

The Policy on the Granting of Permits for Change of Land Use (IPPT) in the Context of Transfer of Use of Agricultural Land to Equitable Residential Houses

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Article	Abstract.
Keywords: Agricultural; Land; Residential; permissions; Policy. Article History Received: 2022-03-25; Reviewed: 2022-06-22; Accepted: 2022-10-16; Published: 2022-10-17. DOI: 10.30659/jdh.v5i2.2087 0	The increasing need for land caused by the community as a result of which there is a cultural shift in land use in Indonesia due to development demands. The purpose of this study is to find out and analyze the policy of granting Land Use Change Permits (IPPT) in the context of transferring the function of agricultural land use to residential houses in the Kendal regency area that is equitable. The approach method used in this study is an empirical juridical approach. The research specifications used are analytical descriptive research. The sources and types of data in this study are primary and secondary data through literature studies and field studies. The data were analyzed qualitatively using role theory and policy theory. The conclusion show in the Context of Transfer of Functions from the Use of Agricultural Land to Residential Houses in the Kendal Regency Area shows that land conversion is still happening and widespread due to several factors.

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1. Introduction

Land is one of the natural resources that is very important for human life because its functions and roles cover various aspects of life and people's livelihoods in terms of social, economic, political and cultural aspects. Therefore, the land issue is a national responsibility to realize how to use, control and own land as much as possible for the prosperity of the people.¹

Article 33 point (3) of the 1945 Constitution states that the earth, water and the wealth contained therein are controlled by the state and used as much as possible for the prosperity of the people. In order to realize prosperity, on land it is necessary to carry out development. This article implies that the state has the authority to

¹Effendi, Perangin, (1986), *"Hukum Agraria di Indonesia"*, Jakarta, Rajawali Perss, p. 13

manage natural resources in order to achieve the desired welfare.² Considering that each plot of land already has control and ownership on it, the implementation of development in addition to causing the transfer of land rights, will also lead to changes in land use from agriculture to non-agriculture.

Land or land availability is the most important asset for agricultural activities, in fact the government pays little attention to this. Land ownership as the most important pillar of production activities is increasingly unfriendly to the needs of the agricultural sector. On average, agricultural land ownership is decreasing, even in Central Java the average land ownership is only 0.25 hectares.³ The decreasing (shrinking) land ownership is a rational indication that is sourced from the inheritance pattern that makes the land fragmented, the infiltration of the industrial or service sectors is increasingly draining every inch of land and government policies (especially BPN) that ignore and even abandon the agricultural sector.

Looking at the situation above, development in Indonesia, especially in certain urban areas, must have a spatial planning or concept, which used to be often referred to as a master plan, where the concept serves as a direction and guideline in carrying out development, so that land problems that will arise are resulting from the results of development will be minimized. However, the concept of spatial planning as a guideline and direction of development for the most part still does not show results in accordance with the stated goals and directions.⁴

The increasing need for land caused by population growth and industrial progress to meet community needs is a natural and unavoidable thing, and as a result there is a cultural shift in land use in Indonesia, namely from the agricultural sector to the industrial sector due to development demands. National Development aims to create a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila within the unitary State of the Republic of Indonesia which is independent, sovereign, united and has sovereignty over the people in a safe, peaceful, orderly and dynamic national life atmosphere. The social environment of an independent world is friendly, orderly and peaceful.⁵

The intensity of development that demands the provision of relatively large land for various purposes (residential, industrial, and various infrastructures) forces the

²Juniarso Ridwan & Achmad Sodik, (2008), *"Hukum Tata Ruang dalam Konsep Kebijakan Otonomi Daerah"*, Bandung, Cetakan I, Nuansa, p.28

³Widhi Handoko, *"Seminar Nasional Karya Motivasi, Pemikiran strategis, & Rencana Program Pengembangan Badan Pertahanan Nasional (BPN) RI,"* Semarang. 2015

⁴Juniarso Ridwan and Achmad Sodik, Op.cit. p.21

⁵MPR Decrees of the Republic of Indonesia 1983, MPR-RI Decree no. 11/MPR/1988 concerning Outlines of State Policy, Bina Pustaka Tama, Surabaya, 1988, p. 14

conversion of agricultural land to non-agricultural use with all the consequences. The developments that have occurred can be said to have barely touched the pattern of farmers' lives, money is increasingly difficult to avoid being forced to give up their land because licensing practices allow for the transfer of functions. However, the increasing demand for land is not followed by the availability of adequate land because the land area tends to remain constant and cannot be increased, so that competition in the use of land for agriculture and non-agriculture is unavoidable.

