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Onrechtmatige Overheidsdaad for not Fulfilling Incentives for the Protection of Sustainable Food Agriculture Land

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Abstract: In the regulation of sustainable food agricultural land, especially regarding incentives as an effort to prevent high conversion of functions, the government has the authority to provide incentives as a form of determination from government officials regarding restrictions on agricultural land owned by the community. In practice, the provision of incentives by the government is often not fulfilled, resulting in injustice for the community, even though the regulations explicitly regulate the provision of incentives. This article aims to, How is legal protection for the community regarding incentives for the protection of Sustainable Food Agriculture Land? what is the model of lawsuit against government officials if compensation is not fulfilled in the protection of Sustainable Food Agricultural Land? The type of research used is legal research with statute approach, and conceptual approach. This research is prescriptive in nature which aims to provide arguments for the results of the research that has been conducted. The results of this study indicate that legal protection for farmers, if their incentives are not fulfilled, has not been concretely regulated in Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, besides farmers in accessing justice experience difficulties due to the unregulated and also complicated arrangements regarding the provision of incentives. Also, when farmers experience losses from the non-fulfillment of incentives, they file a lawsuit for compensation, due to provisions that government officials do not fulfill as a result of the LP2B policy. Therefore, in law enforcement, it is important to reconceptualize so that access to justice for people whose incentives are not fulfilled by the government can make claims against actions taken by the government.

Keywords: Law Enforcement; Justice; Incentives.

Abstrak: Pengaturan lahan pertanian pangan berkelanjutan melalui Undang-Undang Nomor 41 Tahun 2009 tentang Pelindungan Lahan Pertanian Pangan Berkelanjutan sebagai upaya mencegah tingginya alih fungsi lahan, salah satunya dengan cara pemberian insentif kepada pemilik lahan oleh pemerintah sebagai kompensasi terhadap adanya pembatasan terhadap lahan pertanian. Pemberian insentif oleh pemerintah menimbulkan bermacam problem seperti ketidakjelasan bentuk insentif yang diberikan, serta potensi tidak dipenuhinya insentif oleh pemerintah. Artikel ini bertujuan untuk menganalisis. Tipe penelitian yang digunakan ialah yuridis normatif dengan pendekatan statute approach, conceptual approach. Penelitian ini bersifat preskriptif yang bertujuan untuk memberikan argumentasi atas hasil penelitian yang telah dilakukan. Studi ini bertujuan untuk menjawab bagaimana perlindungan hukum bagi

masyarakat perihal pemberian insentif perlindungan Lahan Pertanian Pangan Berkelanjutan? Kedua, bagaimana model gugatan kepada pejabat pemerintahan apabila kompensasi tidak dipenuhi dalam perlindungan Lahan Pertanian Pangan Berkelanjutan?. Hasil penelitian ini menunjukkan bahwa perlindungan hukum bagi petani apabila insentifnya tidak dipenuhi belum ada ketentuan secara konkret dalam Undang-Undang Nomor 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan, sehingga pemilik lahan mengalami kesulitan dalam mengakses keadilan. Kemudian, ketika petani mengalami kerugian dari tidak dipenuhinya insentif, petani dapat melakukan gugatan ganti rugi kepada pengadilan sebagai konsekuensi dari adanya ketetapan yang tidak penuhi oleh pejabat pemerintahan.

Kata Kunci: Penegakan Hukum; Keadilan; Insentif.

INTRODUCTION

Food is the most important basic human need and its fulfillment is part of the human rights guaranteed in the Constitution as a basic component for creating quality human resources. To safeguard the food needs of the people, the state is obliged to realize the availability, affordability, and fulfillment of sufficient, safe, high quality, and nutritionally balanced food, at the national and regional levels to individuals evenly throughout the territory of the Unitary State of the Republic of Indonesia.¹

Food production is closely related to land availability. However, the increasing population growth that occurs every year causes the need for agricultural land to be threatened, where agricultural land is used for other needs such as housing, industry, and so on. In this case, the state has the authority to regulate and administer the allocation, use, supply and maintenance of agricultural land.² To control agricultural land conversion, the government issued a policy in the form of Law No. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land.

The concept of Sustainable Food Agricultural Land (PLP2B) is an effort to consistently protect and develop the agricultural sector through legal objectives to: 1) control the conversion of agricultural land, 2) meet national food needs, 3) improve community welfare, 4) realize sustainable agriculture, up to 5) provision of agricultural supporting facilities and infrastructure³. Awareness of food provision which has been divided into regional levels is continued in the legal politics of the PLP2B Law, where the Law considers the important role of the Central Government to Regional Governments in efforts to maintain land availability. Therefore, in Law no. 41 of 2009 requires every provincial, district/city government to establish sustainable food farming land. This is regulated in.

Article 11 paragraph (1) of Law No. 41/2009:

“Sustainable Food Agricultural Land Planning is prepared at the national, provincial and district/city levels.”

Article 17:

“The determination of the Sustainable Food Agricultural Land Protection Plan is contained in the Long Term Development Plan (RPJP), Medium Term Development Plan

¹ Pasal 12 Undang-Undang Nomor 18 Tahun 2012 tentang Pangan : “bahwa Pemerintah dan Pemerintah Daerah memiliki tanggung jawab atas tersedianya pangan dan pengembangan produksi pangan lokal bagi masyarakat”.

