

A Critical Appraisal of Agricultural Land Conversion for Land Procurement for the Public Interest and National Strategic Projects

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Abstract. The agricultural land conversion must be carried out selectively and restrictively because it is related to farmers' extent of land tenure, which affects their welfare. This study aims to determine the substance of the UUCK (Undang-undang Cipta Kerja or Job Creation Law) that facilitates the conversion of agricultural land in Indonesia and the alignment between policies that facilitate the conversion of agricultural land with agrarian justice. This research is normative research using a statute approach and a conceptual approach. In addition, it employed primary legal sources and secondary legal sources collected through literature research. The data was analyzed using content analysis. Based on the results of the study, it was found that in Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for Development for the Public Interest as a derivative of the UUCK to facilitate the conversion of agricultural land through expanding the scope of public interest activities from 18 to 24 activities. The expansion is also carried out by including the national strategic projects as activities to convert agricultural land, even though business entities carry out the projects. The conversion of agricultural land for national strategic projects is easier than for public interest because it does not need to meet the requirements for a strategic feasibility study, a land conversion plan, land ownership acquisition, and provision of replacement land. The existence of different treatments for implementing national strategic projects and land procurement for the public interest is not in line with the value of justice.

Keywords: Agricultural Land Conversion, Land Procurement for Public Interest, National Strategic Projects, Justice

1 Introduction

Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK) is developing national industry and trade by improving the ecosystem, facilitating investment, and accelerating national strategic projects. Related to the substance of the regulation, there is no objective related to equal distribution of land tenure as the core of agrarian justice, even though one of the clusters in the work copyright law is the land procurement cluster. The objectives have a functional relationship with legal principles and the substance of laws and regulations. The objectives containing the interests to be achieved described in the legislation's substance [1].

The purpose of UUCK, which emphasizes national economic growth and provides convenience to investment, underlies the ease of acquiring land for public purposes and national strategic projects. This national strategic project did not appear for the first time in the

UUCK. However, it has been regulated since 2016 until the latest was Presidential Regulation of the Republic of Indonesia Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Accelerated Implementation of National Strategic Projects. This regulation has defined national strategic projects as projects and/or programs implemented by the Government, Regional Government, and/or business entities that have a strategic nature to increase growth and equitable development in order to improve community welfare and regional development. Categorizing a project into a national strategic project category is determined by the government as contained in the Appendix to various Presidential Regulations concerning the Acceleration of National Strategic Projects, which consist of various programs.

One of the regulations that specifically regulates the ease of implementing national strategic projects is Government Regulation no. 42 of 2021 concerning The Ease of National Strategic Projects. In this regulation, it is stated that the government is obliged to facilitate the resolution of problems in business licensing for the benefit of national strategic projects, even in Article 9, it is stated that the minister in the agrarian field identifies the need for land in order to accelerate the implementation of national strategic projects. In this case, the government would intervene to provide land for national strategic projects, including manufacturing industrial estates, housing, and companies in the energy sector.

One of the conveniences of providing land for the national strategic project is the permitting of conversion of agricultural land. This agricultural land conversion permit will certainly increase the conversion rate of agricultural land in Indonesia. This policy is ironic because the conversion of agricultural land is currently at an alarming stage. An analysis of high-resolution satellite imagery found that the conversion of agricultural land in the 2000-2015 period reached 96,512 ha per year. Based on the conversion rate, it can be predicted that the rice fields covering 8.1 million hectares in 2016 will decrease to 5.1 million hectares in 2045 [2]. Understanding the increasing rate of agricultural land conversion, the government should take preventive measures to prevent the conversion of agricultural land and even try to increase the area of agricultural land.

Ironically, the government has not taken any actions to prevent the widespread conversion of agricultural land but making the opposite policy by facilitating the conversion of agricultural land. It is conducted by changing the provisions on land conversion in Law No. 41 of 2009 concerning Sustainable Food Crops Farmland in Indonesia. This regulation states that the conversion of agricultural land can only be carried out in the public interest. However, in the UUCK, the provision was changed so that the conversion of agricultural land could be carried out because of the public interest and the existence of a national strategic project.

