

## *Vague Norms of Population Density in Land Control Regulation*

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### *Abstract*

*This study aims to examine the vagueness of population density criteria stipulated in Article 3 paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) No. 18 of 2016 and to formulate a normative reformulation that ensures legal certainty in agricultural land ownership restrictions. The core legal problem lies in the absence of explicit quantitative parameters defining “dense” and “non-dense” areas, which renders the regulation difficult to implement and prone to subjective administrative discretion. Employing normative legal research with a statutory and conceptual approach, this study analyzes the internal coherence of agrarian regulations and evaluates their compatibility with the principle of *lex certa*. The analysis reveals that the reliance on outdated qualitative demographic classifications, originating from population standards of the 1960s, is no longer responsive to contemporary demographic dynamics and has generated legal uncertainty as well as risks of land ownership concentration. The novelty of this research lies in proposing an operational and prescriptive legal construction that integrates objective population density ratios (persons per km<sup>2</sup>), based on official data from the Central Statistics Agency (BPS), into the regulatory framework. This quantitative approach replaces elastic qualitative labels with measurable indicators, thereby strengthening transparency, consistency, and enforceability of land control policies. The findings confirm that the absence of numerical benchmarks constitutes a legal loophole that undermines agrarian justice and weakens state control over land ownership. Consequently, the study concludes that reformulating Article 3 paragraph (3) through the incorporation of objective demographic parameters is essential to enhance legal certainty, prevent land monopolization, and reinforce equitable land governance in Indonesia.*

**Keywords:** *Agrarian Reform; Land Restrictions; Legal Certainty; Legal Reform; Population Density*

### **1. INTRODUCTION**

Land plays a central role in human survival, not only as a place to live but also as a primary means of production, especially in agrarian countries such as Indonesia. The Constitution, through Article 33 paragraph (3) of the 1945 Constitution, emphasizes that the earth and natural resources are controlled by the state for the prosperity of the people.<sup>1</sup> However, this ideal of equality faces serious challenges as population growth outpaces land availability. Land ownership inequality has become a tangible phenomenon; wealthy individuals can control vast tracts of land, while small farmers are increasingly marginalized. This situation requires the state to regulate ownership restrictions so that land does not become a monopolized commodity that undermines social justice.<sup>2</sup>

The reality on the ground shows a significant decline in agricultural land from year to year, which threatens national food security. Based on the data collected, the downward

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<sup>1</sup> Baharuddin et al., “The Essence of The State’s Right to Control Land for People’s Prosperity According to Article 33 Of The 1945 Constitution,” *Veredas Do Direito* 22, no. 2 (2025): 2, <https://doi.org/10.18623/rvd.v22.n2.3291>.

<sup>2</sup> Erly Aristo et al., “Establishment of Special Land Courts as an Effort to Settlement of Land Cases,” *Jurnal Ius Constituendum* 8, no. 3 (2023): 458, <https://doi.org/10.26623/jic.v8i3.7837>.

trend in agricultural land area in Indonesia is clearly evident in the last five years, as presented in the following table:

**Tabel 1:** Agricultural Land Area in 2020-2024

Year	Agricultural land area (million)
2020	10,66
2021	10,41
2022	10,45
2023	10,21
2024	10,05

(Source: Indonesian Central Statistics Agency (BPS))

Based on the data in Table 1, there is a year-on-year decline in agricultural land supply in Indonesia. Since most of the land is used for agriculture, its existence must be regulated by law by the state so that it is not used arbitrarily by any party. Currently, farmers' ownership of agricultural land is declining rapidly due to the mismatch between the population's need for agricultural land and the availability of agricultural land.<sup>3</sup>

**Figure 1:** Classification of Agricultural Land Area Controlled

**Golongan Luas Lahan Pertanian yang dikuasai**

\*Berdasarkan Data Tahun 2018



Chart: Aulia Mutiara Hatia Putri - Source: BPS - Created with Datawrapper

(Source: Central Statistics Agency (BPS))

Based on the Figure 1, according to the Central Statistics Agency (BPS), 15,890,427 farmers own land of less than 0.5 ha, in addition to that, 4,338,150 farmers have land of 0.5-0.99 ha, there are 3,813,525 who have agricultural land of 1-1.99 ha, as many as 1,570,033 have agricultural land of 3-3.99 ha, as many as 517,831 have agricultural land of 4-4.99 ha, as many as 228,908 farmers have agricultural land of 5-5.99 ha, as many as 79,603 farmers have agricultural land of more than 10 ha. Farmers' land ownership and rights are increasingly being eroded by the government not regulating agricultural land ownership.

<sup>3</sup> Florianus Sp Sangsun, *Tata Cara Mengurus Sertifikat Tanah : Dasar Hukum Pendaftaran Tanah, Jenis-Jenis Sertifikat Tanah, Proses Pendaftaran Tanah* (Visimedia, 2007), 1, <https://dpk.kepriprov.go.id/opac/detail/j7hzy>.

