

As a Result of Legal Transfer of Function of Sustainable Food Agricultural Land to Non-Agriculture



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ABSTRACT: In a country like Indonesia, which is an agricultural country, which in fact is agricultural land, it shows that agricultural land is very crucial for national food security, but as time goes by, agricultural land is decreasing day by day due to the conversion of agricultural land to non-agriculture and also an increase in population. As for several factors that cause land conversion, among others, namely: Government Program factors, economic factors and social factors. In order to protect the rate of conversion of sustainable agricultural land, the Government issued Law Number 41 of 2009 concerning Protection of Sustainable Agricultural Land which was amended by Law no. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law. This Law regulates legal consequences, namely criminal sanctions and civil sanctions if the conversion of agricultural land is sustainable which is not in accordance with laws and regulations as stated in Article 36 paragraph (1), Article 72, Article 73 paragraph (1), 74 paragraph (1) and paragraph (2). With the existence of sanctions in the Protection of Sustainable Food Agricultural Land Law, the government hopes to suppress the rate of land conversion based on the principles of independence, security and national food sovereignty.

KEYWORDS: Conversion; Sustainable Food Agricultural Land; Non-Agriculture.

1. INTRODUCTION

Indonesia is known as an archipelagic country which results in the territory of Indonesia consisting of land and sea. This affects 1/3 of the entire territory of Indonesia in the form of land which causes most of the livelihoods of Indonesian citizens to be carried out on land such as working as farmers. So it cannot be denied that how dependent the community is on the natural resources around them. Aside from being a provider of employment, agricultural activities also have a role as a source of food security. This is in line with the production of a number of main food crops which have increased at a higher rate than the increase in Indonesia's population. The basis of the legal basis for land in Indonesia is Article 33 paragraph (3) of the Constitution, namely the 1945 Constitution of the Republic of Indonesia. The soul of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is based on a social spirit, which placing such mastery of natural resources for public interest to the state. This arrangement assumes that the government is the holder of the mandate to implement state life in Indonesia. For this reason, the holder of this mandate should have legal legitimacy and someone who controls the policies he makes and implements, so that laws and regulations can be created as an elaboration of Article 33 of the 1945 Constitution which is in line with the spirit of economic democracy.¹

This success is due to factors in the application of food crop cultivation technology in boosting the productivity of food crops even though the harvested area tends to decrease. In addition, agricultural activities also have a role as a buffer for the environment. Therefore, the need for sustainable agricultural activities without damaging the environment, of course agricultural land must be protected and managed properly. Food agricultural land in Indonesia is currently experiencing a decline due to the conversion of agricultural land to non-agriculture. Along with the increasing population which has an impact on increasing the need for land, the conversion of agricultural land to non-agricultural land is unavoidable. The specific change from use for agriculture to use for non-agriculture is known as land conversion.² This has an effect on a decrease in agricultural production, in the long run thereby threatening food security and sovereignty. Therefore, the existence of agricultural land needs to be addressed wisely in order to avoid or at least minimize the conversion of agricultural land to non-agricultural purposes. Indonesia is an archipelagic country with

¹ Bani Siliwangi, "Perusakan Lingkungan Akibat Alih Fungsi Kawasan Hutan di Hulu Sungai Citarum Menjadi Kawasan Pertanian Dihubungkan dengan Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup," *Wawasan Yuridika* 30, no. 1 (2014): 75–96, <http://dx.doi.org/10.25072/jwy.v30i1.76>.

² Judo Satria, A. Faroby Falatehan, and Irfan Syauqi Beik, "Strategi Perlindungan Lahan Pertanian Pangan Berkelanjutan di Kabupaten Bogor," *Jurnal Manajemen Pembangunan Daerah* 10, no. 2 (2018): 48–59, https://doi.org/10.29244/jurnal_mpd.v10i2.27786.

