

## **REGULATIONS FOR THE TRANS-FUNCTION OF AGRICULTURAL LAND INTO NON-AGRICULTURAL LAND IN CONTROLLING FOOD SECURITY IN INDONESIA.**

Khrisna Hadiwinata, S.H., M.H., Dr.  
State Polytechnic of Malang, Malang, East Java, Indonesia  
Corresponding Author : nien\_07@yahoo.com

---

### **Abstract**

Permission Regulation to transform the agriculture land into non-agriculture land in autonomy territory becomes important and basic strategy issue in Indonesia. This issue emerged because there is no law certainty that regulate that issue, more over this issue emerged because of the autonomy territory paradigm that creates authority space in territorial government to conduct few policies; especially in deciding the urban planning. Regional autonomy prefers development in the sector promising a short-term higher advantage (profit) to increase regional genuine income (PAD), but poorly takes account of public interest as a whole. Refer to the reason in increasing the territorial original income, urban planning is made and applied by transforming the function of agriculture land into non-agriculture land, and in its turn it can disturb the nation's food security stability. Based on that fact, of course all comprehensive efforts relating to legal certainty are needed. These are: the consistency in conducting it, the perfecting effort in managing agriculture system, and the policy which is based on participation. It is hoped that those can control the agriculture land trans-function into non-agriculture, as the result Indonesia as an agrarian nation can avoid food security instabilities.

**Keywords:** Food Security, Law Uncertainty regulation, Trans- Function.

---

### **1. Introduction**

Indonesia is an agrarian nation, thus arable land becomes an important asset as the commodity in food security. Food security in this area is the food availability right of every human and the continuing life of that nation. When the availability of food is not balanced with the necessity, then it will cause unstable economy, create social and political problems.

Now, the agriculture issue becomes one of the central issue. The economy importance that is growing and developing, causes the decrease of arable land in Indonesia. If this issue is not solved as soon as possible - the conversion of agriculture land into non-agriculture will disturb the food security stability of the nation.

As we know that with the increase in population and the increase in consumption in each individual that are stimulated by raising income, the necessity of rice produce will be multiply continuously. To fulfill that raising, the national rice production has to be increased as the number of the need to fulfill the nation necessity. However, some researches show that the rice production number recently is decreasing (Franz, 2001).

In recent years, Indonesia government keeps making the policy to import rice, because we only have a little national rice stock. For example in early 2006, the number of rice import reached 0, 11 million ton and in October it was added 0, 21 million ton. The same import number was repeated in early 2007, and it caused the controversy, this case is so ironic if we remember that

Indonesia is a prosperous agrarian nation and a few years ago, Indonesia was a rice self-supporting nation. The concrete reason of that fact is the rapid decrease of productive agriculture land, those productive arable land had been changed into non-arable land (living place, industrial area, recreation object, or other non-agriculture usage).

Since the result of agriculture census was published, issue that is related to the agriculture conversion was greatly debated, the result showed that in 1983-1993 the agriculture land had been decreased 1, 28 million ha. That decreasing was caused by the process of agriculture land conversion into non agriculture usage, thus the total number of agriculture land was decreased by 2, 47 millions ha, while the increase in non-agriculture land has made arable land only reached 1, 19 million ha.

The Trans – agriculture function/ agriculture land conversion does not give any advantages, especially for the agricultural sector, relating to agriculture production. The conversion / trans-agriculture function has the same development as the economy sector and the increased population. The defense law in Indonesia principally is based on the prosperous nation concept (Irawan et al., 2002). It can be seen from the certainty of Act 33 No. (3) Constitution of the Republic of Indonesia on 1945 as the result of the fourth amendment that stated that earth, water, and nature wealth which consists are controlled by government and used for the prosperity of its citizen.