This decline in land area is exacerbated by an unequal ownership structure, where the majority of farmers control less than 0.5 hectares of land.<sup>4</sup> To address this issue, the government has actually had legal instruments in place for a long time, starting with the Basic Agrarian Law (UUPA) of 1960 and its implementing regulations, namely Law No. 56/Prp/1960 concerning the Determination of Agricultural Land Area.<sup>5</sup> In its development, technical regulations on land ownership control were updated through Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (PERMEN ATR/BPN) No. 18 of 2016. This regulation aims to limit the maximum area of agricultural land ownership per individual based on the population density in a region.<sup>6</sup>

However, the implementation of PERMEN ATR/BPN No. 18 of 2016 leaves fundamental legal issues unresolved. Article 3, paragraph (3) of the regulation sets ownership limits based on area categories: "not dense" (maximum 20 ha), "less dense" (12 ha), "moderately dense" (9 ha), and "very dense" (6 ha).<sup>7</sup> The main problem is the absence of quantitative parameters or detailed explanations of what is meant by these density categories in the regulation. The absence of clear indicators creates vague norms, which ultimately confuse policy implementers in the field and the community, and open up loopholes of legal uncertainty.

The ambiguity of the norms in Article 3 paragraph (3) of the Regulation of the Minister of ATR/BPN No. 18 of 2016, particularly the absence of quantitative parameters to technically measure the category of 'population density', creates a major urgency for this research. Without clear and measurable indicators, the regulation on land ownership restrictions is ineffective and vulnerable to subjective interpretation by policy implementers in the field. This condition fundamentally thwarts the core objective of agrarian reform, namely equalizing land ownership and control, and hinders the state's efforts to achieve legal certainty and social justice in the agrarian sector. Therefore, comprehensive research is needed to analyze this technical legal vacuum and offer improvements that ensure the regulation can be implemented effectively and objectively.

Based on the identification of the problem and urgency, this study aims to offer a concrete solution in the form of a reformulation concept for Article 3 paragraph (3) of the Regulation of the Minister of ATR/BPN No. 18 of 2016. The proposed reformulation focuses on providing clear and measurable quantitative parameters, with reference to official standards such as population density data from the Central Statistics Agency (BPS), as a basis for determining the maximum limit category of land ownership. With these objective parameters, it is hoped that the ambiguity of norms can be eliminated, ensuring that the rules can be implemented effectively, and realizing the main objective of the regulation, namely Legal Certainty.

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<sup>4</sup> Humas BRIN, "BRIN Ungkap Sektor Pertanian Tumbuh Stagnan di Bawah 3 Persen dalam 25 Tahun Terakhir," [brin.go.id](https://brin.go.id), 2024, <https://brin.go.id/ortkpekm/posts/kabar/brin-ungkap-sektor-pertanian-tumbuh-stagnan-di-bawah-3-persen-dalam-25-tahun-terakhir>.

<sup>5</sup> Johans Kadir Putra and Maulidia Rani, "Harmonization of Regulations on Agricultural Land Restrictions for Farmers in Land Reform Program," *Jurnal De Jure* 13, no. 2 (2021): 55, <https://doi.org/10.36277/jurnaldejure.v13i2.546>.

<sup>6</sup> Willa Wahyuni, "Begini Aturan Batas Maksimal Kepemilikan Tanah di Indonesia," [hukumonline.com](https://www.hukumonline.com/berita/a/begini-aturan-batas-maksimal-kepemilikan-tanah-di-indonesia-lt659d5734514e3/), 2024, <https://www.hukumonline.com/berita/a/begini-aturan-batas-maksimal-kepemilikan-tanah-di-indonesia-lt659d5734514e3/>.

<sup>7</sup> Khatibul Umam, "Eksistensi Larangan Kepemilikan Tanah Secara Latifundia Berdasarkan Peraturan Menteri Agraria Nomor 18 Tahun 2016 Tentang Pengendalian Penguasaan Tanah Pertanian (Studi di Desa Sejati Kabupaten Sampang)" (Universitas Islam Malang, 2020), 4, <http://repository.unisma.ac.id/handle/123456789/1803>.

The issue of limiting agricultural land ownership has been the subject of intense academic discussion, but the majority of the literature still leaves constitutional gaps at the technical implementation level. Thematically, previous research can be categorized into two large groups. First, studies focus on the philosophical dimension and principles of justice. Julian (2023), for example, examines the *Latifundia* principle (the prohibition on large-scale land ownership) using a substantive justice approach. While normatively sound as a foundation of values, this study is so abstract that it fails to offer operational solutions to the reformulation of technical norms.<sup>8</sup> The next group of studies focuses on the harmonization of macro-level policies and regulatory frameworks. Putra (2021) conducted a historical review of the harmonization of land area restrictions in the agrarian reform program,<sup>9</sup> while Mariane (2024) analyzed the threat of land conversion following the enactment of the Job Creation Law. Furthermore, Kadir (as cited in related literature) provides a foundational understanding of the urgency of synchronizing agrarian regulations from the UUPA era to the present.<sup>10</sup> However, the studies in this group tend to be macro-level and have not yet deeply examined the issue of vague norms within implementing regulations.

A fundamental weakness of the existing literature, which highlights the general ineffectiveness of regulation, is the neglect of the ambiguity of the quantitative parameters in Article 3 Paragraph (3) of the Minister of ATR/BPN Regulation No. 18 of 2016. The article uses the term "population density" as a control instrument, but does not establish clear numerical standards or limits. This unclear norm has direct implications for the emergence of legal uncertainty, policy inconsistencies at the regional level, and opens up loopholes for monopolistic land ownership practices that are detrimental to small farmers. This research is here to fill this legal gap by positioning itself as a prescriptive-solution study. In contrast to Julian's philosophical study or Putra's macro-harmonization study, this research specifically focuses on the deconstruction and reformulation of the technical norms in Article 3 Paragraph (3) of the Minister of ATR/BPN Regulation No. 18/2016.<sup>11</sup> The novelty offered is the formulation of operational concepts regarding population density parameters based on factual and objective data (such as data from the Central Statistics Agency/BPS). Thus, this research aims to reformulate the norms for limiting agricultural land ownership so that they have measurable benchmarks, in order to guarantee legal certainty while realizing equitable land distribution.

