



Legal problematics of converting the function of protected field land into Residential Land

Guntur Satrio Bhakti, Yudho Taruno Muryanto, Noor Saptanti

Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

Abstract

Legal policy is not only limited to having rules, but must also contain the principle of legal certainty. In Presidential Regulation Number 59 of 2019, the rules are clear, but this creates problems for housing developers. This research aims to analyze the legal problems of converting protected rice fields into residential land related to several concepts. This research uses a statutory approach and a conceptual approach. The results of this research explain that, to deal with the polemic that occurred as a result of the enactment of Presidential Regulation Number 59 of 2019, the Regional Government of Sragen Regency, took a firm stance to respond to problems related to the determination of Protected Rice Fields by establishing a "Spatial Planning Forum" formed by Department of Public Housing, Settlement Areas and Human Settlements in 2022. "Spatial Planning Forum", based on the Sragen Regency Regional Spatial Planning Plan. Where, housing developers/developers can still convert their land into housing, as long as the land in question is not included in land for food crops that has been determined in the Regional Spatial Plan. However, the converted land will still have the status of Protected Rice Fields, only its function will change. If you want to change it to dry land, it can be handled directly at the center, namely the Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency.

Keywords: Certainty, function transfer, Housing area, Protected Rice Land

Introduction

Agricultural land conversion is also caused by the Era of Globalization, which is increasingly developing and of course has a negative impact on Indonesia. One of them, what is happening now is that Indonesia is losing its nickname as an agricultural country due to the large number of conversions of rice fields. The consequences of this conversion of rice fields will also have an impact on national food security. Where, Indonesia must import food to continue to meet people's needs. And the most regrettable thing is the conversion of productive agricultural land into residential land due to the high demand for housing from the community. However, the increasing conversion of productive agricultural land is also caused by the unsecured welfare of farmers and also the need for housing which is increasing in proportion to the increase in population in Indonesia.

In the current era of industrialization, agrarian reform is considered very strategic because it aims to reorganize the control, ownership, use and utilization of agrarian resources, especially agricultural land that has been converted to achieve legal certainty and protection, as well as justice and prosperity for all Indonesian people. The global challenge of the existence of a free market today also requires the Basic Agrarian Law to be reviewed, as well as other laws or government regulations, especially Sragen Regency Regional Regulation Number 1 of 2020 concerning Amendments to Sragen Regency Regional Regulation Number 11 of 2011 concerning Sragen Regency Regional Spatial Plan for 2011-2031 must be revised to suit the needs and demands of the community in Sragen Regency. The conversion of protected paddy fields to non-agricultural use, especially in Sragen Regency, has increased. The main aim of changing the use of paddy fields to non-agricultural is to improve the welfare of the community and the nation's economy ^[1].

Land management in controlling changes in agricultural to non-agricultural land use needs to be optimized with a number of considerations. Firstly, up to now there is actually no legal regulation that specifically prevents changes in land use. Second, currently the land administration process for agricultural land refers to the allocation directions in the Regional Spatial Plan, by providing requirements for land use and utilization that are in accordance with land management.

The number of conversions from agricultural land to non-agricultural land in Indonesia is truly astonishing. The conversion area of agricultural land intended for non-agricultural development such as residential areas, industry, offices, roads and other public facilities averages 60,000 to 100,000 hectares per year. This means that there are more than 4,000 hectares of rice fields per day that are being converted into non-agricultural land. ^[2] Sragen Regency is recorded as having an agricultural land area of \pm 678 575 hectares in 2022 ^[2]. And the area of agricultural land decreases every year. Every year \pm 25 hectares of productive agricultural land in Sragen Regency is lost, due to land conversion or conversion of agricultural land. The biggest change in land use is caused by the construction of settlements or housing complexes by developers or the creation of ready-to-build plots of land, some of which are even used for the mining industry.

Seeing the above phenomenon, the government issued Presidential Regulation number 59 of 2019 concerning Control of the Conversion of Rice Fields by mandating the establishment of Rice Field Maps through the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 1589/SK-HK.02.01/XII/2021 concerning Determination of maps of protected rice fields in districts/cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, DIY Province, East Java Province, Bali Province and West Nusa Tenggara Province. The aim is to

reduce control over the increasingly rapid conversion of paddy fields and increase rice productivity.

However, Presidential Regulation Number 59 of 2019 concerning Controlling the Conversion of Rice Fields is generally only an advisory, because then the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 12 of 2020 concerning Procedures for Implementing Verification of Rice Field Data Against Data was issued. Land and Spatial Planning, Determining Maps of Protected Rice Fields, and Providing Recommendations for Changes in Land Use on Protected Rice Fields, where it is explained regarding Providing Recommendations for Changes in Land Use on Protected Rice Fields, which means that Protected Rice Fields are not absolute, which means This means it can be reused at any time.

