



Spatial Regulation of Protected Rice Fields through A Notary Law Approach on Freehold Title Splitzing

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Abstract

Protected Rice Field is a legal norm regulated in 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 Stipulation of Protected Rice Fields Map in Regencies/Cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Yogyakarta Special Region Province, East Java Province, Bali Province, and West Nusa Tenggara Province. The purpose of the establishment of the regulation is to control the conversion of rice fields into other functions such as housing, shops, offices and other investment functions. A Notary as an official authorized to make an authentic deed, based on the duties and authorities of a Notary regulated in the Notary Position Act, can also execute the process of splitzing a land certificate by first obtaining a position as a Land Deed Official (referred to as PPAT). Problems regarding protected rice fields in relation to the authority of the Notary in executing the splitzing of the certificates of rice fields are there are obstacles that may emerge in the implementation process due to the issuance of regulations regarding the protected rice fields. This study aims to analyse the public's perception towards the designation of protected rice fields with the provisions of the freehold titles splitzing. The research method used in thi research is normative juridical research. Based on the analysis, the results of this study indicated that in the case splitzing the deeds of rice field land, the notary is still guided by the terms and conditions stipulated by the National Land Agency.

Keywords: certificate splitzing; notary authority; spatial mapping of protected rice field

INTRODUCTION

Food is the primary human need which is at the top of the three basic human needs before clothing and shelter. Fulfilling food needs is part of moral human rights as well as part of economic and social investment for the community (Sakharina, 2021). Asian people, especially Indonesia, make rice as their staple food need. Fulfilling the need for rice as the stapple food ingredient is obtained from agricultural land production. As an agrarian country, Indonesia has got excellent local agricultural biodiversity potential to be developed in order to improve national food security. Nevertheless, considering the current state of agriculture in Indonesia, the ideal of national food security seems increasingly difficult to realise. The main problem in realising the national food security is the conversion of agricultural land, especially rice fields, to other functions such as housing, shops and other industrial centres.

The impact of the excessive and continuous conversion of rice fields is that it brings about threats to national security which is evident by the increase in the imports of rice to Indonesia to meet the rice needs of the community because national rice production is no longer able to meet the needs of the Indonesian people. One of the efforts in realising

national food security is to control the conversion of agricultural land and protection of productive agricultural land which is carried out by issuing laws and regulations which are expected to guarantee the availability of agricultural land, prevent the uncontrolled conversion of agricultural land (rice fields), and able to guarantee access to farming communities to the availability of agricultural land.

Indonesian government has established a regulation concerning the control of protected rice fields with regulations that are related to the determination of protected rice fields (LSD) maps (Kusniati, 2013). Regulations regarding LSD are contained in 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 Protected Rice Fields Map in Districts/Cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Yogyakarta Special Region Province, East Java Province, Bali Province, and West Nusa Tenggara Province. Regulations regarding protected rice fields for several regions in Indonesia have the potential to cause problems, including: potentially inhibiting investment in areas designated as part of the Determination of Protected Rice Fields Map, and the one related to the process of splitzing Freehold Titles (SHM) of rice fields belonging to the protected rice fields status. Investment problems with the status of protected rice fields require coordination between local governments so they do not conflict with the Regional Spatial Planning (RTRW) and Regencial/Municipal Detailed Spatial Plan. Regarding the splitzing of Freehold Titles of rice fields with protected rice fields status, synchronization with the National Land Agency (BPN) and regulations in notarial law relating to the function of the Land Deed Officials (PPAT) need to be made.

Research about the spatial regulation and the the role of notary in conservation have previously conducted.

A result study conducted by Soediro, et al (2020) that conducted about 'Space Planning Oriented Toward the Realization of Sustainable Food Agriculture Land in Banyumas Regency' showed that first, the conversion of agricultural land functions will threaten the balance of the ecosystem. If the agricultural land changes its function, these animals will lose their homes and can interfere with the residents' settlements. Secondly, the existence of agricultural land also makes rainwater utilized properly, thereby reducing the risk of causing flooding during the rainy season. In addition, the result study conducted by Sudini (2020) that examined the role of the notary in Living Environment conservation showed that the role of a notary in Living Environment conservation is very important, remembering the duties and functions of a notary in the community primarily on making a deed, and a notary in carrying out his profession must pay attention to Living Environment conservation (especially the Living Environment on land)considering the notarial deed has implications on the Living Environment such as land deeds, and so on, which are beneficial to the community.