In addition to land limitations, spatial land issues are getting more complicated due to the current condition of the Indonesian economy, so it is necessary to be careful, especially with regard to business activities in the use and utilization of increasingly large space. Therefore, the unitary territory of the Republic of Indonesia must be utilized and utilized effectively by taking into account the values of the basic concepts of humans, society, and ecosystems that exist in Indonesia.

In relation to the important role of land in human life and the development of a country, it is necessary to have clear, precise, and able to accommodate land-related problems, especially regarding land rights to address various land-related problems. Land in Indonesian law is regulated in Law Number 5 of 1960 concerning the Basic Agrarian Regulations (UUPA). In Indonesia's land law, the principle of nationality is known as stated in Article 1 point (1) of the UUPA which states that "the entire territory of Indonesia is the unitary homeland of all Indonesian people who are united as the Indonesian nation" and Article 1 point (2) which reads "all earth, water,⁶

The intensity of development that demands the provision of relatively large land for various purposes (residential, industrial, various infrastructure) forces the conversion of agricultural land into non-agricultural land with all the consequences. The policy on land use in Indonesia is the main source of the 1945 Constitution of the Republic of Indonesia, precisely Article 33, which essentially states that the state controls and maintains land to be used as much as possible for the prosperity of the Indonesian people by: 1) regulating the legal relationship between people and land 2) regulating legal actions of people against land 3) planning for the allocation and use of land for the public interest.⁷

The implementation of this Basic Agrarian Law has a very important ideological meaning. Because this law is a direct elaboration of Article 33 paragraph (3) of the

⁶Article 1 paragraph (1) and paragraph (2) of Act No. 5 of 1960 concerning Basic Agrarian Regulations.

⁷A.P. Perlindungan, (1998), *Komentaris atas Undang-Undang Pokok Agraria*, Bandung, Mandar Maju, p. 66

1945 Constitution, as the basis or foundation of the strength of economic democracy which is highly developed in the context of creating people's prosperity. The facts on the ground raise questions about the rules used by the National Land Agency as a consideration in granting permits to change land use from agricultural land to residential houses.

Land conversion is a change in the function of part or all of the land area from its original function (as planned) to another function that has a negative impact (problem) on the environment and land potential.⁸ According to I Made Mahadi Dwipradnyana, Land function transfer is a process of changing land use from certain forms of use to other uses, for example to non-agricultural uses. And usually in the transfer of functions it leads to things that are negative for the ecosystem of the natural environment of the rice fields themselves.⁹

The need for non-agricultural land is always increasing along with the increasing population and economic sector. So that the conversion of agricultural land is difficult to avoid and to a certain point can affect national food security. The conversion of agricultural land can change its function due to land acquisition and turn into settlements or industries.

One clear evidence of the many land conversions in Kendal Regency can be seen from the number of houses that have been built even though the houses were previously agricultural land. Because all the agricultural land belongs to the community, the Kendal Regency Government is a little difficult to supervise agricultural land because it is not uncommon for houses to be built without permits because the community considers it difficult to obtain permits to build houses on agricultural land.

2. Research Methods

The approach method used in this study is an empirical juridical approach. The empirical juridical approach is an approach to land problems regarding matters of a juridical nature and existing realities. According to the empirical approach, knowledge is based on facts obtained from research and observation.