Even though Protected Rice Fields are part of Sustainable Food Agricultural Land, this land cannot be converted into use at all. Then there is a difference in the area of land specified in the Map of Protected Rice Fields and Sustainable Food Farming Lands. Of course, this creates legal uncertainty in terms of the content of the regulations. The uncertainty here is caused by the publication of the Protected Rice Fields map which causes confusion in both the Regional Government and the Community. This confusion was caused by the determination of the Protected Rice Fields map without involving the local regional government, in this case the National Agricultural Agency in the province where the Protected Rice Fields were tested. This will of course conflict with the Detailed Spatial Plan for each region and the Sustainable Food Farming Land that has been determined by that region. Apart from that, the confusion that occurs in the community is caused by land that was previously not included in the scope of Sustainable Food Agricultural Land and can be converted into residential land and with the issuance of Presidential Regulation Number 59 of 2019, this land is included in the scope of Protected Rice Fields, which means When it is included in the scope of Protected Rice Fields it cannot be converted into use at all, because Protected Rice Fields are included in the scope of Sustainable Food Agricultural Land.

However, then implementing regulations were issued, namely Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 12 of 2020 concerning Procedures for Implementing Rice Field Data Verification of Land and Spatial Planning Data, Determining Maps of Protected Rice Fields, and Providing Recommendations for Changes in Land Use In protected rice fields there are 2 sides. Firstly, the Pro side, because the issuance of this regulation provides a breath of fresh air for the Regional Government or land owners because they can change the use of their land. The problem here is that there are no indicators or criteria for which land can be converted and which cannot be converted. This creates legal uncertainty again. The two cons, with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 12 of 2020, land owners who were previously not within the scope of Sustainable Food Agricultural Land can be immediately converted into use. Then the land was designated as Protected Rice Fields and it turned out that it could be converted back into use with uncertain indicators. The land owner must submit

paperwork for land conversion, which of course takes quite a long time and is certainly expensive.

The Central Government, in this case the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, determines the map of Protected Rice Fields only based on satellite imagery which is synchronized with the national Regional Spatial Plan, but in implementation it completely changes the Detailed Regency/City Spatial Plan. And including land that was previously not included in the designation of Sustainable Food Agricultural Land but was included in the designation of Protected Rice Fields so that Presidential Regulation Number 59 of 2019 makes things difficult for some communities, especially in terms of managing land that previously was not Protected Rice Fields, now designated as Land. Rice Fields Protected.

The above has caused confusion in some communities, so what kind of Protected Rice Fields can and cannot be changed, if there are categories of Protected Rice Fields that are permanent and non-permanent and this also hinders some regional investments and even hinders some jobs such as housing developers. . Finally, it raises the question, if from the start the status of Protected Rice Fields can still be changed from Protected Rice Fields to yellow zone or homestead land, why did it have to be designated as Protected Rice Fields from the start, why not just take the designation of Sustainable Food Farming Land. If you look at the implementation in the field or the existing process, managing the status of land changes from Protected Rice Fields to yards or yellow zones takes a long time and is expensive. The procedure must go through the National Land Agency at the regional level and submit it to the central National Land Agency and then a recommendation will be made from the local Governor or Regent. And the change in land status from Protected Rice Fields to homestead land or yellow zone can be carried out in 2025 (3 years after Presidential Regulation Number 59 of 2019 is stipulated).

When viewed from a housing developer's point of view, this is very detrimental, not only from the housing developer's perspective but also from the district/city regional government's perspective, it is also very detrimental, due to the loss of several regional investors. Existingly, the need for housing is becoming increasingly unstoppable. If initially the house developers have prepared yard land that is ready to be built, if the yard land is included in the Protected Rice Land designation. So before it is built, it must go through procedures and must wait until 2025 to get a recommendation to change protected rice fields into home gardens.

Therefore, this research will present a problem formulation, namely analyzing the legal problems of converting protected rice fields into residential land related to several concepts.

Methodology

The type of research in this study uses doctrinal legal research which is usually referred to as normative legal research. Normative legal research is research that systematically produces rules governing certain legal categories, analyzes the relationships between certain rules, explains difficult areas, and perhaps predicts future developments^[3]. The approach method that will be used in this research is a statutory approach, a conceptual approach. The type of legal material used in this research is secondary data which consists of Primary Legal Material, Secondary

Legal Material. The technique for collecting legal materials that will be used in this research is a legal research study, which means collecting all legal materials in accordance with the approach in legal research.

