

Transfer of Agricultural Land Function in relation to Spatial Law on

Yusuf Efendi^{*}, Mohammad Roesli¹, Asep Heri¹

¹Faculty of Law, Merdeka University Surabaya, Indonesia

^{*}Corresponding author E-mail: fendinh688@gmail.com

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ABSTRACT

The purpose of this study is to analyze the legal procedures for permitting land use change in the perspective of administrative law. space, in terms of reviewing positive law and the strength of the influence of laws and regulations, reviewing positive law in terms of legal effectiveness. The research method uses a normative juridical research method, which focuses on the study starting from the provisions of the applicable laws and regulations, accompanied by legal theories and principles related to the problems studied. Thus, this research refers to the laws and regulations with a descriptive analytical discussion, which focuses on solving actual problems by collecting legal materials, compiling, classifying, and then analyzing them. Agricultural land products have received protection in accordance with the ratification of Law no. 41 of 2009 and this is also reinforced by Presidential Regulation No. 59 of 2019 concerning controlling land use change, but in reality population growth and the need to live together with development are rife being built regardless of the concept of being environmentally intelligent. but in concept the existing legal regulations are still based on large entrepreneurs with high production capacity which suppress the compulsion of rural farmers who are far from government administration.

Keywords: Land, Land, Agriculture, Constitution, Law

1. INTRODUCTION

Indonesia is a developing country that cannot be separated from modernization. The modernization paradigm that has been developing so far is that developed countries are industrial countries (Roesli et al., 2017). Thus, if Indonesia wants to become a modern country, it must change itself from an agrarian country to an industrial country, and for that economic growth becomes its development paradigm. However, the impact of such a development pattern is that farmers are evicted and lose their land, land speculation is rampant, land control is concentrated in one or a certain group of people, and various other land tenure patterns that are far from democratic and justice values.

Indonesia is a country that has abundant natural resources (Zhong et al., 2011). Natural resources are managed by the government with the aim of prospering the people. This is stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "That the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". One of them is in the field of land. Soil is one of the important natural resources for human survival. Human life is almost largely dependent on land, both for livelihoods, needs for clothing, housing, food and other religious needs. The reality in society, people will



always try to defend an inch of their land. So that in their lives, the community will never be separated from matters related to land (Binswanger et al., 1995).

Since ancient times, people have started to use land as their livelihood, namely by farming. The large number of agricultural lands that are managed because of the large number of people who carry out farming activities so that the State of Indonesia is called an agrarian country where the agricultural sector is the main commodity to produce food for its people. The era of globalization has had a negative impact on the state of Indonesia (Yang et al., 2020). Currently, Indonesia has lost its nickname as an agricultural country. Many agricultural land conversions (conversions) have been carried out. As a result of this agricultural land conversion, it will have an impact on national food security. Where, the Indonesian state must import food to continue to meet the needs of the community. And the most regrettable thing is the conversion of productive agricultural land into residential land due to the large demand for housing (McSweeney et al., 2017).

Land conversion or commonly referred to as land conversion is defined as 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 the potential of the land itself. With the increase in population that occurs every year, it will also result in an increase in population density (Zhang & Wu, 2017). The higher population density without being accompanied by the addition of residential land area will result in increased land use change. This requires attention from the government, especially local governments in anticipating the occurrence of uncontrolled land conversion. In this case, the role of the government is very necessary to prevent the conversion of agricultural land into settlements. Therefore, to protect the existence of productive agricultural land that has been converted into a residential area whose purpose is to provide protection for food security and independence, the government has passed Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land (Kocur-Bera & Pszeny, 2020).

2. RESEARCH METHODS

In this writing, the author uses a normative juridical research method, which focuses on the study starting from the provisions of the applicable laws and regulations, accompanied by theories and legal principles related to the problems studied. Thus, this research refers to the laws and regulations with a descriptive analytical discussion, which focuses on solving actual problems by collecting legal materials, compiling, classifying, and then analyzing them. Legal materials for this research were obtained through library research in order to obtain various materials related to the problem being studied, books and scientific works, papers, newspapers and field studies which are expected to provide an overview of the problems being studied. and The data collected was

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processed in order to obtain legal material that is ready to be analyzed. The analysis of the legal material is carried out deductively in accordance with the problem approach in this study. With this kind of analysis, it will be able to provide conclusions to the problems discussed in this study.