Actually, there are a lot of law regulation and the policy that control the using of the urban planning, and efforts to control the agriculture land controversy in Indonesia. However, based on the phenomena of the trans- agriculture land/agriculture land conversion development which is increasing rapidly, so Law are relatively left behind and it lost its effectiveness, especially in now territorial autonomy era. The possibility of this fact is very high to happen based on the regulation which are generally published by the government, becomes ineffective for the region (regency or region) feel that it has the authority to formulate the development policy in its territory.

The central government itself has already formulated ( Law 2009 No.41) which discussed the continuing of Agriculture Land. This Law is expected to be the boundaries of the trans-function of agriculture land into non-agriculture land. Law 2009 No.41 that is the further regulation of Law 2007 No.26 about space regulation; aims to create safe, comfortable, productive, and continuously national territorial-zone based on Archipelago Insight and National Security. Those regulations are the anticipation of the era development and the development of human's needs in the land utilization by various sectors that recently develop rapidly.

Otherwise, in the region autonomy era, Law 2009 No. 41 is assessed incapable enough in limiting the conversion boundaries. By the existence of region autonomy then all of the decision in giving the approval of land trans–function is in the hand of region chief as the hold of policy. This situation will give freedom to the region chief in permitting the trans- function and breaking the Law regulation. Besides, there are three other factors; *firstly*, few regions prefer to use area as housing project. *Secondly*, farmers who are in trouble situation have to sell their land to fulfill their economy needs. *Thirdly*, some sort of crops are more favorable than rice and other food crops.

Based on the explanation above through this international journal, the writer takes two important and basic law issues to find solution to land conversion that is related to food security in Indonesia. These are: (1) *why does government (regional government) permit the trans-function of agriculture land into non- agriculture? ; (2) What have to be done to control the*

*trans-function of agriculture land into non-agriculture as the food security in regional autonomy era?*

## **2. Research Methods**

This research is a normative legal research <sup>1</sup>that will do the analysis of legal matter which have been collected. This normative legal research was done to identify the Politics of permission regulation in Trans- function of the agricultural sector into non-agricultural sector in the regional autonomy era. Because of this relation, the inductive logic and deductive logic were used. The inductive logic was used to summarize the conclusion from the real cases into general conclusion. While the deductive conclusion was used to summarize the general cases into personal conclusion. Some approaches were used to answer and solve the issues in this research, these are; *statute approach, conceptual approach, historical approach.*

Statue approach was used because it is related to the Statue of Administrative Law. This approach was used to seek the autonomy region authority in permission regulation especially in Trans – function of agriculture sector into non- agriculture sector in the perspective of administrative law development, its “*comprehensive, all-inclusive, and systematic*” (Isa, 2006). This statue approach not only analyzes from the form of law regulation but also analyze the content, the ontology basic of the law creation, the philosophy basic of law and the *ratio-legis* of law regulation.

Likewise, the conceptual approach, this approach was used to find the views and doctrines that develop in law jurisprudence. Through the analysis on law bachelors and the doctrines, the law principles could be found and it can be used to analyze the juridical concepts that influence the autonomy region authority, especially in the area of trans-function of agriculture sector into non-agriculture sector in regional autonomy era. While the History Approach was used to track the history of Law institutions in every period with the aim of finding the law philosophy of regional government and the philosophy development that is underlying the sectorial authority in permitting the trans- function of agriculture sector into non- agriculture sector in region autonomy era.

## **3. Result and Discussion**

### **3.1. Approval Arrangement of Agriculture Land Trans- Function Into Non-Agriculture Land in Region Autonomy Era**

The land policy in article 33 clause 3 Constitution of the Republic of Indonesia 1945 which is explained further in Law 1960 No.5 on Agrarian principal basic regulation (UUPA). In article 2 clause (1) UUPA emphasizes that The earth, water, and outer space, including the natural resources contained in there are controlled by nation as the power organization of the whole people. Moreover, clause (2) in the same article explained that the controlling right from country gives the authority to;

1. Regulating and conducting the allocation, utilization, inventory, and maintenance of the earth, water and outer space.
2. Defining and controlling the law relationship between people and earth, water, and out space, and

