

The Problem of The Conversion of Agricultural Land to Housing in The District of Tegal

Akhmad Tohir¹, Sanusi², Nuridin³
{akhto77@gmail.com}

Magister of Law, Universitas Pancasakti Tegal, Indonesia

Abstract. The problem is how to regulate the transfer of agricultural land to housing in Tegal Regency, and how the legal problems arise from the existence of these provisions, as well as how to solve these problems. This type of research is a normative legal research with a normative juridical approach (law approach) with descriptive-prescriptive characteristics sourced from primary legal materials and secondary legal materials obtained by studying the documentation of legislation and legal science literature studies, then analyzed with legal analysis. The government's efforts to maintain the function of agricultural land in Tegal Regency are in fact not optimal. This can be seen from the government's actions to let the community shift the function of agricultural land to non-agricultural which is not in accordance with the feasibility study; land conversion plan; Mechanisms for freeing ownership of land rights, and the availability of substitute land for sustainable food agricultural land. The problems in maintaining the existence of agricultural land are: the growing population; increase in land prices so that farmers are interested in selling their land; Many rice fields in Tegal Regency are close to residential/residential houses; land productivity because the land/rice field is productive only when it rains; increasing industry in Tegal Regency.

Keywords : Problematics, Policy Implementation, Agricultural land conversion

1. Introduction

The Tegal Regency Spatial Planning (RTRW) was enacted in 2003 and revised in 2006 with a planning period of 2007-2016. In its development, with the existence of External and Internal Factors that affect the RTRW, it is necessary to have an evaluation and revision so that the RTRW can be used and relevant to current developments. External factors that affect the RTRW of Tegal Regency are changes in several laws and regulations, including Law Number 24 of 1992 concerning Spatial Planning to Law Number 26 of 2007 concerning Spatial Planning which is quite significant, namely a change in the planning year, from 10 years to 20 years. planning and more emphasis on the need for green open space.

In addition to changes to the Act, other external factors are the existence of a national program that affects Tegal Regency, the planned National Program is the Construction of the Trans Java Toll Road where the Pejagan Pemasang section will pass through Tegal Regency. This will certainly affect the development of Tegal Regency. The total area of Tegal Regency that is traversed by the Pejagan-Pemasang toll road is 226.19 Ha which includes 176.22 hectares (77.91%) of rice fields, 12.15 hectares (5.37%) of residential land and 37.82 hectares. (16.72%)

vacant land, moor and others. The sub-districts in Tegal Regency that the toll road development plan will pass through are Dukuhuri, Adiwerna, Talang, Pangkah, Tarub, Suradadi and Warureja sub-districts. The number of sub-districts in Tegal Regency that is passed by the Pejagan-Pemalang Toll Road plan has an influence on the development of Tegal Regency.

The development of this toll road will result in a shift in land use, changes in activities in the area traversed by the toll road. In addition, in the long term the existence of the toll road will also affect the development of Tegal Regency as a whole in terms of economic, social and cultural aspects which will ultimately affect the overall spatial layout of Tegal Regency. The district has sustainable food agricultural land. Therefore, it is necessary to evaluate the existing RTRW with changes in regional external and internal factors. There are several things that have not been accommodated in the existing RTRW and the changing planning period, the Regional Government of Tegal Regency in this 2008 Fiscal Year held a Revision of the Tegal Regency Spatial Plan.

It is not an easy thing to make improvements and structuring the existing space, this is considering that in spatial planning there are conditions that have implications for the people in the Tegal Regency area and also for the Regional Government. As we understand that in the preparation of spatial/regional planning plans, it must come after the community has carried out various activities, including building houses/residential premises in space/land which is the object of arrangement for the Tegal Regency Regional Government. For example, in the Kramat District area, the spatial planning plan by the Regional Government is planned as a locus of green areas and agricultural land. But the problem is, the village has been used by the community as a densely populated residential area. Against such conditions, there are consequences for the regional government of Tegal Regency to control and relocate residents who have long lived/established residential houses in the area. This will certainly cause various social problems, including one of which is the issue of certainty for the people of Tegal Regency to fulfill their right to obtain good and decent housing. Along with population growth, the need for land for housing will increase. If the need for residential land is not well managed, it will have consequences for decreasing the quality of nature and agricultural land.

