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## Legal Protection of The Land Rights of The Wolio (Buton) Fort as a Cultural Heritage

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### ABSTRACT

*Buton Fort is known as the largest fort in the world. For this reason, there is a need for legal protection for the Buton Palace Fort by the Government, especially the Baubau City government and the National Land Agency, in terms of Regulations and Efforts to Protect the Land Rights of the Buton Palace Fort as a cultural heritage. Because of these problems, protecting cultural heritage objects, including the land, is necessary. This research method is normative research that focuses on a legislative approach with primary data sources on the Basic Agrarian Law, the Cultural Heritage Act, and other laws and regulations such as the regional regulation on the particular area of Bau-bau City. The results of the study found fact that the land inside the fort of the Wolio Sultanate was land controlled by the people of the descendants of the bonto (sultanate officials/councils who elected the sultan) and Walaka (descendants of the sultan). However, the increase in population around the cultural heritage area can cause the displacement and destruction of cultural heritage objects. It can lead to a land sale and purchase agreement which is the land of Toerakia (usage rights). Referring to the Basic Agrarian Law, it is stated in the Fourth provision, namely the rights and authority over land and water from the autonomous or former autonomous regions that still existed at the time*

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*this Law came into force were abolished and transferred to the State. Based on this regulation, the regulation of the Wolio fort land should be transferred to the State.*

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### **A. Introduction**

Indonesia is famous for its diverse customs and culture. This country is also rich in culture and has many high-value cultural heritage objects that must be preserved. These cultural values can exist if these historical relics can be preserved, preserved, and maintained as well as possible. Cultural heritage objects are regulated in Law Number 11 of 2010 concerning cultural heritage objects which can be interpreted that cultural heritage objects are historical heritage objects that are at least more than 50 years old that are preserved by the government. The Cultural Conservation Objects consist of 24 objects, including tombs, temples, inscriptions, statues, and forts.<sup>1</sup> Examples of well-known cultural heritage objects in the form of temples include the Borobudur and Prambanan temples in Java.

In contrast, the cultural heritage objects in the form of forts include the Wolio Palace Fort on the island of Buton, Southeast Sulawesi Province. The fort of Buton palace is known as 'a thousand forts' that was built in the 1640s to protect the public from attacks by pirates who intended to disrupt the sultanate state at that time. This building is also touted as the largest fort in the world because it has thousands of small forts.<sup>2</sup>

Suppose the people of Central Java are proud of Borobudur. In that case, a temple relic of the Buddhist kingdom famous worldwide, the residents of Baubau City glorify the Benteng and the Great Mosque of the Keraton, which have high religious values. This fort is known as the Wolio Palace fort. This fort surrounds the administrative center of the Sultanate of Buton, which was built during the reign of the Sultan of Buton III, La Sangaji (Sultan Kaimuddin). To function as a barrier to the center of the palace environment, the pile of stones protects from enemy attacks. During the reign of the sultan of Buton IV, La Elangi (Sultan Dayanu Ikhsanuddin), the pile of stones was built into a fort. The establishment of

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<sup>1</sup> Sovian Febrianto, Lilis Sri Mulyawati, and Ichwan Arief, "Identifikasi Potensi Dan Kendala Kawasan Cagar Budaya Kelurahan Batutulis Kecamatan Bogor Selatan Kota Bogor," *Jurnal Online Mahasiswa (JOM) Bidang Perencanaan Wilayah & Kota* 1, no. 1 (2018): 1–11, <https://jom.unpak.ac.id/index.php/teknikpwk/article/view/1272>.

