

The Juridical Implications of Changing the Function of Paddy Field Land to Residential Land

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Abstract. *Indonesia is an agricultural country where agriculture is the main commodity as a producer of national food. Most Indonesian people still depend on the agricultural sector. Land is the main factor in the world of agriculture. As an agricultural country, Indonesia absorbs the largest number of workers in the agricultural sector compared to other economic sectors. The challenge in the agricultural sector is that there is less and less agricultural land because it has been eroded by human economic activities, especially changing its function to become a settlement. The conversion of paddy fields in Songgom District, Brebes Regency has experienced a significant increase. The purpose of this study aims to determine and analyze the process of converting land functions into residential land and the juridical implications of changing the function of paddy fields into residential land. The approach method in this study is a sociological juridical approach with research specifications used descriptive analysis. Where the author uses primary data sources obtained through interviews and secondary data obtained from the literature and then analyzed descriptively qualitatively. Based on the research, it was concluded that the process of transferring land use went through several stages starting from checking the spatial data zone whether it entered the yellow zone, which means it is normally converted, or the green zone, which means it cannot be converted because it is in an LSD area. If the yellow zone is included in the LSD zone area, it must be excreted from the LSD to the Regent, then make an application through the DPSDAPR office, after PERTEK exits, proceed with submitting an application for approval to the DPMPTSP/MPP office, then it will be returned to BPN to record changes in land use. Furthermore, it can only be sold/ready to be converted. The legal consequences of the conversion of agricultural land into a residential area for the perpetrators of land conversion that deviate from the rules, are regulated in Article 72 of Law Number 41 of 2009 concerning Sustainable Food Land: a. Individuals who change the function of sustainable food agricultural land as referred to in Article 44 paragraph (1) shall be subject to imprisonment for a maximum of 5 (five) years and a fine of up to IDR 1,000,000,000.00 (one billion rupiah), b. Individuals who do not carry out the obligation to restore the condition*

of sustainable food agricultural land to its original state as referred to in Article 50 paragraph (2) and Article 51 shall be punished with imprisonment for a maximum of 3 (three) years and a fine of up to IDR 3,000,000,000.00 (three billion rupiahs), c. In the event that the acts referred to in paragraphs (1) and (2) are committed by a government official, the penalty shall be added to 1/3 (one-third) of the penalty imposed.

Keywords: Field; Housing; Juridical; Land.

1. Introduction

Indonesia is an agricultural country where agriculture is the main commodity as a producer of national food. Most Indonesian people still depend on the agricultural sector. Indonesia as an agricultural country needs to guarantee the provision of agricultural land in a sustainable manner as a source of work and a decent livelihood for humanity by prioritizing the principles of togetherness, efficiency, justice, sustainability, environmental awareness and independence, as well as by maintaining balance, progress and national economic unity.

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "Earth, water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people". In Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter: UUPA) authorizes the government to regulate and plan the use, allotment and maintenance of land affairs. Based on this authority, the government is obliged to make a general plan regarding the allotment and use of land, water and air space and the natural resources contained therein as stated in Article 14 paragraph (1) of the BAL. In this sense, it is possible to change the function of land use, including changes to the use of agricultural land for non-agricultural purposes.¹

In its development, the need for land is felt to be increasing day by day along with the increasing population and the better quality of life in line with the success of development, while development itself requires land as its basis.²Population growth continues to increase and the demand for housing also increases causing housing construction to continue to increase however, the availability of land is not in proportion to demand causing a lot of agricultural land to change its function to non-agricultural land (conversion).