In the current decade, the area of Tegal Regency, especially Kramat District, has become one of the places where many lands are used as residential areas, namely by the proliferation of housing of all types and types developed by various developers. The land which was originally an agricultural area, namely rice fields, has now turned its function into a residential area. Seeing this, of course, must be accompanied by strategic policies from the Regional Government of Tegal Regency to anticipate the decline in natural quality and the depletion of agricultural land in the Kramat District area. As for the formulation of the problem based on the background above, the problems that the writer will examine are formulated as follows : How is the regulation regarding the transfer of agricultural land to housing in Tegal Regency?, What are the legal problems that arise from this provision?, and What is the solution to this problem?

2. Research Methods

This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature..

3. Results And Discussion

3.1. Arrangements Regarding the Transfer of Agricultural Land to

Housing in Tegal Regency

The conversion of agricultural land is a phenomenon that cannot be avoided from development. Efforts that may be made are to slow down and control the activity of converting agricultural land into non-agricultural land. In the Government Regulation of the Government of the Republic of Indonesia Number 1 of 2011 concerning the Determination and Transfer of Functions of Sustainable Food Agricultural Land, the conversion of sustainable food agricultural land is a change in the function of sustainable food agricultural land into non-sustainable food agricultural land, either permanently or temporarily.

In order to carry out the conversion of agricultural land into non-agricultural land, the parties concerned must submit their application through a licensing mechanism. The mechanism is divided into two routes, namely through a location permit or a permit to change the use of agricultural land to non-agricultural use. The difference between the two mechanisms lies in the extent of the land being applied for, if the area of agricultural land requested for a change of use to non-agricultural land is less than 10,000 m² then the permit required is a permit to change the use of agricultural land to non-agricultural use, whereas if it is more than 10,000 m² then The permit required is a location permit.

The procedure for granting a location permit as regulated in the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 5 of 2015 is as follows:

1. Location permits are granted based on considerations regarding land tenure and technical aspects of land use which include the state of rights and control of the land concerned, physical assessment of the area, land use, and land capability;
2. The letter of granting a location permit is signed by the Regent/Mayor or for the Special Capital Region of Jakarta by the Governor after a coordination meeting between related agencies is held;
3. Materials for the purposes of considering the granting of location permits shall be prepared by the Head of the Land Office;
4. Coordination meeting for the consideration of granting a location permit accompanied by consultation with the community holding land rights in the requested location;
5. Consultation with the community holding land rights includes the dissemination of information regarding the investment plan to be implemented, the scope of its impact and the land acquisition plan as well as the resolution of problems related to land acquisition. Providing opportunities for land rights holders to obtain explanations about investment plans and find alternative solutions to problems.

Every land owner who wishes to change the use of agricultural land into non-agricultural land according to his needs, whether for residential houses and yards or for the purpose of building a place of business or company must first obtain a drying permit. Housing development carried out by business entities in the housing development sector is carried out only in ready-to-build areas or in stand-alone ready-to-build environments. The implementation of houses and housing is carried out to meet the needs of houses as one of the basic human needs for increasing

and equitable distribution of people's welfare. The administration of houses and housing is carried out by the Government, regional governments and/or everyone to guarantee the right of every citizen to occupy, enjoy, and/or own a decent house in a healthy, safe, harmonious and orderly environment.