Based on the facts, this study aims to analyse the public's perception towards the designation of protected rice fields with the provisions of the freehold titles splitzing. Thus, the results of this study are expected to provide an overview of the impact of the determination of protected rice fields with the land title certification process as regulated in the BPN rules and Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

METHOD

The research method used in thi research is normative juridical research, completed by a statute approach. This study uses primary legal materials and secondary legal materials. Sources of primary legal materials in this study are 1) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles; 2) Government Regulation Number 24 of 1997 concerning Land Registration; 3) Government Regulation (PP) concerning Amendment to Government Regulation Number 37 of 1998 concerning Regulation of Positions for Land Deed Officials; 4) Law Number 41 of 2009 concerning Sustainable Protection of Food Agricultural Land; 5) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position; 6) Law Number 26/2007 concerning Spatial Planning (UUPR); 7) Presidential Regulation (Perpres) Number 59 of 2019

concerning Control of Rice Field Conversion; 8) Presidential Regulation Number 47 of 2020 concerning Ministry of Agrarian Affairs and Spatial Planning; 9) 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 Stipulation of Protected Rice Field Maps in Regencies/Cities in West Sumatra Province, Banten Province, West Java Province, Central Java Province, Province of the Special Region of Yogyakarta, East Java Province, Bali Province, and West Nusa Tenggara Province. The secondary legal materials used in this research are sourced from the literature that is related to the content of the research, journals and other scientific legal writings that can be used as references in this research. The sources of legal material having been collected were processed qualitatively and systematically so as to produce conclusions/answers to the main problems discussed in this study.

DISCUSSION

Indonesian state has got the basic right of possessing titles to the earth's surface called land. The land titles can be granted and owned by individuals or jointly and by legal entities (Article 4 of UUPA). Definition associated with agricultural land/paddy fields in the explanation of the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs dated January 5, 1961 Number: Sekra 9/1/12 is that what is referred to by agricultural land is all plantation land, ponds for fisheries, land for grazing livestock, scrub land and former state land and forest which is a place of livelihood for those who are entitled. Instruments in spatial planning are very essential and strategic in determining considerations for granting, implementing and controlling land titles. Law No. 26/2007 concerning Spatial Planning (UUPR) stipulates that spatial planning is a form of spatial structure and polarity. The spatial structure represents the arrangement of settlement centres and a network system of infrastructure and facilities that function as a supporter of the socio-economic activities of the community, which hierarchically have functional relationships. Meanwhile, spatial polarity refers to the distribution of spatial designation in an area which includes the designation and protection function of the spatial designation for cultivation functions (Article 17 of UUPR).

Spatial planning activities produce a general spatial plan (RUTR) and a detailed spatial plan (RRTR). Hierarchically, the RUTR consists of a national regional spatial plan (RTRW), a provincial RTRW, and a regencial/municipal RTRW. Meanwhile, RRTR is an operational tool for RUTR consisting of island/archipelagic spatial plans (RTR), strategic areas, and regencial/municipal detailed spatial plan (RDTR), in which the RDTR becomes the basis for drafting zoning regulations. As a system, spatial planning begins with spatial planning, utilization and control of spatial planning. The purpose of spatial planning is to realise effective, efficient use of space and their ability to support sustainable environmental management. Spatial planning avoids wasting space utilization, so as to prevent a decrease in space quality. In its implementation, spatial planning activities are aimed at preventing and controlling. The prevention aspect is a preventive effort through regulations of zoning, licensing, providing incentives and disincentives, while the control aspect tends to curative and disincentive by applying the imposition of sanctions in the form of administrative sanctions, civil sanctions and criminal sanctions for violations of space use (Amri, 2019).