In this research method, the data source used is primary data obtained from

⁸Retni Kusniati, Analisis Perlindungan Hukum Penetapan Lahan Pertanian Pangan Berkelanjutan, Inovatif, Volume 6 Nomor 2, p. 8

⁹I Made Mahadi Dwipradnyana, *Faktor-faktor yang mempengaruhi Konversi lahan Pertanian Serta Dampak Terhadap Kesejahteraan Petani (study kasus di subak jadi, kecamatan kediri, tabanan)*. (Program Pascasarjana Universitas Udayana Denpasar. 2014)

interview field studies. In addition, secondary data obtained from library studies. This study uses descriptive analysis legal research specifications, on land issues regarding the study of the implementation of the Land Use Change Permit (IPPT) in the context of transferring the use of agricultural land to houses in Kendal Regency. The collected data is then analyzed by using qualitative analysis method, namely by using role theory and policy theory.

3. Results and Discussion

3.1. Granting of Permits for Change of Land Use (IPPT) in the Context of Transfer of Functions from the Use of Agricultural Land to Residential Houses in the Kendal Regency Area

Based on the description of the research method that in this study the research area is Kaliwungu District. Geographically, it is located in the administrative area of Kendal Regency, Central Java Province, ranging from 6 0 55' 30 " - 6 0 59' 10" South Latitude and 110 0 14' 00" - 1100 18' 00" East longitude with a land height of 4.5 meters above sea level, the boundaries of the Kaliwungu District in the north are bordered by the Java Sea, the west is bordered by Brangsong sub-district, the south is bordered by the southern Kaliwungu sub-district and in the east is bordered by the city of Semarang.

The Kaliwungu Subdistrict area of 47.73 Km² is mostly pond land covering an area of 14.04 Km² or 29.42% of the total area of the second-order sub-district, other lands are 13.44 Km² or 28.16%, and the rest consists of paddy fields. 8.07 km² (16.91%), houses and yards 7.61 km² or 15.95%, upland land 1.67 km² or 3.50%, state forest 2.87 km² or 6.01% and the smallest part for pond/pond land is 0.03 Km² or only 0.05% of the total area of Kaliwungu District. In the past 5 years, the area of rice fields and ponds has decreased every year, this is due to the conversion of functions into land for housing and moreover, land will be prepared for preparation of industrial estates located in two villages, namely Mororejo and Wonorejo which are villages that have the largest pond land. .

In general, the Kaliwungu sub-district is a lowland (sloping) with an altitude ranging from 1-5 meters above sea level and the southern part is higher ranging from 6-50 meters above sea level, this higher area is a hill located in the villages of Sumberejo, Nolakerto, Protomulyo, Kutoharjo while the other 6 villages namely Kumpulrejo, Karangtengah, Sarirejo, Krajankulon, Mororejo and Wonorejo villages are lowland areas.

Kaliwungu sub-district is divided into 9 villages, namely Kumpulrejo village with an area of 1.25 km² or 2.62%, Karangtengah village with an area of 1.20 km² or 2.52%,

Sarirejo village with an area of 1.33 km² or 2.79%, Krajan Kulon with an area of 2.16 km² or 4.53%, Kutoharjo village with an area of 2.31 km² or 4.85%, Nolakerto village with an area of 5.19 km² or 10.87%, Sumberejo village with an area of 7.88 km² or 16.51%, Mororejo village with an area of 14.35 km² or 30.07% and Wonorejo village with an area of 12.05 km² or 25.25%. From the description above, the two largest villages are Mororejo and Wonorejo villages. the existence of a large enough pond area, for Mororejo village has a pond of 5.74 km² or 40.05% of the village area and Wonorejo village has a pond area of 7.85 km² or 65,17% of the village area in the two villages is a producer of pond fish, either milkfish or shrimp and is the mainstay commodity in the village.¹⁰

According to Lestari, defining land conversion or commonly referred to as land conversion is a change in the function of part or all of the land area from its original function (as planned) to another function which has a negative impact (problem) on the environment and the potential of the land itself. The impact of land conversion also affects the social structure of the community, especially in the livelihood structure.¹¹