<sup>2</sup> Novesty Noor Azizu, Antariksa, and Dian Kusuma Wardhani, "Pelestarian Kawasan Benteng Keraton Buton," *Arsitektur E-Journal* 3, no. 1 (2011): 15–28, <https://tatakota.ub.ac.id/index.php/tatakota/article/view/132>.

the fort is similar to the story of the establishment of the Borobudur Temple. That said, the pile of limestone was glued together using egg yolk.<sup>3</sup>

During the reign of the Sultanate, the land within the fort complex of the Keraton Buton was designated as the land of the Sultan, namely land whose control was under the Sultanate's control. Land is an essential factor for human life and has multi-dimensional meaning. For the people of Indonesia, especially the agrarian society, the land is a source of life and life force, among others: "First, from an economic point of view, the land is a means of production that can bring prosperity. Second, political land determines one's position in community decision-making. Third, it can determine the owner's high and low social status. Fourth, land means sacred (religious) because it deals with inheritance and transcendental issues".<sup>4</sup>

During the reign of the Wolio sultanate, the Sultanate was officially free to live in the fort. The number of descendants living in the Buton Palace fort is increasing. The territory of the Sultanate of Buton has 72 forts spread over several kadie (district-level areas). Each kadie is under the Sultanate of Buton, 70 kadie are outside the fort of the Buton Palace, which is given to the people, and the other two kadie for the nobility and Bonto are in the Buton Palace area. The people who live in the fort complex of the Buton Palace are generally descendants of the Nobility (Sultan) and Bonto groups. The two groups control the land with the status of usufructuary rights; in the Buton language, it is the land of "Toerakia." This land is the most famous in the Butonese community. The Right of Use (Toerakia) was initially handed over by the local royal government or Syara' to someone to be processed, a place to build a house, etc. His descendants owned this land for generations or their closest heirs.

The Buton Palace Fort and the Buton Palace Grand Mosque are forts and mosques designated as cultural heritage by the Decree of the Minister of Culture and Tourism of the Republic of Indonesia Number KM.8/PW.007/MKP-03. The regulation concerning the Establishment of Baadia Fort, Buton Palace Fort (Wolio Fort), Bangkudu Fort, Muna Prehistoric Cave Complex, and the Great Mosque of Keraton Buton, which are located in the Southeast Sulawesi Province as Cultural

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<sup>3</sup> Muhammad Mukmin and Rusnina, "Budaya Pada Benteng Keraton Kesultanan Buton Berbasis WEB Sulawesi Tenggara," *Jurnal Informatika* 7, no. 2 (2018): 21–29, [http://download.garuda.kemdikbud.go.id/article.php?article=1084548&val=12613&title=RANCA NG BANGUN SISTEM INFORMASI PENDATAAN ASET BUDAYA PADA BENTENG KERATON KESULTANAN BUTON BERBASIS WEB](http://download.garuda.kemdikbud.go.id/article.php?article=1084548&val=12613&title=RANCA%20NG%20BANGUN%20SISTEM%20INFORMASI%20PENDATAAN%20ASET%20BUDAYA%20PADA%20BENTENG%20KERATON%20KESULTANAN%20BUTON%20BERBASIS%20WEB).

<sup>4</sup> Bambang Winarso, "Dinamika Pola Penguasaan Lahan Sawah Di Wilayah Pedesaan Di Indonesia," *Jurnal Penelitian Pertanian Terapan* 12, no. 3 (July 24, 2017): 137–49, <https://doi.org/10.25181/jppt.v12i3.209>.

Conservation objects and or sites protected by the Law of the Republic of Indonesia Number 11 of 2010 concerning Cultural Conservation Objects.<sup>5</sup>

Maria Sri Wulandari Sumardjono wants that the authority to regulate the State, which is based on the right to control land by the State is limited by two things, namely: (1) It must not violate fundamental human rights guaranteed by the Constitution, (2) It must not violate the purpose of the right to control land by the Constitutional Court. State as regulated in Article 2 paragraph (3) of the BAL, namely, all land laws and regulations must be aimed at the greatest prosperity of the people.<sup>6</sup> The regulation of the fort is only limited to the protection of cultural heritage objects of the heritage buildings regarding the land inside the fort, which is controlled by the community. Regarding the authority to protect and preserve the ownership of land rights for the Buton palace fort after the enactment of Law Number 23 of 2014 concerning Regional Government, the authority was delegated to the local government of Baubau city based on the principle of decentralization.<sup>7</sup>

The problem raised by the author is how the regulation of Legal Protection of The Land Rights of The Wolio (Buton) Fort as a Cultural Heritage and what the Effort to Protect The Ownership of Land Rights by the government. The study aims to describe the regulation of Legal Protection of The Land Rights of The Wolio (Buton) Fort as a Cultural Heritage and to analyze the Effort to Protect the Ownership of Land Rights by the government.

