

The Agricultural Land Conversion Control as a Policy for the Welfare of the People

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ABSTRACT

Landowners in principle have the authority to use their land for various functions to meet their needs and welfare. On the other hand, the state has the authority to control the use of land. Agricultural land included in the area of sustainable food-crop agricultural land is prohibited from being converted into other purposes. This paper aims to explain the agricultural land conversion control as a policy for the welfare of the people. This paper uses primary and secondary legal materials as the main data obtained through normative legal research which is strengthened by primary data obtained through empirical legal research. The results show that the agricultural land conversion control is a policy to realize the welfare of the people. This is because this policy is intended to protect the interests of many people, namely for the existence of independence, security and national food sovereignty. However, at the implementation level, this policy can only become a policy for the welfare of the people if its implementation does not neglect and does not harm the interests of landowners whose land is prohibited from being converted. People's welfare can be realized if there is a balance between fulfilling the interests of the community and protecting the interests of individuals (landowners). Several legal theories were found both from aspects of state authority and aspects of the use of property rights which can be the philosophical basis of the policy. As a welfare state, the state must be able to realize public welfare and individual welfare. The use of property rights must pay attention to the interests of many people. In order to realize this, it is suggested that there be parameters for limiting the use of state authority in controlling the conversion of agricultural land so that the interests of individual landowners are not disadvantaged.

Keywords: *control, conversion of agricultural land, people's welfare*

1. INTRODUCTION

People's welfare is the goal of the establishment of the Republic of Indonesia. That is why in the state Constitution (Article 33 of the 1945 Constitution), it is determined that existing natural resources are controlled by the state and must be used for the greatest prosperity of the people. Likewise, land as one of the natural resources must become an instrument to fulfill people's welfare. According to Indonesian agrarian law, the land is controlled by the state and must be utilized for the welfare of the people.

For the realization of welfare, everyone can own land with a right. One type of right that can be owned is the ownership rights (see Article 4 and Article 16 of Law Number 5 of 1960). Every person who has ownership rights over the land, in principle, can use his/her land for various functions, such as for agriculture, housing and others, in order to meet the needs of life and well-being. But on the other hand, the state has the authority to regulate and control

But on the other hand, the state has the authority to regulate and control the use of land as well as to control the conversion of agricultural land, in the sense of having the authority to determine which agricultural land is permitted to be converted and which may not be converted.

In the development of Indonesian agrarian law, through Law Number 41 of 2009, the state issued a policy that agricultural land that has been designated as sustainable food crops agricultural land, should not be used for other functions. This policy results in limited authority to use the land by the owner, which in certain conditions can be detrimental to the landowners. Agricultural land may not be converted into any cause, except for the interests of the development of public interests by the government. The owner of agricultural land may not change the functions of agricultural land for non-agricultural functions even if the change in the function of the land is intended to increase the economic value of the land (land rent).

The reality in the field shows that there have been a lot of changes in the functions of agricultural land for non-agricultural use, which is done to increase the economic value of land (land rent) for the fulfillment and improvement of the living standards of landowners. The results of observations in Aceh Besar Regency and in Pidie Jaya Regency, Aceh, found that a lot of agricultural land, especially rice fields, was converted to non-agricultural use. The results of research conducted by Faisal, Abdurrahman, and Mahfuz [1] show that a lot of paddy fields, especially those around the roads, are converted to build economic facilities in the form of shops. In fact, paddy fields are fertile land with great potential and are located in areas already available with irrigation networks.

Based on the above background, it is interesting to conduct a study in order to find out whether the policy prohibiting the conversion of agricultural land is the one that can realize people's prosperity and what is the theoretical (philosophical) basis as a reason for justifying the policy.

This paper uses primary and secondary legal material as the main data obtained through normative legal research which is strengthened by primary data obtained through empirical legal research.

2. PROHIBITION ON THE AGRICULTURAL LAND CONVERSION AND PROSPERITY OF THE PEOPLE

According to Law Number 41 of 2009 concerning the protection of sustainable food-crop agricultural land, everyone who has land rights according to the regional spatial plan designated as the area of sustainable food-crop agricultural land must use the land in accordance with its designation (Article 34) and the sustainable food-crop agricultural land must be protected and prohibited from being converted (Article 44).

The ban on the conversion of agricultural land is a policy of the state in order to regulate the use of land. This policy is a manifestation of the implementation of state authority in the land sector.

According to Article 2 paragraph (3) of Law Number 5 of 1960, the state's authority in regulating land affairs must be aimed at achieving the prosperity of the people. The state must not make rules and act outside the objectives for the welfare of the people. In general, the term welfare is defined as a state of fulfillment of all forms of the necessities in life, especially those of a basic nature, such as food, clothing, housing, education, and health [2]. The state authority in this context must at least be aimed at meeting basic needs in the form of food and housing for all Indonesian people.

The results show that the agricultural land conversion control is a policy for the welfare of the people. This is because the policy is intended to create national food independence, resilience and sovereignty. Independence, resilience, and national food sovereignty facilitate the interests of all the people of Indonesia.