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<sup>8</sup> Vanessa Julian, "Penerapan Asas *Latifundia* Atas Penguasaan Tanah Pertanian Berdasarkan Nilai Keadilan" (Universitas Sriwijaya, 2023), 10, [https://repository.unsri.ac.id/129636/2/RAMA\\_74102\\_02022682125035\\_0011116302\\_01\\_front\\_ref.pdf](https://repository.unsri.ac.id/129636/2/RAMA_74102_02022682125035_0011116302_01_front_ref.pdf).

<sup>9</sup> Putra and Rani, "Harmonization Of Regulations On Agricultural Land Restrictions for Farmers in Land Reform Program," 55.

<sup>10</sup> Irene Mariane et al., "Problems of Converting Agricultural Land and the Need to Anticipate Its Control After the Enactment of the Job Creation Law," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2024, 194, <https://doi.org/10.24090/volksgeist.v7i1.10473>.

<sup>11</sup> Audry Zefanya and Fransiscus Xaverius Arsin Lukman, "Tolak Ukur Pemenuhan Penguasaan Fisik Atas Tanah Melalui Surat Pernyataan Penguasaan Fisik Bidang Tanah," *Jurnal USM Law Review* 5, no. 2 (2022): 441, <https://doi.org/10.26623/julr.v5i2.4878>.

Studies on restrictions on agricultural land ownership can be categorized into several thematic groups. First, studies focus on sociological aspects and the impact of absentee land on farmer welfare. Second, studies focus on the dynamics of land use change in general as a consequence of economic development. Despite making important contributions, the current research landscape reveals a gap in normative-technical studies. No studies have been found that conceptually examine normative standards for population density as an instrument for controlling land ownership.

This research is here to fill this gap by conducting an in-depth analysis of Article 3 Paragraph (3) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) Number 18 of 2016. The core legal issue that is the focus of this research is the occurrence of vague norms related to the phrase "population density". From a legal theory perspective, a regulation must fulfill the principles of *lex certa* (clear) and *lex stricta* (strict).<sup>12</sup> The absence of definite numerical limits or population ratios in determining the category of "dense" or "non-dense" areas makes this article an "open-ended norm" that is susceptible to multiple interpretations.

This ambiguity in norms is not merely a matter of semantics but has serious practical implications. This ambiguity triggers legal uncertainty, inconsistencies in the implementation of land policies in various regions, and increases the risk of monopolization of land ownership by certain parties. If the quantitative parameters used are unclear, fair enforcement of agrarian law becomes impossible, and the spirit of land distribution mandated by the Basic Agrarian Law (UUPA) and the Constitution will remain merely a rule on paper.

This integrated research aims to deconstruct the legal criteria for determining population density in agricultural land ownership restriction policies in order to identify points of vague norms that have triggered legal uncertainty and inconsistencies in implementation in the field. Through this in-depth analysis, this research is directed at formulating a concept for reformulating Article 3 Paragraph (3) of the Minister of ATR/BPN Regulation No. 18 of 2016 by integrating objective and measurable quantitative parameters to replace qualitative standards that are open to multiple interpretations with norms that fulfill the principle of *lex certa*. By focusing on preventive efforts against the risk of land ownership monopoly and agrarian distribution injustice, the proposed new formulation is expected to provide a real contribution in strengthening the national land law structure that is more oriented towards legal certainty and protection of farmers' rights.

The novelty of this research lies in its proposed operational concept that integrates factual population data (such as BPS data) into legal norms. This research's contribution is expected to strengthen legal certainty and achieve more concrete agrarian justice for all Indonesians.

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<sup>12</sup> Deswita Abellia, *Mengenal Asas Legalitas Sebagai Fondasi Keadilan Pidana*, General, September 30, 2025, <https://www.hukumku.id/post/asas-legalitas/>.

## 2. METHOD

This research is normative legal research (doctrinal research) that focuses on the analysis of positive legal norms and principles of agrarian law. This method was chosen based on the need to examine the internal coherence and vertical synchronization of agricultural land tenure regulations, particularly to address the issue of vague norms that cannot be resolved through empirical observation alone.<sup>13</sup>

The approaches used in this research include the statute approach and the conceptual approach. The statutory approach is used to systematically examine the regulatory hierarchy, starting from the Basic Agrarian Law (UUPA) to the implementing regulations in Article 3 Paragraph (3) of the ATR/BPN Regulation No. 18 of 2016. Meanwhile, the conceptual approach is used as an argumentative tool to dissect the doctrine of legal certainty and population density limits, which then become the basis for building new norm construction.<sup>14</sup>

The legal materials used in this study are systematically classified into three categories: primary legal materials in the form of authoritative legislation, such as the Basic Agrarian Law (UUPA), the Job Creation Law, and Regulation of the Minister of ATR/BPN Number 18 of 2016. These are then reinforced by secondary legal materials in the form of scientific literature, legal journals, and previous research results relevant to the land policy discourse. Furthermore, tertiary legal materials such as legal dictionaries and encyclopedias are also used as supporting instruments to provide accurate interpretations of the legal technical terms that appear in the analysis.<sup>15</sup>

The legal materials were analyzed using normative qualitative analysis techniques with prescriptive reasoning.<sup>16</sup> Through systematic and historical interpretation, this research goes beyond describing the ineffectiveness of regulations and progresses to providing prescriptions or proposing legal solutions. The analysis was conducted coherently to produce a measurable reformulation of norms oriented toward agrarian law reform that ensures certainty and justice for stakeholders.