## B. Method

This research is empirical legal research. The type of research used is empirical legal research, namely research in the form of studies to find legal phenomena in society or social facts.<sup>8</sup> This legal research is a procedure that produces descriptive data, which comes from writing or expressions and behavior that humans can observe. This study focuses on general principles, such as norms and other rules that generally apply in society. That underlies the manifestation of units of symptoms that exist in human life or patterns that are analyzed by socio-cultural phenomena using the culture of the community concerned to get an idea of the prevailing patterns.<sup>9</sup>

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<sup>5</sup> Margana Silvia, Aristarchus PK, "Sejarah Benteng Keraton Buton," *Jurnal DKV Adiwarna* 1, no. 2 (2013): 1–11, <https://publication.petra.ac.id/index.php/dkv/article/view/609>.

<sup>6</sup> Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara: Paradigma Baru Untuk Reforma Agraria* (Malang: Universitas Brawijaya Press, 2011).

<sup>7</sup> Rachmat Aristiana, "Pelestarian Situs Peninggalan Kesultanan Buton Dalam Mendukung Pengembangan Wisata Heritage Kota Baubau Sulawesi Tenggara," *Jurnal Kajian Pariwisata* 1, no. 1 (2019): 22–31, <http://ejurnal.ars.ac.id/index.php/JIIP/article/view/88>.

<sup>8</sup> Bahder Johan, *Metode Penelitian Hukum* (Bandung: Mandar Maju, 2008).

<sup>9</sup> Burhan Ashsofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 1998).

This study uses a normative legal approach, namely statutory regulations, a historical approach, and a conceptual approach. The applicable customary law related to efforts to protect the legal rights to the land of the Buton palace fort as a cultural heritage by the Bau-bau city government, in particular the land within the Buton palace fort complex.

These regulations and laws include (a) the 1945 Constitution of the Republic of Indonesia, (b) Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, (c) Law no. 11 of 2010 concerning Cultural Conservation Objects, and (d) Law no. 23 of 2014 concerning Regional Government (e) Government Regulation Number 19 of 1995 concerning the Maintenance and Utilization of Cultural Conservation Objects in Museums, (f) Decree of the Minister of Culture and Tourism of the Republic of Indonesia Number: KM.8/PW.007/MPK-03 concerning Stipulation Fort Baadia, Fort Keraton Buton (Fort Wolio), Fort Bangkudu, Prehistoric Cave Complex Muna, and the Great Mosque of Keraton Buton as Cultural Conservation, and (g) Decree (SK) Mayor of Bau-bau Number 09 of 2011 concerning preservation, empowerment, and development of the Palace, traditional institutions of Wolio facilities, and regional cultural customs.

### **C. Finding and Discussion**

The Buton Palace Fort, based on data obtained from the Land Office of Baubau City, is a self-governing land given to the people of Sultan and Bonto descent to be used as a place to live with the status of usage rights. The Determination of the Konstitutie Keradjaan-Sultanate of Buton, which was announced and sworn in at a giant meeting, was attended by all sections of the Butonese community during the time of the Sultan of Buton "Dayanu Ihsaniddin" in 1668, the regulations and the people's rights over the Swapraja Buton land were also stipulated, the contents of which were as follows: Another is that the land in the Buton palace is entirely under the control of the royal government. Anyone can build a house in the palace city (Benteng Keraton Buton) with the ruler's permission. It can be moved anytime if the royal government / autonomous Buton needs it. Land users cannot assume that the land use permit can be in the form of a usufructuary right as Toerakia (hereditary usufructuary permit). The land cannot be planted with old crops, and if there are later cut down, the government only pays compensation according to regular prices and other crops.