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enormous natural wealth. One of Indonesia's wealth is in the agricultural sector. Approximately 47,587,797 hectares of agricultural land in Indonesia are divided into paddy fields, dry land/gardens, farmland/huma land, and land that is temporarily not cultivated.³ With the extent of agricultural land owned, of course these agricultural products will be very important for the food welfare of the Indonesian people. Building food security and self-sufficiency is very important for efforts to implement the responsibilities and obligations of the state in achieving the goals of the state for the welfare of the people and fulfilling food as a human right.⁴

Land conversion is a form of phenomenon that normally occurs in developing areas, the development of a land and urban development can refer to two things, namely previous land use, namely a previous land use with new land use; and the utilization/change that occurs as a result of the local area spatial plan. In reality, land conversion is a dilemma, where an increase in population and growth in economic activity requires land as a container for its implementation. On the other hand, an increase in population growth also requires a large amount of food, or it can be said that population growth is always directly proportional to the need for food and shelter. Factors driving the change in the use of agricultural land to non-agricultural land are caused by population growth, urbanization of the workforce, industrial growth, spatial plans that accommodate metropolitan development strategies and the absence of spatial plans that have the force of law both at the regency and regional levels. Subdistrict. So that in the end a lot of land will be needed to meet food needs, but on the other hand there will also be a lot of land that is converted into a place to live. Due to the high demand for land for housing, causing land prices to be expensive, and the less prosperous profession of the farmer who incidentally is a farming business actor as a provider of food, it is no longer wrong if many farmers then sell their land in an effort to survive. So that in the end the use of land for agriculture will always be defeated.⁵

According to the Central Bureau of Statistics, the conversion of agricultural land to other purposes during 2002-2010 averaged 56,000-60,000 hectare per year which could cause Indonesia to experience a rice deficit and the value of rice imports would increase in the coming years. The urgency to resolve the threat of rice deficit is even more relevant when it is linked to the projected population growth in the future. In 2025, Indonesia's population is projected to reach 273.2 million people, assuming an average growth rate of 1.3 percent per year. To be able to meet food needs in 2025, an additional 2.66 million hectares of rice fields are needed.⁶ Economic growth is increasing along with the increase in population. Development in the area has also increased from year to year such as housing, toll roads and so on. Along with this development, agricultural land has decreased due to land conversion. The condition of agricultural land is increasingly polluted by the government because it will have a major impact on the fulfillment of food for the Indonesian people. It is ironic if an agricultural country has to meet food needs from other countries through imports.

The agricultural sector is the main economic sector in developing countries. The role or contribution of the agricultural sector in the economic development of a country occupies a very important position. Behind the importance of the agricultural sector, there is a problem of population growth which is not followed by agricultural growth, but on the contrary, land conversion occurs in almost every region, such as land that was formerly rice fields and plantations is now being converted into residential housing by the community. This problem is increasingly unresolved in the field because the direction of national policies in terms of controlling land conversion often collides with the direction of local government policies which prioritize local interests and regional interests.⁷

Although the implementation of the policy to control the conversion of agricultural land for a while is still seen as quite effective in limiting the behavior of development implementation to use agricultural land for non-agricultural activities as we know it through the location permit mechanism and the implementation of regional spatial planning, it turns out that the behavior of speculators is still found land that is not covered by the implementation of the policy. With the discovery of several cases of farmers or land owners who deliberately changed the function of agricultural land to non-agricultural land to make it easier to trade through licensing mechanisms or violations of existing regional spatial plans.

Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land which was amended by Law no. 6 of 2023 concerning the Stipulation of Government Regulation in Lie of Law Number 2 of 2022 concerning Job Creation to Become This Law is very important as a controller of land conversion, as for the things needed to realize the protection of sustainable food agricultural land, namely spatial planning and land use stewardship. The need for land will increase every year, resulting in difficulty getting land. To support this process, Government Regulation Number 16 of 2004 concerning Land Use Management was issued.

³ Portal Epublikasi Pertanian, "Statistik Data Lahan Pertanian Tahun 2009-2013," June 1, 2014, <http://epublikasi.setjen.pertanian.go.id/arsip-perstatistikan/167-statistik/statistik-lahan/393-statistik-lahan-2014>.

⁴ Retno Kusniati, "Analisis Perlindungan Hukum Penetapan Lahan Pertanian Pangan Berkelanjutan," *Inovatif: Jurnal Ilmu Hukum* 6, no. 2 (2013): 1-30.