## 3. RESULTS AND DISCUSSION

### 3.1 Criteria For Determining The Population Density of an Area In Terms of Restrictions on Agricultural Land Ownership

The history of land regulation in Indonesia shows a dynamic philosophical transformation, moving from colonial exploitation to the ideal of social justice. During the colonial period, the principles of *Domein Verklaring* and *Agrarische Wet 1870* placed land solely as a commercial object for foreign investors, which triggered extreme inequality

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<sup>13</sup> Dyah Ochtorina Susanti and A'an Efendi, *Penelitian Hukum: Legal Research*, ed. Maya Sari, Cetakan 1 (Jakarta: Sinar Grafika, 2022)

<sup>14</sup> Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum* (Malang: Bayu Media Publishing, 2012).

<sup>15</sup> Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2002).

<sup>16</sup> Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Prenada Media Group, 2017).

where indigenous farmers became laborers on their own land.<sup>17</sup> This situation was then completely overhauled by the Old Order government through the Basic Agrarian Law (UUPA) of 1960 and Law No. 56 Prp of 1960 concerning the Determination of Agricultural Land Area.<sup>18</sup> The main spirit was populist and anti-feudal land reform, with the principle of "land for cultivators" in order to eliminate the dominance of landlords and distribute prosperity evenly among the farming community.

However, the pendulum of agrarian policy shifted dramatically with the advent of the New Order era. The orientation of land law changed from social equality to an instrument supporting economic growth and investment.<sup>19</sup> Land was treated as a "strategic commodity" for industrial and infrastructure development, which often marginalized the rights of small farmers in the name of public interest or economic stability.<sup>20</sup> This paradigm shift led to the implementation of restrictions on agricultural land area not being maximized, as the government focused more on land acquisition for development than on monitoring the maximum limits of individual ownership. As a result, land ownership inequality widened again, and the spirit of land reform faded, buried under the agenda of industrialization.

The philosophical transformation of land regulation in Indonesia, which shifted from colonial exploitation to the ideal of social justice, in reality still leaves substantial weaknesses at the level of implementing norms. Although the spirit of populism and agrarian reform, "land for the tiller," was fundamentally laid down in the 1960 Basic Agrarian Law (UUPA) and Law No. 56 Prp of 1960, there is a sharp disconnect when this principle is translated into technical control instruments.<sup>21</sup> The paradigm shift from social justice to strategic commodities during the New Order era has inherited a regulatory structure that prioritizes economic stability over the firmness of land ownership boundaries. This has implications for the emergence of elastic and non-deterministic norms governing land ownership restrictions.

The substantial weakness, or vague norms, in this context emerges explicitly in the criterion of "population density" as a benchmark for land ownership restrictions. Conceptually, there is a tension between the regulatory objective of achieving equitable land distribution and the normative reality provided. The principle of legal certainty requires a clear norm (*lex certa*), but population density criteria in implementing regulations are often

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<sup>17</sup> Mutiara Zulyanti et al., "Dampak Kebijakan Agraria Pemerintah Kolonial Belanda Terhadap Kondisi Sosial Ekonomi Petani Di Pulau Jawa, 1870-1940," *Fajar Historia: Jurnal Ilmu Sejarah Dan Pendidikan* 9, no. 2 (2025): 346, <https://doi.org/10.29408/fhs.v9i2.31774>.

<sup>18</sup> Muhammad Aziz Zaelani et al., "Mewujudkan Pendaftaran Tanah Yang Responsif Pada Era Disrupsi Sebagai Penunjang Kesejahteraan Rakyat," *Jurnal USM Law Review* 5, no. 1 (2022): 346, <https://doi.org/10.26623/julr.v5i1.4877>.

<sup>19</sup> Mira Ardilla Lubis et al., "Reformasi Agraria Dan Dampaknya Terhadap Perekonomian Indonesia Pada Era Orde Lama Dan Orde Baru," *Analisis Sejarah: Mencari Jalan Sejarah* 14, no. 2 (2024): 50, <https://doi.org/10.25077/jas.v14i2.125>.

<sup>20</sup> Mulyono Makmur Khudori and Sadar Subagyo, *Mengarusutamakan (Kembali) Pembangunan Pertanian* (Fadli Zon Library Kerjasama dengan Himpunan Kerukunan Tani Indonesia (HKTI), 2024), 125, <http://fadlizonlibrary.com/files/HKTI.pdf>.

<sup>21</sup> Embun Sari et al., "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* 7, no. 1 (2022): 51, <https://doi.org/10.26623/jic.v7i1.4390>.

presented only qualitatively without definitive quantitative parameters. This ambiguity is not merely a wording flaw, but a dangerous legal vacuum, as it provides excessive discretion for implementing officials.

From the perspective of land law principles, the unclear definition of "dense" or "non-dense" in Article 3 paragraph (3) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency No. 18 of 2016 creates systemic legal uncertainty. The practical impact is the emergence of policy inconsistencies across regions; an area may be considered dense by one authority but loosely populated by another due to the lack of a standard population-to-land area ratio. This situation directly weakens the state's control over land ownership and actually opens up opportunities for land accumulation, contrary to the spirit of Articles 7 and 17 of the Basic Agrarian Law.