#### **1. The Regulation of Legal Protection of The Land Rights of The Wolio (Buton) Fort as a Cultural Heritage**

Buton palace fort is a defensive fort with a government center with a land area of 2740 m<sup>2</sup>. During Sultan Murhum, all land contained within the territory of the Sultanate's government became land belonging to the Buton kingdom, which was given to the community with the status of

ownership rights and usufructuary rights. The Buton government area is divided into 72 (Seventy Two) Kadie or government areas and 70 (seventy) Kadie outside the Buton Palace fort. In comparison, 2 (two) Kadie is Walaka and Kaomo. Kadie Walaka and Kaomo are located in the palace fort, which was given to the nobles and Bonto. The land was given to nobility and Bonto as Toerakia land because the nobility and Bonto were the government people of the Sultanate of Buton who were in charge of running the government; therefore, the nobility and Bonto were given control over the land. In the palace fort Buton Dagar can run the government well and can monitor the course of the government because the distance is not far from the government area.<sup>10</sup> Apart from that, royal officials such as the Sultan, his family, the Bonto, and their families and grandchildren. Most live in the Fort Keraton complex. They are allowed to build houses in the palace fort complex. However, the land where the building is located cannot be controlled with the status of land rights but with the status of land as Toerakia land or land given by the sultanate government with the status of usage rights.

According to Mr. La Ode Hafilu, an employee of the Baubau City Culture and Tourism Office located in the Buton 2 Kadie palace complex in the Buton palace area is called kadienya walaka and kadienya ka'omo. Kadie land is a communal Bezit (Joint Rights) from each part under its control and supervised by a Lakina/Bonto (Local Customary Head). Kadie Ka'omo is a place that is given to the Sultan and his descendants, while Kadie Walaka is a place for the Bonto and his descendants. Bonto is the group in charge of appointing and dismissing the Sultan. These two groups, namely the Ka'omo and the walaka, did not have land areas, but it was announced and determined that they could clear land in every 70 kadie. Another 70 kadie were given to Papara, namely ordinary people.

In the Buton Customary Guidelines Article 7, the division of the region into 72 Kadie, it is explained that the law or the Buton Shari'a Civilization Law is following the principal or basis under the supervision of Siolimbona (people who have good character and have a noble character, or people who are humane and know the condition of God who is eternal/religious leaders) towards the public, namely speech, language, steps, and movements and the way each human being dresses must be following the law of decency or the principle of which is to clean intentions and purify the soul. The laws or laws of Buton civilization are taken from the figure of 72 (seventy-two) people's or Kadie's intentions. That is, it is stated in the Qur'an and Al-Hadith that one day there will be a country consisting of 72 people, only two people firmly believe in God, and the other 70 people are weak in belief in God because they believe in God. Their passions influenced them, so they became traitors, shirk, and hypocrites. This

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<sup>10</sup> Nur Sadila Sari Mimu Wa Ode Zamrud, Muhammad Syarifuddin, "Tinjauan Hukum Kedudukan Ahli Waris Dalam Hak Pakai Tanah Di Lingkungan Benteng Keraton Buton Kelurahan Melai," *Jurnal Ilmu Hukum Kanturuna Wolio* 3, no. 1 (2022): 30–45, <https://www.ejournal.lppmunidayan.ac.id/index.php/hukum/article/view/562/420>.

attitude, temperament, or character of the 70 people is prevented in the Butonese etiquette law because this attitude or attitude can cause a society to fall and fall into the valley of humiliation (Asfal Saafilien). A sultan and a bonto must have a good and noble character, as the leader of the Wolio Sultanate at that time. Seeing that the sultans and bonto were given the right to live in the palace fort, the descendants of the Sultanate's officials who resided in the fort were the chosen people who would later be seen and selected and elected as sultans and bonto.