In the context of land control through spatial use structuring, especially regarding the conversion of paddy fields to date, there are three strategic policies, namely:

Presidential Regulation No. 59/2019 concerning Control of Rice Field Conversion;

Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/KBPN) No. 16/2018 concerning Guidelines for the Preparation of RDTR and Regencial/Municipal Zoning Regulations; and

Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 686/ SK-PG.03.03/XII/2019 concerning Stipulation of the National Raw Rice Field Area, covering an area of 7,463,948 hectares issued on December 17, 2019.

Even though it has been based on some of these regulations, implementation of spatial use and land conversion has not produced maximum results. Legal issues that arise

regarding the implementation of regulations related to spatial planning are:

Utilization of spatial planning has not been carried out optimally;

The land on which the tenure rights are granted is not properly utilized by the holders of the rights;

The land conversion that occurred was quite massive, the conversion of agricultural land (rice fields) to non-agriculture and limited human resources in monitoring land use changes occurred rapidly.

Agricultural land/rice fields refer to everything that people are entitled to, other than land for housing and companies. If on a large plot of land stands a house where a person lives, then it shall be the local opinion that determines how much area is considered a yard and how much is agricultural land (Harsono, 2000). Land conversion that occurs on a large scale has appeared as the object of special attention from the government. Fear of uncontrolled land conversion has become the government's focus in maintaining the stability of national food security (Ayunita, 2021). The government cannot immediately stop development for the sake of investment and the progress of the people's economy. However, the government needs to provide firm boundaries so that investment interests with the conversion of land go in parallel with the preservation of productive land as a counterweight to national food security.

Impacts of rice field conversion involve various dimensions of interest, such as (1) threatening the sustainability of food self-sufficiency; (2) reducing labor absorption; (3) waste of investment of both central and local governments; (4) lowering the quality of the environment, and (5) disturbing the establishment of the social structure of the community. In the midst of the rate of conversion of productive food land (rice fields, fields and plantation agricultural land) into productive land for the construction of housing, offices and other economic investments is not balanced with revitalization or development of paddy fields. This is clearly the cause of the increase in rice imports by the government to meet the national needs for rice.

The Ministry of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) has shown its concern by participating in protecting the rice fields to support the national food security movement. The seriousness is manifested in the issuance of regulations regarding the determination of Protected Rice Field Maps (LSD) which are applied to eight provinces in Indonesia. The eight provinces include: the provinces of West Sumatra, Banten, West Java, Central Java, the Special Region of Yogyakarta, East Java, Bali and West Nusa Tenggara. Establishment of protected rice fields is an initiative of the Director General of Land and Spatial Control and Management (Dirjen PPTR), which aims to save rice fields, especially productive rice fields by carrying out an orderly spatial layout that is connected and with integrity. Therefore, as an effort to overcome the problem of national food security and control the conversion of rice fields, the government issued Presidential Regulation (Perpres) Number 59 of 2019 concerning Control of Rice Field Conversion.

The objectives of the Presidential Regulation No. 59 of 2019 concerning Control of Rice Field Conversion and Stipulation of Protected Rice Fields are:

To accelerate the determination of protected rice fields in order to fulfill and maintain the availability of rice fields to support national food needs;

To control the rapidly increasing rice field conversion;

To empower farmers not to convert rice fields;

To provide data and information on rice fields for the determination of Sustainable Food Agricultural Land.

Article 1 point 1 states that rice fields refer to wet and/or dry agricultural land areas that are periodically inundated with water and/or continuously planted with rice and/or interspersed with other seasonal crops. Conversion of land as the entity referred to in Article 1 point 1 of the Presidential Regulation Number 59 of 2019 implies that Rice Field Conversion refers to the change of rice fields into non-rice fields either permanently or temporarily. Article 1 point 3 of the Presidential Regulation Number 59 of 2019 states that

Control of Rice Field Conversion means a series of activities intended to control the change of rice fields into non-rice fields either permanently or temporarily. This is intended with the purpose that rice fields and the stipulation of rice fields can be accelerated to protect the fulfillment and availability of rice fields for national food fulfillment (Adnan).