Results and Discussion

In implementing the Protected Rice Land regulations, there are many confusing processes that confuse the public, especially business people or developers in the housing sector (developers). This rule makes many developers, business people and investors trapped in a situation. The reason is, many of them cannot be issued permits related to business development. This is because the land they bought after the Protected Rice Fields regulations were implemented indicated that the land was included in the Protected Rice Fields category, because the water was still good and the irrigation was still very possible for it to be used as a rice field area. Developers cannot build housing or industrial areas on Protected Rice Fields, even though they have been controlled.

Regarding land rights, the provisions of this regulation make the status of the land weak and useless. Meanwhile, the meaning of land rights is rights that give authority to those who have the right to use or take advantage of the land they own. This raises the question of whether the status of land ownership which has clearly become private property might be changed by the state ^[4].

Most of the land included in the conversion of rice fields has the status of freehold land. Meanwhile, property rights are the "strongest and fullest" rights, which means that the person controls the land. This property right has the following characteristics:

1. Hereditary means that ownership rights to the land in question can be transferred by law from a land owner who dies to his heirs.
2. Strongest, meaning that the ownership rights to the land are the strongest among other land rights.
3. Full, meaning that the ownership rights to the land can be used for agricultural business and also for building buildings.
4. Can be switched and redirected.
5. Can be used as collateral with mortgage rights.
6. Unlimited time period.

Land as a tool for food needs and security in Indonesia has resulted in interference from the Government regarding land rights in Indonesia for the prosperity of the people with a program called Protected Rice Fields. However, according to Muhammad Joni in ^[4], an advocate who is also chairman of the National Consortium for Public Housing, there are five things that must be considered when determining protected rice fields.

1. Do not suppress the civil rights of individuals/legal entities, regarding property rights and property rights guaranteed by the 1945 Constitution. This is regulated in: (a) Article 28G paragraph (1) of the 1945 Constitution, that "Everyone has the right to personal and family protection, honor, dignity and property under his control, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right." (b) Article 28H paragraph (4) of the 1945 Constitution. "Every person has the right to own private property rights and these property rights may not be taken over

arbitrarily by anyone." (c) Article 28I paragraph (4) of the 1945 Constitution, the protection, enforcement, promotion and fulfillment of Human Rights is the responsibility of the state, especially the government. Community ownership rights to land are the strongest and fullest hereditary rights that can be obtained by looking at the social function attached to land ownership rights.

2. Does not negate Regional Regulations on Regional Spatial Planning and Detailed Spatial Planning which are legally binding.
3. No mal administration, but full compliance. They should be able to comply with the requirements based on bound authority, carry out formal procedures in forming public policies for determining Protected Rice Fields.
4. The Protected Rice Fields policy should be participatory and take into account the basis of ownership and the rights of citizens or legal entities over land affected by the designation of Protected Rice Fields. Because if the "juridical data" and "physical data" of land rights have been registered with proof of the issuance of a land rights certificate, then this should be recognition and a form of protection as well as a form of guarantee by the state for the person holding the land rights. Therefore, the state cannot arbitrarily take away the freedom of citizens holding certificates to sell, give away, use as collateral, etc., as long as the status of land rights is free from all confiscations and material guarantees that are burdensome on it.
5. And must respect land rights in accordance with the principles of fair legal certainty. In this case, the state has no authority to cancel civil rights over citizens' land.

The presence of Presidential Regulation Number 59 of 2019 is the legal basis for controlling the conversion of rice fields, which aims to speed up the establishment of maps of protected rice fields. This protected rice land is in order to fulfill and maintain the availability of rice fields to support national food needs, control the increasingly rapid conversion of rice fields, empower farmers not to convert rice fields and provide data and information on rice fields for purposes of determining Sustainable Food Agricultural Land. Before this regulation came into existence, the protection of rice fields still used the Sustainable Food Agricultural Land Regulations ^[5]. However, this regulation still does not specifically regulate land conversion, it can be said that there are still many gaps ^[6]. So the LSD was created to regulate agricultural land that is still active by not allowing an area to be used as a yard or housing.

This housing problem is a fundamental matter and a human need. However, the housing sector continues to be shrouded in recurring problems, especially in terms of licensing ^[7]. Previously, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Hadi Tjahjanto received an audience from the Indonesian Subsidized Housing Developers Association ^[4]. According to him, the issuance of regulations such as Approval of Buildings and Protected Rice Fields occurred because the government did not have human resources who understood housing well. As a result, the policies issued are inappropriate and often change ^[4]. Protected Rice Land makes developers' investments related to land unclear because permits are

hampered by these regulations. Although Protected Rice Land aims to protect food security, but the process of implementing these regulations is detrimental to many parties including the community ^[4].