Including a national strategic project as a reason for converting agricultural land will not only increase the conversion rate but also show partiality to the entrepreneur's side. It is because the implementers of the national strategic project program are the government and entrepreneurs. In the context of land, it will be easy for entrepreneurs to acquire land to carry out their projects. The efforts will certainly require land on a large scale. When the entrepreneurs need large-scale land, there will be a possibility that the agricultural land conversion is carried out on a large scale which will have a socio-economic impact on the related community [3]. The economic impact is the narrowing of the area of agricultural land controlled by farmers, which will reduce their income. The explanation above shows two contrasts between the two classes of society. These namely entrepreneurs have strong capital and will find it easier to obtain land with various government facilitation. However, on the other hand, some farmers have increasingly narrow land due to government policies that take more sides with entrepreneurs.

This paper aims to analyze the substance of the UUCK that facilitates the conversion of agricultural land in Indonesia and to review the alignment between policies that facilitate the conversion of agricultural land and agrarian justice. Structurally, this paper will describe the impact of expanding the scope of land procurement for the public interest on the conversion of agricultural land. Then, the impact of the inclusion of a national strategic project will be explained as one of the reasons for carrying out the agricultural land conversion. In addition, the alignment of the regulation of agricultural land conversion with the value of justice and significance will also be explained.

This article is different from the writing by Bambang Irawan, which analyzes the effectiveness of agricultural land conversion policies and the factors that influence their effectiveness. The difference is that Bambang's writing only focuses on implementation. In contrast, the researcher's article focuses on aspects of the development of legal politics that lead to regulations that accelerate the conversion of agricultural land [4]. Another article for comparison is an article written by Isdiyana Kusuma Ayu and Benny Krestian Heriawanto, which focuses on the conversion of agricultural land due to public interest and the process of conversion of agricultural land belonging to private individuals. There are two differences between the previous article and this article, namely that this article does not only focus on the public interest as the reason for allowing agricultural land conversion but also on national strategic projects as stipulated in the UUCK. Another difference is that the comparative article does not discuss aspects of agrarian justice [5].

2 Method

This research is doctrinal research which Khusbal Vibhute defines as research on the rules, principles, concepts, or legal doctrines [6]. It focuses on legislation, namely analyzing changes in agricultural land conversion arrangements after the issuance of UUCK. This study used three approaches, namely the statute approach, conceptual approach, and comparative approach. Based on the type and research approach above, legal materials used primary legal sources in the form of laws and regulations and secondary legal sources in the form of journal articles, books, and official institutional reports. They were obtained through library research and analyzed using content analysis. The data analysis was carried out through several stages: reading the data intensively, making coding frames, coding, analyzing the data that had been coded, and making systematic scientific articles [7].

3 Discussion

3.1 Expansion of Public Interest Category Has an Impact on Increasing Agricultural Land Conversion

The ratification of the Job Creation Law (UUCK) has marked a change in legal politics in the agrarian sector from agricultural legal politics that are oriented to the interests of farmers as regulated in Law No. 5 of 1960 concerning Basic Agrarian Law (hereinafter referred to as UUPA) became a land law policy that was oriented to the interests of capitalists or owners of capital. The change in legal politics affects the overall substance of regulations in the land sector, including regulations regarding agricultural land conversion, which are also intended to

support investment. The change, in this case, is to expand the scope of convertible land, which was previously only the land intended for public purposes and is now added to national strategic projects. The public interest is the interest of the nation, state, and society that must be realized by the central/regional government and used for the greater good of the people.