Determination of protected rice fields maps is closely related to other land policies, including splitzing the freehold titles to agricultural land and the one map policy. The one map policy itself aims to become a reference standard based on a geo-portal that aims to accelerate the implementation of national development. The one map policy has benefits ranging from development that is spatially based and the integrity between space on land, sea in the earth, and air as well as suitability and permits for the use of space for each sector (Silviana, 2019).

Long before the issuance of provisions regarding the conversion of protected rice fields, a regulation through Law Number 41 of 2009 concerning the Sustainable Protection of Food Agricultural Lands was issued (Sihombing, 2021). Considerations of Law Number 41 of 2009 concerning the Sustainable Protection of Food Agricultural Lands are:

Whereas, food agricultural land is a source of prosperity and welfare for the people as mandated in the 1945 Constitution of the Republic of Indonesia;

Whereas, Indonesia is an agrarian country, so it is necessary to ensure the availability of food-agricultural land in a sustainable manner as a source of work and a decent livelihood for humanity, which prioritizes the principles of togetherness, efficiency, justice, sustainability, environmental insight, and independence, as well as by maintaining balance, progress, and national economic unity;

Whereas, the state guarantees the right to food as a human right of every citizen so that the state is obliged to guarantee food independence, security and sovereignty;

Whereas, the increasing population growth as well as economic and industrial growth has resulted in degradation, functional transfer and fragmentation of food agricultural land which has threatened the carrying capacity of the region nationally in maintaining self-reliance, resilience, and maintaining food sovereignty;

Whereas, in accordance with agrarian reforms relating to reorganization of control, ownership, use and utilization of agrarian resources, it is necessary to protect agricultural land for food in a sustainable manner.

It aims to provide protection and develop agricultural areas in order to create self-reliance, security and national food sovereignty. Protection of food availability is balanced with the determination of the Sustainable Food Agricultural Land Area (LP2B) which is stipulated by the Ministry of Agriculture.

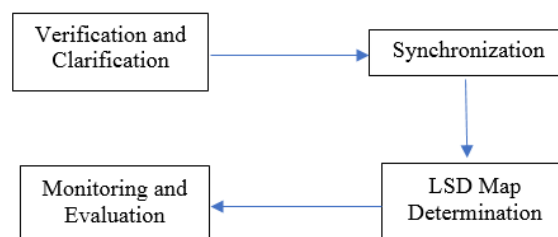


Figure 1. Process Flow of Protected Rice Fields (LSD) Stipulation

In the context of controlling the conversion of rice fields, the government has formed a team to control the conversion of rice fields whose duties are to (Hasanah, 2021):

Coordinate the verification of the determination of the map of protected rice fields;

Carry out synchronization of the results of the verification of rice fields;

Propose the establishment of a map of protected rice fields; and

Carry out monitoring and evaluation of the implementation of controlling the conversion of rice fields.

In Article 4 point 3 of Presidential Regulation Number 59 of 2019 concerning the

Control of Rice Field Conversion, the integrated team for controlling land conversion is chaired by the Coordinating Minister for Economic Affairs and the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency as Daily Chair, and has the members namely a. the Minister of Public Works and Public Housing; b. the Minister of Agriculture; c. the Minister of Home Affairs; d. the Minister of Environment and Forestry; e. the Minister of Finance; f. the Minister of National Development Planning/Head of National Development Planning Agency; and g. the Head of the Geospatial Information Agency. The Rice fields specified in the protected rice field map include: irrigated rice fields and non-irrigated rice fields (Article 7 of Presidential Regulation Number 59 of 2019). After verification of the protected rice fields, further synchronization of the verification results is carried out which includes:

Determining the plan to determine the map of protected rice fields;

Integrating the map of the results of the verification of rice fields carried out by the Minister/head of non-ministerial government agency;

Analyzing the area of protected rice fields; and

Agreeing on a proposed map of protected rice fields.