The Fourth provision is stipulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. The Fourth provision, namely the rights and authority over land and water from the autonomous regions or former self-government organizations that were still in existence at the time this Law came into force, was abolished and turned to the State. All rights and authority over land and water of Swapraja or former self-government that still exist at the entry into force of the Basic Agrarian Law are abolished and transferred to the State. The status of the land in the palace fort of Buton is transferred to the State. The explanation regarding the status of the fort land of the Buton Palace being transferred and controlled by the State can be seen from the fact that the Buton Palace is part of the Republic of Indonesia which recognizes and merges itself into the unity of the Indonesian State so that it is obliged to obey and comply with the applicable laws and regulations, namely land.

Based on the provisions on the conversion of the Buton Palace fort land, which before the enactment of the UUPA was Royal land or autonomous land after the enactment of the UUPA, it turned into state property based on the Fourth Provisions of the UUPA. This conversion is a change of old rights into new rights according to the UUPA, namely the change of land rights for the Buton palace fort into state property. In this way, the legal status of the land within the Buton Palace fort complex is state property given to residents of the Sultan and Bonto descendants. They have always lived and resided in the Buton Palace fort complex with the usage rights status. Evidence of the granting of usufructuary rights to land within the Buton palace city is listed in Manuscript No. HU/5/AMZ concerning the rights of the self-employed people to the land of the Buton palace (6 pages, in Malay, 63 lines/page, Latin script, 33.5x215.5 cm, Prose, factory paper) written by La Ode Falihi (The Last Sultan) and was initiated by La Ode Hoede, Head of the District in Swapraja Buton, Administrative Officer dated May 14, 1957. However, the descendants of residents in the Buton palace fort have occupied the land until now. There has been no definitive determination regarding the time limit for the use of the land, even though the land has already been transferred to the children and grandchildren of residents. The Land Office should firmly make decisions or stipulations regarding the time limit set until the descendants of these descendants can live and reside in the Buton palace fort. It is done so that later the area is not constantly crowded by other residents who come to live and reside in the Buton palace fort complex. The goal apart to preserve the

fort as a cultural heritage and other relics that must be protected from damage.

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a. Toerakia Land (Usage Rights)

This land is a well-known land in the Butonese community. This Right of Use (Toerakia) was initially handed over by the royal government or local Syara' to someone to be processed, a place to build a house, etc., which then this land is owned by their descendants for generations or their closest heirs. According to Buton's customary law, it is forbidden for anyone to sell the land of Toerakia. Toerakia land is the right of the kingdom. The Buton people are only left to use and maintain it but may not be sold.

b. Freehold land was granted by the kingdom (Katampai)

In the Buton Kingdom, there are five pieces of Katampai land, including (1) Katampai On behalf of Wa Ode Wau; (2) Katampai On behalf of Bontona Gundu-gundu Mantjuana; (3) Katampai On behalf of Bontona La Ompo; (4) Katampai on behalf of Modjina Kalo, and (5) Katampai on behalf of the Great Mantri (Bontoogena) Wantiro Mantjuana.

The kingdom gave all the Land of Katampai because he was the people who contributed to the kingdom of Buton. He was willing to sacrifice their property, soul, and body to the kingdom so that the royal government gave the land as a reward for the kingdom for their services. For example, Katampai, on behalf of Wa Ode Wau, gave all his possessions in the form of gold for the construction of the Buton Palace fort.

c. Burial Ground

Cemetery land in each village is divided into (1) Village Cemetery Land (General). A public burial ground is a land that all villagers can use, both from inside and outside the village, which may be buried in village burial grounds. (2) Toerakia burial ground is Toerakia burial ground is a particular burial ground for a family/family group in the village concerned.

d. Land in the palace City Fort.



The city of the palace is entirely under the supervision of the royal government. Anyone self-governing in Buton can build a house in the city of the palace with the ruler's permission and can be moved at any time if the royal government / autonomous Buton needs it.

e. Free Self-Sufficiency Land

Free self-governing lands are lands other than lands with usufructuary rights (Toerakia), property rights granted by the kingdom (Katampai), burial grounds, and land within the palace city. The free lands are contained in unopened and unopened kadie. Lands cleared for plantations are then abandoned, called Jome'. Jome' can not be opened by others without the permission of the previous user.