⁵ Masrukhin Masrukhin, "Perlindungan Lahan Pertanian Pangan Berkelanjutan dalam Perspektif Alih Fungsi Lahan di Kabupaten Cirebon," *Hermeneutika: Jurnal Ilmu Hukum* 3, no. 2 (September 28, 2019), <https://doi.org/10.33603/hermeneutika.v3i2.2598>.

⁶ Direktorat Jenderal Prasarana dan Sarana Pertanian, *Perluasan Areal Sawah Baru Menjadi Salah Satu Solusi Untuk Meningkatkan Volume Produksi Beras Dalam Negeri* (Bogor: Penerbit AIM PRESS, 2022).

⁷ Juniarso Ridwan and Achmad Sodik Sudrajat, *Hukum Administrasi Negara Dan Kebijakan Pelayanan Publik*, Cetakan Keempat (Bandung: Nuansa Cendikia, 2014).

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Article 3 of Government Regulation Number 16 of 2004 concerning Land Use Management explicitly states 4 objectives of land use management, namely:

1. Regulate the tenure, use and utilization of land for various needs for development activities in accordance with the Regional Spatial Plan.
2. Realizing control, use and utilization of land in accordance with the direction of area functions in the Regional Spatial Plan.
3. Realizing land order which includes control, use and utilization of land including land maintenance and control of land use.
4. Ensure legal certainty to control, use and utilize land for people who have a legal relationship with the land in accordance with the stipulated Regional Spatial Plan.

Meanwhile, spatial planning in Indonesia has been determined through Law Number 26 of 2007 concerning Spatial Planning which was amended by Law no. 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law Article 3 of the Law on Spatial Planning discusses the purpose of spatial planning, which states that the implementation of spatial planning aims to create national territorial space that is safe, comfortable, productive and sustainable based on the Archipelagic Outlook and National Resilience with:

1. Realization of harmony between the natural environment and the built environment.
2. Realization of integration in the use of natural resources and artificial resources with due regard to human resources, and
3. Realization of space function protection and prevention of negative impacts on the environment due to space utilization.

Broadly speaking, the Spatial Planning Law aims to control development activities that will be carried out in the future so that there is no chaos in its implementation. In spatial planning regulations there is a delegation of authority given to provincial and district/city regional governments. In addition to the Spatial Planning Law, the DPR and the Government also issued Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land which was amended by Law no. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation Becomes an Act for the Success of Agricultural Development There are seven critical nodes in the implementation of supporting food security which include, as follows:

- a. Local regulatory support;
- b. Understanding of the characteristics of agricultural land resources;
- c. Identification of land types based on the type of irrigation and land class;
- d. Farmers' tenure structure;
- e. The phenomenon of land use change is getting out of control;
- f. Land division and fragmentation; and
- g. The importance of developing an information center.

The regulatory direction of the Protection of Sustainable Food Agricultural Land Law is to protect agricultural food land from the swift currents of degradation, function conversion and land fragmentation as a result of increasing population growth, economic and industrial development. The provisions built into this law are intended so that certain areas of land may only be used for appropriate agricultural food activities. At the same time, it is hoped that the area of land cultivated by farmers can increase sufficiently so as to ensure the welfare of the farmer's family and the achievement of food production that is sufficient for their needs.

For the implementation of the Protection of Sustainable Food Agricultural Land Law, further regulation is needed in the laws and regulations under it, from Government Regulations to Provincial Regional Regulations and Regency/City Regional Regulations. Currently, only a few regions are actively implementing Law Number 41 of 2009 which was amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become Law by issuing several Regional Regulations. Regional Regulations are needed to legally and formally support technical arrangements for implementation and follow-up in the field. For example, regional regulations strictly regulate permits for land use and construction of buildings on land irrigated by technical irrigation. With the existence of regulations that regulate these technical issues, the opportunities for the conversion of food agricultural land are getting smaller and indirectly contributing to maintaining national food security. Thus, this paper will explain the legal consequences of the conversion of sustainable food agricultural land which sometimes has various legal problems. So that the formulation of the problem in this study is whether the factors that cause the conversion of sustainable food agricultural land and whether the legal consequences of the conversion of sustainable food agricultural land functions.