² Hak Menguasai Negara dalam Pasal 2 ayat 2 huruf a UUPA No. 5 Tahun 1960 tentang Undang-Undang Pokok Agraria

³ Disarikan dari tujuam Undang-Undang No. 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Berkelanjutan

(RPJM), and Annual Plans both nationally through Government Work Plans (RKP), provincial and district/city.”

Based on the above regulations, it is emphasized that the central, provincial, and regional governments have an obligation to establish sustainable food farming land in their regions. This form of decree is the basis for suppressing the conversion of agricultural land to non-agricultural use. The policy of restricting agricultural land is not necessarily implemented to limit ownership rights, but rather to ensure that agricultural land remains productive. Referring to Law No. 41 of 2009, especially Article 37, determines that:

“Control of Sustainable Food Agricultural Land is carried out by the Government and Regional Governments through the provision of: a. Incentives b. Disincentive c. Licensing mechanism d. Protection; and e. Counseling”

In the provisions of this article, one way of controlling agricultural land by local governments is by providing incentives. Providing incentives if referring to incentive PP No. 12/2012 concerning incentives are explicitly determined through Regency/City Regional Spatial Plans; and/or Detailed Regency/City Spatial Planning Plan.⁴ Therefore, RTRW or RRTRW is the basis for providing incentives by local governments. According to Amar K. Zakaria, incentives are important, namely as a motivator to encourage farmers to be enthusiastic in managing their farming business.⁵

If referring to the provisions of Law No. 41 of 2009 and PP No. 12 of 2012 concerning Sustainable Food Farming Land Incentives. The government must provide incentives to farmers. However, if you look more closely, these provisions do not yet regulate legal protection for farmers if incentives are not provided or fulfilled. According to Mudakir Iskandar Syah, when the state takes away some of the land rights given to the community, compensation or compensation must be given.⁶ Furthermore, according to him, the revocation of these rights causes the value of the land to decrease. Compensation can be given in any form, such as money or agreed incentives. Therefore, in line with this research, there are restrictions on land management rights under Law No. 41 of 2009 concerning LP2B incentives that must be given to land owners.

The designation of land as Sustainable Food Agricultural Land causes limitations, especially for changing its function. It is included in land that has a social function, this refers to Article 6 of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles which regulates that every land has a social function, so that land use, including changes to its function, must not exclude social functions.⁷ Therefore, because of this function, land can be used for public purposes. If it is linked to the LP2B policy, the policy is that agricultural land is not converted and some of its rights are limited by the state, then this policy is included in the social function of land.

Based on the explanation above, the policy of limiting land management rights is permissible, but incentives are needed as a consequence of the restrictions. However, the LP2B

⁴ Liat Pasal 3 Ayat Peraturan Pemerintah Republik Indonesia Nomor 12 Tahun 2012 Tentang Insentif Perlindungan Lahan Pertanian Pangan Berkelanjutan
About Incentives for Sustainable Food Farming Land Protection

⁵Amar K Zakaria, "Implementasi Sosialisasi Insentif Ekonomi Dalam Pelaksanaan Program Perlindungan Lahan Pertanian Pangan Berkelanjutan (PLP2B)," *Forum Penelitian Agro Ekonomi* 21 (2013): 137–49.

⁶ Mudakir Iskandar Syah, *Pembebasan Tanah untuk Pembangunan Kepentingan Umum*, Jakarta: Permata Aksara, 2015, hlm. 47

⁷ Ayu, Isdiyana Kusuma, and Benny Krestian Heriawanto. "Perlindungan Hukum Terhadap Lahan Pertanian Akibat Terjadinya Alih Fungsi Lahan di Indonesia." *JU-ke (Jurnal Ketahanan Pangan)* 2, no. 2 (2018): 122-130.

Law does not yet clearly regulate how the community can sue if compensation is not met. On the other hand, fulfilling incentives is needed by farmers, besides that if incentives are not met it can cause losses for farmers. Therefore, in this research, it is necessary to examine in more depth the policy of protecting sustainable food agricultural land through Law Number 41 of 2009 regarding the provision of incentive compensation and what the lawsuit model is if incentives are not met.

METHOD

This research uses juridical-normative research to solve legal problems that arise, using a statutory approach, a comparative approach, and a conceptual approach.⁸ Several of these approaches, such as the statutory approach, are used to examine provisions related to legal protection for farmers in fulfilling incentives and the forms of sanctions regulated in Law No. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. Then, the author also uses a comparative approach to compare the provision of incentives in various countries, especially developed countries. Furthermore, a conceptual approach that leads to a proposed concept of legal protection for farmers if incentives are not provided by government officials is to look for models of sanctions and warning models when government officials do not fulfill incentives.

DISCUSSION

The concept of land ownership rights by the state

In the last few decades, green areas have become increasingly threatened due to land conversion from agricultural use to non-agricultural use. This change in function is a threat to the availability of land for agriculture. The threat to agricultural land requires the government to make a breakthrough in protecting agricultural land. According to Indahwati, the reasons the government issued regulations in the agricultural sector include:⁹

- a. There is an abundance of natural resources : Indonesia, as an agricultural country spread over islands, has abundant natural wealth from land and sea. Therefore, to support these natural resources, it is important to establish regulations governing the agricultural sector, with the aim of strengthening the agricultural industry and improving people's welfare.
- b. The importance of protecting farmers and their cultivated land : To support the agricultural industry, the Sustainable Food Agricultural Land Protection Law no. 41 of 2009 provides protection for agricultural land owned by farmers, the provisions in the PLP2B Law, especially in Article 62, contain several things, such as profitable food commodity prices, obtaining agricultural production facilities and infrastructure, marketing staple food agricultural products, prioritizing domestic food agricultural

⁸ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 2017th ed. (Jakarta: Kencana, 2017).