Tegal Regency is one of the regencies that is experiencing rapid development with the establishment of several facilities, namely educational facilities, shopping centers, industry, and housing. Housing developed by private parties in Tegal Regency includes Griya Bumi Pertiwi, Sapphire Residence Housing, Griya Tiara Arum, Griya Kabunan Asri, Griya Indah Slawi Housing, Pesona Amarta Jatilawang, Villa Slawi Regency, Permata Abadi, Lebaksiu Residence, Shangrila Land Estate, Taman Indo Kaliwadas, Permata Indah, Sapphire Town House, Suradadi Indah, Pendawa Asri, Mediterranean Sapphire, Dirly Lebaksiu Residence, Griya Satria Dampyak, Kalisapu Permai Raya, Griya Tiara Asri Housing, Griya Satria Kajen, RA. Eternal Enchantment, Guci Raya Indah, Dampyak Permai Raya, Puri Cendana, Grand 50 Safira City, Grand Panorama, Pala Raya Permai, Griya Pamenang, Villa Slawi Regency, and Griya Tiara Arum Housing.

Most of the housing development in Tegal Regency in acquiring land comes from agricultural land. The land acquired for housing construction is in the form of agricultural land, so a Land Use Change Permit is needed by the right holder to change the use of land from agricultural land to non-agricultural (housing). Technically, the procedures for land conversion in Tegal Regency are:

1. The applicant submits an application for conversion of agricultural land to non-agricultural use to the Office of the Integrated Licensing Service Agency will request Information on Space Allotment at the Regional Planning and Development Agency which is based on the Regional Regulation of Tegal Regency No. 10 of 2012 concerning Regional Spatial Planning. Spatial Planning and Regional Development which regulates the allotment of space;
2. The next procedure is to go to the land office to ask for technical considerations on land and the land office will conduct a survey. Location permit and land use change permit are the authority in the field of land regulation and arrangement;
3. The final procedure is to the Tegal Regency Integrated Licensing Service Agency to complete the form.

One of the backgrounds of the birth of this Regional Regulation Number 1 of 2007 is that in the context of implementing regional autonomy, in particular to foster, regulate, supervise and control land use in accordance with regional spatial planning and increase regional original income, it is necessary to stipulate Location Permit Retribution as one of the sources of land use. financing of governance and development in Tegal Regency.

3.2. Legal Problems in the Transfer of Agricultural Land Functions to Non-Agriculture

Based on the provisions regarding the transfer of agricultural land to housing in Tegal Regency, the existence of housing in Tegal Regency is an area that is indeed provided for residential residents. So that housing in the Kramat District, Tegal Regency is one of the locations planned by the Tegal Regency Government for residential land. Because the existing agricultural land in the Kramat area is dry agricultural land, so it is more productive to use the land as a residential area.

The problem is getting more complicated in the field because the direction of national policy in controlling the conversion of agricultural land often collides with local government

policies that prioritize local interests and regional policies. Although the implementation of the policy on controlling land use change is still considered quite effective in limiting the use of paddy fields for non-agricultural activities (such as the location permitting mechanism and the application of the Regional Spatial Plan), it turns out that there are still many “land speculators” who are not covered by the implementation of the policy.

There are many cases where the owners of agricultural land deliberately change the function of the land to make it easier to trade without going through a licensing mechanism or violating the existing Spatial Plan. For example in some locations, many rice fields are platted. The main reason is the double profit. This is certainly a tremendous attraction for rice field owners. The occurrence of changes in land use can be caused by changes in regional spatial plans, policies on development directions and because of market mechanisms. In the past, what happened was mostly due to the last two things, due to the lack of understanding of the community and government officials regarding regional spatial planning, or regional spatial planning plans that were difficult to realize.

In line with the development policy that emphasizes the growth aspect through the ease of investment facilities, both for local and foreign investors in the provision of land, the change in land use from agriculture to non-agriculture is widespread. It is undeniable that the increasing population from year to year demands that adequate facilities are also provided, such as transportation, economy, government, sources of electrical energy, water, and sufficient services in various fields, so that housing and industrial development continues to be encouraged. This is one of the causes of changes in land use change.