3. RESULTS AND DISCUSSION

Transfer Of Agricultural Land Functions In Relation To Spatial Law and Spatial Planning

Settlement is an area or land used as a residential area or residential environment and a place for activities that support people's lives. In general, there are many houses in residential areas. In Article 4 of Law no. 4 of 1992 concerning housing and settlements, states that settlements are defined as "part of the environment outside the protected forest area, both in the form of urban and rural areas that function as a unit of residential environment or residential environment and a place for activities that support livelihoods and livelihoods. However, this law is no longer used because it is not in accordance with the development and needs of decent and affordable housing and settlements in a healthy, safe, harmonious and orderly environment. Then Law No. 4 of 1992 was replaced with Law no. 1 of 2011 (Widowaty & Wahid, 2021).

In Law No. 1 of 2011 concerning Housing and Settlement Areas, it is explained that "Settlements are part of a residential environment consisting of more than one housing unit. Article 106 of Law no. 1 of 2011 stipulates that the provision of land for the construction of houses, housing, and residential areas can be done through:

- a. The granting of land rights to land controlled directly by the state.
- b. Land consolidation by land owners.
- c. Transfer of rights or relinquishment of land rights by land owners.
- d. Utilization and transfer of state-owned or regional-owned land in accordance with statutory regulations.
- e. Utilization of state land, former abandoned land.
- f. Procurement of land for development for the general interest in accordance with the provisions of the legislation.

There is one key word that land is one of the strategic elements of space and its use is related or related to regional spatial planning. Regional spatial planning, contains a commitment to implement a consistent and consistent arrangement within the framework of land policy based on Law no. 5 of 1960 concerning Basic Agrarian Regulations (Sanjaya & Widayati, 2022).

In line with the above description, Article 33 paragraphs (1) to (5) of Law no. 26 of 2007 concerning Spatial Planning (State Gazette of 2007 No. 68) emphasizes more clearly the correlation between land use and spatial planning with a complete description as follows:



- 1) Space utilization refers to the function of space specified in the spatial plan carried out by developing stewardship land, water stewardship, air stewardship and other natural resource stewardship.
- 2) In the framework of developing the stewardship as referred to in paragraph (1), activities are carried out for the preparation and determination of the land use management balance, the water resources management balance, the air resources management balance, and the other natural resource management balance sheet.
- 3) Land use in the space planned for the construction of infrastructure and facilities for interest gives first priority to the Government and Regional Government to receive the transfer of land rights from the holder of land rights
- 4) In the use of space in a protected function space, the first priority is given for the Government and Regional Government to accept the transfer of land rights from the holders of land rights if the concerned will relinquish their rights.

In Article 2 of the Law on Spatial Planning (UUPR), it is emphasized that: "Within the framework of the Unitary State of the Republic of Indonesia, spatial planning is carried out based on the principles:

a. Integration

What is meant by "integration" is that spatial planning is carried out by integrating various interests that are cross-sector, cross-regional, and cross-stakeholder Stakeholders, among others, are the Government, regional government, and the community

b. Harmony, harmony and balance

What is meant by "harmony, harmony and balance" is that spatial planning is carried out with realize harmony between spatial structures and spatial patterns, harmony between human life and the environment, balance growth and development between regions as well as between urban areas and rural areas

c. Sustainability

What is meant by "sustainability" is that spatial planning is carried out by ensuring the preservation and n continuity of the carrying capacity and capacity of the environment by taking into account the interests of future generations.

d. Usability and effectiveness

What is meant by "usability and usability" is that spatial planning is carried out by optimizing the benefits of space and the resources contained therein as well as ensuring the realization of quality spatial planning.

e. Openness



What is meant by "openness" is that spatial planning is carried out by providing the widest possible access to the public to obtain information related to spatial planning.

f. Togetherness and partnership

What is meant by "togetherness and partnership" is that spatial planning is carried out by involving all stakeholders

g. Protection of public interest

What is meant by "protection of public interest" is that spatial planning is carried out by prioritizing the interests of the community.

h. Legal certainty and justice

What is meant by "legal certainty and justice" is that spatial planning is carried out on the basis of laws/statutory provisions and that spatial planning is carried out by taking into account the community's sense of justice and protecting the rights and obligations of all parties fairly with guaranteed legal certainty.

i. Accountability

What is meant by "accountability" is that the implementation of spatial planning can be accounted for, in terms of the process, the financing, and the results (Bergsteiner, 2012).