3. Defining and controlling the relationship between law and people and law action related to earth, water, and outpace.

To the basics of “nation controls”, government accepts the authority for people to control the allocation, the inventory and land utilization, which have to be the responsibility of the people. Because of that commitment, government made general program of the inventory, the allocation, and the utilization of earth, water, out space and nature resources that are in there based on that general plan that covers the whole Indonesia sectors, the regional government can arrange the inventory, the allocation, and the land utilization in its region as the condition of each area. Then, the regional government will specify the general plan, depending on the condition of its area. With this regulations, which means that every region has different regulations in conducting their land utilization. For example, the industrial region with the agriculture region, suburb and town.

The land utilization not only has to pay attention to peoples' prosperity but also to the responsibility to take care of the land, taking care means to keep and to add its fertilization, and to prevent air from the destructive as has been explained in UUPA and Law 1997 No. 23 on Life Environment Management. Besides, if it is related to Urban Planning Law, so the land utilization is the subsystem of urban planning. In this reformation era, the regulation of land utilization is arranged in government ordinance 2004 No. 16 published on 2004, May 10. In the government ordinance it is stated that there are some changes of rencana tata ruang wilayah, so it's usage and utilization must be based on the newest Urban Planning (RTRW). It means that there are possible amendment on land usage and utilization (Isa, 2006).

Next regulation is explained in Article 6 on Government Ordinance 2004 No. 16. It stated that land utilization covers the whole land, i.e land which owned by individuals, legal entity, government, or even land which belongs to the society by customary law. As a result, right utilization and reconciliation on RTRW will be done to these lands, by considering land utilization policy, landlord's right, infestation of facilitation building, and also land evaluation. It stated that those amendments have to involve societal participation; but the regulation of thier participation is not still arranged yet.

Along with the rapid development in all of the sectors, the amendments are frequently done, especially to follow the development and the needs of entrepreneurship. It can be seen from the decreasing number of agriculture sectors in suburb, town, and even more in countryside that generally serves as agriculture area or even source of livelihood of its it population suddenly change into industrial area such as recreational area, shopping complex, *real estate*, or other sectors outside the agricultural sectors.

The decreasing of agriculture sectors stimulated special attention and as the result, Law 2000 No.25 on National Development Program 2000-2004 was made. It stated prevention of agriculture and forestry sector conversion into non- agriculture and forestry is one of the basic steps to reserve the function of conservation areas and reservation areas; to decrease the forestry and agriculture sectors which have been almost extinct; to decrease the land conflict; and to develop social institution that has capability in manage the sector integrated.

In its development, after the inventory, at least there are nine regulations controlled in the agriculture sector conversion into non- agriculture sector (Isa, 2006). In its implementation, those regulations are not effective enough. According to Elly Roosita, Law Regulation is not enough to solve these issues. The reason for conducting the conversion is not only because of other sectors' needs, but also related to farmer prosperity, the economy interest of regional government, the rent enthusiasts, the economy basic policy that want to be built.

The data of the agriculture sector decreasing as the result of conversion strengthen this opinion. According to Bomer Pasaribu, it is estimated that in every year 165 thousands hectares agriculture sectors becomes settlement and industrial areas, or even other infrastructure establishment, without any complement in establishment of new agriculture area<sup>2</sup>. The big number of this conversion cases emerge not only because of the ineffective Law Regulation, both from the unclearness and infirmness of the substation side and the limitation of the implication support by the government itself as the official that has an authority in permitting the trans – function of the sector. Moreover, those issues emerged because the agriculture sector is not interesting enough. The rare and expensive fertilizer and other production tools, the decreasing of agriculture labor (Jhonny, 2006), those issues strengthen by the harvest that is fluctuating and decreasing drastically caused the social interest (or just afford to maintain its function) into agriculture sector decreasing.

