

# CONTROLLING THE CONVERSION OF AGRICULTURAL LAND TO FULFILL THE RIGHT TO EQUITABLE FOOD

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## Abstract

The need for law enforcement against the threat of conversion of sustainable food agricultural land involving sub-systems, including substance, structure, and culture. Within this framework, the position and role of the Regional Government in determining sustainable food-agriculture land are crucial. Type of the study is a normative-legal research by using conceptual, comparative and case approaches. This paper provides information on the latest trend in research. The results show that the ideal concept in the context of controlling the conversion of agricultural land functions towards equitable food security can be carried out using a regulatory, acquisition and management approach as well as community participation. To control land conversion, it is necessary to establish regulations governing the existence of acquisition and management and also regulating community participation in controlling land conversion.

**Keywords:** Agriculture; Civil Rights; Land; Legal Policy; Right to Food

## 1. INTRODUCTION

The world economy is experiencing many changes caused by the development of financial, production, investment and trade activities that have pushed the level of dependence between countries and causes competition and towards globalization.<sup>1</sup> One of the driving factors of globalization is information technology that allows humans to interact with each other without being limited by national boundaries, so that the world seems to be flat.

Legal policy of government in terms of controlling the conversion of agricultural land are faced with the unavoidable reality of society, namely the need for farmers to do transactions on their land for the sake of fulfilling their needs, the inability of farmers to replace agricultural land that has been sold and has changed its function.<sup>2</sup> It requires the presence of an ideal concept that provides a balance between controlling the conversion of agricultural land and the interests of farmers in fulfilling their daily needs. Hence, controlling the conversion of agricultural land can provide legal certainty, justice and benefits.<sup>3</sup> Therefore, it is necessary to conduct an assessment of the ideal concept of controlling the conversion of agricultural land towards food security in Indonesia.

From the perspective of human rights, it is important to regulate the determination of sustainable food agricultural land because the need for food is a human right which requires the state, in this case the Government and local governments to make efforts to build food security and sovereignty, including formulating a legal framework so that land food agriculture

can still be used for both present and future generations. In the context of sustainable agricultural development, the protection of food-agriculture land is an effort that is inseparable from agrarian reform which includes efforts to organize, control or ownership related to the legal relationship between humans and land.<sup>4</sup>

Provisions for the protection of sustainable food-agriculture land are intended so that certain areas of land may only be used for appropriate food-agriculture activities. Strategic efforts in controlling the conversion of agricultural land and protecting productive agricultural land need to be supported by a statutory regulation. In Indonesia, efforts to protect food agricultural land have been continuously carried out, among others by enacting Act No. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. This provision needs to be further elaborated by the local government as it is determined that the Province/District/Municipal stipulates sustainable food agricultural land, one of which is the obligation to stipulate agricultural areas in the regional spatial planning so that its existence is expected to be sustainable.

Functionally, law does not only play a macro role in order to maintain social order or play a micro role in resolving concrete individual cases. Law has another function, namely as a social engineering tool.<sup>5</sup> This includes the use of law as one of the solutions or means taken in engineering a situation that threatens food security, self-sufficiency and sovereignty towards a conducive condition for the realization of sustainable food-agricultural land protection, so that the availability of food-agricultural land can still be maintained. In this social engineering function, law is perceived as having the power of energy to change circumstances.<sup>6</sup> The situation want to change must depart from an unfavorable condition towards a better one. The legal setting in the juridical context is basically motivated by the view that the rule of law must be understood as the embodiment of legal norms with their empirical consequences. This is in line with the idea that every rule is a reflection of a norm and its realistic conditions.

Actually, the policy to protect sustainable food-agriculture land is an initial step that requires follow-up, namely how to interpret the substance of the provisions of Act No. 41 of 2009 as a whole, especially with regard to legal politics and the purpose of forming a law because when a law is formed, it must be enforceable and it is expected to be able to carry out the legal mission of providing certainty, benefit as well as bringing justice. The increase in the number of land conversions actually occurred when the rules regarding the conversion of agricultural land had been implemented. The rule of law that is considered to be close to the feeling of justice must fulfill the condition that the law must be able to reflect the demands of the conscience of the people, especially the feeling of justice. There are two approaches used to examine issues related to national law, namely the systems approach and the cultural-political approach. Through the national law development system approach, it must be seen as a political dimension that is conceptually and contextually closely related to the dimensions of geopolitics, ecopolitics, demopolitics, sociopolitics and kratopolitics. In other words, legal politics cannot stand alone apart from other dimensions, especially if the law is expected to act as a means of social engineering (law as a tool of social engineering). It is understandable that the main objective of the legal reform agenda is to present new norms to answer the legal needs