Land begins to change its function as population growth and development of human civilization. This eventually led to complex problems due to population

¹Sumardjono, Maria SW, Changes in Use of Agricultural Land to Non-Agricultural Land in DIY Province 1983-1987", *Mimbar Hukum*, No. 17/IV/1993, 1993

²<https://harianpelitanews.id/tabrak-aturan-ada-business-kavling-di-lahan-pertanian-desa-kaligawe-dan-kaligawe-wetan/> .

growth. Land conversion is a specific change from agricultural use to non-agricultural use. This phenomenon can certainly bring serious problems. The implication of uncontrolled conversion of agricultural land can threaten the reduced food supply capacity³

The impact that can occur on land conversion apart from an imbalance in land ownership by the community which can result in land conflicts can also have an impact on the development of basic biodiversity in Indonesia if the availability of agricultural land is not quickly converted into sustainable agricultural land which is expected to become consistent agricultural land in Indonesia. Presidential Decree 34/2003 Article 2 paragraph (2) concerning National Policy in the Land Sector, including land use planning for Regency/City areas. In this sense it is also possible for changes in land use.⁴

The purpose of this research is to find out and analyze the process and juridical implications of the conversion of paddy fields to residential land. Population growth which increases every year causes a surge in demand for housing, while land or land cannot possibly increase to keep up with population growth causing the conversion of rice fields to uncontrollable functions. In addition, the Government must provide new land for agricultural activities to replace land that has been converted. The process of transferring land functions should be in accordance with applicable laws and regulations so that the conversion of paddy fields is under control.

2. Research Methods

In the research conducted by the author, the approach used is a sociological juridical approach with the research specifications used are analytical descriptive research specifications. The data used includes: 1) primary data, data obtained directly through observation, interviews, and documentation 2) secondary data, data obtained from the literature. The data analysis method used in this study uses a qualitative descriptive method.

3. Result and Discussion

3.1. The Process of Transferring the Function of Paddy Field Land to Residential Land

Land is a limited number of gifts from God Almighty and is provided for humans and other creatures created by God as a place of life and a source of life. In

³Tri Feby Handayani, Ana Silviana, Sri Sudayatmi, Converting the Function of Agricultural Land to Housing (Study of Land Conversion of the Applicability of Law NO. 41 OF 2009 Concerning the Protection of Sustainable Food Agricultural Land), Diponegoro Law Review vol. 3 No, 2 (Online), 2014. <http://ejournal-s1.undip.ac.id/index.php/dlr>.

⁴Zuhr. Mi, Conversion of Agricultural Land Functions in the Pantura of Central Java (Case Study of Brebes Regency), Journal of Research and Development of Central Java Province vol. 16 No. 1, 119-130, 2018, retrieved from <http://ejournal.bappeda.jatengprov.go.id/index.php/jurnaljateng/article/view/77>, quoted from (W. Lockeretz, 2003)

addition, land is also a space which is a vehicle that must be utilized as much as possible for the prosperity of the people. According to geomorphology experts, soil is part of the earth's surface as a result of modification by physical, chemical and biological processes that work together for a certain period.⁵

Land has a social function and its utilization must be able to improve the people's welfare as emphasized in the National Medium Term National Development Plan (RPJM). For this reason, it is necessary to continue to develop national spatial and land use plans so that land use can be coordinated between various types of land use while maintaining natural and environmental sustainability and preventing the use of land which is detrimental to the interests of society and development interests.

In connection with the activity of changing the use of agricultural land to non-agricultural use, it has been regulated in various relevant laws and regulations. As a basis for regulation, it is stated in Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, hereinafter abbreviated as UUPA, which states that:⁶

1. On the basis of the provisions in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia and the matters referred to in Article 1 "earth, water and outer space, including the natural wealth contained therein, is controlled by the State at the highest level." , as the organization of the power of the whole people.
2. The right to control from the State included in paragraph (1) of this article gives authority to:
 - a. Regulate and administer the allotment, use, supply and maintenance of the earth, water and space;
 - b. Determine and regulate legal relations between people and earth, water and space;
 - c. Determine and regulate legal relations between people and legal actions concerning land, water and space.

Based on the provisions of the article above, the government has the authority to regulate and administer the allotment, use, supply and maintenance of land, including in regulating the relationship between people and actions that result in changes in the use of agricultural land to non-agricultural uses. Further provisions of Article 2 of the UUPA are set forth in the provisions of Article 10 of the UUPA where it is determined that there is an obligation for every holder of agricultural land rights to work actively, increase soil fertility and prevent land damage. Further implementation of the provisions of Article 2 of the UUPA is also stated in Articles 14 and Article 15 of the UUPA. Based on the provisions in

⁵Alfia Fitriyanti Rukmina, Implementation of Converting the Function of Agricultural Land to Residential Land in Jember Regency Based on Regional Regulation Number 1 of 2015 Concerning Jember Spatial Plans for 2015-2035, Faculty of Law, University of Muhammadiyah Jember, 2021, p. 2

⁶Mistain Billah, Land Use Change, Agrarian Law Papers, 2012, <http://mustain-billah.blogspot.com>, p. 1.