According to Malthus in his book entitled Principles of population, human development is faster than the production of agricultural products to meet human needs. Malthus was one of those people who was pessimistic about the future of mankind. This is based on the fact that agricultural land as one of the main factors of production remains constant. Although its use for agricultural production can be increased, the increase will not be much. On the other hand, agricultural land will decrease in existence because it is used to build housing, factories and other infrastructure.¹² The impact of this change in land use directly reduces the amount of agricultural land in Kendal Regency, Kaliwungu District. Some of the factors that occur in the transition of agricultural land into non-agricultural land in the Kaliwungu District Government are more focused on concentrating development in the Kaliwungu area because the Kendal industrial area will be built in that area. Judging from the socio-economic conditions of farmers, changes in the use of agricultural land have a positive impact on their needs. From the sale of agricultural land, the impact on the education of the perpetrators' children will increase from before. The impact on the quality of the perpetrator's residence, seen from before, the condition of the house has progressed. While the impact on ownership of valuables,

¹⁰ https://id.wikipedia.org/wiki/Kaliwungu,_Kendal accessed on August 1, 2022 at 20.00

¹¹ Dwi Prasetya, (2015), *"Dampak Alih fungsi lahan dari Sawah ke Tambak Terhadap Mata Pencaharian Masyarakat Desa (studi Kasus di Desa Cebolek Kidul Kecamatan Margoyoso Kab, pati"*, Universitas Negeri Semarang, Semarang,

¹² Zaenil Mustopa. (2011), *"Analisis Faktor-Faktor yang mempengaruhi Alih Fungsi Lahan Pertanian di Kabupaten Demak"*, Universitas Diponegoro Semarang, p 38

Based on the results of my research to the Department of Agriculture regarding the conversion of agricultural land to houses in Kaliwungu, Kendal Regency, the factors are:

- Population Factor

More and more people automatically need for clothing, food, and housing increases. Looks like the most exotic board function is rice field land.

- Economic factors

Increasing demand, agricultural land business is less promising because people prefer to work on land rather than in the fields or in the agricultural sphere so that those who manage agriculture have decreased even though this can be anticipated with technology. There is no one who processes it, eventually a transfer of function occurs.

- Inheritance factor

The occurrence of land splitting due to inheritance so that each one gets a small part to be processed as agricultural land. so they choose to transfer functions that can benefit more.

- Environmental degradation factors

Environmental degradation is caused by climate, such as prolonged drought. Rice fields that only rely on rainwater will dry up. Environmental degradation is rice fields that used to be planted twice a year, but due to climatic factors, it was only once. So the impact of this is economically reduced, so this can result in buying and selling land and switching functions.

- Regional Autonomy Factor

Governments are competing to develop their respective areas by wanting to create industrial areas, build ports, build airports, and make tours, etc. The land is also used mostly for agricultural land, so more and more agricultural land is changing functions.

- Factors of the legal system in the Kendal Regency Government

To control the transfer of land functions in Kendal Regency, it is regulated in a

regional regulationRegional Regulation No. 1 of 2020 amendments to Regional Regulation Number 20 of 2011 concerning Regional Spatial Planning (RTRW) of Kendal Regency and Regional Regulation No. 11 of 2020 amendments to Regional Regulation Number 13 of 2013 concerning Sustainable Agricultural Land (LP2B) Kendal Regencybut for enforcement it is still lacking, many factors regarding this matter, the first regarding the issue of Human Resources is still lacking.¹³

Based on the description above, the Department of Agriculture cannot provide justice by maintaining agricultural land, because the development of districts/cities cannot be separated from development that uses agricultural land for urban development. However, the Kendal district government is still trying to control the transfer of functions by regulating it in local regulations. Kendal Regency, which incidentally still has a lot of agricultural land, on the other hand is a impact adjacent to the capital city of Central Java.

According to the author's analysis, the policy of granting permits for changes in land use for the transfer of functions from agricultural land to residential areas in Kendal Regency is not fair because it has not been able to reduce permits and control the community not to change functions anymore, there should be more jobs in Kendal, the Kendal government must control the place The workers are left by making the flats, let alone allowing a Limited Liability Company (PT) or Commanditaire Venootschap (CV) to build housing, so that what used to be fertile land becomes polluted due to lack of irrigation and so on.