⁹ Redaksi Suara Merdeka.com, "Kementan Tegaskan Pentingnya UU PL2B bagi Petani". <https://www.suaramerdeka.com/nasional/pr-0496600/kementan-tegaskan-pentingnya-uu-plp2b-bagi-petani>. diakses 10 Juli 2024

products to meet national food needs as well as compensation for crop failure.¹⁰ Based on these provisions, the government's PLP2B Law explicitly protects farmers.

- c. To maintain food security : Apart from the spirit of protecting the agricultural industry, the PLP2B Law also aims to maintain and increase strong food production. In the current era, the increase in conversion of functions, it certainly has an impact on national food security. The existence of a policy in the PLP2B Law by provides protection, empowering agricultural land from non-irrigated to irrigated, is expected to make agricultural land productive. Article 77 of the PLP2B Law determines several things including:¹¹ a) Protection of sustainable agricultural land, b) Regulation of land conversion, c) Linkage with other regulations, d) Sustainable land information system, e) Sustainable land information system, and f) Sustainable land information system.

Government policy in regulating agricultural land cannot be separated from the existence of State Control Rights (HMN) which is a derivative of sovereignty theory (sovereignty theory). According to Jean Bodin, sovereignty is an attribute and a special and basic characteristic of every sovereign unit or state. In the sense that no higher power can limit the power of the state.¹² From the theory of sovereignty, the right to control the state was born. According to Suparjo, he said that "Wealth (property) which is the right of citizens depends on the discretion of the sovereign holder (when prosperity comes to citizens from sovereigns, the right by which citizens hold the property depends on the discretion of the sovereign"¹³ This means that rights owned by citizens can become state rights, depending on decisions made by government officials or discretion. Regarding further control rights, Sunarjati said that all goods would be owned by individuals and by the state known as "domain learning" Therefore regarding a common thing, a public thing, a holy thing¹⁴ owned by the state.

In Indonesia, the right to control the state is regulated in the constitution, Article 33 Paragraph (3) of the NRI Constitution, which states that "Earth and water and the natural wealth

¹⁰ Hotris Parlinggoman Sitanggang and Mella Ismelina F. Rahayu, "Perlindungan Hukum Terhadap Lahan Produktif Pertanian Akibat Maraknya Alih Fungsi Lahan Untuk Keperluan Properti, Industri Dan Proyek Pembangunan Strategis Nasional Berdasarkan Hukum Positif Indonesia," *Jurnal Hukum Adigama* 5, no. 1 (2022): 229–52.

¹¹ Muchidin Rachmat dan Chaerul Muslim, *Peran dan Tantangan Implementasi UU No.41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan*, (Jakarta: Badan Penelitian dan Pengembangan Pertanian, Kementerian Pertanian, 2013), hal.63.

¹² Sembiring, Julius. "Hak menguasai negara atas sumber daya agraria." *BHUMI: Jurnal Agraria dan Pertanahan* 2, no. 2 (2016): 119-132.

¹³ Suparjo Sujadi, 2014, *Manifestasi Hak Bangsa Indonesia dan Hak Menguasai Negara Dalam Politik Hukum Agraria Pasca Proklamasi 1945 Hingga Pasca Reformasi 1998* (Kajian Teori Keadilan Amartya K. Sen), Disertasi, Program Studi Ilmu Hukum, Universitas Indonesia, Jakarta.

¹⁴ *res communes, res publicae* merupakan barang-barang yang berada di luar lalu lintas perdagangan dan merupakan bagian dari *res extra commercium*. *Res communes* merupakan barang-barang, termasuk tanah, yang menurut kodratnya dipergunakan untuk keperluan umum dan tidak dapat dimiliki (udara, air, sungai, dan sebagainya); *res publicae* merupakan barang-barang yang menurut kodratnya dipergunakan untuk keperluan negara; dan *res sanctae (res sacrae atau res religiosae)* adalah barang-barang yang dipergunakan untuk keperluan suci. Lihat Notonagoro, 1984, *Politik Hukum dan Pembangunan Agraria di Indonesia*, Penerbit Binacipta, Jakarta, hlm. 13; Sunarjati Hartono, 1976, *op.cit.*, hlm. 45; dan Iman Sutiknyo, 1990, *Politik Agraria Nasional. Hubungan Manusia dengan Tanah yang berdasarkan Pancasila*, Gadjah Mada University Press, Yogyakarta, hlm. 22

contained therein are controlled by the state and used for the greatest prosperity of the people." Where this concept in Roman law is a state authority that is interpreted as public law, not as defined by civil law. This concept is as stated by Montesquieu (1689-1755) who separated the concepts of empire and dominium, namely "imperium the rule over all individuals by the Prince" and "dominium the rule over things by the individuals"¹⁵ Therefore, in the concept of land in Indonesia in the Basic Agrarian Law no. 5 of 1960 Article 2 Paragraph (1) which determines that "Based on the provisions in article 33 paragraph (3) of the Constitution and the matters referred to in article 1, earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the State, as an organization power of all the people." Based on these provisions, the state has the highest control over natural resources.