Article 10, Article 14, and Article 15 of the UUPA, the activity of changing the use of agricultural land to non-agricultural is an activity that is not in accordance with the principles of land use stewardship and the principle of maintaining soil fertility. In other words, changes in land use are acts of destruction to natural resources in the form of fertile agricultural land.

Changes in the use of agricultural land to non-agricultural uses have indeed become a phenomenon in society along with the pace of development in all areas of life. Changes in land use are something that deserves attention, because many green areas (green belts) have become industrial areas, trade settlements. This situation affects the life and rural environment.⁷ According to Mubyarto, land is a factor of production that can no longer be produced by humans or is often referred to as non-produced input, so conversion results in degradation. The convention on agricultural and non-agricultural land also raises environmental problems and this is also caused by technological advances that can produce massive and efficient production, but cause side effects in the form of pollution. Land conventions have a major influence on the sustainability of ecosystem relationships, all of which are caused by land conventions.⁸

Regarding the causes of changes in land use, various opinions taken from the literature explain this matter. According to Koesnadi Hardjasoemantri, the challenges of problems that arise in development are influenced by 4 main factors, namely: developments and problems of the population in society, utilization and management of natural resources and the environment, developments and changes in technology and culture, and developments in the international scope. These factors can lead to land conversion activities.⁹

The provisions contained in the UUPA regarding changes in land use are emphasized again in the letter of the State Minister for Agrarian Affairs/KBPN No. 460-1594 concerning the Prevention of the Convention on Technically Irrigated Paddy Fields to Become Dry Land, and as such action the community is urged not to close the irrigation canals that irrigate their technically irrigated rice fields, not to dry up their technically irrigated rice fields and make them into use of dry land agriculture, not hoarding their technically irrigated rice fields for building purposes. If you want to return it to its original state, technically irrigated paddy fields that have been changed are used that do not comply with licensing procedures.

The house is one of the basic human needs and not a few houses are used as an indicator of one's success and as an asset for business development and

⁷Agus Salim, Samun Ismaya, Introduction to Agrarian Law, Grasindo, Jakarta, 2012, p. 89.

⁸Arief Budiono, The Theory of Utilitarianism and Legal Protection of Agricultural Land from Conversion of Functions, Journal of Jurisprudence, Vol. 9 No. 1, Faculty of Law, University of Muhammadiyah Ponorogo, 2019, pp. 103-104.

⁹esnadi Hardjasoemantri, Introduction to Agrarian Law, Grasindo, Jakarta, 2000. Pg.91

increasing the economic value of the owner. As the population increases, the need for a place to live also increases, and most people buy land to build a place to live. But in order to carry out the utilization and use of land, it is necessary to compile terms and conditions for using and utilizing land, which are arranged in a technical form for utilization and use of land. -respectively.¹⁰

At a minimum, the transfer of land use must pay attention to:

1. Area of land to be transferred
2. Potential loss of food yield due to conversion
3. Hazard value due to conversion
4. The impact on the decline in labor income and
5. Estimation of socio-cultural changes in society.

