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Solidifying the Just Law Protection for Farmland to Anticipate Land Conversion

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Abstract: This research to solidify a just law protection for farmland in controlling farmland conversion to deal with food crisis, as we know, constituting an important thing to ensure that the farmers do not convert their farmland because they consider that through selling farmland they are more profitable and the policy existing is impartial to the agricultural sector.

Farmland conversion is urgent to arrange recalling that the land conversion cases occur widely and result in the decreased farmland thereby reducing the food product and harming the national food tenacity.

This research was a juridical normative law research with statute approach and conceptual approach. Statute Approach was used to study all legislations and regulations related to the problems (legal issues) encountered, while conceptual approach uses the result of study to build legal argumentation used in solving the legal issue encountered.

Considering the result of research, there should be a solidification of sustainable protection for farm land as the attempt of anticipating farmland conversion thereby bringing the food tenacity into reality. The control of farmland conversion was conducted through incentive and disincentive. Incentive administration should be conducted justly, in the case of the owners/farmers may not convert their farmland, the farmers should get incentive that can make their family more prosperous, so that the farmers do not want to sell/convert their farmland.

Conclusion and recommendation: Law No.41 of 2009 about Sustainable Protection for Food Farmland should be revised related to the incentive the farmers receive. Through a variety of incentive that can bring more prosperity, the will convert their farmland reluctantly.

Keywords: Farmland Law Protection, Farmland Conversion, Just Farmland

INTRODUCTION

The condition of Indonesian food tenacity is getting worse today, due to the farmland conversion. Indonesian Government should be more sensitive to this condition, not only land problem; as posted by FAO (Food

and Agriculture Organization), Indonesia is at serious level in global Hunger Index. It will be predictably getting worse with the population number of Indonesia (Akbar Anwari, 2014). Food tenacity issue is one of crucial issues for Indonesian political economic landscape today. Indonesia, as an agrarian state with widest area in South East Asia, explains that most Indonesian people work in agricultural sector and become the foothold all at once for social-economic life (Budi Winarno, 2002). Considering the data obtained from BPS (Central Statistic Bureau), the number of farmers is 34.00% of total labor force in Indonesia in 2014 or 38.97 people. As an agrarian state, majority Indonesian people has utilized natural resource to support life necessity (Razali Ritonga,2014).

Agricultural sector is primary mainstay for majority Indonesian people's life. In the condition of world food price tending to increase, rural people involved in agricultural sector should get windfall (Budi Winarno, 2002). The fact shows that at least in the last decade, Indonesia still wrestles with the problems of how to suffice food need and people welfare relying on food sector for their life. It can be seen from the always deficit food production in Indonesia, that is compensated with import.

Such the inadequate food production is due to the land conversion from agricultural to non-agricultural uses. The threat against food tenacity due to land conversion is very significant. Many areas formerly constituting the self-sufficient rice areas now import rice from other areas. This threat against food tenacity not only results in the reduced rice production but also harms economic, social, political stabilities and population development in general (Nana Apriyana, 2011).

Agricultural Ministry's Strategic plan design in 2010-2014 reveals that the data of farmland conversion to non-agricultural land reaches 563,159 ha or 187,719.7 ha/year in 1999-2002. During 1981-1999, the balance of farmland increase is 1.6 millions ha, but during 1999-2002, there is a decrease in land width by 0.4 millions ha or 141,285 ha/year. Data of BPS in 2005 shows that the size of land conversion from rice farmland to non rice farmland is 187,720 ha per year: land conversion to non-agricultural land of 110,164 ha per year and that to other agricultural land of 77,556 ha per year. The farmland conversion is getting more worrying in Java. Based on the result of land census conducted by Agricultural Ministry (thereafter called Kementan), the farmland shrinks from 4.1 millions ha into 3.5 millions hectare (ha) in 2007. In three years, the land conversion reaches 600 thousands hectare" (Nana Apriyana, 2014).

