

Local Government Policy: Converting Agricultural Land to Housing

Suwari Akhmaddhian, Haris Budiman, Erga Yuhandra and Septian Apriditiya

Faculty of law, University of Kuningan, Indonesia

Email : suwari_akhmad@uniku.ac.id

How to cite : Suwari Akhmaddhian,et.all.“Local Government Policy : Coverting Agricultural Land to Housing”. <i>Unifikasi : Jurnal Ilmu Hukum</i> . 8(1). 2021.28-33. DOI : 10.25134/unifikasi.v8i1.3451		
Submitted : 02-09-2020	Revised : 06-05-2021	Accepted : 18-06-2021

Abstract : This study aims to determine the regulation of converting agricultural land into housing and the suitability of its implementations. This study employed a juridical empirical approach which is a research done by looking at and paying attention to applicable legal norms associated with existing facts from the problems encountered. In this case, the local government policies on converting agricultural land into housing. The findings revealed the perpetrators of the land conversion process that occur in Kuningan Regency are the landowners. Some of the causes are: social, economic, population density, and the lack of socialization of Law Number 41 of 2009. Efforts made by local government officials and related agency officials to realize sustainable food land protection are still limited to carrying out their main duties and functions. The guideline in controlling the use of space, licensing and controlling mechanisms for the implementation of development, stated in the Regional Regulation of Kuningan Regency Number 26 of 2011 on regional Spatial Planning and Regulation of the Head of the National Land Agency Number 2 of 2011 concerning guidelines for technical land considerations in controlling location permits and determining locations and permits for changes in land use. The study concluded that converting the function of agricultural land to non-agriculture in Kuningan Regency is carried out by the landowner. In addition, efforts made by local government officials and related agency officials to realize sustainable food land protection are still limited to carrying out their main duties and functions. Accordingly, it is necessary to socialize Law Number 41 of 2009 on Protection of Sustainable Food Agricultural Land and Regional Regulation of Kuningan Regency Number 26 of 2011 concerning Regional Spatial Planning continuously to the community level. Furthermore, local governments need to coordinate with the village officials to monitor the use of agricultural land and the development of housing areas. This can be done by providing socialization to village officials.

Keywords : Changing in agricultural land, Into Housing

Kebijakan Pemerintah Daerah Atas Alih Fungsi Lahan Pertanian Menjadi Perumahan

Abstrak : Tujuan untuk mengetahui pengurusan peralihan lahan pertanian menjadi perumahan dan kesesuaian pelaksanaan alih fungsi lahan pertanian menjadi perumahan. Metode yang digunakan dalam penelitian ini adalah pendekatan Yuridis. Hasil penelitian menunjukkan bahwa sebagai pelaku proses alih fungsi lahan yang terjadi di Kabupaten Kuningan adalah pemilik lahan itu sendiri. Beberapa penyebabnya adalah: sosial, ekonomi, kepadatan penduduk, dan belum tersosialisasinya Undang-Undang Nomor 41 Tahun 2009. Upaya yang dilakukan oleh aparat pemerintah daerah dan aparat instansi terkait dalam upaya mewujudkan perlindungan lahan pangan berkelanjutan masih sebatas menjalankan tugas pokok dan fungsinya. Sebagai pedoman dalam pengendalian pemanfaatan ruang yang terdiri atas mekanisme perizinan dan penertiban terhadap pelaksanaan pembangunan adalah Peraturan Daerah Kabupaten Kuningan Nomor 26 Tahun 2011 tentang Rencana Tata Ruang Wilayah dan Peraturan Kepala Badan Pertanahan Nasional Nomor 2 Tahun 2011 tentang Pedoman Pertimbangan Teknis Pertanahan dalam Penertiban Izin Lokasi, Penetapan Lokasi dan Izin Perubahan Penggunaan Tanah. Kesimpulan dari hasil penelitian, Pengalihan fungsi lahan pertanian ke non pertanian di Kabupaten Kuningan adalah dilakukan oleh pemilik lahan itu sendiri. Upaya yang dilakukan oleh aparat pemerintah daerah dan aparat instansi terkait dalam upaya mewujudkan perlindungan lahan pangan berkelanjutan masih sebatas menjalankan tugas pokok dan fungsinya. Saran dari hasil penelitian, Perlu dilakukan sosialisasi Undang-Undang Nomor 41 Tahun 2009 tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan dan peraturan Daerah Kabupaten Kuningan Nomor 26 Tahun 2011 tentang Rencana Tata Ruang Wilayah secara terus menerus sampai ke lapisan masyarakat dan Pemerintah daerah perlu melibatkan aparat desa untuk berkoordinasi dalam rangka pengawasan terhadap penggunaan lahan pertanian serta pembangunan kawasan perumahan, dengan cara memberikan sosialisasi terhadap aparat desa.