With the construction of housing, roads, school buildings, industry, and other public facilities in Tegal Regency, on the one hand it increases the opening of employment opportunities in the non-agricultural sector such as construction services and industry, but also creates a negative impact that is less profitable. These negative impacts include :

1. Reduced area of rice fields resulting in a decrease in rice production, which interferes with the achievement of food self-sufficiency;
2. The reduction in the area of rice fields which results in a shift in employment from the agricultural sector to non-agriculture, which if the existing local workforce is not fully absorbed it will increase the unemployment rate. This social impact will develop with increasing social jealousy of the local community towards migrants which in turn has the potential to increase social conflict;
3. The government's investment in the procurement of infrastructure and facilities for irrigation is not optimally utilized;
4. The failure of investors to implement construction of housing and industry, as a result of the economic crisis, or due to miscalculation resulting in the unutilization of the acquired land, thereby increasing the area of idle land which in turn also causes social conflicts such as land looting;
5. The decline in the rice field ecosystem, especially in the northern coast of Java Island, which is said to be the best and has been formed for decades, while the printing of new rice fields which is very expensive outside Java, such as in Central Kalimantan, is not satisfactory.

Local governments in relation to changes in the function of agricultural land are faced with choices that are difficult to choose. On the one hand, the local government of Tegal must spur economic growth through the development of the industrial, service and property sectors, but on the other hand it must also maintain the existence and continuity of the agricultural (food) sector. Recognizing this problem, the government has established several provisions in the

policy to limit and/or prevent the conversion of fertile agricultural land to non-agricultural uses such as:

1. Presidential Decree No. 53/1989 on Industrial Estates and Presidential Decree No. 33/1990 on Land Use for Industrial Estates Development have prohibited the development of industrial estates as well as reserving or granting location permits and land acquisition in fertile agricultural land areas;
2. Letter of the State Minister for National Development Planning/Chairman of Bappenas Number 5334/MK/9/1994 dated September 29, 1994 concerning Changes in the Use of Technically Irrigated Rice Fields for Non-agricultural Land Use;
3. Letter of the Minister of State for National Development Planning/Chairman of Bappenas to the Minister of Home Affairs Number 5335/MK/9/1994 dated September 29, 1994 concerning the Preparation of the RTRW Dati II;
4. In the framework of implementing PAKTO-23, a Letter from the State Minister of Agrarian Affairs/Head of the National Land Agency was issued to the Head of the Regional Office of the Provincial National Land Agency and the Head of the Regency/City Land Office throughout Indonesia Number 460-3346 dated October 31, 1994 concerning changes to the use of technically irrigated rice fields. for Non-agricultural Land Use. This circular prohibits the Land Apparatus in the regions from issuing location permits for irrigated rice fields for non-agricultural purposes, even though according to the General Spatial Planning it is intended for non-agricultural activities.

The applicant's obligation is to provide a description of the condition of the land at the time of submitting an application for a permit for amendments including:

1. Type of land use;
2. Soil fertility and productivity;
3. Status of land use;
4. Environmental factors;
5. Regional spatial planning and regional development plans;
6. Environmental infrastructure, facilities and facilities at the location of the surrounding activities that will be affected by the applicant's activities, and
7. Other supporting and inhibiting factors.

Meanwhile, several important considerations for local governments in making decisions to transfer or prohibit the conversion of agricultural land after reviewing the above soil conditions are:

1. Consideration of the suitability of the applicant's plan with the regional spatial plan;
2. Consideration of the suitability of the applicant's plan with the regional development plan.
3. Consideration of the authority to use land in accordance with the type of land rights;
4. Consideration of the obligation to cultivate the land in accordance with the applicable provisions;
5. Consideration of increasing the value, production and fertility of the soil;

6. Consideration of environmental sustainability and prevention of soil damage;
7. Consideration of the prohibition of abandoning land.

In considering this aspect of land use, local governments have adequate means to monitor and limit the efforts of land owners to intentionally change the function of the agricultural land they control or own, by:

1. Closing irrigation canals that irrigate their technically irrigated rice fields;
2. Drying his technical irrigated rice fields and making them for dry land agricultural use;
3. Stockpiling his technically irrigated rice fields for building purposes;
4. Selling dry land/dry land, the result of the above legal changes without permission in an effort to avoid the prohibition.