According to Ir. Rija Sudirja, M.S. (Jhonny, 2006), there are some reason why farmers sell their agriculture sectors, those are *first*, the condition of their land that cannot produce the harvest maximally; secondly, the value of areas around them increasing rapidly; third, the economy needs that cannot be avoided, for examples: school stuff, foods, etc.

In the context of regional autonomy, sector authority and the sector utilization which are the authorities of each region where its policy of utilization sector should cover the region needs appropriately and make it under controlled, in fact there are still many agriculture sector conversions happened. Moreover, if the region government is oriented on its economy establishment which stresses on the non- agriculture businesses (Jhonny, 2006). That is the most important commitment and the consistency of the region government for not conducting the regulation which only prohibits the trans- function of agriculture sector into non-agriculture sector, but where its anticipative policy takes a side to agriculture too, and every policy related to agriculture must get the main attention. However, the implementation of those regulations was not conducted effectively, it happened because it was not supported by complete data and the pro-active action. Three constraints that become reasons of the difficulty in conducting sector conversion controlling regulation are; (i) contradictive policy; (ii) limited land policy; (iii) constraint of design consistency.

First constraint, contradictive policy happened because the government tried to prohibit trans-function, while the other side the policy of industrial growing/manufacturing growing and non-agriculture sector stimulated trans-function on agriculture sectors. *Secondly*, the limited policy boundaries. Those regulations are applied to companies/ Law firm that will use the sector/ will transform the agriculture sector into non-agriculture sector. Those regulations have not been applied to the trans-functions that are done by individuals. In fact, there were a lot of trans-function cases done by individual. *Third*, the design consistency was caused by Urban Planning (RTRW) that was continued by the giving mechanism of location approval is the main component of the controller in preventing the technic irrigated land sector conversion. In fact, there were a lot of RT/RW that were intentionally planned to convert technic irrigated field sector into non agriculture sector.

Other weaknesses on law regulation are: (i) the agriculture land object that is protected from conversion process is defined based on the condition of the land physic. While physic land condition is easily faked. As the result, the sector conversion happened without breaking the applicable regulation. ;( ii) the exist regulations only provoke and do not explain clear sanction,

both the amount of its sanction or who that gets its sanction. ; (iii) When the agriculture sector conversion happens, it will be difficult enough to find which institution holds the responsibility, because conversion approval is collective decision of some institutions.

Based on these fact, Infrastructure and Public Facilities Director of Agriculture Minister-Gatot Irianto said that it was still difficult enough to stop the agriculture sector conversion into non-agriculture sector, even though it has been made Law No.41/2009. Most of the region government has not wanted to define their agriculture sectors in their territorial to be stated in food agriculture land area that has to be protected. This phenomenon happened because the region government still uses the agriculture sector as the region income resource (Jhonny, 2006).

In other words, if the sectors are included into sectors that have to be protected from the trans-function, so the region government cannot gets any advantages. For example, by transforming the agriculture sectors into shopping center and other commercial businesses. The region government also regards that establishment of sustainable agricultural land will be the burden for the region economy. Gatot hoped that all of parties can find out the solve together to stop sector conversion which threatens the defense of national food continuously.

### **3.2. Controlling Trans-Functions of Agriculture Sector into Non-Agriculture in Framework of Food security in the Era of Region Autonomy**

Based on the collected data from the land researches about cause factors of trans-function of agriculture sector into non agriculture sector, then there are some afford that can be done to control the agriculture sector trans-function into non-agriculture sector. Those are;

1. The improvement of facilities and infrastructure supporting agriculture, such as: the improvement on irrigation facilities, provision of seeds, fertilizers with affordable prices for farmers.
2. Agricultural counseling particularly concerning to the conversion of agricultural sector for national food security, especially social dangers for farmers who do trans-function on agriculture sectors into non-agriculture sectors.
3. Providing the incentives for farmers, in the form of credit facilities for farmers, help on support farming, granting the tax relief.
4. Improving coordination among the relevant agencies. Such as Department of Agriculture, Regional Planning Council, Parliament and the private sector as an investor.
5. Giving strict sanctions against violators of the Spatial Plan, particularly the trans-function of agricultural sectors that is diverted for non-agricultural sector.
6. The social involvement in urban planning.
7. The provision of agricultural sector permanently, according to the struggle for sector utilization between agriculture and non-agriculture sector becomes harder, in this case farmers are the parties who get more disadvantages and defeated.