Kata Kunci : Perubahan Lahan Pertanian, Menjadi Perumahan.

INTRODUCTION

The strategy for controlling the conversion of agricultural land that relies on community participation is by involving active participation from all stakeholders as entry points for planning, implementing, monitoring, and assessing (focusing on the analysis) the existing laws and regulations. However, it should be underlined that community participation will not be realized without an approach of socialization and advocacy. This is because society has a plurality typology which is characterized by social differences (stratification) with ties to rules, institutions, and behavior. Suppressive or inducement patterns should be avoided and replaced with approaches based on a typology of community pluralism with an understanding and appreciation of local wisdom. On a macro scale, one approach that should be considered is the philosophical nature of the land and human existence. Considering the intense process of land conversion on Java island, the priority of the control strategy is based on the philosophy of humans following the land (*uwong manut Tanahe*).¹ One of the meanings is if the placement and management of land are regulated in a participatory manner, the community will follow these rules. Thus, the main focus is the enforcement of laws and regulations on the consequent conversion of land functions. On the other hand, for areas outside Java, the community has relatively more land, it is necessary to improve human resources in line with the enforcement of laws and regulations for controlling land conversion (*tanah manut uwonge*). The level of success of a policy depends on the content of the policy. The content of existing policies in the protection of agricultural land is very real and clear. The seriousness of the implementing officials has been carried out well. This is in the form of institutions that work optimally.²

The land utilization that should be used for agricultural land is converted into industrial areas, residential areas, offices, and so on. However, the increasing demand is not followed by the availability of a large area. Meanwhile, the land is permanent and cannot be changed or increased. As the result, there is an increase in land shrinkage of agricultural land conversion. In addition, the lack of supervision and control in the field by the government causes various negative impacts³. The regulation in Law Number 41 of 2009 concerning the Protection of Sustainable Agricultural Land, it is explained that the protection of food agricultural land is an inseparable part of regional spatial planning. For this reason, the protection of food agricultural land needs should be done by determining food agricultural areas that need to be protected. The food agriculture area is part of structuring the rural areas in the regency area.⁴ In fact, agricultural lands located in urban areas also need to be protected. The Protection of food-agricultural areas and food-agricultural lands includes planning and stipulation, development, research, utilization and development, control, supervision, development of information systems, protection and empowerment of farmers, community participation, and financing. Based on the aforementioned background, the research question is formulated as follows: How is the regulation of converting agricultural land into housing?

RESEARCH METHODS

This research used descriptive-explorative. The descriptive-explorative method is research by solving problems that are widely explored. This covers the causes or things that influence the occurrence of something based on what happens in reality. Meanwhile, juridical-empirical research is a law as a symptom of society to obtain primary data. The data can be obtained by conducting

¹ Muhammad Iqbal dan Sumaryanto, *Strategi Pengendalian Alih Fungsi Lahan Pertanian Bertumpu Pada Partisipasi Masyarakat*, Jurnal Kebijakan Pertanian. Bogor, 2007, p 167-169

² Randa Nurianansyah Putra, Implementasi Kebijakan Pengendalian Alih Fungsi Lahan Pertanian Di Kota Batu Sebagai Kawasan Agropolitan Kebijakan dan Manajemen Publik. Volume 3, Number 2, May-August 2015.71.80