Free self-governing lands are regulated in the Decree of the Buton Swapraja Government dated July 15, 1938, Number 54. The boundaries of the people's rights to land clearing are set as follows: (1) The people can open the Free Swapraja land (Scrub and others) without permission from the District Head, or it is sufficient to notify the village head of a maximum of 2 hectares; (2) Clearing of land/forest groves for plantations, either individually or jointly, of more than 2 Ha must have a permit from the Head of the District and the Buton Swapraja.

This Buton palace fort land, if interpreted as self-governing land, then in the Fourth Provisions of the BAL, it is state land. The State has the authority to regulate and protect cultural heritage objects in the palace fort, which is said to be the largest fort in the world. The arrangement for the protection has been regulated in Law Number 11 of 2010 concerning Cultural Conservation Objects. The State as a central organization gives authority to local governments as an extension of the central government based on the theory of authority of H.D van Wijk/Wiliem Konijnenbelt that the delegation of authority from the central government to the Regional Government is referred to as delegation authority. Delegation authority is not in full, namely a delegation of existing authority from the attribution authority to state administration officials. An attribution of authority always precedes delegation. If there is no attribution of authority, the delegation is invalid (legal disability).<sup>11</sup> Delegation is the delegation not in full. It does not include the authority to form policies because the authority to form these policies is in the hands of officials attached by attribution.

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<sup>11</sup> et al Nugraha, Safri, Anna Erliyana, Sri Mamudji, *Hukum Administrasi Negara* (Jakarta: Center For Law And Good Governance Studies Fakultas Hukum Universitas Indonesia, 2007).

In the delegation of authority, the responsibility and accountability are transferred to the delegated authority or the delegates.<sup>12</sup> With this delegation of authority, the local government, namely the Baubau city government, must protect the cultural heritage objects, including the land issue. The Baubau City Government and the Sultanate's officials had to sit down at one table to discuss the matter. The result of this meeting was to make Regional Regulation regarding the regulation of the protection of cultural heritage and the arrangement of the palace fort area, which is already crowded with residential areas. This arrangement is intended so that residents do not trade land in the palace fort and make arrangements for the area already densely populated. The National Land Agency must also intervene in this issue, especially regarding determining land rights for the Wolio Palace fort with the status of Hak use. The time limit for using the land and its extension can be determined. There is a synergy between the Baubau City government, the National Land Agency, and descendants who occupy the land inside the Wolio palace fort to form an excellent statutory regulation so that the problem of regulating and protecting the land and cultural heritage area of the Wolio Palace Fort can find a win-win solution.

The legal status of land rights for the Buton Palace fortress has actually been explained in the previous discussion that the land's legal status is state property given to descendants of the community with the status of usage rights used to live and reside. The local government and the Baubau City Land Office said that the land inside the Buton palace fort had been the center of attention for a long time because the area has cultural values that must be preserved. The local government made a Mayor's Decree in 2003 to maintain and preserve the Buton Palace fort as a unique area of Baubau City. However, the contents of the regulation have not shown evidence of the seriousness of the Regional Government and the Baubau City Land Office to protect the particular area from Ownership Status, especially land issues. The Buton Palace Fort, based on data obtained from the Land Office of Baubau City, is a self-governing land given to the people of Sultan and Bonto descent to be used as a place to live with the status of Hak Use. In the Letter of Determination of the Konstitutie Keradjaan-Sultanate of Buton, which

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<sup>12</sup> Zaelani, "Pelimpahan Kewenangan Dalam Pembentukan Peraturan Perundang-Undangan (Delegation of Authority The Establishment of Legislation Regulation)," *Jurnal Legislasi Indonesia* 9, no. 1 (2012): 119–34, <https://e-jurnal.peraturan.go.id/index.php/jli/article/viewFile/380/261>.