In the use of agricultural land that will be made as housing must obtain an IPPT Permit. After obtaining the IPPT permit, namely the Land Use Permit issued by BPN, it is included in the principle permit, in this case it is also intended to have a land conversion plan (PERMENTAN No. 18 of 2013) for public purposes including the preparation of annual plans such as location, area, allotment and equipped with a master plan without disrupting the use of existing infrastructure or what can be called a site plan together with suggesting the height of the area, after going through the formal procedures above and the transfer of rights has been carried out / land rights acquisition, the land has changed its function by draining it by the Agriculture Service in the context of changes in land form from agriculture to non-agriculture. If this activity is completed, the land to be built must be in accordance with the issuance of an IMB (Building Permit). IPPT permits are permits that are carried out at the local land agency, before an agricultural land will change its function in the form of technical comparisons from the BPN, BAPPEDA, Government, Camat, Lurah offices as a decision letter.¹¹ Before transferring the function of agricultural land to non-agricultural land, the agricultural land must first be landed or the soil must be drained first. Soil drying itself is a series of processes that aim to change the status of agricultural land, paddy fields, or moor land to switch status to non-agricultural land or yards. Aims to carry out development for business buildings or residences. The requirements that must be met in order to submit an application for land landing/soil drying include:¹²

1. Photocopy of KTP of Land Owner
2. Photocopy of NPWP of Land Owner
3. Photocopy of the current year's PBB SPPT and proof of current year's PBB payments
4. Copy of Land Certificate

¹⁰Master Saha Purba, Idham, Legal Analysis of Conversion of Agricultural Land Functions into Settlement and Housing Development, Arbitrator: Scientific Journal of Master of Laws, 3(2), 2021, p. 154.

¹¹Ibid., p. 156.

¹² <https://www.pengeringantanahsleman.web.id/>

5. Ground location coordinates

6. Land location photo

However, before carrying out the process of landing or draining the soil, it must first be checked in the spatial data by the Spatial Planning Service first. The purpose of checking the spatial data is to find out whether the land is included in the yellow zone or the green zone. If the land, after checking the spatial data, is included in the yellow zone, it can proceed with the process of landing or draining the soil, but if after checking the spatial data, it shows that the land is included in the green zone, then the land cannot proceed to the next process, or in other words the land cannot be converted, however, if the yellow zone land is included in the Protected Paddy Field Area (LSD), then the yellow zone land that is included in the LSD Area (Protected Paddy Field) must first be removed from the LSD Area (Protected Paddy Field). The National Land Agency (BPN) in the process of landing or draining land issues what is called PERTEK (Technical Consideration). The purpose of issuing PERTEK by BPN is that BPN only provides technical considerations regarding the location of the land requested by the applicant. If there is something that the applicant disagrees with what was issued by BPN, in this case, it is PERTEK (Technical Considerations). If after checking the spatial data and in PERTEK it is stated that the land being applied for is included in the green zone, meaning that the resistance cannot be continued, the green zone is clearly included in the LSD area. However, if it is stated that the land being applied for is included in the yellow zone but the location of the land is in the LSD Area, it must be removed from the LSD area by applying for a permit to the Ministry through the Regent. Submission of these expenditures through the DPSDAPR office (Water Resources Management and Spatial Planning), in the process of submitting permits to the Ministry through the Regent there is something called the FPR (Spatial Planning Forum). The task of the Spatial Planning Forum is to consider whether or not the permit application for release of yellow zone land is within the Protected Wetland Area (LSD). After PERTEK has been approved, the next step is to submit an application for approval to the Office of Investment and One-Stop Services (DPMPTSP) / Public Service Mall (MPP) for testing. After obtaining approval from the DPMPTSP/MPP, it is returned to BPN for recording on the certificate. Furthermore, after the registration is done submission. In this filing process, the rights are automatically owned by individuals, and if housing is to be made, the rights are changed to building use rights. This means that there has been a decline in rights from property rights to building use rights. The basis of rights is one of the conditions for citizens to apply for land rights, such as buying and selling, grants, inheritance, or physical possession for tens of years. After being recorded in the certificate of change in land use in the sense that the landing from agricultural land to non-agricultural land is called the land use change recorder, then the registration of the decree (SK) from the Building Use Right (HGB) is carried out. After the certificate is in the name of the PT, there is a release from the

individual property to the PT. Representatives from the PT submitted an application for a Building Use Rights Certificate (SHGB). After becoming a Building Use Right, the PT can only split the certificate to be sold as housing. If the solution is below 5 (five) basic areas, the solution is using land plots, while if the solution is above 5 (five) basic areas, the solution is using a site plan issued by the PERWASKIM (People's Housing and Settlement Area) Office and there is no reduction in rights.