The objectives of spatial planning are explained in article 3 of the Law on Spatial Planning (UUPR), namely: "The implementation of spatial planning aims to create a safe, comfortable, productive, and sustainable national space based on the Archipelago Insight and National Resilience by:

- a. The realization of harmony between the natural environment and the artificial environment.
- b. The realization of integration in the use of natural resources and artificial resources with due regard to human resources, and
- c. The realization of the protection of spatial functions and prevention of negative impacts on the environment due to the use of space."

2. Management Land

use management is the same as the spatial use management pattern which includes the control, use and utilization of land in the form of consolidated land use through institutional arrangements related to land use as a unified system for the benefit of the community in a fair manner (Erb et al., 2017).

In Law Number 26 of 2007 concerning Spatial Planning, it is stated that "spatial planning, structure, and spatial patterns which include land use, water use and other resource use". In this regard, land use management is an inseparable part of spatial planning, or a subsystem of spatial planning. Currently, land use is the most dominant element in the spatial planning process.

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In Article 3 of Government Regulation no. 16 of 2004 explicitly states 4 objectives of land use management, namely:

- a. Regulate the control, use and utilization of land for various needs for development activities in accordance with the Regional Spatial Plan.
- b. Realizing the control, use and utilization of land in accordance with the direction of the function of the area in the Regional Spatial Plan.
- c. Realizing land order which includes control, use, and utilization of land including land maintenance and control of land use.
- d. Guaranteeing legal certainty to control, use and utilize land for people who have legal relations with the land in accordance with the determined Regional Spatial Plan.

3. Basic Competencies of Land Function Transfer

Land based on positive law in Indonesia is a state right that is intended entirely for the prosperity of the people, land is a state-owned unit which covers all land and seas within the limits set by national law covering land areas, inland waters, waters the archipelago and the territorial sea along with the seabed and subsoil thereof, as well as the air space above it, including all sources of wealth contained therein as stated in Article 1 paragraph 1, Law no. 43 of 2008 concerning State Territories and International Law (Continental Shelf Boundaries, EEZs, territorial and jurisdictional boundaries) "uti possidetis juris" regional development and development based on the principles of autonomy and decentralization that occurs has reduced the function of green open spaces, according to a Ministerial Regulation PU No. 5 of 2008 concerning Guidelines for Provision and Utilization of Green Open Space in urban areas; (a) guaranteeing the provision of green open space to be part of the air circulation system (city lungs), (b) microclimate regulator so that the air and water circulation system naturally runs smoothly, (c) as shade, (e) oxygen producer (f) provider of animal habitats (g) absorbent of air, water and soil media pollutants and (h) windbreaks. According to Huisman, the government's authority in the concept of the rule of law from the law states that government organs do not consider having government authority by law, followed by that authority comes from legal ethics. Land conversion should at least pay attention to;

1. The area of land to be transferred;
2. Potential loss of food yields due to conversion;
3. Value of risk due to conversion;
4. Impact on decreasing absorption of agricultural labor and;
5. Estimation of socio-cultural changes



in land conversion in the Regulation of the Minister of Agriculture Number 81 of 2013 concerning Technical Guidelines for the Transfer of Functions of Sustainable Food Agricultural Land concerning Technical Guidelines for the Procedures for Sustainable Food Agricultural Land Transfer which stipulates that land conversion must include data that includes ;

1. Data related to land area, soil fertility, quantity and variety of commodity production in the area concerned and potential for future production
2. Agricultural labor absorbed,
3. Estimated length of time for recovery to be fulfilled,
4. Household income, and demographic conditions
5. Then And accompanied by land conversion planning data.