Referring to this concept, Law No. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, where one of the legal objectives of this regulation is to control the conversion of land from agricultural to non-agricultural. Article 44 Paragraph (1) determines that "Land that has been designated as Sustainable Food Farming Land is protected and prohibited from being converted."¹⁶ Referring to the provisions of this article, when agricultural land is designated as agricultural food land protected by the state, it cannot be converted from previously agricultural land to non-agricultural land. If you look closely at this policy, there are restrictions on land control rights for land owners, which is in the phrase "no conversion is permitted" it can be interpreted that when it has been designated as Sustainable Food Agriculture Land (LP2B) by the government, it has taken away the rights of citizens in the use of their land. There are special restrictions for agriculture regulated in Law No. 41 of 2009 is theoretically permitted under existing regulations, namely in the constitution and UUPA No. 5 of 1960.

Legal Protection for Fulfilling Incentives for Farmers

Government policy after the issuance of law no. 41 of 2009 concerning Sustainable Food Agricultural Land which has the impact of limiting land use rights for land owners. In fact, this allotment right is a right that the farmer has to his land by the farmer's interests.¹⁷ Farmers can allocate the land they choose for other purposes such as renting, farming, and building houses on it. However, after the sustainable food agricultural land policy was implemented, agricultural land was determined by the provincial, district/city central government, and land owners were not free to allocate their land for purposes other than agriculture. Even though land use is legally limited, there is compensation or incentives for land owners.

Article 37 stipulates that to carry out sustainable control of food agricultural land, the central government and regional governments provide, a) incentives, b) disincentives, c) licensing mechanisms, d) protection, and f) counseling. Based on these provisions, one form

¹⁵ Abrar Saleng, Hukum Pertambangan, UII Press, Yogyakarta, 2004. hlm. 8

¹⁶ Liat Pasal 41 Ayat (1) Undang-Undang No. 41 Tahun 2009 tentang Pelindungan Lahan Pertanian Pangan Berkelanjutan.

¹⁷ Liat Pasal 16 Ayat (1) UU No. 5 Tahun 1960 tentang Undang-Undang Pokok Agraria

of compensation is through the provision of incentives. Apart from that, according to Law No. 26 of 2007 concerning Spatial Planning, incentives are devices or efforts to provide rewards for the implementation of activities that are in line with spatial planning plans. Based on the National Regional Spatial Planning Plan (RTRWN), incentives are something that is given if space utilization follows the spatial structure plan, spatial pattern plan, and indications of zoning regulation directions. From several of these provisions, it is clear that incentives are compensation given to landowners due to restrictions and zoning on their land. This is following the concept of providing incentives regulated in PP 12/2012 concerning incentives, namely that incentives are determined in the district/city RTRW.

The incentive policy contained in Law no. 41 of 2009 concerning LP2B as well as Government Regulations provided by the central, provincial, and district/city governments, namely the development of agricultural infrastructure, funding research and development of superior variety seeds, easy access to information and technology, provision of inputs, guarantees for the issuance of land rights certificates, farmer awards achievements, as well as land and building tax relief. The incentives provided, such as assistance for agricultural production, infrastructure and variety development, are programs that have been routinely implemented by the government since the green revolution program. Referring to the provisions of statutory regulations, incentives are one of the most important things in efforts to protect sustainable food farming land. Some incentive objectives are:

- 1) Encourage the realization of designated Sustainable Food Farming Lands.
- 2) Increasing efforts to control the conversion of Sustainable Food Agricultural Land.
- 3) Increasing empowerment, income and welfare for farmers.
- 4) Providing certainty of land rights for farmers.
- 5) Increasing partnerships of all stakeholders in the context of utilizing, developing and protecting Sustainable Food Farming Land in accordance with spatial planning.

When compared with several other developed countries, such as in America, according to Furuseth and Pierce, there are several food agricultural land protection programs carried out in North America. Apart from the zoning aspect, there are also several programs, such as tax incentives and disincentives, land banks, purchasing development rights. (Purchase of Development Rights) and transfer of development rights (Transfer of Development Rights).¹⁸ Apart from that, the Australian government provides incentives with an assistance scheme for young farmers under 40 years of age (Young Farmer Finance Scheme) which is facilitated by Rural Finance, with various loan facilities with lower interest rates.¹⁹ In Japan, incentives are given by means of complete tax exemption to heirs, where the gift will continue to be given

¹⁸ Zhong, T., Mitchell, B., Scott, S., Huang, X., Li, Y., & Lu, X. (2017). Growing centralization in China's farmland protection policy in response to policy failure and related upward-extending unwillingness to protect farmland since 1978. *Environment and Planning C: Politics and Space*, 35(6), 1075-1097. <https://doi.org/10.1177/0263774X16682958>

¹⁹ Sri Hery Susilowati, "Incentive Policy for Young Farmers: Lessons Learned from Various Countries and the Implications for Policy in Indonesia: Incentive Policy for Young Farmers: Lessons Learned from Various Countries and the Implications for Indonesian Policy," *Agro Economic Research Forum* 34, no. 2 (2016): 103–23.

as long as the land is still cultivated for agriculture. Meanwhile, in the European Union, incentives are provided in two schemes.²⁰

1. Early retirement scheme (early retirement schemes), namely a scheme providing incentives to farmers aged between 55-66 years who meet the requirements, who are willing to transfer their agricultural business to young farmers. For this reason, this group of old farmers will be given a fixed annual pension.
2. The Young farmer scheme (the young farmers scheme), namely an incentive scheme to attract youth to the agricultural sector, which aims to assist groups of young farmers aged 40 years or less. This scheme has been in existence since the mid-1980s.