2. METHOD

This study uses normative legal research, namely research that examines legal issues from the point of view of legal science in depth on the established legal norms.⁸ In conducting this research, the researcher conducted a study of the current laws and regulations to then find legal principles and legal concepts as well as positive legal rules that were relevant so that they were used to find answers

⁸ M. Hadin Muhjad and Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer* (Yogyakarta: Genta Publishing, 2012).

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to the problems that the researchers raised.⁹ The approach that researchers use to analyze legal issues in this study is the statute approach. Especially in terms of the conversion of agricultural land to sustainable food.¹⁰

3. RESULT AND DISCUSSION

A. Factors Causing the Transfer of Functions of Sustainable Food Agricultural Land

Efforts to build food security and sovereignty to realize people's welfare are very important things to realize. To realize food security and sovereignty, it is necessary to carry out sustainable agricultural development, most of which are still dependent on land-based agricultural patterns. The role of the agricultural sector for the development of the Indonesian nation's economy is still very important based on this sector in supporting the formation of gross domestic product, creating employment opportunities, increasing people's income, and earning foreign exchange. The role of the agricultural sector in a comprehensive manner is also seen as the provision of food for the community so that it is strategically capable of creating food security which is very closely related to social security, economic stability, politics and security or national security; and role in the provision of environmental services.¹¹

In addition to this, control is also important in realizing food security and sovereignty. This is achieved through protection, by maintaining and increasing the area of land and establishing sustainable food agriculture areas in designated agricultural areas. The determination of sustainable food agricultural land is intended so that the existence of existing agricultural land can be maintained and can even be increased both in macro area and per capita land management area of farmers. In connection with the conditions mentioned above, it is hoped that each autonomous region will not easily provide opportunities for the conversion of food agricultural land to occur. The government (regional) is obliged to maintain food agricultural land so that its function is sustainable. However, efforts to protect agricultural land through Law no. 41 of 2009. until now it has not been fully effective and in synergy with spatial planning. Spatial planning should determine which lands must be maintained and determine lands that can be converted.¹²

The provisions of Article 44 of Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land, basically prohibit the conversion of agricultural land, but if the public interest requires it, the conversion of the land function is permitted with the condition that a strategic feasibility study is carried out, a plan for land conversion is prepared, the ownership rights of the owner are released, replacement land is provided for the land that has been converted. So, the conversion of agricultural land functions is a threat to the achievement of food security and sovereignty. Land conversion has serious implications for food production, the physical environment, and the welfare of agricultural and rural communities whose livelihoods depend on their land. The conversion of fertile agricultural lands so far has not been matched by concerted efforts to develop agricultural lands through the printing of potential new agricultural lands. On the other hand, the conversion of food agricultural land results in a narrower area of cultivated land and often has an impact on decreasing the level of farmer welfare.¹³

There are several subjects that play a major role in the conversion of sustainable food agricultural land, namely: Government, Corporations, and Individuals. these three subjects have contributed to the recent rate of conversion of agricultural land, therefore the government, in order to suppress the rate of conversion of agricultural land, issued a policy in the form of Law no. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law. Against the subject then among the explanations are as follows.

1. Factors Causing the Change of Function of Sustainable Food Agricultural Land carried out by the Government.

Seeing the development of the transition to rice fields which are increasing day by day, the government finally stipulates regulations regarding agrarian affairs, agrarian regulations contain the government's right to control natural resources, meaning that the government and other components have the right to manage to make nature more orderly, not controlling means forbidding rice field owners to use rice fields but limiting the transition the function of paddy fields for the creation of green areas that attract the attention of many tourists to visit. Protection of agricultural land, especially sustainable food agricultural land, is already a

⁹ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: PT. Bina Ilmu, 1987).

¹⁰ Djoni Sumardi Gozali, *Ilmu Hukum Dan Penelitian Ilmu Hukum* (Yogyakarta: UII Press, 2021).

¹¹ M. Hamzah Takim, "Perlindungan Hukum Lahan Pertanian Pangan Berkelanjutan (PLP2B) Di Kabupaten Gresik Terhadap Ijin Usaha dan Industri," *Airlangga Development Journal* 2, no. 2 (January 29, 2020): 57–72, <https://doi.org/10.20473/adj.v2i2.18070>.