³ Arsanita Nur Fattah, Eko Priyo Purnomo. Analisis Kebijakan Alih Fungsi Lahan Pertanian Ke Non – Pertanian Di Kabupaten Klaten Tahun 2013-2016 (Studi Kasus Kecamatan Ceper Kabupaten Klaten). Jurnal Ilmu Sosial dan Ilmu Politik. Volume.08 Number 01.2018. 113.140

⁴Nia Wardani, *Pengadilan Konversi Lahan Sawah Menjadi Industry dan Perumahan di Kabupaten Sukoharjo*, Jurnal Of Politic and Government Studies, Sukoharjo,2014, p 46-55

interviews with respondents. This is to gain data that can be justified. In addition, secondary data was also involved by studying textbooks, laws and regulations, articles and scientific writings. This is to obtain theories and concepts related to the problems under study.

RESULTS AND DISCUSSION

The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) affirms that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Considering that minerals and coal as natural resources in the earth are non-renewable natural resources, their management needs to be carried out optimally, efficiently, transparent, sustainable and environmentally sound, and fair to get the greatest benefit for the prosperity of the people continuously. To comply with the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 1967 concerning Basic Mining Provisions has been issued. This law has made an important contribution to national development for approximately four decades since its enactment. In further developments, the law whose content is centralized is no longer in line with the development of the current situation and future challenges⁵. In addition, mining development must adapt to changes in the strategic environment nationally and internationally. The main challenges faced by mineral and coal mining are the effects of globalization that encourage democratization, regional autonomy, human rights, the environment, the development of technology and information, intellectual property rights and demands for increased roles of the private sector and society. To face the strategic environmental challenges and find the solution of these problems, it is necessary to formulate new laws and regulations in the mineral and coal mining sector. This is to provide a legal basis for steps to reform and restructure mineral and coal mining management and exploitation activities.

Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning, National Spatial Planning, provincial spatial planning, and regency/municipal spatial planning cover land space, sea space, and air space. This also includes the space within the earth. Based on article 15 of the Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning, it is stated that: Space utilization refers to the function of space specified in the spatial plan. This can be carried out by developing land use, water management, air management, and other natural resource management. In the development of 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 management balance sheet, and the other natural resource management balance sheet. Land use in the space planned for the construction of infrastructure and facilities for the public interest gives the Government and local governments the first priority to receive the transfer of land rights from the holders of land rights. In the use of space that functions as protection, first priority is given to the Government and local governments to accept the transfer of land rights from the holder if the person concerned relinquishes his rights. Further provisions regarding land use, water management, air management, and other natural resource management as referred to in paragraphs (1) and (2) shall be regulated by government regulations⁶.

Law of the Republic of Indonesia Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land and Article 44 of the Law of the Republic of Indonesia Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Lands affirm that, land that has been designated as Sustainable Food Agricultural Land is protected and prohibited from being converted. In the case of public interest, the Sustainable Food Agricultural Land as referred to in paragraph (1) can

⁵ Nita Triana. Pendekatan Ekoregion Dalam Sistem Hukum Pengelolaan Sumber Daya Air Sungai di Era Otonomi Daerah. *Pandecta : Jurnal Penelitian Ilmu Hukum*. Volume 9, Number 2, 2014.154.168

⁶ Haris Budiman. Kebijakan Tata Ruang Dalam Penerapan Pusat Kegiatan Lokal Di Kabupaten Kuningan Untuk Peningkatan Pendapatan Asli Daerah. *Unifikasi : Jurnal Ilmu Hukum*. Vol. 2 No.2 .2015.1-30

be converted and implemented in accordance with the provisions of the legislation. The conversion of land that has been designated as Sustainable Food Agricultural Land for the public interest as referred to in paragraph (2) can only be carried out with the following conditions:

1. conducted a strategic feasibility study;
2. a land conversion plan is drawn up;
3. freed ownership of its rights from the owner; and
4. a replacement land is provided for the converted Sustainable Food Agricultural Land.