The efficiency of Presidential Regulation Number 59 of 2019 concerning Policies for Controlling the Conversion of Rice Fields in Connection with Housing Developers can be seen from the implementation of the Decree of the Head of the National Land Agency Number 1589 of 2021 which states that the determination of maps of protected rice fields based on satellite photos, land verification, synchronization land verification results. However, what happens in the field is that the Protected Rice Land map is determined only based on satellite photos ^[4]. So that verification is not carried out thoroughly in its implementation. The reason that is the basis for this problem is that land permit administrators are not experts in carrying out permit processing mechanisms such as managing the suitability of space utilization activities, which are directly connected to the central department. Meanwhile, the person issuing the permit or recommendation should be the Department of Public Housing, Settlement Areas and Human Settlements. The decision to implement the verification results of Protected Rice Fields cannot simply negate or ignore Regional Regulations on Spatial Planning or Detailed Spatial Planning, which are valid legal products from regional executive and legislative legislative procedures ^[8]. Providing housing for the wider community in Indonesia needs to be carried out through a serious and ambitious program, especially by the state. Therefore, it cannot be done in an institution that has a dual focus. This issue is crucial because the determination of Protected Rice Land concerns the rights and laws of the citizens of the country, where these rights are hampered or taken away because land rights during transfer, replacement or division must be clear and clean. What this means is that if the determination of Protected Rice Land is not appropriate, this will be detrimental to land rights holders who will take legal action on their land certificates, because the status of land rights that are not clear and clean will stop the permitting process for building the house ^[4].

Therefore, in Sragen Regency, the regional government has taken a firm stance to respond to problems related to the determination of Protected Rice Fields by establishing a "Spatial Planning Forum" which was formed by the Department of Public Housing, Settlement Areas and Human Settlements in 2022. "Spatial Planning Forum", based on the Sragen Regency Spatial Planning Plan. Where, housing developers/developers can still convert their land into housing, as long as the land in question is not included in land for food crops that has been determined in the Regional Spatial Plan. However, the converted land will still have the status of Protected Rice Fields, only its function will change. If you want to change it to dry land, it can be handled directly at the center, namely the Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency.

The actions taken by the Sragen Regency Government are intended to provide legal certainty. Where the rules are not just limited to having standard rules, but are intended to provide clarity and usefulness and not cause confusion. According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules so that individuals know what actions they can or cannot do.

Second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the State can impose or do on individuals ^[9].

Apart from that, Lon L Fuller believes that there are eight values that must be realized by law. The eight values which are called the "Eight Principles of Legality" are ^[10]:

1. There must be regulations first, this means there is no place for ad-hoc decisions or arbitrary actions. In this case, the stipulation of the policy on protected rice fields already has a legal basis that regulates, namely, Presidential Regulation Number 59 of 2019 concerning Control of the Conversion of Rice Fields and Regulation of the Coordinating Minister for Economic Affairs Number 18 of 2020 concerning Work Procedures for Integrated Teams to Control the Conversion of Land Use. Rice Fields and the Implementation Team for Controlling the Conversion of Rice Fields, but the process of determining them is not in accordance with the applicable legal basis.
2. These regulations must be properly announced. The policy on protected rice fields through Decree Number 1589/SK-HK.02.01/X11/2021 has been properly announced in various regions, one of which is in Central Java, namely in Sragen Regency. From there, the knowledge emerged that this policy emerged without the knowledge of the Sragen Regency regional government.
3. This regulation cannot be applied retroactively. The stipulation of the policy on protected rice fields, namely through Decree Number 1589/SK-HK.02.01/X11/2021, came into effect from the time the policy was established, so the policy does not apply retroactively.
4. The formulation of these regulations must be clear in detail and must be understandable by the people. The policy on protected rice fields through Decree Number 1589/SK-HK.02.01/XII/2021 is clearly detailed in its formulation, however, in the process of determining it/the stages that were followed to establish this policy, there are inconsistencies so that the community and local government can know if there is something things that are incompatible and out of sync.
5. The law must not require the implementation of things that are impossible. In this case, the protected paddy fields, namely through Decree Number 1589/SK-HK.02.01/X11/2021, can be implemented, but in reality achieving the objectives of the policy is still difficult to achieve.
6. Between each other, the rules must not conflict with each other. In the process of determining the policy on protected rice fields, it is considered to be in conflict with the governing regulations, namely Presidential Regulation Number 59 of 2019 concerning Control of the Conversion of Rice Fields and Regulation of the Coordinating Minister for Economic Affairs Number 18 of 2020 concerning the Working Procedures of the Integrated Team for Controlling the Conversion of Rice Fields and the Implementation Team. Controlling the conversion of rice fields, so that the policy is deemed to be inconsistent.
7. Rules must be fixed, they must not be changed frequently. In this case, the policy of protecting paddy fields, namely through Decree Number 1589/SK-HK.02.01/X11/2021, can change. because it is adjusted