These two incentive schemes are part of the Common Agriculture Policy (CAP) The European Union is under the Pillar II program, namely a generation renewal scheme that has support from member countries. Based on several schemes implemented in several countries, the incentive schemes used are very concrete and clear, starting from tax exemption schemes, to providing incentives with age limits.²¹ Meanwhile, the incentive scheme in Indonesia is based on Government Regulation No. 12 of 2012 concerning Incentives for Sustainable Food Agricultural Land Protection Article 7 determines that "The government provides incentives for protecting sustainable food farming land to farmers in the form of a. development of agricultural infrastructure; b. funding research and development of superior seeds and varieties; c. ease of accessing information and technology; d. provision of agricultural production facilities and infrastructure; e. guarantee of issuance of a certificate of land rights on Sustainable Food Farming Land; and/or f. awards for high achieving Farmers." Based on the provisions of this article, the provision of incentives is different from some, where Indonesia has not yet regulated the provision of incentives concretely.

Even though it is strict about providing incentives unlike other countries, one of the regions in Indonesia that have implemented incentives is Sukabumi City where in 2023 the Sukabumi City Food Security, Agriculture and Fisheries Service (DKP3) assisted in the form of 20 kg of fertilizer per hectare in one season apart from that, it also provides seeds to land owners designated as part of the LP2B program.²² Sukabumi City is one of the areas that implements a sustainable food agricultural land policy with approximately 43 hectares of LP2B land owned by the government and 15 hectares owned by residents, so it can be seen factually that Sukabumi City is one of the areas that has successfully implemented LP2B.

Meanwhile, when compared with other regions, the implementation of LP2B has not gone

²⁰ Hennessy. 2014. CAP 2014–2020 tools to enhance family farming: opportunities and limits. In-depth Analysis. Brussel (BE): Directorate-General for Internal Policies Policy Department B: Structural And Cohesion Policies. Also available from: [http://www.europarl.europa.eu/RegData/etudes/not_e/join/2014/529051/IPOL-AGRI_NT\(2014\)529051_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/not_e/join/2014/529051/IPOL-AGRI_NT(2014)529051_EN.pdf)

²¹ *The common agricultural policy: 2023-27*, "The common agricultural policy is key to securing the future of agriculture and forestry, as well as achieving the objectives of the European Green Deal." https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27_en, diakses Pada 29 Juni 2024.

²² "Jaga Ketahanan Pangan, Wali Kota Sukabumi Serahkan Insentif Ke LP2B Milik Warga - KDP Kota Sukabumi," accessed October 4, 2024, <https://kdp.sukabumikota.go.id/2023/04/jaga-ketahanan-pangan-wali-kota.html>

as expected by the legal ideals of Protecting Sustainable Food Agriculture. There are several challenges in implementing LP2B including: a. There is no map of sustainable food agricultural land, b. The regulations exist but the map attachment is not described/delineated further in the map attachment or the regulation does not even have a map attachment c. Political factors of local governments who are less concerned about the implementation of LP2B, d. There are no sanctions for regional governments if they do not implement LP2B in their regional regulations.²³ When the government has not yet published a land delineation map, implementing incentives will be difficult because it is not supported by concrete data. On the other hand, agricultural land has been designated in regional regulations for LP2B, so the LP2B policy will have an impact on land management restrictions on land. agriculture for land owners.

Access to Justice for Farmers in the Context of Fulfilling Incentive Compensation

The Sustainable Food Agricultural Land Protection Policy through the LP2B Law is one of its enthusiasms for protecting agricultural land from conversion, Article 17 of Law no. 41 of 2009 determines that "The determination of the Sustainable Food Agricultural Land Protection Plan is contained in the Long Term Development Plan (RPJP), Medium Term Development Plan (RPJM), and Annual Plans both nationally through Government Work Plans (RKP), provincial and district/city."²⁴ In this article, agricultural land is determined at the provincial to district/city levels. In its implementation, the LP2B policy is supported by incentives/disincentives given to farmers as a form of compensation. Apart from that, Article 67 Paragraph (1) determines that "The community plays a role in protecting Sustainable Food Farming Areas and Land." Based on this article, the community has a role in implementing the LP2B policy.

In addition, in Article 38 regarding incentives given to farmers in the form of:²⁵

- a) land and building tax relief
- b) development of agricultural infrastructure;
- c) funding research and development of superior seeds and varieties;
- d) ease of accessing information and technology;
- e) provision of agricultural production facilities and infrastructure;
- f) guarantee of issuance of food agricultural land certificates through sporadic and systematic land registration; and/or
- g) awards for high-achieving farmers.

Therefore, providing incentives is a form of land control so that agricultural land remains suitable for its intended purpose, namely for agriculture, and as a form of compensation after restrictions on agricultural land. Article 41 confirms that "In addition to the incentives as intended in Article 37 letters a to Article 40, the Government, provincial regional governments, and/or district/city regional governments can provide other incentives by their

²³ Endang Dyah Ayu Pitaloka, "Kebijakan Perlindungan Lahan Pertanian Pangan Berkelanjutan Dalam Dimensi Politik Hukum Penataan Ruang," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 49–78.

