation for the formation of agricultural programs aimed at improving the welfare of farmers or owners of agricultural rice fields. Based on Article 2 of Law Number 41 of 2009, Sustainable Food Agricultural Land Protection is carried out based on the principles: (1) Benefits, (2) Sustainability and consistency, (3) Integration, (4) Openness and accountability, (5) Togetherness and cooperation, (6) Participative, (7) Justice, (8) Harmony, harmony, and balance, (9) Environmental sustainability and local wisdom, (10) Decentralization, (11) State responsibility, (12) Diversity, and (13) Social and cultural.

Then in Article 4 of Law Number 41 of 2009, it is stated that the scope of Sustainable Food Agricultural Land Protection includes: (1) Planning and determining, (2) Development, (3) Research, (4) Utilization, (5) Coaching, (6) Control, (7) Supervision, (8) Information systems, (9) Protection and empowerment of farmers, (10) Financing, and (11) Community participation.

Based on Article 14 paragraph (2) of Law Number 41 of 2009, planning for Sustainable Food Agriculture Land Planning proposals is carried out based on: (1) Inventory, (2) Identification, and (3) Research.

Article 15 of Law Number 41 of 2009 states that (1) The planning proposal as intended in Article 14 paragraph (1) is distributed to the community to obtain responses and suggestions for improvement. (2) Responses and suggestions for improvement from the community as referred to in paragraph (1) are taken into consideration for planning Sustainable Food Farming Sustainable food farming land planning proposals can be submitted by the community for discussion and consideration with the village, sub-district, and district/city governments.

The community should also be involved in plans to determine sustainable agricultural land. The purpose of requiring public opinion is so that people are guaranteed the protection of their land because the government is also obliged to protect the welfare of affected communities. Sustainable agricultural land development must use intensification and extensification steps. Law Number 12 of 2011 concerning the Formation of Legislative Regulations, in article 96 regulates Community Participation in the Formation of Legislative Regulations including Regional Regulations. Community participation is a form of community political participation that is very important to create good governance.²⁵ According to Article 28 of Law Number 41 of 2009, intensification is carried out by: (1) Increased soil fertility, (2) Improving the quality of seeds/seedlings, (3) Diversification of food crops, (4) Prevention and control of plant pests, (5) Irrigation development, (6) Utilization of agricultural technology, (7) Development of agricultural innovation, (8) Agricultural extension; and/or (9) Guarantee access to capital.

Article 35 of Law Number 41 of 2009 states that the central government and regional governments are obliged to (1) guide everyone involved in the sustainable use of agricultural land for food and (2) protection of Sustainable Food Agricultural Land.

Then Article 37 of Law Number 41 of 2009 states that Control of Sustainable Food Agricultural Land is carried out by the Government and Regional Governments by providing (1) incentives, (2) disincentives, (3) licensing mechanism; (4) protection; and (5) counseling.

²⁵ *Ibid.*

The government is also required to provide incentives to farmers based on Article 38 of Law Number 41 of 2009, namely incentives as intended in Article 37 letter a, given to farmers in the form of: (1) Land and Building Tax Relief, (2) Development of agricultural infrastructure, (3) Funding for research and development of superior seeds and varieties, (4) Ease of accessing information and technology, (5) Provision of agricultural production facilities and infrastructure, (6) Guarantee of the issuance of food agricultural land certificates through sporadic and systematic land registration, and/or (7) Awards for high-achieving farmers.

The determination of protected rice fields should be accompanied by government obligations based on Law Number 41 of 2009. Farmers and affected landowners must have their rights protected. Protection of this right is one of the characteristics of a legal state. Based on Article 1 paragraph (3) of the 1945 Constitution, it is firmly stated that Indonesia is a legal state. Indonesia is a country that adheres to the teachings of the welfare state (*verzorgingstate*, welfare state) and can be categorized as a democratic legal state. Where every implementation of government affairs must be based on applicable law (*wetmatigheid van bestuur*).²⁶

The rule of law aims to create protection for the people, fair treatment, and laws that protect every citizen of the nation so that their rights as citizens and human rights are guaranteed.²⁷ So the making of regulations regarding protected rice fields and the implementation of their determination must refer to higher laws by Law Number 12 of 2011 concerning the Formation of Legislative Regulations in conjunction with Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations. According to Satjipto Rahardjo, forming laws and regulations must refer to an operational basis. This operational foundation consists of: First, fair, and prosperous laws. Second, the state is tasked with providing state equipment to implement the rules.²⁸ Based on the description above, the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 and its

²⁶ Hasan, Hasanauddin. "Hierarki Peraturan Perundang-Undangan Negara Republik Indonesia Sebagai Suatu Sistem." *Madani Legal Review*, Vol. 1, No. 2, 2017, pp. 120-130.

²⁷ Sopiani and Zainal Mubaroq. "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." *Jurnal Legislasi Indonesia*, Vol. 17, No. 2, 2020, p. 147, <https://doi.org/10.54629/jli.v17i2.623>.

²⁸ *Ibid*, p. 151.

implementation should refer to Law Number 41 of 2009, Law Number 26 of 2007, Article 21 UUPA, Article 570 of the KUHPer so that Every citizen who has ownership rights to rice fields can be protected. Of course, protecting the rights mentioned above is based on every implementing regulation, technical regulation, and implementation of the determination of protected rice fields in various ways, including the many obligations that must be carried out by the central and regional governments, namely providing space for discussion in the community to hear responses, in-depth study. and comprehensive by involving community leaders and experts in their fields, providing facilities to affected residents, implementing the promise of prosperity by the law, and many more things that the government needs to fulfill for citizens who own property rights to rice fields designated as land protected rice fields/sustainable food farming land.

III. CONCLUSION

Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 results in incomplete ownership rights to land with the status of rice fields. The legal force of the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021 is not strong because its contents are not by higher regulations. Therefore, the government must review the Decree of the Minister of Atr/Bpn Number 1589/Sk-Hk.02.01/Xii/2021. Implementing regulations regarding protected rice fields must be made clear by higher regulations.

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