Herein lies the interests of many people (the community) in relation to the utilization of natural resources (land). Fulfillment of food needs for all people is one indicator of the prosperity and welfare of the people.

The concept of the people's welfare, which is meant in the constitution of the Republic of Indonesia is the welfare of all people, not the welfare of individuals or groups of people. In the preamble of the 1945 Constitution, it is stated that the purpose of the state's presence is to protect the entire Indonesian nation and the whole of Indonesian people. This is consistent with what Aristotle said that the state was formed to organize a good life for all its citizens. The link between the policy of prohibiting the conversion of agricultural land to the fulfillment of people's welfare can be known by understanding the background and objectives of Law Number 41 Year 2009. The law shows that food crops agricultural land is considered as a gift from God Almighty and controlled by the state and is used to the greatest extent for the prosperity and welfare of the people. Indonesia as an agrarian country needs to ensure the availability of sustainable food crops agricultural land as a source of employment and a decent living for humanity. Furthermore, Article 3 of the Law stipulates that the purpose of the prohibition on the conversion of agricultural land is to realize food independence, resilience, and sovereignty; and to increase the prosperity and welfare of farmers and the community.

From the background and purpose of the Law No. 41 of 2009, it can be understood that the policy prohibiting the conversion of agricultural land is in order to realize the welfare of all people. Therefore, this policy can be justified legally, and by the state constitution. However, at the implementation level, this policy can only become a policy for the welfare of the people when its implementation does not neglect and does not harm the interests of landowners whose land is prohibited from being converted. Landowners must still be able to take maximum advantage of their agricultural land. For this reason, a number of other policies are needed to strengthen the policy of prohibiting the conversion of agricultural land including the policies relating to support for the existence of agricultural land, support for the provision of facilities or infrastructure for optimizing the function of agricultural land, support for optimizing the value of agricultural products and other policies intended to protect the interests of agricultural landowners whose land is prohibited from being converted.

The implementation of this policy must put the interests of all people and the interests of individuals (landowners) in a balanced position. Therefore, it is necessary to limit the authority of the state in controlling the agricultural land conversion, so that the interests of landowners remain protected.

3. THEORETICAL BASIS OF AGRICULTURAL LAND CONVERSION BAN

There are several theories that could be the theoretical basis for the justification of the policy on the prohibition of the conversion of agricultural land, both the theory related to state authority and theories related to property rights and the authority to use it.

Owning something (ownership) is having rights, in the sense that it is a claim that is forcing against use or benefit. The philosophers, jurists always see that "property is a right" not an object [3]. Because ownership of an object is a right, legally the right-holder could make a claim for the use and benefits of an object. This claim must be respected by anyone.

John Locke and Pufendorf assume that private property is a natural right outlined by natural law [4] Every person who owns a piece of land means to own an object, therefore s/he has individual rights to the object. Proprietary Rights is the relationship between a person and an object that forms ownership rights over that object. Therefore, property rights, in this case, meant ownership rights to land, are fundamental rights of someone who must be protected and respected by anyone. This is where the importance of the existence of the state to protect it.

However, land ownership is not absolute, so land use must pay attention to the interests of many people (the community). The state with its legal instruments can intervene in the use of individual property rights over land in order to pay attention to the interests of many people. This is consistent with the Goal Adjustment theory proposed by Rudolf von Jhering: on the one hand the law is tasked with ensuring the freedom of individuals to achieve their goals, namely pursuing benefits and avoiding losses, on the other hand, the law bears the task of organizing individual goals and interests so that they are related harmoniously with the interests of others. Jhering makes individual interests become a part of social goals by connecting one's personal goals with the interests of others [5].

There are other theories that are in line with the theories above that can also be a theoretical (philosophical) basis for the justification of a policy prohibiting the conversion of agricultural land, namely the Theory of Interest Balance proposed by Roscoe Pound. According to this theory, in the context of the law as a tool of social engineering, the law must organize the interests that exist in society. Friedman (as cited in Tanya, Simanjuntak, & Hage [6], suggested that these interests must be arranged in such a way as to achieve a proportional balance between the interests of the state and the individual.

The policy prohibiting the conversion of agricultural land can also be based on the Benefit Theory put forward by John Stuart Mill. The theory states that the greatest happiness for the greatest numbers. So, the guideline is that everyone can act in such a way that as many people as possible feel the happiness. If there are two kinds of actions, choose the results that will make people happy in greater numbers. The purpose of this flow is to reach the

pleasure of life as much as possible, both quality and quantity [7] .

Some of the theories above are from the western (European) legal system. What about the conceptions and views of Islamic Law and Customary Law? The conception and view of Islamic Law and Customary Law on policies prohibiting the conversion of agricultural land for the welfare of the people are also similar, the difference is only on the emphasis. Islamic law places the interests of individuals and the interests of society in a balanced position. Whereas customary law places the interests of the community first, it does not deny individual interests. This can be seen in the description below.