was announced and sworn in at a giant meeting that was attended by all sections of the Butonese community during the time of the Sultan of Buton "Dayanu Ihsaniddin" in 1668, the regulations and the people's rights over the Swapraja Buton land were also stipulated, the contents of which were as follows: Another is that the land in the Buton palace is entirely under the control of the royal government. Anyone can build a house in the palace city (Benteng Keraton Buton) with the ruler's permission. It can be moved anytime if the royal government / autonomous Buton needs it. Land users cannot assume that the land use permit can be in the form of a usufructuary right as toerakia (hereditary usufructuary permit). The land cannot be planted with old crops, and if it is found and then cut down, the government only pays compensation according to regular prices and other crops.

## 2. The Effort to Protect The Ownership of Land Rights

In the book on legal protection, especially for the people of Indonesia, Philipus M. Hadjon divides two kinds of legal protection, namely:<sup>13</sup>

### a. Preventive Legal Protection

In this preventive legal protection, legal subjects can submit objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. Preventive legal protection is significant for government actions based on freedom of action because, with preventive legal protection, the government is encouraged to be careful in making decisions based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection.

Preventive legal protection of land rights for the Wolio palace fort is interpreted in this study so that there is no dispute between the community and the State (government). It is necessary to form a statutory regulation that discusses the protection of land rights for the Wolio palace fort. Legal protection efforts in this way are carried out so that there is clarity and as a legal basis for the community and government so that there are no disputes between the two parties.

### b. Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government

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<sup>13</sup> Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: Bina Ilmu, 1987).

actions rests and originates from the concept of recognition and protection of human rights because, according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at the limitations and laying down of community obligations. The second principle that underlies legal protection against government acts is the rule of law—associated with the recognition and protection of legal status and efforts to protect the ownership of land rights to the palace fort as a cultural heritage.

Repressive Legal Protection aims to resolve disputes that occur when preventive legal protection does not work well in preventing disputes from occurring.<sup>14</sup> Legal protection of land rights for the Wolio palace fort is defined here as a way out of a dispute between the community and the State, so it is necessary to formulate a statutory regulation that contains legal protection of land rights for the Wolio palace fort. Repressive legal protection is a dispute resolution in the general court and is the last alternative to protect the law on land rights for the Wolio palace fort. Therefore the role of the state (central government and local government), the National Land Agency, and the community is needed to discuss and find ways to protect the law on land rights for the Wolio Palace Fort. In 2003, the government issued a Decree from the Mayor of Baubau. It was stated that based on the Decree of the Mayor of Baubau Number 105 of 2003 concerning the Designation of the Buton Palace Fort as a Special Area of Baubau City (Baubau City Regional Gazette Number 19 of 2003 Series E Number 19) described in Article 4 that “In Special Areas, it is prohibited to: a. Construct buildings, both owned, private and residential buildings in the form of permanent and/or the like; b. Adding a typical Wolio Customary residence building with a permanent building on the front and left and right wings of the main, except for the rear, provided that it is not visible from the front and does not exceed the volume of 20% of the main building; c. Establish factories, warehouses, and the like; d. Construct buildings that do not value the traditional culture of Wolio Buton; e. All types of Socio-Cultural and Community activities in particular areas do not have the nuances of Wolio Culture/Custom; f. Doing business can create noise, air pollution, and vehicle traffic,

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<sup>14</sup> Dewi Susanti, “Perubahan Dan Ancaman Benteng Keraton Buton Di Kota Bau-Bau Sulawesi Tenggara,” *Jurnal Konservasi Cagar Budaya Borobudur* XI, no. 2 (2017): 46–63, <http://borobudur.kemdikbud.go.id/index.php/jurnalkonservasicagarbudaya/article/view/175/152>.

such as factories, warehouses, so on; g. Establish a slaughterhouse that is carried out regularly; h. Release livestock that can disturb public order; i. Entertainment places such as cafes, discotheques, bars, and the like.