In the case of a disaster so that the transfer of land function for infrastructure cannot be postponed, the requirements as referred to in paragraph (3) letter a and letter b will not be applied. Provision of replacement land for Sustainable Food Agricultural Land which is converted for infrastructure due to disaster as referred to in paragraph (4) is carried out no later than 24 (twenty four) months after the transfer of function is carried out. The liberation of ownership of land rights that are converted as referred to in paragraph (3) letter c is by providing compensation in line with the provisions of the legislation. Spatial planning and land use management are needed to protect sustainable food agricultural land. Therefore, the central and local governments must implement spatial planning to properly regulate and organize existing spaces. The need for land will increase every year, making it difficult to own land. To support this process, Government Regulation No. 16/2004 concerning Land Management was issued. Article 3 of Government Regulation Number 16 of 2004 explicitly states four objectives of land use, as follows:

1. Regulate the control, use, and utilization of land for various needs for development activities in accordance with the Regional Spatial Plan.
2. Realizing the control, use and utilization of land in accordance with the direction of the function of the area in the Regional Spatial Plan.
3. Realizing land order which includes the control, use, and utilization of land including land maintenance and control of land use.
4. Guarantee 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.

Meanwhile, the spatial planning in Indonesia has been stipulated in Law Number 26 of 2007 concerning Spatial Planning. The Article 3 of the Law on Spatial Planning (UUPR) discusses the purpose of spatial planning, which states that: The implementation of spatial planning aims to create a safe, comfortable, productive and sustainable national space based on the Archipelago Insight and National Resilience by⁷:

1. The realization of harmony between the natural and artificial environments
2. The realization of integration in the use of natural and artificial resources by paying attention to human resources and
3. The realization of the protection of the function of space and the prevention of negative impacts on the environment due to the use of space.

Spatial planning is a process to determine the spatial structure and spatial pattern which includes the preparation and determination of the spatial plan. Therefore, in the district and rural areas, spatial planning is very necessary. This is to avoid chaos in the development that will be carried out in the future. In other words, the purpose of the Spatial Planning Law is to control development activities that will be carried out in the future. This can be done by continually paying attention to the arrangements stated in the Spatial Planning Act. This space is to avoid confusion in its implementation.

According to the authors' analysis, if it is tied to Lawrance Meir Friedman's Legal System theory, there are three main points such as Legal Structure, Legal Substance, and Legal Culture. From

⁷ Haris Budiman. Pelanggaran Hak Asasi Manusia Dalam Kebijakan Daerah Di Bidang Tata Ruang Di Kabupaten Kuningan. *Unifikasi : Jurnal Ilmu Hukum*. Vol. 4 No.1. 2017.25-34

these three points, the transition of agricultural land into housing in terms of the legal structure, the Kuningan district government is not involved in the transition of agricultural land into housing. This includes licensing and the supervision process. This is because the agricultural land in Kuningan Regency is averagely owned by individuals or the community⁸. Meanwhile, in terms of legal substance, there is an impact on the legal system which includes decisions issued, Law No. 41 of 2009 concerning the protection of sustainable agricultural land has not yet been socialized. In addition, it is also necessary to systematically record the activities of converting agricultural land that occur through village officials. It can be clearly seen how much of the activity has occurred. Thus, appropriate countermeasures can be made to the activities of land conversion that are rife. In terms of Legal Culture, Socio-cultural factors include the existence of inheritance law which causes fragmentation of agricultural land. Thus, it does not meet the minimum limit of profitable business economies of scale. According to the authors, the fragmentation of land from parents to be distributed to their children as inheritance is the most important factor causing a land conversion. With the inheritance of agricultural land, it is no longer necessary to buy other land as a place to live. This is because the price of land in residential areas is very expensive and the heir does not have the ability to buy it. Thus, there is no other choice for the heir but to convert the agricultural land into a house to live in.

CONCLUSION

Based on the findings, the following conclusions can be drawn: The conversion of agricultural land to non-agricultural functions in Kuningan Regency is done by the landowner. Some of the contributing factors are: social, economic, population density, and the lack of socialization of Law Number 41 of 2009 concerning Protection of Agricultural Land for Sustainable Food and Regional Regulation of Kuningan Regency Number 26 of 2011 concerning Regional Spatial Planning to target communities. Efforts made by local government officials and related agency officials to realize sustainable food land protection are still limited to carrying out their main duties and functions. The guideline in controlling the use of space, licensing and controlling mechanisms for the implementation of development, stated in the Regional Regulation (Perda) of Kuningan Regency Number 26 of 2011 on regional Spatial Planning and Regulation of the Head of the National Land Agency (BPN) Number 2 of 2011 concerning guidelines for technical land considerations in controlling location permits and determining locations and permits for changes in land use.