- to each regional regulation, especially Sragen Regency regarding Regional Spatial Planning.
8. There must be a correspondence between the actions of legal officials in the regulations that have been made. In the process of determining the policy on protected rice fields, namely through Decree Number 1589/SK-HK.02.01/XII/2021, discrepancies arose between the actions of legal officials in the regulations that had been made, this was because the officials in the process of determining the policy did not carry out the Synchronization stages and clarification with the regional government of Sragen Regency.

Conclusion

From the entire description above, we can see the polemic that occurred from the implementation of Presidential Regulation Number 59 of 2019 concerning Control of the Conversion of Rice Fields. So it can be said that the implementation of Presidential Regulation Number 59 of 2019 does not contain the principle of legal certainty. Therefore, the Regional Government of Sragen Regency took a firm stance by establishing a "Spatial Planning Forum" which was formed by the Department of Public Housing, Settlement Areas and Human Settlements to deal with the polemics created by the issuance of Presidential Regulation Number 59 of 2019.

The solution that the author can offer is that the central government, namely the Ministry of Agrarian Affairs and Spatial Planning or the National Land Agency, needs to create a public policy that is adapted to regional sociological conditions. Regarding the formation of the Protected Rice Fields map, not only looking at the new satellite map was discussed but reversed, the local government was invited to discuss whether what was seen on the satellite map was correct with the condition of the land in the area. A public policy is created that prioritizes the principle of balance, because it is the most important basis for realizing justice. And finally, a public policy was created regarding the control of protected rice fields which is not only oriented towards food security but also needs to be oriented towards the welfare of farmers.

References

1. Ali Achmad Chomzah. 2005. *Hukum Agraria (Pertanahan Indonesia)*. Jakarta: Prestasi Pustaka Publisher.
2. Badan Pusat Statistik Kabupaten Sragen. 2021.
3. Peter Mahmud. 2016. *Penelitian Hukum*. Jakarta: Lentera.
4. Ferisa Nurfauziyah, Mohamad Fajri Mekka Putra. 2022. Implementasi Peraturan Presiden Nomor 59 Tahun 2019 Tentang Kebijakan Pengendalian Alih Fungsi Lahan Sawah Terhadap Para Pelaku Bisnis Perumahan. *Jurnal Ilmiah Indonesia* p-ISSN: 2541-0849 e-ISSN: 2548-1398 Vol. 7, No. 11.
5. Rizki Erwahyuningrum, Heru Kuswanto, Habib Adjie. 2023. Problematika Hukum Penetapan Lahan Sawah Dilindungi (LSD) Terhadap Pelaku Bisnis Di Indonesia. *Jurnal Bisnis dan Manajemen*. Vol. 3, No. 2.
6. M. Hamzah takim. *Perlindungan Hukum Lahan Pertanian Pangan Berkelanjutan (PLP2B) Di Kabupaten Gresik Terhadap Ijin Usaha Dan Industri*. *Airlangga Development Journal*. P-ISSN: 2528-3642.
7. Caecilia Waha, Jemmy Sondakh. 2014. Pemenuhan Hak Atas Perumahan Yang Layak Bagi Masyarakat Miskin Di Perkotaan (Suatu Kajian Dalam Perspektif Hak Asasi Manusia). *Jurnal LPPM Bidang EkoSosBudKum*. Vol 1, No 2.
8. Diah NikenSari, Meta Indah Budhianti. 2023. Lahan Sawah Dilindungi Dikaitkan Dengan Rencana Tata Ruang Berdasarkan Peraturan Presiden Nomor 59 Tahun 2019. *Jurnal Reformasi Hukum Trisakti*. Volume 5 Nomor 4.
9. Rinduan Syahrani. 1999. *Rangkuman Intisari Ilmu Hukum*. Bandung: Citra Aditya Bakti.
10. Mustofa Ponco Wibowo. 2023. *Validitas Kebijakan Penetapan Lahan Sawah dilindungi di Kabupaten Sragen*. Surakarta: Tesis Universitas Sebelas Maret.