²⁴ Liat Pasal 17 Undang-Undang No. 41 Tahun 2009 Tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan

²⁵ Liat Pasal 38 Undang-Undang No. 41 Tahun 2009 Tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan

respective authorities." Based on these regulations, the government and regional governments can provide incentives to farmers according to the criteria for providing incentives. The provision of incentives is strictly regulated in the LP2B Law and its derivative regulations, but these regulations do not yet regulate access to justice, or how to sue if incentives are not met.

In forming a regulation, one of the important things is that there is a balance in the legal position between the government and the community. On the one hand, policies are issued by the government for the community by regulating various things. According to Roscoe Pound law is a tool of social engineering law can be interpreted as social engineering, but even though law acts as social engineering,²⁶ On the other hand, the law must also be able to accommodate people's rights. Juridical Analysis in Law No. 41 of 2009 does not yet regulate how farmers can demand that their rights, namely incentive compensation, be fulfilled by the government. The law does not explicitly regulate this. Article 54 Paragraph (1) regulates supervision to achieve Sustainable Food Agricultural Land Protection, regarding the performance of a. planning and determining; b. development; c. utilization; d. coaching; and e. control. Meanwhile, Article 54 Paragraph (2) determines that "Supervision, as intended in paragraph (1), is carried out in stages by the Government, provincial regional governments and district/city regional governments according to their authority." The meaning of this regulation is that supervision focuses on the implementation of LP2B, apart from that the supervision itself is carried out by the Provincial, District/City Governments. Supervision specifically related to providing incentives to farmers has not been regulated in the Law, meaning that farmers, in terms of supervising the implementation of LP2B, are not given space to supervise and carry out prosecutions.

Strictly speaking, the LP2B Law does not yet regulate how the community can prosecute the fulfillment of incentive compensation, if you look closely at the Chapter on Community Participation, Article 67 of Law no. 41 of 2009 including:

- (1) The community participates in protecting Sustainable Food Farming Areas and Land.
- (2) Community participation as intended in paragraph (1) can be carried out individually and/or in groups.
- (3) Participation as intended in paragraph (1) is carried out in stages:
 - a) planning;
 - b) development;
 - c) study;
 - d) supervision;
 - e) farmer empowerment; and/or
 - f) financing.

Based on this article, community participation can be carried out in several matters regulated in Article 67 Paragraph (3), such as planning and so on, while community

²⁶ Sundari, Nata, Fasya Zahra Luthfiah, and Windi Rahmawati. 2024. "Peran Hukum Sebagai Alat Rekayasa Masyarakat Menurut Roscoe Pound". Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat 2 (01). <https://journal.forikami.com/index.php/dassollen/article/view/566>.

participation in terms of fulfilling incentive compensation is not regulated at all in that article. Regarding the obligation to claim compensation, it is actually mentioned in the Elucidation to Article 67 letter h which determines that "demand that protection, empowerment, and incentive rights be fulfilled in accordance with applicable regulations"²⁷ From this explanation, people can actually demand rights such as empowerment, protection, and incentives. However, the body of the regulations does not explicitly regulate how to demand fulfillment of these incentives.

Based on several previous explanations, the Sustainable Food Agricultural Land policy takes the form of a determination carried out by the Provincial, District/City Governments. In State Administrative Law, this provision is a decision that has the character or content of an administrative determination (order) or a decision in the form of a 'sentence' judge which is usually referred to by the term decision.²⁸ This authority is mentioned in Management namely, state administration or government bodies or officials have the authority to administer the state in a form called government administration acts or actions.²⁹ In carrying out their functions, these government bodies or officials must be based on applicable laws and regulations. Usually, this government agency or official issues policies (policy) based on the interpretation he understands. Therefore, in this case, when government officials determine LP2B, they should be based on statutory regulations, in carrying out their authority they must fulfill a sense of justice. Thus, government bodies or officials are servants of the community who pay attention to and formulate policies that concern their (society's) lives. The actions of government bodies or officials must be fulfilled so that they do not deviate from applicable legal regulations (positive law), which tend to cause losses to parties. administrable.³⁰

The actions of government agencies or officials within the scope of public law, sometimes for reasons of public interest and legal certainty, have actually sacrificed the individual rights of the community, both individuals, groups and civil legal entities. Therefore, based on these reasons, this act can be categorized as "an unlawful act by a government agency or official or what is generally known as unlawful government act".³¹ When

²⁷ Liat Penjelasan Pasal 67 huruf H Undang-Undang No. 41 Tahun 2009 Tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan.

²⁸ Jimly Asshiddiqie, "Perihal Undang-Undang", Jakarta : Rajawali Pers, 2020, Cetakan. 5, Hlm. 8

²⁹ Agus Budi Susilo, "Reformulasi Perbuatan Melanggar Hukum Oleh Badan Atau Pejabat Pemerintahan Dalam Konteks Kompetensi Absolut Peradilan Tata Usaha Negara," *Jurnal Hukum Dan Peradilan* 2 (2013): 282–308.