¹² Djoni Djoni, Suprianto Suprianto, and Eri Cahrial, "Kajian Alih Fungsi Lahan Pertanian Pangan di Kota Tasikmalaya," *Mimbar Agribisnis: Jurnal Pemikiran Masyarakat Ilmiah Berwawasan Agribisnis* 1, no. 3 (August 20, 2018): 233–44, <https://doi.org/10.25157/ma.v1i3.43>.

¹³ Yani Pujiwati and Betty Rubiati, "Alih Fungsi Lahan Pertanian Untuk Pembangunan Rumah Bagi Masyarakat Berpenghasilan Rendah (MBR) Ditinjau Dari Undang-Undang Nomor 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman Dan Undang-Undang Nomor 41 Tahun 2009," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 1, no. 1 (December 28, 2017): 19–30.

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government policy to make various policies both in the form of laws and other regulations. However, if efforts to control agricultural land for food do not receive adequate support or are not integrated into the development of an integrated agricultural sector, these efforts will not be successful. However, there are exceptions in which the state has the authority to convert sustainable food agricultural land.¹⁴

As for some of the factors for the conversion of agricultural land mentioned in Law Number 22 of 2019 concerning the Sustainable Agricultural Cultivation System which was amended by Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation become a Law which in Article 19 paragraph (2) states that agricultural land can be converted in terms of land acquisition for public interests and/or national strategic projects.

a) Land acquisition for public interest.

Procurement of land for the public interest in the form of:

- Land acquisition for public roads includes the construction of state roads, provincial roads, district/city roads, and village and environmental roads.
- Land acquisition for the construction of reservoirs, dams, irrigation and irrigation structures in sustainable food agriculture areas
- Land acquisition for the construction of drinking water or clean water, drainage and sanitation in sustainable food agriculture areas.
- Acquisition of land for seaports, airports, stations and railroads as well as terminals as part of a spatial structure that uses sustainable food agriculture areas.
- Land acquisition for public safety facilities in the Designated Areas for Sustainable Food Agriculture.
- Procurement of land for nature reserves in designated areas for sustainable food agriculture.
- Procurement of land for generators and electricity networks in designated areas for sustainable food agriculture.

b) Proyek strategis Nasional

In terms of the conversion of agricultural land functions as regulated in Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects, the latest amendment to Presidential Regulation Number 109 of 2020 concerning Acceleration of Implementation of National Strategic Projects, there are several projects mentioned in the appendix, namely: the road sector and bridges, port sector, airport sector, railway sector, regional sector, housing sector, dam and irrigation sector, clean water and sanitation sector, coastal embankment sector, energy sector, technology sector, and finally the education sector.

2. Factors Causing the Transfer of Functions of Sustainable Food Agricultural Land by Corporations.

The conversion of agricultural land functions can have an impact in the form of reduced agricultural land, decreased national food production, threatens the balance of ecosystems, agricultural infrastructure becomes unusable, farm workers lose their jobs, food prices are increasingly expensive, and urbanization rates are high. The impact of changing the function of agricultural land is inseparable from several factors, namely rapid population growth, increasing community needs for housing, high costs of implementing agriculture, declining selling prices of agricultural products, lack of interest of the younger generation to manage agricultural land, shifts to sectors that are considered more promising, and weak regulations controlling land conversion. For in this context the factors that cause the conversion of sustainable food agricultural land carried out by companies or corporations.¹⁵ The right to control from the state can be over Natural Resources by the State can be delegated to regions, the private sector and customary law communities, only necessary and not contrary to national interests, according to the provisions of the regulations in force.

The conversion of agricultural land carried out by corporations is solely for profit, because the purpose of corporations is indeed established to seek profit, dominant economic factors make corporations really consider if they want to invest in an area, whether the area is feasible or not, because there are two things that must be considered. underlying the conversion of agricultural land carried out by corporations, namely: first, there is a demand for market share to meet the needs of the community whose population is increasing and second, the increasing demands for a better quality of life.

¹⁴ Komang Triana Ayunita, Ida Ayu Putu Widiati, and I. Nyoman Utama, "Pengendalian Alih Fungsi Lahan Pertanian Pangan Berkelanjutan," *Jurnal Konstruksi Hukum* 2, no. 1 (March 1, 2021): 160–64, <https://doi.org/10.22225/jkh.2.1.2987.160-164>.