Based on the theory of legal certainty that the process of transferring the function of rice fields to residential land is not in accordance with the applicable laws and regulations. This is because there are still many landowners who sell their land without providing adequate or adequate infrastructure, facilities and infrastructure for buyers.

3.2. Juridical Implications of Converting the Function of Paddy Field Land to Residential Land

The basis for land policy is Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which is further elaborated in Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA). In Article 2 paragraph (1) of the UUPA it is reaffirmed that the earth, water and space, including the natural resources contained therein are controlled by the state as an organization of the power of all the people. Furthermore, in the same paragraph (2) it is stated that the state's right to control gives authority to:

- a. Regulate and administer the allotment, use, supply and maintenance of earth, water and space.
- b. Determine and regulate legal relations between people and earth, water and space.
- c. Determine and regulate legal relations between people and legal actions concerning earth, water and space.¹³

Basically each of these policies prohibits changes in the use of agricultural land to non-agricultural uses. However, in reality in the field the policy cannot be an effective control system for the conversion of agricultural land that occurs. However, that doesn't mean it can't because it depends on the political will of the government.¹⁴

The conversion of agricultural land functions that are not in accordance with applicable regulations will potentially threaten food security. The conversion of functions, especially land for food crops, should never have been carried out.¹⁵ If it is absolutely necessary to change the function of the land, there should be prevention efforts such as providing incentives for rice field owners, protecting

¹³I Komang Darman, The Legal Consequences of Converting the Functions of Agricultural Land to Housing Areas, *Belom Bahadat: Journal of Hindu Religious Law*, Vol. 10 No.2, 2010. p. 12

¹⁴*Ibid*, p.12.

¹⁵Parlindungan Sianipar, Legal Analysis of the Implementation of the Conversion of Agricultural Land to Residential Land in Serdang Bedagai Regency, p. 8.

agricultural commodities, and limiting permits for conversion of functions. along with the increase in population and the development of the economic structure. The conversion of agricultural land is difficult to avoid due to this trend. Several cases show that if there is a change in land use in a location, then in a short time the land around it will also change function progressively. This is due to two factors. First, in line with the construction of a residential or industrial area in a land conversion location, then accessibility at that location becomes increasingly conducive for industrial and residential development which ultimately encourages increased demand for land by other investors or land speculators so that the price of land in the vicinity increases. Second, an increase in land prices can further stimulate other farmers in the vicinity to sell their land.¹⁶

For sustainable food agricultural land, it is not allowed to be converted or its function cannot be changed. Apaliba due to a change in the function of sustainable food agricultural land and this change has resulted in reduced agricultural land there must be replacement land. The purpose of procuring replacement land for converted agricultural land is to ensure that the replacement land will be utilized, so that even if there is a transfer of land functions in the area, it will not affect agricultural output, because the replacement land is former forest land, swamp land or abandoned land which is then converted into land that is likely to be developed both irrigation and technically, so that with the opening of replacement land after the transfer of function of the paddy fields,

The legal consequence of the conversion of paddy fields to non-agricultural land, in this case, has changed to residential land, namely the change in the status of land use from agricultural to non-agricultural land. In this case, agricultural landowners who have converted to non-agricultural land can use their land for the purposes of using non-agricultural land, such as for the purposes of building settlements, public facilities, increasing income by transferring the work function of farmers to other jobs or professions such as traders where the land concerned is used to open a business and so forth.

Agricultural land that is always reduced will have direct or indirect consequences, namely as follows:

- a. National food production is reduced because the population is always increasing and is not matched by the area of agricultural land.
- b. Threatens the balance of the ecosystem because rice fields become the residence of several animals. In addition, agricultural land can also be used as a place to absorb rainwater.
- c. Agricultural facilities that had previously been provided became unusable due to reduced agricultural land.
- d. Farm workers lost their jobs as a result of the conversion of agricultural land.