The ease of conversion of agricultural land will also be directly affected by the expansion of the scope of land rights which are of public interest as regulated in Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for Development for the Public Interest compared to that contained in Law No. 2 of 2012 concerning Land Procurement for Public Interest. The following table compares the substance of Law No. 2 of 2012 concerning Land Procurement for the Public Interest and Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for Development for the Public Interest.

Table 1. Categorization of Land Procurement for Public Interest

	Law No. 2 of 2012	GR. No. 19 of 2021
Total	18 activities	24 activities
Impact	Increasing the potential for the agricultural land conversion in Indonesia	

In Law No. 2 of 2012 concerning Land Procurement for Public Interest, 18 development activities are categorized as public interest. Meanwhile, in Government Regulation No. 19 of 2021 concerning the Implementation of Land Procurement for Development for the Public Interest, 24 activities are categorized as public interests. It means that there are 6 (six) categories added to the scope of land procurement for the public interest, namely:

1. upstream and downstream oil and gas industrial estates initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regionally-owned enterprises;
2. special economic zones initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises;
3. industrial estates initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises;
4. tourism areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises;
5. food security areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises; and
6. technology development areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises.

The addition of land categories within the scope of the public interest also increases the potential for the conversion of agricultural land in Indonesia. It is because agricultural lands can be converted to benefit upstream and downstream oil and gas industrial estates, special economic zones, tourism areas, food security areas, and technology development areas. Previously, in Law No. 2 of 2012 concerning Land Procurement for Public Interest, agricultural land conversion cannot be carried out for the activities above. Therefore, a thesis can be drawn that the wider the category of land acquisition for the public interest, the greater the potential for the conversion of agricultural land in Indonesia.

3.2 National Strategic Projects as Activities Underlying the Agricultural Land Conversion

National strategic projects are projects and/or programs implemented by the government, regional government, and/or business entities that have a strategic nature to increase growth and equitable development in the context of improving community welfare and regional development. They can be one of the reasons for converting agricultural land, as stated in Article 31 of Law No. 11 of 2020 concerning Job Creation which amends Article 19 section (2) of Law No. 22 of 2019 concerning the Sustainable Agricultural Cultivation System, which states that in the case of public interest and/or national strategic projects, agricultural land can be converted and implemented following the provisions of the legislation. The substance of the article is also in line with Article 124, which changes the substance of Article 44 of Law No. 41 of 2009 concerning Sustainable Food Crops Farmland. Looking at the construction of the article on the Job Creation Law, it expands the reasons that can be used as a basis for converting agricultural land because Law No. 41 of 2009 stipulates that the conversion of agricultural land can only be carried out for the public interest. The following table compares the substance of Law No. 41 of 2009 concerning Sustainable Food Crops Farmland and Law No. 11 of 2020 concerning Job Creation.

Table 2. Comparison of Sustainable Food Crops Farmland Law and Job Creation Law

Indicators	Law No. 41 of 2009 concerning Sustainable Food Crops Farmland	Law No. 11 of 2020 concerning Job Creation
Substance	Agricultural land conversion can only be conducted in the context of land procurement for the public interest	Agricultural land conversion can be conducted in the context of land procurement for the public interest and national strategic projects
Consequences	Increasing the potential for conversion of agricultural land so that the land area controlled by farmers decreases.	

It expands the scope of activities that are the object of the conversion of agricultural land and provides convenience in the conversion process. In fact, the requirements for converting agricultural land for national strategic projects are much easier than converting agricultural land for the public interest. In the UUCK, it is stated that the conversion of agricultural land for land procurement for the public interest must meet several requirements, namely:

1. There is a strategic feasibility study;
2. Plan for land conversion is carried out;
3. The landowners have relinquished land ownership rights;
4. Replacement land is provided for sustainable food agricultural land that is converted.