The development of the era and population density has resulted in more and more transfers of functions in Indonesia, as evidenced in the 2021-2022 timeframe that apply for 139 permits to build housing or residential houses or companies and of the 139 permits granted by the Kendal Regency Government as many as 83 were granted permits. It was found that the rejection was because it was not in accordance with LP2B as many as 56, indeed the land was non-technical irrigation agricultural land, but if it was continuously carried out, active productive agricultural land also decreased.¹⁴ SoThis could be a serious problem for food security if more and more agricultural land is converted to non-agricultural use. And then with the conversion of agricultural land to non-agriculture this will cause unemployment in the agricultural sector, some people will lose their livelihoods. While other places may not necessarily be able to accept it due to the lack of existing expertise. In order to effectively and efficiently control the conversion of agricultural land in an area, the following strategies are offered:

¹³Edy Nuryanto, interview, Head of the Kendal Regency Agriculture Service, On August 10, 2022

¹⁴Pre-survey at the Kendal Regency PTSP Service

- Government policies, government policies that are made must be pro-people, meaning that these policies really pay attention to the interests of the people, so that people feel comfortable living with their families and always want/pay attention to the government's invitation to make development successful, it is not easy to be tempted by the desire to convert agricultural land.
- Legal Instruments, Need to be made concretely in terms of:
 - Revoke and at the same time replace PerUU regulations that are not in accordance with the conditions of farmers' needs and by including strict and severe sanctions for violators;
 - The application of strict control, especially regarding permits for changes in the function of agricultural land and its management must be in accordance with the RTRW;
 - Implement strict and severe sanctions for violators such as violations of the RTRW etc.;
 - Provide much heavier sanctions for violators from the government apparatus/law enforcement, including those concerning permits, changes in land status, etc.;
 - Make a law that guarantees adequate and equal power for farmer organizations in relation (to fight for their rights) with the government and other organizations concerning every decision-making, especially those concerning the needs of farmers;
 - Making laws concerning guaranteeing the stability of the birth of a maximum of 2 babies for all Indonesian people who have families;
 - Revise PP No. 25 of 2000 concerning the Authority of the Regional Government and the Authority of the Province as an Autonomous Region by including land tenure rights by the State and the people who are more pro-people;
 - Replacing Presidential Decree No. 53 of 1989 concerning Industrial Estates; Presidential Decree No.33/1990 concerning Land Use for Industrial Estate Development with a new Presidential Decree that is more pro-people; and
 - Supporting the existence of Act No. 41 of 2009 concerning the Protection of Sustainable Agricultural Land and supervising its implementation and enforcement. And others.

3.2. Policy on the Granting of Permits for Changes in Land Use for the Transfer of Functions from the Use of Agricultural Land to Residential Houses in the Kendal Regency Area which is Equitable

Policies are written rules which are formal organizational decisions that are binding on members associated with the organization, which can regulate behavior with the aim of creating new values in society. In contrast to laws and regulations, policies only serve as guidelines for action and do not force them like laws. Although the policy regulates what can be done and what cannot be done, the policy is only adaptive and interpretative. Policies are generally problem solving in nature and are expected to be general in nature but without eliminating the local characteristics of an organization or institution, in other words, policies must provide opportunities for interpretation in accordance with existing conditions. According to Policy Theory Carl J Federick as quoted by Leo Agustino:¹⁵

Defines a policy as a series of actions/activities proposed by a person, group or government in a certain environment where there are obstacles (difficulties) and opportunities for the implementation of the proposed policy in order to achieve certain goals.

In the policy on land use change, the government has actually paid attention to it. In 2009, the Government passed Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, hereinafter referred to as Law 41/2009. The country of Indonesia, which is an agricultural country, needs to ensure the provision of food agricultural land in a sustainable manner. The state has an important role in fulfilling the people's right to food so that they are obliged to guarantee food independence, security and sovereignty. The government also understands that population growth, economy, and industry will lead to degradation, conversion and fragmentation of agricultural land for food.