Furthermore, there is a tension between the regulatory authorities' intention to control land ownership and the legal instruments used. Regulations that should serve as a protective instrument for smallholder farmers have instead become impotent due to the lack of clarity in their operational indicators. Without a reformulation that includes measurable numerical standards, population density criteria will remain mere paper rules that fail to protect agrarian sovereignty from the threat of land monopoly by a handful of parties. Therefore, the urgency of introducing quantitative parameters (such as the ratio of people per square kilometer) is an absolute prerequisite for returning land law to its core values of justice and legal certainty.

Entering the Reformation era until the current administration, the spirit of restructuring the agrarian system has been revived through the Agrarian Reform program (Presidential Regulation No. 86 of 2018) and the issuance of technical regulations such as Permen ATR/BPN No. 18 of 2016 concerning Control of Agricultural Land Ownership. This regulation aims to update land ownership limits to reflect current demographic conditions. However, the good intentions of this regulation are undermined by substantial weaknesses in the formulation of its norms. As found in legal analysis, there is a lack of technical explanation regarding the parameter of "population density," which is the main benchmark for land area restrictions.

The absence of an operational definition of what is meant by "sparsely populated," "less densely populated," "moderately densely populated," and "very densely populated" areas in Article 3 paragraph (3) of Permen ATR/BPN No. 18 of 2016 creates legal uncertainty (*rechtsonzekerheid*). Without clear quantitative indicators, such as the ratio of population per square kilometer, this article is difficult to enforce in the field and is prone to subjective interpretation by the competent authorities. The ambiguity of this norm not only hinders the effectiveness of land control, but also contradicts the principle of *lex certa* (the law must be clear), which is an absolute requirement in the formulation of legislation, making reformulation of the rule an urgent necessity in order to achieve substantive agrarian justice.

Hierarchically, restrictions on agricultural land ownership are firmly based on Articles 7 and 17 of the 1960 Basic Agrarian Law (UUPA), which prohibit land ownership beyond certain limits in order to prevent monopolies that are detrimental to the public interest. This mandate was then executed through Law No. 56 Prp of 1960, which set thresholds for land area based on population density categories: "not dense," "less dense," "moderately dense," and "very dense".<sup>22</sup> However, legal problems arose because this law did not define the density figures itself, but referred to implementing regulations issued in the same era. Without an update to the definition at the law level, these density terms became "empty shells" that were prone to subjective interpretation in the modern era.

The root of this legal uncertainty lies in the reference to outdated technical indicators, namely the Minister of Agrarian Affairs Decree No. Sk/978/Ka/1960. This decree previously set concrete figures: "sparsely populated" areas were defined as those with a density of up to 50 people/km<sup>2</sup>, while "very densely populated" areas were those with a density of over 401 people/km<sup>2</sup>.<sup>23</sup> These figures were very relevant in 1960 when Indonesia's population was still around 90 million, but they are unreasonable if applied wholesale today, when demographic explosions and migration have drastically changed the population map. As a result, almost all areas in Java can now be categorized as "very dense" if we refer to the old standard, which automatically narrows farmers' land ownership rights extremely and disproportionately.

In addition to the issue of land area, regulatory inconsistencies are also evident in the handling of absentee land ownership (*guntai*), which is the ownership of agricultural land by people who reside outside the subdistrict where the land is located. Article 10 of the UUPA, in principle, requires agricultural land owners to actively cultivate their land to prevent speculation and land abandonment.<sup>24</sup> Although this prohibition was reaffirmed in subsequent regulations, its effectiveness was weakened because the criterion of "population density," which was one of the variables determining absentee exemptions, also had an ambiguous meaning. This created a legal loophole whereby landlords could circumvent the domicile rule due to the unclear status of their area's population density.

Responding to this regulatory chaos, the government issued Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2016 on Control of Agricultural Land Ownership. This regulation was introduced with a new spirit to reduce land ownership inequality and ensure food security.<sup>25</sup> Although this regulation reaffirms the

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<sup>22</sup> Rani Rizkiyanti, "Kedudukan Hukum Pemegang Hak Milik Atas Tanah Pertanian Yang Melebihi Batas Maksimum," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 23, no. 3 (2018): 169, <https://doi.org/10.30742/perspektif.v23i3.663>.

<sup>23</sup> Nurhayati Nuirhayati, "Pelaksanaan Redistribusi Tanah Obyek Landreform Di Kecamatan Semarang Barat Kota Semarang" (masters, Universitas Diponegoro, 2006), 37, <https://eprints.undip.ac.id/15762/>.

<sup>24</sup> Marwiyah Marwiyah et al., "The Effectiveness Of The Absentee Land Ban In Realizing Social Justice For Farmers," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 5786, <https://doi.org/10.31941/pj.v24i2.6100>.

<sup>25</sup> Wildan Mahmud Hanafi and Suratman, "Agricultural Land Control Based on the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016

maximum area limits (20 hectares for non-densely populated areas to 6 hectares for highly densely populated areas), unfortunately, it is not accompanied by a reformulation or new indicators of "population density" that are more relevant to 21st-century demographic conditions. The absence of updated quantitative parameters means that the Ministerial Regulation seems to inherit the "inherent flaws" of its predecessor, so that its implementation in the field is often hampered by the lack of precise technical guidelines.