The number of rice farmland nationally supporting the availability of primary food is 7.7 millions ha (2002), but in fact it has shrunk into 6.7 millions ha. It is because of, among others, land conversion from agricultural to non-agricultural uses reaching 110,000 hectare per year. However, Land and Agro-climate Research Agency of Bogor informs that the rice farmland conversion rate has reached 141,000 ha/year now, a very worrying number (Edhy Sutanto Kusumo Sudjono, 2012). It is in line with Imam Panudu, the Director of Land Expansion and Control of PSP Directorate General of RI's Agricultural Ministry, stating that farmland conversion, particularly in Java Island has been uncontrolled. Data of BPS mentions that every 80 thousands hectare of farmland is lost. So, in other words, every time we wake up, 220 hectare of farmland is converted into other sector uses (Imam Panuju, 2013).

Azadi Ho and L Hasfiat state that Land conversion in a process by which land is changed from agricultural to urban uses (H Azadi Ho and L Hasfiat (2010). It will of course result in some problems in many sectors. For that reason, a variety of regulations and legislations has been developed to prevent the utilization of farm land for non-farm activities. For example, Interior Ministry's Regulation (PMDN) No.

5 of 1974 about the provisions regarding providing and giving right to land for company use, PMDN No.3 of 1987 about the provisions regarding providing and giving right to land for housing development purpose, presidential decree (Keppres) No.53 of 1989 about Industrial area, keppres No.54 of 1980 about the policy regarding rice farm casting are the sample regulations prohibiting the fertile farm land from being used for non-farm uses (Ida Nurlinda, 2011).

Land conversion has a serious implication to food production, physical environment and wellbeing of farming and rural communities, whose life is dependent on their land.

The threat against food vulnerability in Indonesia occurs strongly. It is because of dramatic farm land degradation, and slow rehabilitation. The conversion of farmland to non-farmland reaches 158,000 hectare per year, while the non-farmland casting reaches less than 5,000 hectare per year. This condition is exacerbated with the presence of due-to-worn out infrastructure damage, including irrigation, rural roads and etc, in addition to Indonesian farmer aging (Taufiq Yuhri, 2011). Frank Ramsey in journal of conversion of prime agricultural land to nonagricultural uses in one area of the Sunbelt stated that: (Frank Ramsey. Floyd. 1982)

> "In general, people are aware of the rapid growth of urban areas, the spread of suburban developments, urban sprawl, strip developments, and extensive highway systems, but they are seldom aware of the extent to which prime agricultural land has been, and is being, diverted to these and other nonagricultural uses. By definition, prime agricultural land is land of the high-est quality for food and fiber production. In this article, the terms prime land, prime farmland, and prime agricultural land are used interchangeably"

Food deficiency has led Indonesian to import food products frequently to fulfill domestic need. In the condition of ever increasing population number, the threats against food production have resulted in anxiety for the food vulnerability condition in the future. As a result, in the future, Indonesia needs additional food and food land availability (General Explanation of Law Number 41 of 2009).

This land conversion condition worries the Government and local government for the difficulty in embodying the food independency, tenacity and sovereignty. Therefore, the fulfillment of food need in a country should be accomplished. Moreover food holds an important and strategic policy in Indonesia based on the effect it has socially, economically, and politically. However, food tenacity, independency, and sovereignty deal with serious problem due to the ever increasing number of conversion from food farmland to non-farm one.

METHODOLOGY

This study was a juridical normative law research using statute approach and conceptual approach. The problem formulated was answered using statute approach to study all regulations and legislation as well as regulations related to the problems (legal issue) encountered. After the problem have been analyzed using legislation and related regulation, it was made the foothold of building legal argumentation, corresponding to conceptual approach, used in solving the legal issues. Considering various related documents and literatures, data was processed and analyzed qualitatively. The data of research consisted of secondary one, the data taken from literatures including legal books, literature, legislation, official document, previous studies, article, bulletin, newspaper, and other sources relevant to this study. Secondary data derived from primary law material in the form of legislations related to sustainable protection for food farmland.

LITERATURE REVIEW

1. Land Conversion

Land conversion can be defined as the change of some of or whole area from its original function as planned into other function affecting negatively the environment and potency of land itself. For example: the change of irrigated rice farmland into industrial area and protective function into settlement land (Aryo Fajar Soenartomo, 2015). The conversion process through the process of selling agricultural land runs in two patterns: the pattern in which the farmers serve as the seller in monopoly nature and the buyer is in monopsony position; it occurs because the land market is highly segmented even tends to result in information asymmetry between both of them. Thus, the structure of market established emphasizes more on bargaining power.