¹⁵ Muhammad Nur Ansari, Syamsul Bachri, and Kahar Lahae, "Efektivitas Terhadap Pelaksanaan Pengaturan Lahan Pertanian Pangan Berkelanjutan," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 9, no. 2 (November 30, 2020): 135–51, <https://doi.org/10.28946/rpt.v9i2.863>.

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3. Factors Causing the Transfer of Functions of Sustainable Food Agricultural Land by Individuals.

According to Ita Rustianti Ridwan in her journal also mentions several factors that cause people to convert their paddy fields to non-agricultural uses, including the following:¹⁶

a) Economy Factor

Economically, land conversion by farmers either through sales transactions to other parties or by substituting non-rice businesses is a rational decision. Because with this decision farmers expect their total income, both in the long term and in the short term, will increase. Research conducted by several researchers, shows that the use of paddy fields for rice cultivation is very inferior compared to the use for tourism, manufacturing and industry. On a macro-economic basis, land inputs are needed, including paddy fields, for economic activity in Indonesia. But for outside Java, the availability of government funds to create new rice fields can offset the conversion rate to be positive. Limited funds during the economic crisis caused the factors that encouraged conversion to increase, while the funds for printing new rice fields were much reduced, so that the conversion of paddy fields greatly increased. At the macro level, there is no positive correlation between the conversion of paddy fields and an increase in population.

b) Social Factor

According to Witjaksono there are five social factors that influence land conversion, namely: behavior change, owner-land relationship, land splitting, decision-making, and government appreciation of community aspirations. The last two factors relate to governance. Assuming that the government is the protector and servant of the community, it should be able to act as a controller for land conversion.¹⁷ Adequate transportation and communication systems have opened the eyes of the rural population to the outside world. There is even a perception among the urban community, namely that the farming profession is a dirty, miserable and less prestigious job. As a result of this change in perspective, the image of farmers in their minds has decreased. Thus agricultural land is no longer merely a social asset, but is more relied on as an economic asset or working capital when they switch professions outside of agriculture. They will not mind releasing their agricultural land to be converted to non-agricultural uses. This situation is exacerbated by the current economic conditions, where formal employment opportunities are getting smaller. Not a few farmers sell their land to pay for entry to work in formal employment, or buy vehicles for public transportation.

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One of the forms of land conversion control mandated by Law no. 6 of 2023 concerning the Stipulation of Government Regulation in Lie of Law Number 2 of 2022 concerning Job Creation to Become a Law in article 37 through the Central Government and Regional Governments provide support for land owners who maintain the function of their land, this support is in the form of incentive; disincentive; licensing mechanism; protection; counseling. The incentives provided by the Government to landowners are mentioned in Article 38, namely in the form of land and building tax relief; development of agricultural infrastructure; financing research and development of superior seeds and varieties; ease of accessing information and technology; provision of agricultural production facilities and infrastructure; guarantee for the issuance of agricultural land parcel certificates; food through sporadic and systematic land registration; and/or awards for high achieving farmers.

B. Legal Consequences of Converting the Use of Protected Agricultural Land to Non-Agriculture That Is Not in Accordance with Legislation

Article paragraph (2) of Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land is also strengthened by special regulations, namely Law Number 2 of 2012 which is the main factor in the conversion of agricultural land functions to the public interest in Indonesia. In this case the government has sought to provide protection for sustainable food agricultural land so that it is not converted, but with the existence of rules for procuring land for public purposes where also in the article there are exceptions to this.¹⁸ Thus, controlling the conversion of functions of food agricultural land through the protection of food agricultural land is one of the efforts to realize food security and sovereignty, in order to increase the prosperity and welfare of farmers and

¹⁶ Ita Rustiati Ridwan, "Faktor-Faktor Penyebab dan Dampak Konversi Lahan Pertanian," *Jurnal Geografi Gea* 9, no. 2 (2009): 1–12, <https://doi.org/10.17509/gea.v9i2.2448>.