The government's efforts to reorganize agricultural land ownership cannot be separated from the strategic role of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). The merger of two major functions, namely agrarian affairs and spatial planning, into one ministry during President Joko Widodo's administration aims to eliminate sectoral egos and harmonize the "*One Map Policy*" so that natural resource management becomes more efficient and equitable in accordance with the mandate of the constitution.<sup>26</sup> This step is in line with the Nawacita agenda, which targets legal certainty of land ownership rights and land redistribution through agrarian reform for the welfare of the people, not just for a handful of capital owners.<sup>27</sup> However, this good institutional intention faces legal challenges when the resulting legal product, namely ATR/BPN Ministerial Regulation No. 18 of 2016, is tested for its position in the national legal system.

A fundamental problem arises when examining the hierarchy of laws and regulations based on Law No. 12 of 2011. In this hierarchy, Ministerial Regulations are not explicitly included in the main hierarchy (such as laws or government regulations), but are recognized as binding regulations as long as they are mandated by higher regulations or formed based on authority. The problem is that Ministerial Regulations should ideally only regulate technical-administrative or procedural matters. When a Ministerial Regulation regulates substantial matters such as restrictions on citizens' rights to agricultural land without a clear and detailed delegation from a new law or government regulation, its legal force becomes vulnerable to debate.

This condition creates a serious legal loophole known as the disparity between regulatory authority and the hierarchy of norms. In legislative theory, a minister's authority to formulate regulations should be obtained through delegated legislation from higher regulations, not solely based on the authority of their position. Because Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2016 refers to an old law (Law No. 56 Prp of 1960) whose technical criteria are outdated, this regulation seems to "stand alone" without a strong operational basis from modern Government

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Concerning Control of Agricultural Land Tenure," *Journal of Law, Politic and Humanities* 5, no. 4 (2025): 2725, <https://doi.org/10.38035/jlph.v5i4.1617>.

<sup>26</sup> Doran Contributor, "Mengenai One Map Policy Dan Dampaknya Di Indonesia," *Doran.Id*, September 6, 2024, <https://doran.id/one-map-policy/>.

<sup>27</sup> Jesse Heber Ambuwaru et al., "The Politics of Land Law and the Implementation of the Agrarian Reform Program in Indonesia," *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 3, no. 5 (2023): 1445, <https://doi.org/10.54443/ijerlas.v3i5.1013>.

Regulations (PP).<sup>28</sup> These risks make the land restriction regulation considered merely a policy rule (*beleidsregel*), which has less binding force than full legislation.

The weak hierarchical position has a direct impact on the effectiveness of law enforcement in the regions. Local governments are often hesitant or unwilling to harmonize their Regional Regulations (Perda) with the Ministerial Regulation because they consider its legal position to be "ambiguous" and potentially contrary to regional autonomy. Coupled with the absence of a concrete definition of "population density" in the body of the regulation itself, legal uncertainty becomes even more layered. Therefore, legal reformulation is needed not only in terms of the content of the articles, but also in terms of improving the legal form, ideally into a Government Regulation or new Law, so that it has unquestionable legitimacy in limiting land ownership for the sake of social justice.

Throughout the history of Indonesian law, the rules regarding the hierarchy of legislation have undergone seven changes, reflecting the state's evolving political dynamics and needs over time.<sup>29</sup> Currently, the main reference is Law Number 12 of 2011, which arranges the order of legal force starting from the 1945 Constitution at the top to Regional Regulations at the bottom. However, there is a unique position for Ministerial Regulations; this type of regulation is not included in the main hierarchy list (Article 7), but is recognized in a separate article (Article 8) as a binding regulation as long as it is mandated by a higher regulation or formed based on the minister's own authority.

This position "outside the main hierarchy" often triggers legal debates, particularly regarding its binding force. Theoretically, a Ministerial Regulation should ideally be created in response to a direct order or "delegation" from a higher authority, such as a Law or Government Regulation. If a Ministerial Regulation is formed solely based on the "authority" of the minister's position without a specific order from the law, then the legal product risks being considered only as a policy rule (*beleidsregel*) or internal administrative rule, not as a statutory regulation that has full binding force on the public.

This condition is a crucial point in the application of land restriction rules in the regions. Because Regional Regulations (Perda) are part of the official hierarchy, local governments often face a compliance dilemma when faced with Ministerial Regulations whose legal basis is considered weak or does not have a clear delegation from higher regulations. Therefore, for Ministerial Regulation ATR/BPN No. 18 of 2016 to be complied with and effectively implemented by local governments in restricting land ownership, the regulation must be based on higher-level legislation (such as a Government Regulation or Law), not merely on the minister's policy initiative.

The urgency of reorganizing land tenure in Indonesia is increasingly undeniable when looking at statistical data that shows a drastic decline in productive rice fields. It is noted that the area of rice fields, which had previously been stable at 8.1 million hectares during

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<sup>28</sup> Qurrata Ayuni, "Optimizing Land Use Laws: A Comprehensive Revision of Law No. 56 of 1960 on Agricultural Land Area," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 3, no. 2 (2023): 220, <https://doi.org/10.51825/sjp.v3i2.22487>.

<sup>29</sup> Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan* (Jakarta: Sinar Grafika, 2021).

the period 2010 to 2017, suddenly declined sharply to 7.1 million hectares in 2018 due to the massive conversion of land for infrastructure and settlement development in line with population growth. This phenomenon occurred even though the government had issued a legal umbrella for land protection through Law Number 41 of 2009 (PLP2B), which signifies that physical protection of land is not enough without strict control of land ownership structures. Therefore, the principles of Land Reform as stipulated in Articles 7, 10, and 17 of the 1960 Basic Agrarian Law (UUPA) have once again become an absolute foundation for preventing land monopoly by capital owners and ensuring fair access for farmers.<sup>30</sup>

As a technical control instrument, the government uses Law No. 56 of 1960, which explicitly limits agricultural land ownership to a maximum of 20 hectares per family, whereby excess land must be taken over by the state with compensation and then redistributed to farmers in need. Although the spirit of this regulation was effective during the Old Order era, its implementation suffered a serious setback during the New Order era, which was less serious in carrying out the people's agrarian agenda, so that the practice of land ownership exceeding the limits by corporations or legal entities is still rampant today in the Reformation era. The scope of the Land Reform program in Indonesia is actually very comprehensive, not only limiting the maximum land area, but also including a ban on absentee land ownership, fair profit-sharing arrangements, and systematic land registration in order to achieve the goal of general welfare.