In the Islamic conception and view of wealth, Azzuhaili, states that humans are only the caliph or God's representative in controlling the property. Therefore, humans in possession of the property must obey and submit to the provisions of God. Individual ownership of a property has social characteristics or characters, not as an absolute, monopolistic, and totalitarian right. Communities have the right to supervise and control the individual owners to ensure that they use their property for the public good and benefit. The right of ownership of individuals according to Islamic views and judgments has a dual nature, namely individual and communal nature at the same time [8].

Not much different from the Islamic conception and view, according to the Conception of Customary Law, possessions owned by someone are a gift of God to all members of the community and therefore must be used for the prosperity and welfare of the whole community. The land is not the absolute property of individuals. Every land owned by someone is attached to the rights or interests of the community. According to Boedi Harsono, the Customary Law Conception was formulated as a "Religious Communal Concept". With this concept, individual land tenure, with personal land rights, contains an element of togetherness because all-natural resources are God's gifts to all people [9].

The theories and conceptions that exist in Islamic Law and Customary Law mentioned above are theories and conceptions that can be a theoretical (philosophical) basis for justifying policies on the conversion of agricultural land for the welfare of the people. This is because these theories and conceptions lay the theoretical basis for the fulfillment of the interests of all people (society) without prejudice to the protection of the interests of individuals. This is in accordance with the objectives of the policy to control the conversion of agricultural land functions as regulated in Act Number 41 of 2009 concerning the Protection of Sustainable Agricultural Land.

4. CONCLUSION

Through the policy of controlling the transfer of functions of agricultural land, the state, in this case, the Government prohibits the conversion of certain agricultural land functions, namely agricultural land that has been included in the Sustainable Food Agricultural

Land area. This policy can be categorized as a policy to realize the welfare of the people because this policy is intended for national food independence, security and sovereignty. To realize the welfare of the people, the implementation of this policy must be accompanied by the existence of other policies that provide protection for the interests of agricultural landowners whose land is prohibited from being converted. Fulfillment of community interests in food must not be detrimental to agricultural landowners. For this reason, it is necessary to have clear parameters to limit the state's authority to control the transfer of functions of agricultural land so that the interests of landowners are not disadvantaged. In this context the state must act fairly in protecting the interests of the community and the interests of individuals because law and justice have a functional relationship. Justice that is to be achieved through law is the essence of any country. What are states without justice, but robber-bands enlarged? [10].

economic system, financial markets, Law for unlawful sexual intercourse punishment, and theft]. (A. H. Al-Kattani, Trans). Jakarta, Indonesia: Gema Insani. (Original work published 1987), pp 33.

- [9] Harsono, B. (2007). *Hukum Agraria Indonesia, Sejarah Penyusunan, Isi dan Pelaksanaannya [Indonesian Agrarian Law, History of Compilation, Content and Implementation]*. Jakarta: Djambatan, pp 179.
- [10] Kusumohamidjoyo, B. (1999). *Ketertiban yang adil: Problematik filsafat hukum [Fair order: Problematic philosophy of law]*. Jakarta, Indonesia: PT Grasindo, pp 127.

REFERENCES

- [1] Faisal, Abdurrahman, Mahfud, (2016) *Fungsi Pemerintah Dalam Pengendalian Alih Fungsi Tanah Sawah untuk Penggunaan Non Pertanian* [The function of government in controlling the conversion of paddy field for non-agricultural use], Banda Aceh, Indonesia: Universitas Syiah Kuala.
- [2] Adisaputra, M. I. (2015), *Reformasi agraria Indonesia* [Indonesian agrarian reform]. Jakarta, Indonesia: Sinar Grafika, pp.94
- [3] Macpherson, C. B. (1989). *Pemikiran dasar tentang hak milik* [Basic thinking about property rights]. (C. Wulirsari, P. S. Baut, & Haryono, Trans.). Jakarta, Indonesia: Yayasan Lembaga Bantuan Hukum Indonesia. (Original work published 1978), pp 24-25.
- [4] Sonny Keraf, (1997). *Hukum Kodrat dan Hak Milik Pribadi* [Natural Law and Private Property], Yogyakarta, Indonesia, Kanisius, pp.54-54
- [5] Tanya, B. L., Simanjuntak, Y. N., & Hage, M.Y. (2013). *Teori hukum: Strategi tertib manusia lintas ruang dan generasi* [Legal Theory: An orderly strategy of humans across space and generations]. Yogyakarta, Indonesia: Genta Publising, pp 99.
- [6] Tanya, B. L., Simanjuntak, Y. N., & Hage, M.Y. (2013). *Teori hukum: Strategi tertib manusia lintas ruang dan generasi* [Legal Theory: An orderly strategy of humans across space and generations]. Yogyakarta, Indonesia: Genta Publising, pp 45-46.
- [7] Tukgali, L. L. (2010). *Fungsi sosial hak atas tanah dalam pengadaan tanah untuk kepentingan umum* [Social functions on land rights in respect to land procurement for public interest purposes]. Jakarta, Indonesia: Kertas putih Communication, pp 35.
- [8] Azzuhaili, W. (2011). *Wa Adillatuhu: Sistem Ekonomi Islam, Pasar Keuangan, Hukum Hadd Zina, dan Pencurian* [Wa Adillatuhu: Islamic