¹⁷ R. Witjaksono, *Alih Fungsi Lahan: Suatu Tinjauan Sosiologis. Dalam Prosiding Loka Karya "Persaingan Dalam Pemanfaatan Sumber Daya Lahan Dan Air" Dampaknya Terhadap Keberlanjutan Swasembafa Beras* (Yogyakarta: Pusat Belajar Offset, 1996).

¹⁸ Khairiyatul Mahmudah, "Politik Hukum Pengendalian Alih Fungsi Lahan Pertanian Pangan Berkelanjutan Untuk Kepentingan Umum Dalam Perspektif Hukum Pertanahan" (Tesis, Jambi, Universitas Jambi, 2021), <https://repository.unja.ac.id/21426/>.

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society in general.¹⁹ Sustainable food agricultural land is protected and cannot be transferred except for public interests. This exception means that the protection of sustainable food agricultural land is not fully protected. Land acquisition which is a development activity in the public interest has an important role for development, but sustainable food agricultural land also plays a role in maintaining food security.²⁰ However, things often happen that are not in accordance with the mandate of the statutory regulations, so that the conversion of protected agricultural land to non-agricultural land which is not in conformity with the statutory regulations often occurs.

In Law no. 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law states that there will be consequences if the conversion of sustainable food agricultural land is not in accordance with the applicable laws and regulations, both criminal and civil sanctions. Following are the legal consequences carried out by the Government, Corporations, and Individuals.

1. Legal Consequences of Converting the Use of Protected Agricultural Land to Non-Agriculture by the Government

There are several rules governing the consequences of land conversion by the Government, including Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land which was amended by Law no. 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law in article 73 paragraph (1) which reads:

“Any government official authorized to issue permits for the conversion of Sustainable Food Agricultural Land not in accordance with the provisions referred to in Article 44 paragraph (1), shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a maximum fine, a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 5,000,000,000.00 (five billion rupiah).”

Regarding the conversion of agricultural land in terms of land acquisition for public purposes, the Government also regulates the policies contained in Law Number 2 of 2012 on Land Acquisition which was amended by Law no. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law in article 36 paragraph (1), namely Provision of compensation can be given in the form money; substitute land resettlement; share ownership, or another form agreed upon by both parties. The amount of compensation for land acquisition for public purposes as regulated in Article 33 varies based on the assessment, among others land; basement; building; plant; objects related to land, and/or; other disadvantages that can be assessed.

2. Legal Consequences of Converting Functions of Protected Agricultural Land to Non-Agricultural Activities by Corporations

The conversion of agricultural land is not only carried out by the Government and the Community, but can also be carried out by corporations, for example building factories, building constructions, housing developments etc. It also requires land that does little to fulfill development land quotas. The role of development in these times, it is felt that there is an increase in the need for land for the purposes of various aspects in fostering equitable development for all levels of society, especially development in the physical sector both in villages and cities. Land as the basic capital for development plays a very important role in carrying out development activities, such as constructing school buildings, widening roads and so on. However, the amount of land available for development purposes is very limited.²¹ Therefore, it is not uncommon for corporations to look for land on the outskirts of cities or remote villages, where on average the land is still rice fields with a price ratio that is quite far compared to prices in urban areas. It is not uncommon for farmers to relinquish their land rights to corporations because they want to get money faster and more, to meet their needs. Therefore the government is very concerned about this problem so that the government makes policies to control the rate of land conversion for food security.

In this case those who commit violations against the conversion of agricultural land by corporations, the Government has stipulated criminal sanctions contained in Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land, namely in article 74 paragraph (1) and paragraph (2) which reads:

- (1) In the event that the crime referred to in Article 72 paragraph (1) and paragraph (2) is committed by a corporation, its management shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years and a fine of at least Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of IDR 7,000,000,000.00 (seven billion rupiah).
- (2) In addition to fines as referred to in paragraph (1), corporations may be subject to punishment in the form of:
 - a. confiscation of proceeds of crime;

¹⁹ Muh Ricky Subarkah, La Ode Husen, and Ilham Abbas, “Perlindungan Hukum Terhadap Lahan Pertanian Akibat Terjadinya Alih Fungsi Lahan: Studi Kabupaten Luwu,” *Journal of Lex Generalis (JLG)* 2, no. 9 (September 4, 2021): 2329–46.