There are three steps in realizing a strategy to control the conversion of agricultural land that is based on the community. First, the entry point of the control strategy is through the participation of all stakeholders. This is quite basic, considering that the stakeholders are those who are in direct contact with the process of conversion of agricultural land. Second, the focus of the control strategy analysis is the stakeholder's perspective on the existence of policy regulations such as legal instruments (laws and regulations), economic instruments (incentives, disincentives, compensation) and zoning (restrictions on the conversion of agricultural land). In essence, the perspective of stakeholders should be based on the community in the form of collective action participation that is synergistic with policy regulations, in accordance with the expectations and desires of the community. Third, the goal of the control strategy is the realization of a harmonious and sustainable control over the conversion of agricultural land

Empirically, the most vulnerable agricultural land to conversion is rice fields. This is caused by:

1. The population density in rural areas that have a dominant rice field agro-ecosystem is generally much higher than that of a dry land agro-ecosystem, so that population pressure on land is also higher;
2. Many rice fields are located close to urban areas;
3. As a result of the previous development pattern, the infrastructure of the paddy fields is generally better than that of the dry land area;
4. Development of infrastructure and facilities for settlements, industrial estates, and so on tends to take place rapidly in areas with flat topography, where in areas with such topography (especially in Java) the dominant agricultural ecosystem is rice fields.

The government is not turning a blind eye to the widespread conversion of land, but there are several obstacles it faces. According to Nasoetion, there are at least three basic obstacles that are the reason why the regulation on controlling land use change is difficult to implement, namely:

1. Policy Coordination Constraints. On the one hand, the government seeks to prohibit land conversion, but on the other hand, it encourages the conversion of land functions through industrial/manufacturing growth policies and other non-agricultural sectors which in fact use agricultural land;
2. Obstacles to Policy Implementation. The new land use control regulations state the provisions imposed on companies or legal entities that will use the land and/or will convert agricultural land to non-agriculture. Therefore, changes in the use of paddy fields to non-agriculture that are carried out

- individually/individually have not been touched by these regulations, where individual changes in land use are estimated to be very extensive;
3. Consistency Constraints in Planning. The Regional Spatial Planning (RTRW) which is then followed by the mechanism for granting location permits, is the main instrument in controlling to prevent the conversion of technically irrigated rice fields. But in reality, many RTRW actually plan to convert the function of technically irrigated rice fields to non-agricultural ones.

In relation to the three obstacles above, the ineffectiveness of existing regulations is also influenced by: (1) weak land administration system; (2) lack of strong coordination between related institutions; and (3) the mechanism for implementing regional spatial planning has not been socialized. In addition, the government's perception of losses due to the conversion of paddy fields tends to be biased downwards (under estimate), so that the negative impact of the conversion of paddy fields is not considered a problem that needs to be handled seriously and consistently.

3.3. Solutions in Overcoming the Problem of Transfer of Agricultural Land Functions to Non-Agriculture

To find out how to solve the problem of changing the function of agricultural land to non-agriculture, the Ministry of Agriculture (Kementan) continues to seek solutions to overcome the existing condition of narrowing the standard area of agricultural land due to land conversion. Limited clean and clear agricultural land is caused by several factors.

Protection of food agricultural land is an integral part of regional spatial planning. For this reason, the protection of food agricultural land needs to be carried out by determining food agricultural areas that need to be protected. Food agriculture area is part of the arrangement of rural areas in the district. In fact, agricultural lands located in urban areas also need to be protected. 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. Protection of areas and land for food crops is carried out by respecting local cultural wisdom and customary communal rights.

4. Conclusions

The Tegal Regency Government in maintaining the function of agricultural land is still not optimal. This can be seen from the government's actions to let the community shift the function of agricultural land to non-agricultural which is not in accordance with the feasibility study; land conversion plan; Mechanisms for the acquisition of land rights, and the availability of substitute land for sustainable food agricultural land.

If this is related to the welfare value of the community, then the transfer of land functions not in accordance with the procedure is not allowed, but if there are circumstances that force someone to transfer land functions due to economic factors, the government may not impose sanctions but the government must provide direction so that the person concerned to be aware of the applicable law and the government must also confirm the truth of the applicant's condition.