In a concrete effort to realize a just and prosperous society in accordance with the mandate of Pancasila, the government already has a strong legal instrument through Law No. 56 of 1960, better known as the Land Reform Law. This law was enacted with the mission of restructuring the agrarian system through three main pillars: setting maximum ownership limits to prevent monopoly, setting minimum limits so that land is not divided into too small a size (*gurem*), and a mechanism for returning mortgaged agricultural land.<sup>31</sup> This regulation was intended to end the colonial feudal landlord system and replace it with a more equitable ownership system, in which land is viewed as the main source of livelihood for farmers, not merely a commodity for exploitation.

### **3.2 The Relevance and Urgency of Updating the Land Reform Law in the Modern Era**

The implementation of Law Number 56 Prp of 1960, which is more than half a century old, now faces exponential demographic challenges, so that its effectiveness in controlling inequality in land ownership is starting to erode. Although the Regulation of the Minister of ATR/BPN Number 18 of 2016 is presented as a modern instrument to revive the spirit of agrarian reform, there are structural failures at the level of technical norms that hinder the achievement of its goals. This failure centers on Article 3 paragraph (3), which stipulates

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<sup>30</sup> Muhammad Ilham Arisaputra, *Reforma Agraria di Indonesia* (Jakarta: Sinar Grafika (Bumi Aksara), 2021).

<sup>31</sup> Gunawan Gunawan, "Penerapan Ketentuan Landreform Dalam Rangka Pelaksanaan Reforma Agraria Sebagai Upaya Peningkatan Kesejahteraan Masyarakat Petani Di Indonesia," *Pemuliaan Hukum* 2, no. 2 (2019): 108, <https://doi.org/10.30999/jph.v2i2.1022>.

ownership quotas based on population density labels without definitive numerical indicators. Legally, this condition creates the phenomenon of "normatively unenforceable" because the absence of *lex certa* parameters (clear norms) makes the regulation unable to be implemented consistently.

The unclear criteria for "dense" and "non-dense" have practical implications in the form of uncontrolled administrative discretion at the regional Land Office level. Without a standard population-to-land ratio, the determination of regional categories becomes subjective and vulnerable to intervention by local economic or political interests. The broader impact is the threat to public interests and food sovereignty; this legal uncertainty opens up loopholes for capital owners to accumulate land through gaps in the interpretation of regional criteria. If this continues for the long term, the land redistribution policy stipulated in Government Regulation No. 224 of 1961 will lose its database, resulting in land that should be controlled by the state for the benefit of small farmers remaining concentrated in the hands of a handful of parties (land monopoly).

Viewed from a land governance perspective, this normative ambiguity reflects a disconnect between the dynamics of public policy and demographic reality. Referring to Nurhasan Ismail's theory of legal certainty, Article 3 paragraph (3) contains substantial flaws because it fails to fulfill the aspect of "conceptual clarity" which should guide the behavior of legal subjects. The logical consequence of this lack of quantitative parameters is the emergence of the risk of agrarian disputes and the loss of protection of citizens' constitutional rights. A landowner cannot predict with certainty whether their land ownership violates the rules or not, because the "density" standard used is very elastic.

Therefore, as a systematic academic reflection, regulatory reform is no longer merely an option, but rather a legal mandate to safeguard the goals of agrarian reform. Reformulation of Article 3 paragraph (3) must be positioned as the result of rational legal construction to synergize factual population data (such as BPS data) into positive legal norms. By replacing qualitative labels with measurable quantitative parameters (for example, the number of people per square kilometer), the state not only closes the gap in land ownership irregularities but also provides investment certainty and protection for smallholder farmers. This step is fundamental to ensure that national land policy remains adaptive to changing times without sacrificing the principle of social justice that is the soul of the UUPA.

In response to agrarian inequality, the government issued Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2016 with a clear philosophy: land must bring prosperity to the people, not just a handful of individuals. The main objective of this regulation, as stated in Article 2 paragraph (1), is to reduce social inequality, distribute prosperity evenly, and ensure national food security. To achieve this, Article 3, paragraph (1) stipulates that the area of land control and ownership must be

limited.<sup>32</sup> This restriction is not intended to curtail individual rights, but rather to ensure the fair distribution of natural resources so that land can provide tangible economic benefits to the wider community.

One of the most technical and stringent breakthroughs in this regulation is the provision regarding the transfer of agricultural land rights. Article 4 stipulates the absolute requirement that any purchase or transfer of rights may only be made to parties residing in the same sub-district as the location of the land. This domicile requirement must be proven administratively through an Identity Card (KTP). This rule directly closes the loophole for absentee land ownership, where capital owners from outside the area often purchase agricultural land solely as a speculative asset without having any social or economic ties to the local area.