The stipulated provisions do not always synergize with the provisions concerning the stipulation of protected rice fields. Determination of protected rice fields is felt not through in-depth socialization by assessing the needs of the community. Likewise, it becomes a problem in terms of splitzing agricultural land certificates by the community using the services of a Notaries/Land Deed Officials. Notaries/Land Deed Officials encounter obstacles in splitzing the rice fields. This is because it is a form of anticipation of anxiety from the breakdown of the Freehold Titles which is carried out to convert rice fields into housing and industry.

Stipulation of protected rice fields has resulted in resistance from housing developers who reject the application of the Regulations of Minister of ATR/Head of BPN regarding protected rice fields. The reason is the protected rice fields policy will reap problems bringing about a negative impact on regional investment due to the narrower land for investment due to conflicts with provisions concerning national food security ([Pardomuan, 2021](#)).

Judging from the aspect of the notary law regarding splitzing freehold titles (SHM), the essence of the splitzing of land parcels is a master certificate which is divided from one into several parts, the process of which is carried out through the office of the land agency of which the land is located. Division of land parcels is regulated in Article 48 of Government Regulation Number 24 of 1997 (PP 24 Tahun 1997) and Article 133 of Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (PMNA/ KBPN No. 3 of 1997).

With reference to the provisions of Article 48 paragraph (1) PP No. 24 of 1997, it can be claimed that division of land parcels means division of one registered land parcel into several parts at the request of the title holder concerned. Based on Article 1 point 2 PP No. 24 of 1997, land parcel is part of the earth's surface which is a limited unit of field. The legal consequence of splitting a plot of land is each piece of land becomes a new unit of land with the same legal status as the original plot of the land ([Lesmana, 2020](#)).

Splitzing of freehold titles to land is carried out on the basis of 2 underlying conditions, such as: splitzing due to inheritance distribution and splitzing due to sale and purchase transactions. Splitzing of freehold titles due to inheritance is allowed. The exception is intended as an appreciation and respect for land owners who want to use their respective religious laws in an effort to divide inherited land, so no conditions are needed as in the registration of the transfer of land rights ([Fahrija, 2021](#)).

Splitzing freehold titles based on sale and purchase and grants is a form of rights from one party to another. The requirements that must be met in doing splitzing of rice fields/agriculture include:

Conformity of land use and utilization with the Regional Spatial Plan (RTRW);

Conditions for using land which include maintaining soil and the environment, preventing damage and increasing soil fertility;

It is not allowed to change the use and utilization of land so that it is not in accordance with the function of the area that has been specified in the RTRW;

Compliance with the provisions on the minimum area of ownership of agricultural land, except for inheritance.

The requirements for applying for splitzing freehold titles include:

Filling out the application form;

Completing the identity of the applicant and/or his/her proxy (the power of attorney for splitzing the certificate shall be legalized or ratified by a notary);

Attaching a photocopy of the Land and Building Tax Payable Notice (SPPT PBB) for the last year and proof of payment;

Certificate of land titles to be split;

Annual Tax Payment Proof (SPPT);

Boundary statement letter;

Death certificate/Inheritance certificate.

Regulations regarding land splitting are stipulated in Article 133 paragraphs (2), (3), and (4) of the Regulations of the Minister of State for Agrarian Affairs Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997, which specify as follows:

To obtain new land parcels as a result of splitzing, measurements shall be carried out;

The legal status of the land parcels is the same as the legal status of the original land parcels;

For each registration, a new title number is given and a new certificate of measurement, land book and certificate is made as a replacement number for the title, measurement letter, land book, and the previous land title certificate shall be declared invalid by including notes in it.

Splitzing of land deeds can be done independently or with the help of a notary. Based on Attachment IX to the Regulation of the Head of BPN RI No. 6 of 2008, the time required to split a certificate is fifteen working days. The time is calculated from the time the file is received by the registration section of the Land Office in which the land object is located is complete and measurements have been made (WIJAYA, 2021).

Spatial planning approach as a legal instrument in protecting rice fields as a buffer for national food security is carried out through the direction of controlling the use of space through the regulation of protected rice fields, namely the provisions that regulate the requirements for space utilization and the provisions for its control which are arranged in each zone/area designation.