of society. If the reform is in the realm of law enforcement, the new norms are expected to be able to answer the needs of law enforcement and be present more progressively compared to existing arrangements. The need for law enforcement against the threat of conversion of sustainable food agricultural land is a law enforcement system involving sub-systems, including substance, structure, and culture. Within this framework, the position and role of the Regional Government in determining sustainable food-agriculture land are crucial. This can be illustrated because fertile food-agricultural lands are generally found in rural areas. The rate of population growth and competition for land for the benefit of non-agricultural land is unavoidable because of changes in the way people view paddy fields. Therefore, Regional Governments need to actively implement and formulate policies to protect sustainable food agricultural land in their regions.

In Indonesia, efforts to realize food security have been implemented for a long time using a food estate approach. This program has been implemented several times and has failed because it failed to make land use effective and did not produce high yields. A number of examples of food estate failures were during Soeharto's era, namely the PLG Food Estate Program, Central Kalimantan (1996) and SBY's era, namely the Bulungan Food Estate Program, East Kalimantan (2011), Merauke Integrated Food and Energy Estate Program, Papua (2011) and the Ketapang Food Estate Program, West Kalimantan (2013). The government has estimated a fund of 6 trillion rupiah over 3-4 years to realize the food estate plan, including planting rice fields. Food estates on peatlands have the potential to exacerbate environmental risks and endanger health. Rice field activities carried out with non-peat friendly practices have the potential to cause serious problems. For example, most of the forest and land fires in 2019 occurred on peatlands, resulting in economic losses of IDR 72.95 trillion, including respiratory problems due to smoke and decreased productivity due to health problems.

However, legal politics from the government in the context of controlling the conversion of agricultural land must deal with realities in society which cannot be avoided, including the need for farmers to carry out transactions on their agricultural land for the benefit of fulfilling their daily needs, the inability of farmers to replace agricultural land, which has been sold and changed functions.<sup>7</sup> This requires the existence of an ideal concept that provides a balance between controlling the conversion of agricultural land and the interests of farmers in fulfilling their daily needs so that controlling the conversion of agricultural land can provide legal certainty, justice and benefits. Therefore it is necessary to conduct an assessment of the ideal concept of controlling the conversion of agricultural land towards food security in Indonesia.

## 2. METHODOLOGY

This research is normative legal research, to examine written positive legal provisions in a systematic manner related to the prohibition on the conversion of agricultural land, and then exercises an induction-verification test on the facts found in society. It uses conceptual, comparative and case approaches.<sup>8</sup> This paper provides information on the latest trend in research.

### 3. RESULTS AND DISCUSSION

#### 3.1 Legal Policy and the Reality of Controlling the Conversion of Agricultural Land

Strategic efforts in controlling the conversion of agricultural land and protecting productive agricultural land need to be supported by a statutory regulation. In order to protect food agricultural land on an ongoing basis, provisions of Act No. 41 of 2009 concerning the protection of sustainable food agricultural land have been established. This provision needs to be further elaborated by the local government as it is determined that the Provincial/District/Municipal stipulates sustainable food agricultural land, one of which is the obligation to stipulate agricultural areas in the Regional Spatial Planning so that its existence is expected to be sustainable.<sup>9</sup>

In this case the function of law is as an affirmative action which is interpreted as an effort to increase opportunities for people or groups of people to receive progress within a certain period of time. Through a policy of providing incentives and rewards, farmers and land owners are encouraged to designate their land as sustainable food agriculture land and not to be converted.

The biggest challenge faced in efforts to realize food security is the occurrence of very rapid land conversion in Indonesia in particular. Data from the Central Bureau of Statistics show that until 2021, there will be land conversion of between 60-80 thousand hectares per year. This shows that if the rice harvest index for converted land is 2.5 – 3% with an average productivity of 6 tons of dry grain/hectare then in 5 years, the converted land between 300.000–400.000 hectares with rice yield losses reaching 1.8 million tonnes – 2.4 million tonnes. The following is productive land in Indonesia (Table 1).