SUGGESTION

Referring to the result of the findings, it is suggested that there is the need for socialization to the community on government policies in land conversion and government consistency in protecting existing land. Thus, the need for food sufficiency is guaranteed.

REFERENCES

- Arsianita Nur Fattah, Eko Priyo Purnomo. Analisis Kebijakan Alih Fungsi Lahan Pertanian Ke Non – Pertanian Di Kabupaten Klaten Tahun 2013-2016 (Studi Kasus Kecamatan Ceper Kabupaten Klaten). *Jurnal Ilmu Sosial dan Ilmu Politik*. Volume.08 Number 01.2018. 113.140
- Haris Budiman. Kebijakan Tata Ruang Dalam Penerapan Pusat Kegiatan Lokal Di Kabupaten Kuningan Untuk Peningkatan Pendapatan Asli Daerah. *Unifikasi : Jurnal Ilmu Hukum*. Vol. 2 No.2 .2015.1-30
- Haris Budiman. Pelanggaran Hak Asasi Manusia Dalam Kebijakan Daerah Di Bidang Tata Ruang Di Kabupaten Kuningan. *Unifikasi : Jurnal Ilmu Hukum*. Vol. 4 No.1. 2017.25-34

⁸ Suwari Akhmaddhian. Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015), *Jurnal Unifikasi*, Vol. 03 Number 01 January 2016.1-33.

- Muhammad Iqbal dan Sumaryanto, Strategi Pengendalian Alih Fungsi Lahan Pertanian Bertumpu Masyarakat, *Jurnal Kebijakan Pertanian*. Bogor, 2007.
- Nia Wardani, Pengadilan Konversi Lahan Sawah Menjadi Industri dan Perumahan di Kabupaten Sukoharjo, *Jurnal of Politic and Government Studies*, Sukoharjo, 2014.
- Nita Triana. Pendekatan Ekoregion Dalam Sistem Hukum Pengelolaan Sumber Daya Air Sungai di Era Otonomi Daerah. *Pandecta : Jurnal Penelitian Ilmu Hukum*. Volume 9, Nomor 2, 2014.154.168
- Randa Nurianansyah Putra, Implementasi Kebijakan Pengendalian Alih Fungsi Lahan Pertanian Di Kota Batu Sebagai Kawasan Agropolitan. *Kebijakan dan Manajemen Publik*. Volume 3, Number 2, May-August 2015.71.80
- Suwari Akhmaddhian. Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015), *Unifikasi : Jurnal Ilmu Hukum*, Vol. 03 Number 01 January 2016.1-33.

Legislations

- 1945 Constitution of the Republic of Indonesia
- Law of the Republic of Indonesia Number 41 of 2009 concerning Protection of Agricultural Land for Sustainable Food
- Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Settlement Areas
- Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning
- Government Regulation of the Republic of Indonesia Number 1 of 2011 concerning Determination and conversion of Agricultural Land for Sustainable Food
- Sustainable Food Regulation of the Minister of Agriculture Number 81 of 2013 concerning Technical Guidelines for converting Agricultural Land for Sustainable Food
- Regulation of the Head of the National Land Agency (BPN) Number 2 of 2011 concerning Guidelines for Land Technical Considerations in Issuing Location Permits, Determination of Locations, and Land Use Change Permits
- Regional Regulation Number 26 of 2011 concerning Regional Spatial Planning
- Kuningan Regency Regional Regulation Number 7 of 2015 concerning Protection of Sustainable Food Agricultural Land in Kuningan Regency
- Regulation of the Regent of Kuningan Regency Number 34 of 2016 concerning Guidelines for the Implementation of the Protection of Sustainable Food Agricultural Land in Kuningan Regency