1. The problems in maintaining the existence of agricultural land are :
 - a. the population continues to grow;

- b. increase in land prices so that farmers are interested in selling their land;
- c. many rice fields in Tegal Regency are close to residential/residential houses;
- d. land productivity because the land/rice field is productive only when it rains;
- e. increasing industry in Tegal Regency.
- 2. Solutions to overcome the problem of exodus of conversion of agricultural land to non-agriculture:
 - a. Tightening the granting of transfer of function permits;
 - b. Lowering the cost of rice fields tax;
 - c. Guide the RTRW;
 - d. The permit for the transfer of functions must consider aspects of benefit to the community;
 - e. The transfer of functions must consider the ability to support infrastructure costs by the Government.

References

- [1]. A.P. Parlindungan, *Komentar Atas Undang-Undang Pokok Agraria*, Mandar Maju, Bandung, 2003
- [2]. Ali Achmad Chomzah, *Hukum Pertanahan*, Prestasi Pustaka, Jakarta, 2002
- [3]. Bachtiar Efendie. *Pendaftaran Tanah di Indonesia dan Peraturan Pelaksananya*, Alumni. Bandung. 1983
- [4]. Bambang Sunggono dan Aries Harianto, *Bantuan Hukum dan Hak Asasi Manusia*, Mandar Maju, Bandung, 2001
- [5]. Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria. isi dan pelaksanaannya*, Penerbit Djambatan edisi Revisi, Jakarta, 1999
- [6]. Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid I Hukum Tanah*, Djambatan, Jakarta, 2007
- [7]. Dahlan Thaib, *Teori dan Hukum Konstitusi*, RajaGrafindo Persada, Jakarta, 2001
- [8]. Effendi Perangin, *Hukum Agraria Di Indonesia, Suatu Telaah Dari Sudut Pandang Praktisi Hukum*, PT. Raja Grafindo Persada, Jakarta, 2004
- [9]. Iman Soetikinjo, *Proses Terjadinya UUPA*, Gajah Mada University Prees, Yogyakarta, 2007
- [10]. Jimly Ashiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Mahkamah Konstitusi, RI, Jakarta, 2006
- [11]. Lili Rasjidi dan Ira Thania Rasjidi, *Pengantar Filsafat Hukum*, Mandar Maju, Bandung 2002
- [12]. Miriam Budiardjo, *Dasar-dasar Ilmu Politik*, PT. Gramedia, Jakarta, 1983
- [13]. Muljadi Kartini & Widjaja Gunawan, *Seri Hukum Harta Kekayaan: Kedudukan Berkuasa dan Hak Milik*, Kencana.cetakan kedua 2008
- [14]. Mudjiono, *Hukum Agraria*, Libertyi, Yogyakarta, 2009
- [15]. Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)*, Refika Aditama, Bandung, 2011
- [16]. Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya, 1987
- [17]. Ridwan HR.. *Hukum Administrasi Negara*. PT. Raja Grafindo, Jakarta, 2006
- [18]. Romli Atmasasmita, *Pengantar Hukum Kejahatan Bisnis (Business Crime)*, Prenada Media, Jakarta, 2003
- [19]. Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, Genta Publishing, Yogyakarta, 2009
- [20]. Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya*, Ghenta Publihing, Yogyakarta, 2009

- [21]. Santoso Urip, *Hukum Agraria dan Hak – Hak Atas Tanah*, Kencana cetakan ketiga 2007
- [22]. Soemitro Ronny Hanitijo, *Metode Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, 2008
- [23]. S.Nasution, *Metode Penelitian Naturalistik Kualitatif*, Yogyakarta: Rekasarasin, 2006
- [24]. Supriadi, *Hukum Agraria*, Sinar Grafika, Jakarta, 2007
- [25]. Sudargo Gautama, *Tafsiran Undang-Undang Pokok-Pokok Agraria (1960) dan Peraturan-Peraturan Pelaksanaannya (1996)*, Cetakan Kesepuluh, Citra Aditya Bakti, Bandung, 2007
- [26]. Subekti, *Bunga Rampai Ilmu Hukum*, Alumni, Bandung, 2009