In fact, allocation of space utilization through the structuring of protected rice fields still causes turmoil and problems. There are obstacles for people who want to purchase and sell rice fields or split the certificates of rice fields. In formal material terms, determination of protected rice fields with certificate splitting carried out with the services of a notary does not have its own rules; in other words, a notary can still do splitzing based on the terms and conditions issued by the national land agency.

Regarding the duties and authorities of a notary, in general a notary is a public official who has duties and authorities related to the making of an authentic deed. In Law Number 2 of 2014 Article 1 paragraph (1) the definition of a Notary is stated, that is to say, a public official who has the authority to make an authentic deed and has other authorities as referred to in the Act or based on other laws. A Notary has the duty and authority to: first, make an authentic deed that contains all actions, agreements and regulations related to the law and/or stakeholders which will later be stated in the form of an authentic contract;

second, correct errors in typing or writing on the deed that has been signed by compiling an official report and providing notes regarding them, and then, send the official report to the party concerned; third, ensure the authenticity of the date of making the deed, save the deed and provide the total price, copies and quotes of the deed; fourth, take care of the bookkeeping of unofficial documents by registering in a special book and make original copies of documents containing the descriptions that have been written and illustrated in the original letters; fifth, validate the conformity of the copy with the original letter (legalization); sixth, provide legal advice regarding the formulation of documents or deeds; seventh, sign the deed of auction record; and eighth, make land-related contracts.

Article 15 of Law Number 30 of 2004 concerning the Position of a Notary explains that a notary has the authority to make a land deed. The role of a notary in making a land deed has strong legal force based on the law. Basically, the law of land certificates made by a notary is valid. Notaries in making land deeds must also act as Land Deed Officials (PPAT). Any notary who does not act as PPAT do not have the competence to make agreements on the transfer of land rights, and this is based on the preamble to the law on the position of a notary.

Rice fields, which are included in the protected rice field map but have not been designated as part of the sustainable food agricultural land mapping in the regional spatial plan, cannot be converted before obtaining a recommendation for land use change from the Minister who administers government affairs in the agrarian/land and spatial planning sector.

CONCLUSION

In order to avoid and prevent the growth and development of various problems in land and spatial planning mentioned above, strategic, decisive and comprehensive steps are needed. These can be achieved through land control and spatial planning policies that are more measurable and directed through the factors that influence them, both from the policy, government and community aspects. As a form of the government's seriousness in creating national food security and anticipating the impact of large-scale land conversion, the government has begun to focus on establishing the Protected Rice Field (LSD) Map. Through Law Number 41 of 2009 concerning Sustainable Protection of Food Agricultural Land, which was later strengthened by Presidential Regulation (Perpres) Number 59 of 2019 concerning Control of Rice Field Conversion, regulations regarding Protected Rice Fields were made and set forth in 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 Stipulation of Protected Rice Fields Maps in Regencies/Cities in the Provinces of West Sumatra, Banten, West Java, Central Java, Special Region of Yogyakarta, East Java, Bali, and West Nusa Tenggara. The issuance of regulations regarding protected rice fields has resulted in resistance from developer entrepreneurs viewing them as narrowing the investment area due to the difficulty of converting agricultural land into non-agricultural land such as housing, shops and other investments. It also has an impact on the process of splitting freehold titles in the form of rice fields at BPN, both personally and through a notary. Judging from the regulations related to protected rice fields, there is no provision regarding the prohibition on splitting rice fields certificates. Splitzing of land certificates is guided by the provisions in Article 133 paragraphs (2), (3), and (4) of the Regulations of the Minister of State for Agrarian Affairs Number 3 of 1997 concerning Provisions for Implementation of Government Regulation Number 24 of 1997. Hence, in the case of splitting of lands in the freehold titles executed by a notary, it can be carried out based on these provisions on the duties and authorities of a notary as regulated in Article 15 of Law Number 30 of 2004 concerning the Position of a Notary, because a notary only performs splitzing of rice field land certificates, not converting the agricultural land to their functions other than agriculture/rice fields.

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