The ease of obtaining land rights cannot be separated from Article 22, section (1) and section (2) of Presidential Regulation Number 3 of 2016 concerning Accelerated Implementation of National Strategic Projects, which state that the central government and/or regional government can provide support to business entities in the process of providing land in the form of:

1. Priority for the provision of land and/or;
2. Use of land owned by the Central Government/Regional Government

It is interesting because the four requirements above do not apply to national strategic projects. Business entities will easily control land on a large scale for project activities with various facilitation carried out by the government. Even the business entities do not have to cultivate the substitute agricultural land and are exempt from the obligation to carry out strategic feasibility and land conversion studies. If it is measured from two indicators, namely actors, nature, and urgency, the public interest is the one that should be facilitated instead of the national strategic projects. Regarding actors, the implementers of land procurement for the public interest are only public institutions, namely the central government, regional government, state-owned enterprises, or regional-owned enterprises. It is because they are important and control many people's lives, while actors who can carry out national strategic projects are not only by the government but also by business entities.

The ease of converting agricultural land for the national strategic project can provide convenience for business entities working on the project. Not all national strategic projects are included in the public interest. An example of a national strategic project not included in the public interest is the construction of a smelter as stipulated in the Attachment to Presidential Regulation Number 3 of 2016 concerning the Accelerated Implementation of National Strategic Projects. The smelter construction projects included in the national strategic projects are located in Kuala Tanjung (North Sumatra Province), Ketapang (West Kalimantan Province), Morowali (Central Sulawesi Province), Konawe (Southeast Sulawesi Province), Bantaeng (South Sulawesi Province) and Buli (North Maluku Province). The construction of a smelter is the obligation of companies that invest in mining energy which certainly will be facilitated by the regulation in procuring land, even converting agricultural land.

The convenience for business entities in carrying out national strategic project activities, including projects that are not included in the public interest category, can have a private dimension, such as a smelter. It is unfair when compared to land procurement for the public interest carried out by state organs to serve the public interest or public welfare. The difference in treatment of actors in land procurement for the public interest is also not in line with the concept of justice put forward by Wojciech Sadurski, who states that in determining justice, it can be measured from two indicators, namely the treatment of one party compared to another party [8]. Using this indicator, the convenience of implementing national strategic projects compared to government organs is unfair because the government represents the interests of the community in general. At the same time, the private sector carries out its activities with a profit orientation which certainly emphasizes the benefits for the business entities.

Based on the description above, the government should properly map out the criteria for business entities that can carry out national strategic projects, the projects that are included in the categorization of national strategic projects based on appropriate and measurable indicators, and establish strict conditions for the executors of national strategic projects in carrying out the agricultural land conversion. Meanwhile, suppose there is any convenience in converting agricultural land. In that case, the convenience should be addressed to the government as the executor of land procurement for the public interest instead of entrepreneurs. The reason is because of the level of urgency and impact given by the project, namely for the benefit of Indonesian society.

The strategic steps above need to be taken by the government in order to ensure that justice is enforced. In addition, it is also to prevent the polarization of land ownership among entrepreneurs. They carry out national strategic projects and land ownership inequality between farmers and entrepreneurs, which always triggers conflicts in the agrarian sector. The government cannot argue that there will be no inequality in land ownership because one of the national strategic projects is a food estate project closely related to the agricultural sector. It is

because food estates are large-scale agricultural projects managed by the government or business entities. They have even caused the polarization of land ownership by business entities without empowering farmers and even eliminating the rights of indigenous peoples.

One example of food estates taking over indigenous peoples' land is the Merauke Integrated Food and Energy Estate (MIFEE) program covering an area of 1.2 million ha. This national strategic project involves six companies: P.T. Selaras Inti Semesta, P.T. Medco Papua Industri Lestari, P.T. Bio Inti Agrigindo, P.T. Agrinusa Persada Mulia, P.T. Agriprima Cipta Persada and P.T. Anugerah Rejeki Nusantara. It has led to the expropriation of customary law communities' customary land rights with minimal compensation and the loss of social, cultural, and even spiritual relations between customary law communities and land as their lebensraum [1].