Protection of agricultural land has actually been regulated in Law 41/2009 Article 44 paragraph (1) of Law 41/2009 states that land that has been designated as sustainable food agricultural land is protected and prohibited from being converted. However, there is an exception regarding this protection, namely when the transfer of function occurs because it is in the public interest. The conversion of agricultural land for the public interest has been regulated in Article 44 paragraph (3) of Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. Adi Sasono stated that the conversion of agricultural land to non-agricultural uses could have an impact on the weak ability to maintain food self-sufficiency as has been achieved in recent years.¹⁶ Besides that, it will also give birth to a fairly high unemployment rate, because the industrial sector and other service sectors will not

¹⁵Leo Agustino, (2008), *Dasar-Dasar Kebijakan Publik*, Bandung: Afabeta, p. 7.

¹⁶Adi Sasono & Ali Sofyan Husein, (1995), *Ekonomi Politik Penguasaan Tanah*, Jakarta: Pustaka Sinar Harapan.

be able to accommodate the entire workforce which continues to increase rapidly every year. The change in the use of agricultural land to non-agriculture, for example changing the use for industrial or housing development, this will obviously cause environmental pollution in general and the surrounding agricultural land.¹⁷

The granting of a transfer permit in Kendal Regency applies a one-stop system at the Kendal Regency Office of Investment and One-Stop Integrated Services (DPMPTSP) with the aim of providing convenience, if a line is drawn to compare the current system with the previous system, the difference lies in the requirements for requesting a letter recommendations from relevant agencies. There are several permits in DPMPTSP related to agriculture, including the transfer of functions in the form of IPPT. Basically the issuance of IPPT is directly related to DMPTSP and BPN. DPMPTSP is a team to recommend or a technical team to provide permits, besides that DPMPTSP also provides considerations based on Perda No. 11 of 2020 amendments to Regional Regulation No. 13 of 2013 concerning Sustainable Agricultural Land (LP2B).¹⁸

The Policy for Granting Permits for Changes in Land Use for the Transfer of Functions from Agricultural Land Use to Residential Houses in the Kendal Regency Region which is just is analyzed using the theory of justice. The theory of justice according to Thomas Hobbes is an act can be said to be fair if it has been based on an agreed agreement. From this statement, it can be concluded that justice or a sense of justice can only be achieved when there is an agreement between the two parties who promise. The agreement here is interpreted in a broad form, not only an agreement between two parties who are entering into a business contract, leasing, and others. But the agreement here is also an agreement for the verdict between the judge and the defendant.

Demands for justice and legal certainty are a permanent part of the law. But finality which is relativity because justice is the ultimate goal. Based on the description above, a common thread can be drawn that the policy of granting IPPT in Kendal is not balanced because it only focuses on the development of transportation access such as railroads, toll roads, dams, industrial areas and housing, which have implications for diminishing and neglected agricultural land. Meanwhile, development policies in the agricultural sector have not yet been seen, such as: farm roads, drilled wells, water for rainfed rice fields. Thus the purpose of justice to promote goodness in society is still far from the word "justice".

¹⁷Suryani, *"Implikasi Perubahan Penggunaan Tanah Pertanian Ke Non Pertanian Di Kabupaten Batang"*, (Malang: Pena Justisisa Volume VI Nomor 12 Tahun 2007), p. 14

¹⁸Edy Nuryanto, interview, Head of the Kendal Regency Agriculture Service, On August 10, 2022

4. Conclusion

Granting of Permits for Change of Land Use (IPPT) in the Context of Transfer of Functions from the Use of Agricultural Land to Residential Houses in the Kendal Regency Area shows that land conversion is still happening and widespread due to several factors, namely: a) population factors who see agricultural land as exotic land for board functions, b) economic factors, agricultural businesses are less promising, c) inheritance factors, getting a small share choose to transfer function rather than manage, d) environmental degradation, rice fields relying on rain-fed water are less profitable so they choose to be sold or transferred to function, e) regional autonomy factors, the government wants to develop the area by creating industrial estates, f) factors of the legal system, enforcement that is still lacking and inadequate human resources.

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