The process of land conversion from agricultural to non-agricultural uses is due to some factors. The important factors are (Lestari, T, 2009) : 1) external factor is the factor due to the presence of dynamic urban growth (either physically or spatially), demography, and economy, 2) internal factor is the factor viewing more the aspect due to social-economic condition land users' farming household, and 3). Policy factor, namely the aspect of regulation released by both central and local governments related to the change of agricultural land function. Another factor encouraging the conversion of fertile farmland is the presence of contradictive policy occurring because on the one hand government attempts to prohibit the land conversion, but on the other hand, industrial/manufacturing and other non-agricultural sector growth policies instead encourage the conversion of farmland. The regulation existing so far is the one that is applicable to legal entity/company only, while the conversion of fertile farmland conducted by individuals has not been touched by the regulation (Abdul Halim Barakatullah, Syahrida, and Ifrani,2015).

Sjahran Basah, as cited in Ridwan HR, states that license is the one-facet state administrative law action applying the regulation concretely based on the requirement and procedure as specified by the legislation power. Meanwhile, Bagir Manan mentioned that license, in broad meaning, is a ruler's approval based on legislation to allow the action or deed prohibited in general (Ridwan HR,,2010).

General provision of Government Regulation Number 1 of 2011 about the Stipulation and the Conversion of Sustainable Food Farmland explains that the Conversion of Sustainable Food Farmland is the conversion of sustainable food farmland to non-sustainable food farmland either temporarily or permanently. The sustainable food farmland is the one specified to be protected and developed consistently to produce main food for national food independency, tenacity, and sovereignty.

Furthermore Article 35 of Government Regulation Number 1 of 2011 about the Stipulation and the Conversion of Sustainable Food Farmland explains that the land specified as Sustainable Food Farmland is protected and prohibited from land conversion. The conversion of sustainable Food farmland can be done only by government and local government in the attempt of soil procurement for general interest or in the case of disaster occurrence. The requirement of land conversion is governed in Article 39 of Government Regulation Number 1 of 2011 about the Stipulation and Conversion of Sustainable Food Farmland, mentioning that the conversion of Sustainable Food Farmland in the attempt of land procurement for public interest can be done only with the following requirements: a) conducting the strategic feasibility study; b) having land conversion plan; c) liberating the ownership of land property; d) the availability of substitute land for the sustainable food farmland to be converted.

Article 1 of Government Regulation Number 16 of 2004 about Land Use explains that the release of license of the conversion of land from agricultural to non-agricultural uses should consider the land use aspect. Land use is as same as the land use management including land mastery, use, and utilization in the form of land utilization consolidation through the institutional regulation related to land utilization as one system unit for the public interest justly.

2. Theory of Justice

John Rawals (1921-2002) initiates the principles of achieving the justice as included in 2 (two) main principles (Leif Wenar, John Rawls "The Stanford Encyclopedia of Philosophy (Fall 2008 Edition Edward N Zalta (ed) *http:// plato. Stanford /edu/entries/rawls/UTwoPriJusFai,* accessed on 18 July 2017):

(a) First principle focuses on right and freedom: First Principle: Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties. Which scheme is compatible to the same scheme of liberties for all.

(b) Second principle: social and economic inequalities are to satisfy two conditions:

1) They are to be attached to offices and positions open to all under conditions of fair equality of opportunity

2) They are to be to the greatest benefit off the least –advantaged members of society the difference principle

The second principle is subdivided into 2: firstly, talking about fair equality of opportunity and secondly, difference principle focusing mainly on opinion and wellbeing problems (Henry S Richardson "John Rawls" Internet Encyclopedia of Philosophy, *http://www..iep.utm.edu/rawls/ffSH2d.* Accessed on 18 July 2017). Furthermore, the meaning of justice as fairness building on the original position is realized with procedural justice meaning that the justice based on the ways that can achieve mutual agreement rather than based on certain values (Franz Magnis-Suseno, 2005). This procedural justice is not defined as denying the substantial moral basic values, but instead raising the substance of value about commonality constituting the right for everyone as human being. So justice contains equal concern and respect (Franz Magnis-Suseno, 2005). John Rawls's justice principle determines the position to protect those disadvantaged within the society.