³⁰ Muchsan, Pengantar Hukum Administrasi Negara Indonesia, Liberty, Yogyakarta, 1982, hlm. 74

³¹ Istilah "melanggar hukum" jika mengacu pada terjemahan lihat N.E. Algra, dkk, dalam Kamus Istilah Hukum Fockema Andreae (Belanda-Indonesia), Bina Cipta, Bandung, 1983, hlm.347-348, bukan "melawan hukum", karena, "melawan hukum" identik dengan tindak Pidana. Serta yang dimaksud *onrechtmatige* disini lebih tepat diartikan melanggar hukum, sedangkan "*melawan hukum*" dalam bahasa Belanda dikenal dengan istilah *wedwerrechtelijk*, lihat Ibid, hlm. 677 dan lihat pula Achmad S. Soema di praja, Pengertian serta sifatnya melawan hukum bagi terjadinya tindak Pidana, Armico, Bandung, 1983, hlm. 16. Selanjutnya, menurut Philipus M. Hadjon, onrechtmatig lebih tepat diartikan "melanggar hukum", meskipun ada beberapa pendapat mengartikan "melawan hukum", lebih lanjut beliau menjelaskan bahwa hukum padahal tidak bisa dilawan melainkan hanya bisa dilanggar. Lihat Philipus M. Hadjon, Fungsi Normatif Hukum Administrasi dalam mewujudkan Pemerintahan yang bersih, dalam Pidato penguken sebagai Guru Besar dalam Ilmu Hukum pada Fakultas Hukum Universitas Airlangga, Senin, 10 Oktober 199

government bodies or officials commit acts that violate the law, they can be subject to Article 1365 of the Civil Code, including the government (government). Due to this action, a dispute will arise, where the government agency or official will become a party to the lawsuit because of their actions as state administration when carrying out their duties in the field of public service, causing losses to members of the public (including civil legal entities). This act of state administration is what is called an act of a government agency or official that violates the law, namely wrongful implementation, even though the provisions are legally valid and correct.³² Based on the Administrative Law, the provisions or decisions regarding LP2B land, if the Government Agency or Official does not fulfill its obligations, namely providing incentives and actions that have violated administrative law, then the community can file an administrative lawsuit to fulfill the compensation. However, Law No. 41 of 2009 does not fully regulate how farmers can file a lawsuit, in the administrative sanctions chapter there is no regulation at all regarding legal protection for farmers if the government official has committed an unlawful act.

Model of Lawsuits against Government Officials Who Violate the Law

In State Administrative Law, Government Agencies or Officials have the authority to carry out regulatory actions (to arrange) as well as administration (control)³³. As explained previously, the Sustainable Agricultural Land Protection policy stipulated in Law no. 41 of 2009 Article 17 Decisive determination "The determination of the Sustainable Food Agricultural Land Protection Plan is contained in the Long Term Development Plan (RPJP), Medium Term Development Plan (RPJM), and Annual Plans both nationally through Government Work Plans (RKP), provincial and district/city." Referring to these regulations, LP2B is the authority of the regional government, this determination is used as the basis for drafting zoning regulations.³⁴ This zoning regulation determines that agricultural land falls into several categories, one of which is Sustainable Food Agricultural Land.

Based on this policy, LP2B is included in administrative determination (order) or referred to as a decision by a government body or official. Therefore, if the LP2B determination is violated by the government body or official who issued the decree, it can be sued by the injured party, in this case, the farmer or land owner, because the provision of incentives is hope for farmers, such as fertilizer incentives, tax breaks and so on. as a form of compensation for determining LP2B. However, even though the agricultural land is included in the area of sustainable food farming, many of the incentives provided are not on target and are detrimental to the community. According to Eka et al, providing incentives so that they are right on target must pay attention to the background of the farmer concerned, so that the provision of incentives is right on target.³⁵ Furthermore, providing incentives can be done

³²Susilo, Agus Budi. "Reformulasi Perbuatan Melanggar Hukum Oleh Badan Atau Pejabat Pemerintahan Dalam Konteks Kompetensi Absolut Peradilan Tata Usaha Negara." *Jurnal Hukum dan Peradilan* 2, no. 2 (2013): 291-308.

³³Bagir Manan dan Kuntara Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*, Penerbit Alumni, Bandung, 1997, hlm. 159

³⁴Liat Pasal 20 Ayat (2) UU No. 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan

³⁵Eka N A M Sihombing, "Analisis Kebijakan Insentif Dalam Rangka Perlindungan Lahan Pertanian Pangan

directly and indirectly, such as land and building tax relief including indirect, while assistance with seeds, fertilizer, and other necessary costs includes direct assistance.

The policy of providing incentives is a very good breakthrough, although, on the one hand, there are restrictions on the use of agricultural land which is only focused on agricultural land or cannot be converted to non-agricultural functions. In the implementation of LP2B, especially regarding the provision of incentives, it has not gone well, it is even considered that many lands designated in the LP2B area have not received incentives, even though the government should have fulfilled the compensation for providing incentives. Therefore, according to the author, when government officials who have the authority to determine LP2B promise to provide incentive compensation to farmers and it turns out this is not fulfilled, then the official has violated the law and is detrimental to farmers.

Referring to Article 1 point (1) RI Regulation No. 2 of 2019 concerning Guidelines for Settlement of Disputes on Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) states that "Government Actions are actions of Government Officials or other state administrators to carry out and/or not carry out concrete actions in the context of administering government", Referring to this rule, when the government is silent and does not fulfill concrete actions, it can be said to have carried out government action. The silence of these government officials in the LP2B policy by not fulfilling the incentives has caused material and non-material losses so this action is categorized as violating the law.