Besides those affords, other ways can be done as stated by (Pearce & Turner, 1990) who recommends three approaches simultaneously in the case of agricultural sector conversion control, namely;

1. **Regulation:** Through this approach, the policy makers need to set a number of rules in the existing sector utilization. Based on various technical, economic, and social considerations, policy makers can do zoning of the land as well as the possibility of the

trans-function process. In addition, clear and transparent mechanism approvals are needed by involving all stakeholders in the process of sector trans- function.

2. **Acquisition and Management:** Through this approach, the related parties need to improve the system and rules of land trades, and improvement of land tenure system that exist to support the efforts to maintain the presence of agricultural sector.
3. **Incentive and Charges:** Providing subsidies to farmers who can improve the quality of their land, as well as an interesting application of the tax to maintain the existence of agricultural land, is a form of another approach in preventing conversion of agricultural land. In addition, the development of the existing infrastructure is more focused on supporting the development of the activities of agricultural cultivation following by its crop business.

Muhammad Iqbal and Sumaryanto described other applied potential controller that is which conversion of agricultural land controller by realizing an alternative policy. That alternative policy is expected to break the incapability in controlling the previous land trans- function. The components are legal, zonation, and economy instruments, and the initiative of society.

Legal instruments consist of the application of laws and regulations governing the land conversion mechanism. Meanwhile, the economy instruments cover incentives, disincentives, and compensation. Incentive policy is given to those who defend the land from trans-function. The patterns of these incentives are the land and building tax remission (PBB), as well as the easiness in agricultural production facilities<sup>3</sup>. In the other hand, disincentive policy is given to those who do land trans-function where its implementation against the applicable legislation and regulations. Meanwhile, compensation is intended to parties who get the disadvantages as the result of land trans-function for establishment activities, or which prevent the land trans-function for the preservation of agricultural production (food).

Zoning policies related to management of spatial grouping through the land allocation (cluster) are divided into three categories of control zones, those are the preservation land ( it is not allowed to transform to other function), limited trans- function, and can be transform to other function. Zoning classifications are made based on irrigation classification criteria, cropping intensity, and productivity of its lands. Irrigation criteria is divided into irrigated and non-irrigated rice land.

Society initiative strategy is a strategy that involves society. The society involvement also covers all levels of stakeholders. The strategy of controlling the agriculture land trans-function has to consider is *community-based management plan*. It means the community is the support in the form of participation in the controlling the agricultural land trans-function.

1. The social participation in urban planning is absolutely needed, the participation form of the society can be by using the sector as the urban planning in its area, besides to keep, reserve, and develop the preservation of environment function. In Law No.26/2007 on Urban Planning, the social participation is stated in Article 65;
2. Implementation of urban planning is done by the government by involving society.
3. The social participation that was explained in clause (1), done by:
  - a. Participation in arrangement of Urban planning;
  - b. Participation in utilization sector; and

c. Participation in controlling the sector utilization.

While public participation procedures can be done by giving some advice, consideration, opinion, response, the objection to the information of the potential development purpose, issues, and urban planning in its area orally and written to Governor/ Mayor, besides the social participation development is done giving counseling, encouragement motivation, technical support, and education/trainings.

In engaging the social participation in Urban Planning, it has to avoid the inducement approach and it has to be replaced by approach that is based on typology of social plurality accompanied with an understanding and appreciation of local wisdom.