3. Theory of Law Protection

Fiitzgerald said that law aims to integrate and to coordinate a variety of interests within society because in an interest traffic, the protection of certain interest should be done by means of limiting a variety of interests on the other hand (Satjipto Raharjo, 2000). Legal interest deals with human right and interest, so that law has supreme authority to determine which human interest needs regulation and protection (Satjipto Raharjo, 2000).

Lili Rasjidi and I.B Wysa Putra stated that law can be functioned to realize not only adaptive and flexible but also predictive and anticipative protection (Lili Rasjidi and I.B Wysa Putra, 1993). Meanwhile, Phillipus M.Hadjon argued that law protection for people is the government's action that is preventive and repressive in nature. Preventive law protection aims to prevent dispute from occurring, leading the government to make decision thoroughly based on discretion; while repressive protection aims to settle the dispute including its management in the court (Phillipus M Hadjon,1987).

ANALYSIS AND DISCUSSION

1. Law Protection for Farmland in Anticipating the Land Conversion

In Indonesian context, the distribution of resource in the society both in constitution (UUD 1945) and in the legislations below should be based on the conception of justice referring to the values approved and held on by Indonesian people collectively. The values intended in the context of Indonesian people is Pancasila containing in the Preamble of UUD 1945, as the star guiding the regulation of natural resource management (Otong Rosadi).

Pancasila is a series of values stemming from Indonesian people tradition. Those values are shared by all communities in archipelago area. Those values never contain a certain political policy directly, but serve as the stars for the sailors that will always be the orientation in policy making (Franz Magnis Suseno, 2006).

The rules in Law No.26 of 2007 about Spatial Arrangement clearly containing the Arrangement of Area Spatial Layout Plan (RTRW) should be implemented well by stakeholders considering that the food plant cultivation (technical irrigation rice farm) should be preserved. Thus, economic development must have kept following or complying with RTRW law to maintain the food tenacity.

Population growth needs wider land, not only for settlement expansion but also for economic activity space in order to fulfill human need better. The problem arises when the population builds settlement and its supporting infrastructure in the fertile farm region (Rhina Uchyani and Susi Wuriani, 2012:). It is in line with A Frank Ramsey and Floyd L. Corty in their journal entitled *Conversion of Prime Agricultural Land to Nonagricultural Uses in One Area of The Sunbelt* stating that:

> Preservation of prime agricultural land is a controversial subject because, historically, this nation has been concerned with agricultural surpluses more frequently than with scarcities. However, this situation is likely to change as world population increases. not only will the demand for food and fiber increases, but society will continue to demand more land for urban expansion and related activities such as highway, airport, parks, and industrial sites(A Frank Ramsey and Floyd L. Corty, 1982).

Land conversion is often due to the land owners' willingness as well. Agricultural land is the land with the lowest economical value. Because of city development, the change not only comes from developer as the investor but also from the farmers themselves considering that their land value is too high when it used for agricultural purpose (Muh Taufiq Yuhry, 2011). Overall, the advantage of agricultural land can be divided into 2 categories: firstly, use values or called personal use values. This advantage results from exploitation activity and farming activity conducted on agricultural land resource. Secondly, it is non use values or so called intrinsic values or secondary advantage (Bambang Irawan,2005).

The land concentration is stated below 0.2%, out of total 460 millions population masters 56% national asset. It is not less than 62-87% in the form of land. The number of farmer households decreases from 31.17 millions in 2003 to 26.13 millions in 2013 (BPS May, 2013), followed with the narrowing agricultural land width mastered by the farmers, about 0.3 ha/household. Agricultural land per capita in Indonesia is 0.03 ha/hectare (Satyawan Sunito in Tim Ahli Seknas Jokowi, 2014).

The number of farmers shrinks over times; the data shows that 62 percents of farmers have been old while only 12 percents are still young. Overall, the number of populations works in agricultural sector decreases continuously from 39.22 millions in 2013 to 38.97 millions in 2014. In addition, according to a

UI's economist, Faisal Basri, this number decrease more to 37.75 millions in 2015 (*http:// nusantaranews. co/ petani-haru-diberi-insentif-dan-dijamin-stabilitas-harga/ accessed* 13 Juni 2017).