²⁰ Permai Yudi, Lyndon Parulian Nainggolan, and Bobby Sutra Saragih, “Perlindungan Hukum Terhadap Lahan Perkebunan Dan Pertanian Masyarakat Akibat Terjadinya Alih Fungsi Lahan,” *Jurnal Justia* 3, no. 2 (September 29, 2021): 14–20, <https://doi.org/10.36764/justia.v3i2.608>.

²¹ I. Komang Darman, “Akibat Hukum Pengalihan Fungsi Tanah Pertanian Menjadi Kawasan Perumahan,” *Belom Bahadat* 10, no. 2 (December 30, 2020): 1–15, <https://doi.org/10.33363/bb.v10i02.566>.

As a Result of Legal Transfer of Function of Sustainable Food Agricultural Land to Non-Agriculture

- b. cancellation of work contracts with the government;
- c. management dismissal; and/or
- d. Prohibition on management to establish corporations in the same line of business.”

3. Legal Consequences of Converting Functions of Protected Agricultural Land to Non-Agricultural Activities Done by Individuals

The conversion of agricultural land functions carried out by the community through licensing instruments. Applications for permits for the conversion of agricultural land to non-agricultural land must meet the requirements, both administratively and technically in accordance with Government Regulation Number 13 of 2010 concerning Types and Tariffs for Types of Non-Tax State Revenue, the administrative process includes fees, non-tax revenue rates.²² The basis for land policy is Article 33 paragraph (3) of the 1945 Constitution which is further elaborated in Law Number 5 of 1960 concerning the Basic Agrarian Law. In Article 2 paragraph (1) of the Agrarian Law 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 paragraph (2) of the same article it is stated that the right to control from the state gives the authority to:

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

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.²³

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 Agricultural Food Land:

1. Individuals who carry out the conversion of the function of Sustainable Food Agriculture Land as referred to in Article 44 paragraph (1) shall be subject to imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
2. Individuals who do not carry out the obligation to restore the condition of the Sustainable Food Agricultural Land to its original state as referred to in Article 50 paragraph (2) and Article 51 shall be subject to imprisonment for a maximum of 3 (three) years and a fine of a maximum of IDR 3,000,000,000. 00 (three billion rupiah).
3. 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 punishment imposed.

The conversion of agricultural land is a phenomenon that cannot be avoided from development. Efforts that might be done is to slow down and control the conversion of agricultural land into non-agricultural land, including housing. The process of land conversion is generally preceded by a process of land tenure transfer. In fact, behind the process of land conversion there is generally a process of deteriorating land resource control structures. The problems surrounding the process of land tenure transfer are an asymmetrical process between those who give up rights and those who receive land tenure rights; the tendency of the land tenure structure to become more concentrated in certain groups of people (the distribution of tenure is getting worse), and; increase in landless community groups.

4. CONCLUSION

Related to the factors that affect the conversion of sustainable food agricultural land, there are several subjects from the conversion of sustainable food agricultural land, namely the Government, Corporations or Companies and Individuals. From the Government, there are two factors, namely land acquisition for public purposes and national strategic projects. In terms of corporations or companies, the factor is that they only aim for profit, because the purpose of corporations or companies is indeed established to seek profit, the dominant economic factor makes corporations really consider it if they want to invest in an area. For individuals the factors are economic and social.

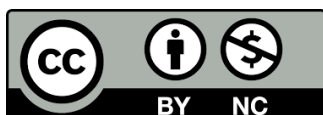
The conversion of sustainable food agricultural land for this matter, the government has made every effort to suppress the rate of land conversion by issuing laws and regulations in the form of Law no. 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law which contains criminal sanctions as well as civil sanctions but on the other hand the government seems to have weakened the Protection of Sustainable Food Agricultural Land Law by issuing policy Law Number 2 2012 Land Acquisition which was amended by Law no. 6 of 2023 concerning the Stipulation of Government Regulations in Lie of Laws whose contents do not reflect the spirit of maintaining the conversion of agricultural land by prioritizing land acquisition for public interests and national strategic projects.

²² Darman.

²³ Darman.

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