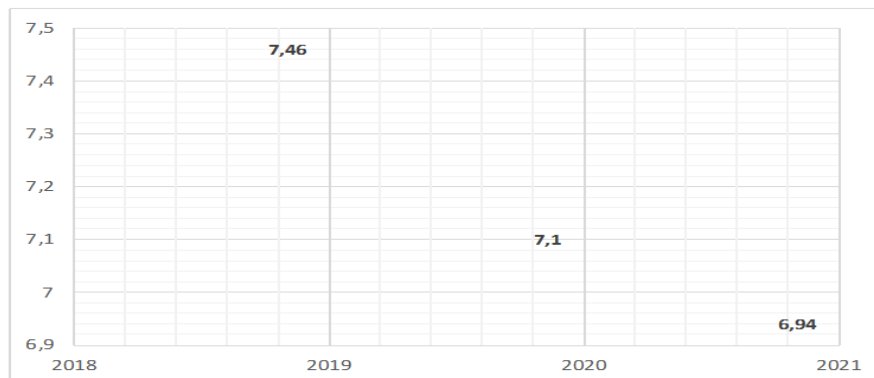
**Table 1: Percentage of productive land in Indonesia in 2019 -2021**

No	Types of Land	Percentage		
		2019	2020	2021
1	Paddy fields	5 %	3 %	2 %
2	Garden	11 %	4 %	3 %
3	Farm/huma land	8 %	4 %	3 %
	Total	24 %	11 %	10 %

Source: Ministry of Agriculture of the Republic of Indonesia, 2022.

Table 1 shows that there has been depreciation so that in 2020 the agricultural land area will only be 11 percent of the 24 percent and in 2021 the remaining 10 percent. The availability of agricultural land in Indonesia based on area can be seen in Chart 1.

**Chart 1: The area of agricultural land in Indonesia in 2019-2021**



Note: In Million Ha.

Source: Ministry of Agriculture of the Republic of Indonesia, 2022.

Chart 1 shows that from 2019 to 2021 there has been a reduction in the area of agricultural land by 966.000 ha. It causes the food security index in Indonesia is still low. In general, the food security index in Indonesia is still at a level that is not worrying; however, when it is associated with the decreasing amount of agricultural land, food security in Indonesia needs to be a concern through efforts to control the conversion of agricultural land. Agricultural land in Indonesia is currently not in a productive condition so that only a portion of the agricultural land area is in the productive category and this land is the object that is prioritized to be controlled from land conversion. The following is a table of agricultural land production results in Indonesia.

From 2019 to 2021, there has been a reduction in agricultural production in Indonesia and it is related to the decreasing area of agricultural land. Basically, the government policy in controlling the conversion of agricultural land is closely related to efforts to reduce hunger and in the context of preserving the environment through controlling climate change which can occur due to the increasing shortage of agricultural land.<sup>10</sup> In reality, dealing with the interests of agricultural land owners who have rights to the land they own are used to meet their daily needs.

Several previous studies have shown the resistance of farmers to the policy of controlling the conversion of agricultural land for the following reasons: **First**, land conversion can solve farmers' economic problems that agricultural land is a commodity to be traded to investors who generally will convert the function of agricultural land in the use of the land. **Second**, farmers are unable to replace the agricultural infrastructure that has been invested by the government and claim they will not be able to replace 3 times the rice fields that have been converted.<sup>11</sup> **Third**, the farmers do not agree that land conversion is not permissible because the assets owned by farmers are only rice fields, so if unexpected things happen, then these assets will be sold or released or will become homes for children.

### **3.2 Policy Approach to Control Over the Conversion of Agricultural Land based on Human Rights**

The conversion of agricultural land is not only a strategic issue in Indonesia. In Malaysia, the conversion of agricultural land is an important issue. To guarantee the level of self-sufficiency in rice as national food security.<sup>12</sup> The Malaysian government has identified 8 food storages in Malaysia but in the 8 food storage areas, conversion of land for non-domestic purposes is inevitable. From perspective the area of paddy fields is decreasing, the conversion of land in Malaysia has decreased by 12.613 ha in 2022. This has an impact on reducing rice production in Malaysia. This is what prompted the country to control the conversion of agricultural land through the establishment of regulations regarding the control of conversion of agricultural land in areas that have been determined and designated as rice storages in Johor, Kelantan, Negeri Sembilan, Perak, Pulau Pinang, Taengganu, Kedah, Malaka, Pahang, Pertis and Selangor.<sup>13</sup>