¹⁶Wibowo SC, Analysis of Paddy Field Conversion Patterns and Their Impact on Rice Production, Agency for the Study of Agricultural Technology, Bandar Lampung, 1996, p. 76.

e. Food prices are becoming expensive as a result of the amount of production that is always decreasing.

f. The number of population movements from one area to another has increased because the agricultural land which is a source of livelihood has also decreased.¹⁷

The form of compensation given to the community is an alternative in accordance with Article 36 of the Law on Land Acquisition. According to the expert, the criteria for determining the amount of compensation include:¹⁸

a. Any direct loss from dispossession must be fully reimbursed,

b. Losses due to residual rights that are not revoked become reduced in value.

Regarding the sanctions that must be accepted for land conversion actors who deviate from the rules, it is regulated in Article 72 of Law Number 41 of 2009 concerning Sustainable Food Land:

a. Individuals who change the function of sustainable food agricultural land as referred to in Article 44 paragraph (1) shall be subject to imprisonment for a maximum of 5 (five) years and a fine of up to IDR 1,000,000,000.00 (one billion rupiah).

b. Individuals who do not carry out the obligation to restore the condition of sustainable food agricultural land to its original state as referred to in Article 50 paragraph (2) and Article 51 shall be punished with imprisonment for a maximum of 3 (three) years and a fine of up to IDR 3,000,000,000.00 (three billion rupiah).

c. In the event that the acts referred to in paragraphs (1) and (2) are committed by a government official, the penalty shall be added to 1/3 (one-third) of the penalty imposed.

Meanwhile, the sanctions that will be received by government officials who are authorized to issue permits for applications for the conversion of agricultural land to non-agricultural land functions, but grant permits for applications that are not in accordance with spatial planning, do not meet both administrative and technical requirements and violate all provisions, are in accordance with Article 72, the official is punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah).¹⁹

Protection of agricultural land has actually been regulated in Law Number 41 of 2009 Article 44 paragraph (1) which states that land that has been designated as sustainable food agriculture land is protected and prohibited from being converted. But there are exceptions regarding this protection, namely when the transfer of function occurs because it is in the public interest. The conversion of

¹⁷Master Saha Purba, Op.cit, p.156.

¹⁸Ibid.

¹⁹I Komang Darman, Op. cit, p. 12-13.

the function of agricultural land for public purposes has been regulated in Article 44 paragraph (3) of Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land which states that "the conversion of land function that has been determined as referred to in paragraph (2) can only be carried out by condition:²⁰

1. Strategic feasibility analysis was carried out,
2. A plan for the transfer of land functions is prepared,
3. Freed from the ownership rights of the owner, and
4. Replacement land is provided for sustainable food agricultural land that is converted.

The transition of functions will still occur to sustainable food agricultural land and the government is responsible by providing provisions in accordance with Article 46 paragraph (1) of Law Number 41 of 2009 which states that the provision of replacement land must meet the following conditions:²¹

1. At least 3 (three) times the area of land in the event that the converted function is irrigated land,
2. At least 2 (two) times the area of land when the converted function is in the form of measuring land for tidal and non-tidal swamp land,
3. At least 1 (one) times the land area in terms of the conversion of non-irrigated land.

Based on the theory of legal benefits, the conversion of rice fields to residential land provides good benefits for both parties, namely the seller and the buyer. The seller feels the benefits of transferring the function of the land, namely getting a profit of some money and for land buyers they have new land that they can reuse by building new buildings or houses as a place to live or take shelter and the demand for housing is increasing day by day as the population increases. . However, on the one hand, there are also those who feel aggrieved by the impact of this land conversion because, more and more paddy fields are converted, the less livelihood for the farmers cultivating the rice fields.

4. Conclusion

The land conversion process goes through several stages starting from checking the spatial data zone whether it is included in the yellow zone which means it is normally converted or the green zone means it cannot be converted because it is in an LSD area. If the yellow zone is included in the LSD zone area, it must be excreted from the LSD to the Regent, then make an application through the DPSDAPR office, after PERTEK exits, proceed with submitting an application for approval to the DPMPSTP/MPP office, then it will be returned to BPN to record changes in land use. Furthermore, it can only be sold/ready to be converted.

²⁰Saha Purba, Idham, Op. cit, p. 158.

²¹Ibid.

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