In a problem like this, it is considered a violation of the law, but because this action is a determination that falls within the realm of state administrative law, then according to administrative law, if in carrying out the task of carrying out public interests, government bodies or officials carry out many activities or actions. or actions are generally divided into two groups, namely: legal act (group of legal acts) and actual action (class of factual actions).³⁶ According to Krabbe, Kranenburg Vegting, Donner, and Huart, when government agencies or officials use private law in carrying out their duties, then to resolve a specific problem in the field of state administration public law regulations are available, here government agencies or officials must use public law that and cannot use private law.³⁷ However, in the subsequent development of state administrative law, there was a dichotomy in terms of meaning unlawful government act, as explained by Paulus Effendie Lotulung, a civil lawsuit based on P.M.H.P (Unlawful Acts by Authorities or in Dutch terms known as unlawful government act which has so far been a competency in the general court, will then be delegated the authority to examine and try it to the state administrative court or state administration court. So in the state

Berkelanjutan Di Indonesia," *Jatiswara* 36, no. 1 (2021): 1–10.

³⁶ E.Utrecht, *Op.Cit.* hlm. 86-87. Asli pengertian Feitelijke handeling menurut E. Utrecht adalah perbuatan yang bukan perbuatan hukum. Mengenai klasifikasi "golongan yang bukan perbuatan hukum" ini menurut Philipus M. Hajdon terlalu berlebihan, karena secara teoritis tidak ada perbuatan karena jabatan yang bukan perbuatan hukum

³⁷ S.F. Marbun dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2009, hlm.69-70

administrative courts in Indonesia, there will be 2 (two) types or kinds of lawsuits, namely:³⁸

- a. a lawsuit to annul a decision of a government body or official based on a violation of applicable laws and violation of general principles of good government.
- b. claims for material or immaterial compensation based on actions of government bodies or officials that cause material or immaterial losses according to this law.

Until that becomes the subject of the lawsuit (object of the suit) refers to the two types of lawsuits, the first is administrative, namely the cancellation of a state administrative decision, while the second type is a claim for a sum of money in compensation. In lawsuit cases in state administrative courts, two types of cases are distinguished which stand separately, namely:

1. Lawsuit for Cancellation of Decree (recourse for annulment of administrative acts)
2. Lawsuit for Compensation Liability of Authorities/Officials. (recourse for compensation from the liability of public authorities)

According to the author, in the case of non-fulfillment of incentive compensation for land determined by the Provincial, Regency/City regional government into Sustainable Food Agricultural Land which results in restrictions on the use of agricultural land, as well as if incentives are not fulfilled which results in material and material losses for land owners, a lawsuit can be filed because the action violates the law. So it can be done administratively and secondly a compensation claim.

On the other hand, if we refer to the sanctions chapter in Law No. 41 of 2009 Article 70 only regulates administrative sanctions in paragraph (1) which determines that "Every person who violates the obligations or prohibitions as intended in Article 34, Article 45, Article 50 paragraph (2), Article 57 paragraph (3) and paragraph (4) will be subject to administrative sanctions." Furthermore, article 34 Paragraph (1) regulates "Every person who has land rights designated as Sustainable Food Farming Land is obliged to: a. utilize the land according to its intended purpose; and b. prevent irrigation damage". Administrative sanctions are imposed if the land owner does not use the land according to its intended purpose and does not prevent damage, then sanctions will be imposed. The same thing is also regulated in Article 50 Paragraph (2) which determines that "Any person who changes the function of Sustainable Food Farming Land outside of the provisions is obliged to return the land of Sustainable Food Farming Land to its original condition." This article specifically refers to people carrying out conversion to restore the function of the land to its original form. Of the several forms of administrative sanctions, all of them are given to land owners or farmers.

Apart from the administrative sanctions provisions in Law no. 41 of 2009 also regulates criminal provisions, Article 72 Paragraph (1) Regulates "Individuals who change the function of Sustainable Food Farming Land as intended in Article 44 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 1,000,000,000.00

³⁸ Paulus Effendie Lotulung, *Menyongsong Pengesahan Rancangan Undang-Undang Republik Indonesia Tentang administrasi Pemerintahan*, Makalah disampaikan pada Acara Bimbingan Teknis Peradilan Tata Usaha Negara – Mahkamah Agung R.I. pada tanggal 9 Januari di Jakarta, hlm.2

(one billion rupiah)." Furthermore, in Paragraph (2) sanctions are given to individuals who do not carry out the obligation to return Sustainable Food Farming Land to its original condition. Some of these provisions are even criminal, the same as administrative sanctions, which do not regulate the imposition of sanctions on government officials who have designated farmers' land as Sustainable Food Farming Land. If you look closely, the provisions for imposing administrative and criminal sanctions are given because of the Sustainable Food Farming Land policy established by the Provincial, District/City Governments. Based on Law no. 41 of 2009 does not expressly or explicitly regulate compensation sanctions, even though in the previous discussion, when a loss occurs as a result of a government official's decision that can cause material and non-material losses, a compensation claim can be filed.

CONCLUSION

Based on the results of the discussion in this research, it was found that Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, especially regarding the obligation to fulfill incentives in Article 38 paragraphs (1) and (2) which determines that provincial and district/city governments must provide incentives and allocate budget in particular, although it must explicitly provide incentives, the law does not yet regulate prosecution for fulfilling incentives if they are not fulfilled by the government so that in this case there has been injustice for land owners because access to fulfill incentives has not been regulated and there is no legal certainty. . Apart from that, in the sanctions chapter, namely Article 70, regarding types of lawsuits, only administrative and criminal regulations are regulated, whereas there are no civil regulations. Therefore, it is important to revise the provisions regarding claims for fulfilling incentives and includes resolving disputes civilly for compensation, not just administratively and criminally.

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