Particularly for rice farm, the conversion occurs either directly or directly. The direct conversion occurs due to the land owner's decision who utilizes their rice farm land for other purposes, for example for industry, housing, infrastructure or dry field farm. Meanwhile, the indirect conversion is related to the degradation of rice farmland or the lower opportunity of obtaining income (income opportunity) from the land due to certain activity, such as the isolated rice farm compartments in suburban areas due to the conversion of land surrounding (Syarif Imam Hidayat,2008). Pasour in journal of agricultural land protection is government intervention warranted stated that : (E.C. Pasour, Jr. 1982).

> "agricultural land must be protected to ensure production of sufficient food and fiber to meet the requirements of a growing national and world population. In some eases, it is argued, land should be protected to ensure the continuation of agricultural production in particular geographical regions. In this view, even if agricultural land is not required today, it will be required tomorrow".

As the government's policy to protect rice farmland from the threat of sustainable food land conversion in Indonesia in 2009, the Law (UU) Number 41 of 2009 was enacted concerning the protection of sustainable food farmland. This presence of regulation is expected to prevent land conversion and to protect the sustainable food land in Indonesia; however as the time progresses the conversion of sustainable food land remains to occur even with uncontrollable rate and defeating the government's program in its ability of casting the new rice farmland (Alimansyah, Yenni Sariasih, Yuliati,2015).

As the part of protective attempt expectedly can reduce the uncontrollable conversion rate of food farmland, the more technical regulation that is Government Regulation (PP) No. 12 of 2012 was released concerning the Incentive of Sustainable Food Farmland Protection. The administration of incentive to the rice farmland owners is a set or an attempt of rewarding the implementation of activity or program in line with the spatial layout made by the state.

A state's successful development will be highly affected by the existing spatial layout; a component of spatial layout is how the spatial controlling can run well. Kodoatie and Sjarief said that the control over the spatial utilization can be through: giving incentive and disincentive (Kodoatie, Robert J and Sjarief, Roestam,2010) so that it is relevant to Government Regulation Number 12 of 2012 about the Incentive for Sustainable Food Farmland Protection, mentioning that the incentive given involves: farming infrastructure development, seed and superior cultivar research and development funding, facilitation in accessing information and technology, production infrastructure provision, land deed publishing guarantee for the sustainable food farmland; and/or reward for the high-performing farmers.

The sustainable Food Farmland Control is conducted in coordinated manner; Article of Law No.41 of 2009 mentions that Sustainable Food Farmland Protection is conducted by Government and Local Government through giving a) incentive, b) disincentive, c) licensing mechanism; d) protection; and e) education/extension.

Article 38 states that the incentive as intended in Article 37 letter a is given to the farmers in the form of: a) Land and Building tax dispensation, b) agricultural infrastructure development, c) seed and superior cultivar research and development funding, d) facilitation in accessing information and technology, e)

production infrastructure provision, f) land deed publishing guarantee for the sustainable food farmland; g) and/or reward for the high-performing farmers.

The administration of incentive as included in Article 37 letter a and article 38 is done by considering: a) type of sustainable food farmland, b) soil fertility, c) planting width, d) irrigation, e) land fragmentation level, f) farming productivity, g) location, h) farming collectivity, and/or, i) environment-friendly farming practice. Disincentive as intended in Article 37 letter b is the deprivation of incentive because the farmers do not comply with their obligation.

Incentive is given to lead the farmers to keep improving agricultural sector and not to change their profession (Olly Dondokambey (North Sulawesi Governor) in https://www.jurnalasia.com/bisnis/petani-dapat-insentif-agar-tidak-beralih-profesi) In addition, economists encourage, the government to give the farmers an incentive to maintain their profession. Government should give incentive to improve production, but also to ensure price stability on the other hand (Indef Enny Sri H in http:/nusantaranews.co/petani-harus-diberi-insentif-dandijamin-stabilitas-harga/)