The food estate program, as one of the national strategic projects, also has the potential to not only eliminate customary rights from customary law communities but also not empower farmers, especially local and transmigration farmers, as revealed by Anggalih Bayu and Reza Altamaha. The phenomenon can be seen in food estate projects in Bulungan and Merauke Regencies. Ironically, the food estate has led to a worsening of the food condition of the local population and the lack of land ownership security for transmigration farmers [9].

The description above clearly shows that national strategic projects, especially food estates, do not provide welfare for farmers and indigenous peoples but rather lead to the accumulation of community land tenure by business entities on the grounds of food security. Very many Indonesian people work in the agricultural sector. The reality also deviates from the desiderata that the development of the agricultural sector goes hand in hand with the development of farmer welfare so that food security and farmer welfare are mutual.

4 Conclusion

The conversion of agricultural land has been made easier after the enactment of the Job Creation Law, namely the expansion of activities included in the public interest which has an impact on the increasing number of activities that can be a reason for converting agricultural land. In addition, the Job Creation Law also expands the conversion of agricultural land in addition to the public interest, and it can also be carried out to support national strategic projects. The conversion of agricultural land for national strategic projects is easier than for public interests because it does not meet the requirements for a strategic feasibility study, land conversion plans, land ownership acquisition, and provision of replacement land. Whereas national strategic projects can be implemented not only by the government but also by business entities, not all of them are related to many people's lives. It shows the unequal (unfair) treatment between the executors of national strategic projects, especially business entities, and the executors of land procurement for the public interest. Therefore, the government should properly map out the criteria for business entities that can carry out national strategic projects, particularly the projects that are included in the categorization of national strategic projects based on precise and measurable indicators and hold strict conditions for implementing national strategic projects in converting agricultural land.

References

- [1] Maria S.W. Sumardjono. 2020. Penyempurnaan Undang-Undang Pokok-Pokok Agraria Dari Masa Ke Masa. Jakarta: Kompas.
- [2] Anny Mulyani et.al. Analisis Konversi Lahan Sawah: Penggunaan Data Spasial Resolusi Tinggi Memperlihatkan Laju Konversi Yang Mengkhawatirkan. *Jurnal Tanah dan Iklim*
- [3] Nika Putri Hariani dan Mlhammad AriF Affandi. Alih Fungsi Lahan Pertanian Menjadi Pabrik Gula Kebun Tebu Mas (Studi Perubahan Sosial Ekonomi Masyarakat Dusun Sambirejo Desa Sidokumpul Sambeng-Lamongan. *Paradigma*, Volume 05, Nomo 01, 2017.
- [4] Bambang Irawan. Meningkatkan Efektivitas Kebijakan Konversi Lahan. *Forum Peneliti Agro Ekonomi*, Vol. 26, No. 2, 2008.
- [5] Isdiyana Kusuma Ayu dan Benny Krestian Heriawanto. Perlindungan Hukum Terhadap Lahan Pertanian Akibat Terjadinya Alih Fungsi Lahan di Indonesia. *Jurnal Ketahanan Pangan*, Vol. 2, No. 2008.
- [6] Khusbal Vibhute dan Filipos Aynalem. 2009. Legal Research Method : Teaching Material. Justice and Legal System Research Institute.
- [7] Edo Kuckartz. Qualitative Text Analysis: A Systemic Approach dalam Gabriele Kaiser dan Norma Presmeg (Editors). 2019. Compedium for Early Career Researchers in Mathematics Education. New York: Springer,
- [8] Anggalih Bayu Muh. Kamim dan Rez Altamaha. Modernisasi Tanpa Pembangunan Dalam Program Food Estate di Bulungan dan Merauke, *Bhumi: Jurnal Agraria dan Pertanahan*, Vol. 5, No. 2
- [9] Wojciech Sadurski. Law's Legitimacy and Democracy Plus, *Oxford Journal of Legal Studies*, Vol. 26, No. 2, 2006,