#### **4. Conclusion**

Based on the explanation above, it can be concluded that the local government gives agricultural land trans-form approval into non-agricultural because of the paradigm of autonomy decentralization that opens the authority space as the authority source to arrange its region government, including in determining the Spatial Plan (RTRW). Thus, it is no wonder that local governments tend to promote the development of the sector that promises short-term profits in order to increase the local income (PAD). It can be seen from the Urban Planning (RTRW) which tends to encourage the trans-function of agricultural land into land for non-agricultural land. Efforts in controlling the trans-function of agricultural land to non-agriculture land in terms of food security in the era of regional autonomy can be broadly done by some points. Those are the regulation that substantively has the certainty of legal sanction, the improvement of its system, and the land management pattern that focused on the effort in maintaining the existence of agriculture land, giving the subsidy to farmers who can develop their land quality, opening the opportunity for social participation as the consistency of regulation enforcement.

#### **5. Recommendations**

Some recommendations regarding the issue of agricultural land trans-function to non-agricultural concretely can be done sort of efforts as follows;

1. Arrangement of regional regulation that can harmonize the interests of the government and the society. So that regional government will not give the approval of agricultural land trans-function easily, just to increase the regional income.
2. Controlling the trans-function of agricultural land to non-agriculture land should involve and rely on society participation community-based management plan by involving the active participation of stakeholders as the entry point of its planning, implementation, supervision, and Law values and the exist regulations.
3. As soon as possible designing the draft Law on Agricultural Land Management Food Immortal ( RUU PLPPA) to be discussed, socialized and enacted immediately.
4. Revitalization of controller policy of agricultural land trans-function by pointing to the alternative policies, which are: law, economics, zoning alternatives and the social initiatives.



5. **Rural urban planning should be composed as the foundation for the rural area development as the basic for the agriculture sector development in Indonesia and as the prevention of urbanization that is very interesting to the Land.**

## **References**

Franz, M. S. 2001. *Etika Politik, Prinsip-prinsip Moral Dasar Kenegaraan Modern*, Jakarta, Gramedia Pustaka Utama, Jakarta.

Irawan Simatupang et al. 2002. *Pengendalian Konversi Lahan Pertanian; Tinjauan Ulang kebijakan Lahan pertanian abadi*. Makalah Seminar Nasional “ Multifungsi dan Konversi Lahan Pertanian”, 25 Oktober 2002, Badan Penelitian dan Pengembangan Pertanian, Departemen Pertanian, Jakarta.

Isa.I. 2006. *Strategi Pengendalian Alih Fungsi Tanah Pertanian*. Papers on Multifunction Seminar (Multifunctionality of Agriculture). Bogor, 2006 June 27-28. Balai Besar Sumberdaya Lahan (BBSDL), Ministry of Agriculture, Fisheries, and Forestry (MAFF) of Japan, dan ASEAN Secretariat, Bogor.

Johnny, I. 2006 *Metode Penelitian Hukum Normatif*, Bayumedia, Malang Jawa Timur.

KOMPAS. 2012. Retrieved from: [www.kompas.com](http://www.kompas.com) on 2013, June 12.

Muhammad, I. and Sumaryanto, D. 2004. *Strategi pengendalian Alih Fungsi Lahan Pertanian Bertumpu Pada Partisipasi Masyarakat*, Jakarta

*Pertanian Indonesia Diambang Krisis*, Kompas, 03 August 2006.

## **Laws**

- [1] Republik Indonesia, Constitution of the Republic of Indonesia on 1945.
- [2] Republik Indonesia, Government Regulation 2004 No.16 on Land Utilization.
- [3] Republik Indonesia, Law 1960 No. 5 on Agrarian Principle Basic Regulation.
- [4] Republik Indonesia, Law 1997 No.23 on Nature Management.
- [5] Republik Indonesia, Law 2000 No. 25 on National Establishment Program 2000-2004.
- [6] Republik Indonesia, Law 2007 No. 26 on Urban Planning.
- [7] Republik Indonesia, Law 2009 NO. 41 on Food Land and Sustainable Agriculture.
- [8] Rija, S., Sulitnya, M., Areal and Produksi, P. and Pikiran, R. 2007.