The benefit of law is a condition in which the law must be able to become an instrument for realizing people's welfare through the provision of opportunities and rights to obtain a decent life as human beings. This is reflected in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates the objective of managing natural resources in Indonesia, namely for the greatest prosperity of the people. Hans Kelsen argues that law is a system of norms. Norms are statements that emphasize the aspect of "should" or *das sollen*, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.<sup>14</sup> Utrecht which states that legal certainty contains 2 (two) meanings, the first, the existence of general rules makes individuals know what actions may or may not be carried out, and the second, legal security for individuals from government arbitrariness because with general rules individuals can knowing what the state may charge or do to individuals.<sup>15</sup>

The politics of controlling the conversion of agricultural land is one of the government's efforts to realize Indonesia's ideals as a rule of law country which provides a very large place for upholding human rights where through upholding human rights, especially the right to food, it is hoped that justice, benefit and legal certainty will be provided to public. The obstacle to controlling the conversion of agricultural land is the condition of Indonesian farmers who have limited land so that when they have a need, agricultural land is the only asset they can trade. Referring to this condition, the state should be in a capacity as a regulator in the land authority to make efforts in the form of providing compensation to farmers who need a certain amount of funds, so that their agricultural land is not traded to private parties who have the opportunity to convert land functions but are taken over by the state to be managed and maintained as agricultural land. Certainly, it requires the existence of a legal umbrella in the form of laws and regulations which become the reference and guidance for the government in carrying out these actions, bearing in mind that these alternative solutions will cause expenditures in the state



budget in the context of providing compensation and managing agricultural land that has been damaged has been released by owner to the state.

In alternative acquisition and management, the government is the party that will take over agricultural land that will be converted by farmers that are likely to be converted by buyers. For this, it is necessary to have a certain mechanism, for example farmers who need funds submit requests to the government and these requests are followed up with research by the local government regarding the land and the possibility of a conversion by the party buying it. In the event that the function transfer is carried out, the local government can purchase the land. For land that has been purchased by the regional government, it can become a regional asset and be managed by an appointed institution, for example a cooperative which then employs farmers to manage and distribute the produce.<sup>16</sup>

Management in controlling land conversion can also be carried out by involving participation of the private sector. The private sector, in this case business actors is one of the parties that needs attention in controlling land conversion, considering that the most dominant parties in implementing agricultural land conversion are entrepreneurs who are generally private companies. Development needs in globalization are very demanding of the role of the private sector; however this does not have to sacrifice the community's need for food so that a firm policy is needed regarding granting permits for changes in land use or granting permits to carry out non-agricultural businesses on agricultural land.<sup>17</sup>

The role of related agencies related to permits and spatial planning is very important, as a space to limit the issuance of permits to carry out business activities on agricultural land. Another policy that can be taken is to oblige business actors to provide agricultural land which will be maintained in every license granted as a form of social responsibility for business actors. The policy of zoning relates to the spatial management of the area through the grouping (cluster) of land into 3 (three) categories of control zones, namely land that is protected (may not be converted), limited conversion, and may be converted. Zoning is regulated based on irrigation classification criteria, cropping intensity, and paddy field productivity. Irrigation criteria are distinguished on irrigated and non-irrigated paddy fields. The criteria for cropping intensity are one to two plantings per year, while the productivity criteria are below 4.5 tons/ha/harvest.

Communities are the closest group to agricultural land. Increasing the role of the community in controlling land conversion is very important because the community is the main actor in managing agricultural land. Efforts that can be carried out include: utilization of local wisdom. Local wisdom is a form of attitude of all responses in interactions between humans and the environment. Human interaction and adaptation to this occurs as a form of fulfilling human needs from time to time so that local wisdom is formed or it can be said that local wisdom provides arrangements when people interact with the environment.

In addition, aspects of incentive and charge. Providing subsidies to farmers who can improve the quality of the land they own, as well as applying attractive taxes to those who maintain the existence of agricultural land is another form of approach that is recommended in efforts to prevent the conversion of agricultural land. In addition, the development of existing

infrastructure is more directed at supporting the development of agricultural cultivation activities and their associated businesses.

#### 4. IMPLICATIONS AND RECOMMENDATIONS

The ideal concept in the context of controlling the conversion of agricultural land functions towards equitable food security can be carried out using a regulatory, acquisition and management approach as well as community participation. To control land conversion, it is necessary to establish regulations governing the existence of acquisition and management and also regulating community participation in controlling land conversion.

#### ACKNOWLEDGMENTS

The authors acknowledge all contributors involved in this study. The authors declare no conflict of interest and no research funds or grants received.

#### DECLARATION OF INTEREST

Authors declare there are no competing interests in this research and publication.

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