If you have obtained an IPPT permit, it is a land use permit issued by BPN contained in a principle permit, in this case it is also intended to have a land conversion plan (PERMENTAN NO. 81 of 2013) for the public interest including the preparation of an annual plan including the area, location, designation and completed with a master plan without disturbing the utilization of existing infrastructure (Site Plan) along with the recommendation for the height of the area, after going through the formal procedure above and the transfer of rights has been carried out/freedom of land rights, the land undergoes change of function by drying by the agricultural service in the context of p When this activity is completed, the land to be built must be accompanied by an AMDAL permit (analysis of environmental impacts) then land that is ready to be built is issued with an IMB (permit to construct a building) (Gereffi et al., 2005).

The IPPT permit is a permit that is carried out at the local land office, before an agricultural land will change its function in the form of a technical balance from the BPN office, BAPPEDA, government, camat, lurah for a decree. Based on the post-independence era, Indonesia implements a sustainable development system that starts from all sides, both economic, legal, social to the welfare of the residence. Land has become very important since the liberation of the era of agrarian reform which later became awareness of the fundamentals of land that are inherent with the nation in terms of the right to control by the state which is the context of the rights and obligations of the state over the owner (domain) not as *eigenaar* which is directed at *privaatrechtelijke*.

4. Determination of the Policy for the Protection of the Transfer of Land Functions.

In accordance with statutory regulations, agricultural land in this case has experienced protection, including; sustainable food agriculture area, sustainable food agricultural land, sustainable food agriculture reserve land designated for rural areas, while the hierarchy is stated in Article 5 the sustainable food agricultural land area consists of national, provincial and district/city areas, with the requirement to have a stretch of land with a certain area and produce staple food



with a production level that can meet the food needs of the local community at district/city, provincial and or national 8.Regulation of the Minister of Agriculture Number 81 of 2013 concerning Technical Guidelines for the Transfer of Functions of Agricultural Land for Sustainable Food if in terms of land conversion food agriculture must include related; the area of land to be converted, the percentage of food loss due to land conversion, the value of the loss, the impact on employment, and the impact on the socio-cultural changes of the community (kinship, settlements, etc.)9 and article 17 of Government Regulation No. 1 of 2011 a sustainable food agricultural land if in terms of the provision of protection must include the relevant;

- a. Area of food agriculture
- b. Productivity
- c. Technical potential of land
- d. Reliability of dam infrastructure
- e. Availability of agricultural facilities and infrastructure.

Which will be used as a national strategic area. Several incentives in the field of community welfare in agriculture are realized by the government in Government Regulation Number 12 of 2012 concerning Incentives for Protection of Sustainable Food Agricultural Land by:

- a. Encouraging the realization of sustainable food agricultural land.
- b. Increase efforts to control the conversion of agricultural land
- c. Provide certainty of land rights for farmers.
- d. Improving partnerships in agricultural businesses

In Presidential Regulation Number 59 of 2019 it states that irrigated and non-irrigated rice fields are protected in their use for the transfer of land functions under supervision and evaluation with an integrated team in the field of environment and government affairs, the regulation also mentions land protection rice fields through; verification, synchronization, and implementation of the determination of protected paddy fields maps. The protected rice fields are located in protected areas or cultural areas. The state's authority over land is a form of legal relationship authority between the state as a subject and agrarian resources as an object, meaning that this legal relationship gives birth to the right to control agrarian resources and the state's obligations in natural resources as a prosperous people.

4. CONCLUSION

Agricultural land has received protection in accordance with the ratification of Law no. 41 of 2009 and this is also reinforced by Presidential Regulation No. 59 of 2019 concerning
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controlling land use change, but in reality population growth and the need to live together with development are rife being built regardless of the concept of being environmentally smart. Protection of agricultural land is very important, especially for small-scale entrepreneurs for living capital, but in concept the existing legal regulations are still based on large entrepreneurs with high production capacity which suppress the compulsion of rural farmers who are far from government administration.

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