The past experiences the food farmers face and still experience until to day include: a) their difficulty in finding water supply from irrigation water the government develops because of many damaged irrigation channel and the decreased supportability of dam existing, due to poor maintenance; b) their difficulty in obtaining seed, fertilizer and drugs currently dominated more by investors as the company production such as Mosanto as seed producer, Bayer as drug producer, and many more fertilizer employers mastering the farmers' need with ever increasing price annually. Meanwhile, the farmers' productivity increases very slightly even flatly thereby resulting in lower profit margin or close to impasse point; it can be seen from the farmers' exchange value ranging only between 103-105% annually; c) their difficulty in accessing the investors to fund their farming and life (cost of living) during waiting for harvest time, formerly called *Kredit Usaha Tani* (KUT = Farming Loan); d) their limitation in obtaining market information or their weak bargaining position in selling their production output; e) Government's easy and quick decision making without serious consideration in importing food material, particularly rice, impacts significantly on the degradation of life and wellbeing (Edhy Susanto Kusumosudjono,2012).

Despite policy to maintain sustainable agricultural land and land allocation design for bioenergy, the market economy tends to resist the policy's wish. Living environment policy should reinforce the land allocation through spatial layout policy and other polices (Hariadi Kartodiharjo,in Tim Ahli Seknas Jokowi 2014:).

2. Farmland Law Protection Model

A variety of problems arising related to land conversion and land existence is not compensated with appropriate regulation. Essentially, there is no firm regulation, particularly the one technically made the government's policy in dealing with the land conversion problem. Such the infirmness includes multiinterpretative regulation, law enforcement hesitation and infirmness based on motivation and weak sanction imposition against the administrative infringement of land allocation deviation (Samsul Wahidin,2017). From the problems in land conversion, the following attempts are taken to deal with them:

(a) There should be regulation solidification particularly the revision of Sustainable Food Farmland Protection law governing incentive and disincentive. There should be incentive administration

to increase the farmers' intention or motivation to improve their production, such as market guarantee, elimination or mitigating all constraints and marketing and distribution cost, and production infrastructure procurement as much as possible (in addition to irrigation and etc) (Tulus Tambunan, 2010). By giving incentive that can reduce operational cost and make the farmers/land owners more prosperous, every farmer whose land is made the sustainable farmland is entitled to get incentive as long as he/she complies with his/her obligation including Land and Building Tax exemption, covered with farming insurance the premium of which is assumed by government in order to ensure the harvest failure and price guarantee.

(b) The reinforcement of farmer institution. The experience shows that the strong farmer institution will facilitate the farmers and to protect the farmers from unjust marketing practice. Thus, the process of revitalizing farmer institution toward business/cooperative institution will guarantee the process of improving the farmers' income in general. The stronger the farmer institutions, the less is the number of farmland conversion because to meet the farmers' need for cash money, they can borrow from the cooperative institution without selling their land (Dwidjono Hadi D, 2015).

(c) The presence of incentive administration mechanism with clear standard operation and continuous supervision will be received directly by farmers. A variety of agricultural programs planned well by government and agricultural facilitators through any policy provided by government and agricultural facilitator has not been able to improve the agricultural success. The failure rate of agricultural program conducted by both government and NGO is substantial. More than 65% of farmer empowerment programs are failed and cannot be accountable for, from fund distribution, agricultural technique innovation to management incentive (Fakih, 2003). Fertilizer subsidy policy for farmers and government cannot improve the farmers' wellbeing due to poor coordination at implementation level (Cahaya Widiyanto & Faturochman, 2014).

(d) Accurate data of farmland is required and periodical supervision should be done in making policy without contradiction between agricultural and other non-agricultural uses. The spatial layout the government has developed at the first and the second levels of area is often unfulfilled, so that land allocation is getting unclear depending on the situation at that time. National, regional, and regency spatial layouts are very desirable to guarantee the long-term development space need (Iskandar Andi Nuhung, 2006).

CONCLUSION AND RECOMMENDATION

The sustainable farmland protection has not been implemented in anticipating the land conversion because in the term of incentive giving, the Law No.41 of 2009 determines the incentive helping inadequately the farmers whose farmland is defined as sustainable food farmland.

The Law No. 41 of 2009 about Sustainable Food Farmland Protection should be solidified by revising it in relation to the form of incentives the farmers will received, adjusted with the problems they face. In the presence of various incentives resulting in more prosperity, they will convert their farmland reluctantly.

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