In addition to limiting who can own land, this regulation also regulates what must be done with the land. The state requires owners to actively cultivate their land for agricultural purposes, rather than neglecting it. Article 9, paragraphs (1) and (2) give owners a six-month deadline from the date of issuance of ownership rights to cultivate their own land. However, this regulation still allows for flexibility; if the owner is unable to do so, the land can be leased to another party, provided that a valid written agreement is in place. This aims to protect the rights of tenants and ensure that the land remains productive even if it is not cultivated directly by the owner.<sup>33</sup>

To monitor compliance with these rules, the state authorizes the Head of the local Land Office to conduct inventory or re-registration activities, both textually and spatially. The focus of this inventory is to track ownership that exceeds the maximum area limit (Article 3) and ownership by people outside the sub-district (Article 4). If violations are found, the consequences are very serious: the land will be designated as an object of land reform and then redistributed to farmers in need in accordance with the laws and regulations. This mechanism serves as a "tooth" of law enforcement to ensure that the rules are not just paper tigers.

The enactment of Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2016 was initially welcomed with high hopes as a new spearhead for the implementation of land reform, which had been dormant since Law No. 56 of 1960.<sup>34</sup> Philosophically, this regulation carries the noble mission of reducing social inequality, distributing prosperity more evenly, and ensuring national food security. However, its implementation in the field has actually created new problems for the

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<sup>32</sup> Barizy Roqy, "Tinjauan Yuridis Larangan Kepemilikan Tanah Secara Absentee Sebagaimana Diatur Dalam Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria" (Thesis, Universitas Abdurrachman Saleh, 2024), 7, <https://repository.unars.ac.id/id/eprint/3271/>.

<sup>33</sup> Yusuf Saepul Zamil et al., "Pemberantasan Mafia Tanah Di Indonesia: Dalam Mewujudkan Keadilan Dan Kepastian Hukum Bagi Pemilik Tanah," *Jurnal USM Law Review* 7, no. 3 (2024): 1306, <https://doi.org/10.26623/julr.v7i3.10239>.

<sup>34</sup> Sulasi Rongiyati, "Land Reform Melalui Penetapan Luas Tanah Pertanian (Kajian Yuridis Terhadap UU No. 56/Prp/ Tahun 1960 Tentang Penetapan Luas Tanah Pertanian)," *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 4, no. 1 (2016): 1, <https://doi.org/10.22212/jnh.v4i1.200>.

community, especially farmers. The main problem lies in the substance of Article 3, paragraph (3), which regulates the technical limits of land ownership. This article sets ownership quotas based on regional categories: a maximum of 20 hectares for "sparsely populated" areas, 12 hectares for "less densely populated" areas, 9 hectares for "moderately densely populated" areas, and 6 hectares for "very densely populated" areas.<sup>35</sup> Unfortunately, this regulation stops at mentioning these label categories without providing operational definitions or clear numerical indicators of what is meant by "dense" or "non-dense".

The absence of measurable parameters causes the legal norms in the regulation to be vague and difficult to implement. When reviewed using Nurhasan Ismail's theory of legal certainty, a regulation must meet internal requirements in its normative structure in order to guarantee legal certainty.<sup>36</sup> These requirements include three fundamental things: first, clarity of the concepts used so that the description of the regulated behavior is not biased; second, clarity of hierarchy to ensure its validity and binding force; and third, consistency between legal norms so that there are no contradictions between them.

In the context of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18 of 2016, the first requirement regarding "clarity of concepts" is not met. The concept of "population density," which is the main benchmark for restricting property rights, is left vague without a detailed explanation. As a result, this regulation loses its function as a mandatory rule of conduct. This ambiguity not only confuses local officials in determining the status of their regions but also violates the constitutional rights of citizens who need legal certainty in doing business and owning land. Therefore, it can be concluded that, legally, Article 3 paragraph (3) contains a substantial flaw because it fails to present a complete and definitive norm, making it urgent to reformulate it immediately.

#### 4. CONCLUSION

The results of the analysis in this study confirm that the criteria of "population density" in Article 3 paragraph (3) of the Regulation of the Minister of ATR/BPN No. 18 of 2016 are a form of vague norms which harms the principle of legal certainty (*lex certa*) due to the absence of definitive numerical parameters, resulting in subjective administrative discretion and hindering the effectiveness of agrarian reform in the field. As a novel contribution, this study offers a prescriptive-solution legal construction model that integrates factual demographic ratios (people/km<sup>2</sup>) based on BPS data into legal norms to replace qualitative standards that are open to multiple interpretations, thereby enriching the discourse on land governance with control instruments that are more objective and adaptive to population dynamics. The implications of these findings emphasize the urgency of regulatory

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<sup>35</sup> Amalul Arifin Slamet, "Problems Of The Maximum Limits Of Land Tenure In Indonesia," *JHR (Jurnal Hukum Replik)* 10, no. 2 (2022): 45, <https://doi.org/10.31000/jhr.v10i2.6894>.

<sup>36</sup> Zulfahmi Nur, "Keadilan Dan Kepastian Hukum (Refleksi Kajian Filsafat Hukum Dalam Pemikiran Hukum Imam Syâtibi)," *Misykat al-Anwar Jurnal Kajian Islam dan Masyarakat* 6, no. 2 (2023): 256, 2, <https://doi.org/10.24853/ma.6.2.247-272>.

reformulation for the Ministry of ATR/BPN to close the gap in land accumulation by capital owners and guarantee the protection of the rights of smallholder farmers, while still opening up space for further research to test the effectiveness of these quantitative parameters on various geographical characteristics of different regions in order to achieve more measurable and sustainable agrarian justice.

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