Continued and then stated in Article 6 that in the Special Area (Buton palace fort), it is mandatory to: Protect and maintain cultural heritage objects in the fort area; b. Create and maintain a garden in front of the house/yard; c. Maintain order and security; d. Create and provide trash bins; e. Creating a conducive climate as a tourist destination.

Based on the interview at the Baubau Land Office, he said that the land inside the Palace Fort has no one a land certificate because the land in the Buton palace fort complex is known to be the land of the Buton Swapraja or belongs to the State. The lands that are former Indonesian rights, namely lands that are subject to customary law that is hereditary, such as Yasan, Andarbeni, Pesini, Grant Sultan, etc., whose owner at the time the UUPA came into force is an Indonesian citizen, is converted into property rights.<sup>15</sup> According to the data from a public figure from Buton, in 1969, one resident who lived in the Buton Palace Fort Complex submitted a letter of application to the Land Office so that a land certificate was issued and a land certificate was issued. It happened because the resident who applied then was an important person who served as the Head of the Baubau City Land Office. The Head of the Land Office said this is now canceled because the certificate was issued not according to existing procedures and contrary to the law. So, the certificate was revoked. It is the author's concern because, at this time, money and position can change something that is not possible into possible. Therefore, the Land Office and the Baubau City Government should be more serious in dealing with land problems that occur inside the Buton palace fort, a special area of Baubau city.

The Mayor's Decree above explains the importance of the Buton Palace Fort and all its contents, such as mosques, palaces, restaurants, sultan's appointments, and others, to be preserved so that they are not extinct or damaged and are not contaminated by the times. The decree was also explained by La Ode Mursali, one of the residents of the Palace. The decree was made as a legal basis that the government used as a benchmark to protect the Buton Palace Fort as

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<sup>15</sup> Ali Achmad Chomzah, *Hukum Agraria (Pertanahan Di Indonesia)* (Jakarta: Prestasi Pustaka, 2001).

a Special Area. So that tourists who came could see the remnants of the glory of the Buton Sultanate in the past. When the mayor's letter was issued, the Baubau city government had not yet made a regional regulation regarding the Buton palace fort area. Following the times, the decree is no longer valid because this Mayor's Decree, according to the Head of the Legal Division of the Baubau mayor's office, Rifai, is considered null and void.

The Baubau City Government should issue a new Regional Regulation to stipulate the Legal Status of Land Rights for the Buton Palace Fort. The regulation contains a stipulation regarding the prohibition of land ownership status in the Buton Palace fort complex and the prohibition on adding and constructing buildings within the Buton Palace Fort Complex. The Baubau city government provides new, better housing land or compensation for descendants to move and vacate the Buton Palace fort area. So, the area can be used as a special area of Baubau city that can be used as a cultural center, such as the Buton culture exhibition, which is usually held in the city of Baubau. In the fort of the Palace, the local government provides a policy by issuing a regional regulation concerning the time limit for the use of the rights of descendants to live in the fort area of the Palace of Buton.

#### **D. Conclusion**

The regulation of legal protection of land rights for the Buton Palace fort should be the duty and authority of the government and/or local government of Baubau City based on the mandate of Law Number 11 of 2010 concerning Cultural Conservation Objects, Article 95 and Article 96, to the local government of the city. Baubau is a Buton Swapraja land controlled by the State after enacting the Basic Agrarian Law of 1960 following the Fourth Provisions of the BAL. The land was given to the community by the Sultanate of Buton to settle and reside in the palace area. So the sultanate officials were close to the center of government.

An effort to protect the ownership of Land Rights for the Buton Palace fort following Law Number 11 of 2010 concerning Cultural Conservation objects that the State controls is the highest authority possessed by the State in organizing legal action arrangements regarding the preservation of Cultural Conservation. The highest ownership of cultural heritage objects should be with the State. Cultural Conservation Areas can only be owned and/or controlled by the State.

However, this study has a lack or limitation in the preparation. The authors in this study have not widely explored the study of property rights and usufructuary rights. It can be the study or recommendation for future research.

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