

Legal Protection of Land Use in the Context of Opening and Development of Agricultural Land for Public Interests

Akiruddin Ahmad
Alwashliyah University

ABSTRACT

Land as a source of life and one of the important factors of production, besides being able to guarantee the availability of space to build infrastructure and facilities for development needs in accordance with the priorities that have been set, it is also necessary to maintain its fertility and sustainability in order to create a comfortable living environment. The pattern of land use in supporting development will experience a shift in accordance with developments in each development sector. Policies in the land sector are aimed at achieving three main things that complement each other, namely efficiency and economic growth, social justice, environmental conservation and sustainable land use patterns. Government has given legal protection to agricultural land by issuing several regulations such as Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. This rule emphasizes that sustainable food agricultural land must be protected and cannot be converted unless it is in the public interest.

Keywords: Land Use, Legal Protection, Law

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INTRODUCTION

Land use is a form of activity using or cultivating land as an effort so that the land can provide benefits. Land use planning, which is one of the procedural aspects of the implementation of development as an activity that must support a more appropriate and effective procedural mechanism in land acquisition for sectoral and community development interests, as well as provide more guidance, guidance and development possibilities. In this regard, the government must be able to link various interests in a harmonious and balanced manner to obtain optimal benefits, while the benefits of land as an element of space remain in a sustainable state.

The increasing role of the industrial sector has certainly led to a greater need for land to support this sector. The role of land in development will be increasingly important in the future because almost all development in all fields that we do requires land so that land becomes scarce.

Strictly speaking, land must be used for development with the principles of the greatest prosperity of the people as stipulated in Article 33 paragraph (3) of the 1945 Constitution. It cannot be justified if land is used as an object of speculation. Likewise, the control of people's land by those with strong capital to seek personal gain is clearly contrary to the will of Article 33 of the 1945 Constitution. Especially if these lands are then abandoned, left unproductive because what is important is waiting for land prices to rise. This is clearly detrimental to the interests of the community and the interests of development. The government must have the courage to take firm action against lands abandoned by their rights holders (Mahendra, 1996).

Apart from the land registration agency, in our land law we are also known as the land acquisition agency. Currently, arrangements regarding land acquisition are accommodated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. This law is an implementing regulation of the provisions of Article 18 of the UUPA.

The planned development as outlined in the land policy must be accompanied by a planned use of the land in which the community still has the protection of their rights in accordance with the applicable legal provisions. Planned use of land must be able to meet development interests in both agriculture and industry. Industrialization is not the ultimate goal, but only one of the strategies that must be taken to support the process of economic development in order to achieve a high level of per capita income. The industrial sector, especially industries that produce for export, industries that absorb a lot of labor, agricultural product processing industries and industries that can produce industrial machines.

All of this is carried out in order to realize a balanced economic structure between industry and agriculture, both in terms of added value and in terms of employment. In addition, the planned use of land must also be able to support development in the fields of politics, social culture, defense and security, etc. commensurate and mutually supportive with economic development so as to ensure national security.

Literature Review

1. National Land Law

The term law is identical to the term law in English, *droit* in French, *recht* in German, *recht* in Dutch, or *dirito* in Italian. Law in a broad sense can be equated with rules, rules, norms, or urgency, both written and unwritten, which basically apply and are recognized by people as regulations that must be obeyed in social life and if violated will be subject to sanctions. Meanwhile, according to the Indonesian Encyclopedia, "Law is a series of rules, regulations, rules, both written and unwritten, which determine or regulate the relationships between members of the community.

The above formulation shows that the emphasis is placed on law as a series of rules, regulations and rules (processes and procedures) as well as the distinction between sources of statutory law (written rules) and habits (unwritten rules).

2. Land Use and Land Use

This land use will be reviewed from 2 aspects, namely the theory and practice of land use planning. Regarding the theory, we will discuss the definitions, objectives to be achieved from the land use plan, as well as the principles of land use for both rural and urban areas. These principles are important for guiding the process of land use activities.

Law Number 5 of 1960 (UUPA) covers: earth, water, space, and the natural resources contained therein. Meanwhile, land as part of the earth is one of the objects of agrarian law. Based on the object of national agrarian law, the appropriate term to use is "agrarian use planning". Agrarian use planning includes: *land use planning*, *water use planning* and *water use. use planning* (space use).

3. Management Rights

a. Conversion

According to AP Parlindungan, what is meant by conversion is the adjustment of land rights that were once subject to the old legal system, namely land rights according to BW and lands subject to customary law to enter into the system of land rights according to UUPA provisions.

b. Granting of Land Rights

According to Article 1 Paragraph (8) of the Minister of Agrarian Affairs/Head of BPN Number 9 of 1999, what is meant by granting of land rights, is the Government's stipulation granting a right to State land, extending the period of rights, renewing rights, changing rights, including granting rights above Management Rights.

In granting this land right, the Management Right that was born came from the state land requested by the holder of the Management Right. Provisions regarding the birth of Management Rights through the granting of rights were originally regulated by Permendagri Number 5 of 1973, then amended by Minister of Agrarian Affairs/Head of BPN Number 9 of 1999.

c. Authority in Management Rights

Philipus M. Hadjon, namely: "The term authority or authority is often translated by the term *bevoegdheid* in terms of Dutch law. If a careful study is carried out, there is a difference between the term authority or

authority and the term *bevoegdheid*. The difference is in its legal character, the Dutch term *bevoegdheid* is used in the concept of law private and public law concepts. Meanwhile, in Indonesian legal concepts, the term authority or authority is used in public law concepts. In national law, authority (*bevoegdheid*) is described as legal power (*rechtsmacht*). So, in public law concepts, authority relates to power. Therefore, the concept of authority is a concept in public law".

Philipus M. Hadjon further stated that the authority to make decisions can only be obtained in two ways, namely attribution or by delegation. Attribution is the authority attached to a position. Delegation is the delegation of authority. Mandate is an internal working relationship between the authorities and their employees, in certain cases a person obtains authority on behalf of the ruler.

METHODS

This type of research uses empirical legal research. Empirical legal research is conducted to see a truth and legal reality that occurs in society by looking at it from an empirical point of view. This research is a descriptive research. Descriptive research is research that has the goal of providing data that is as precise as possible about humans, conditions or other phenomena in certain areas and at certain times. The purpose is mainly to reinforce hypotheses, so that it can assist in strengthening old theories, or within the framework of developing new theories.

RESULTS AND DISCUSSION

Transition of Agricultural Land Functions due to Land Procurement for Public Interests

Land procurement is an activity carried out by the government to provide land by providing appropriate and fair compensation to the entitled party. This activity aims to provide plots of land so that infrastructure can be developed for the public interest. The land that will be used for the development sometimes has to take land owned by the community. This is because the land area of the state is less than the land attached to land rights. In addition, sometimes the land acquisition is also through agricultural lands in an area which has indirectly changed the function of agricultural land.

The public interest in Law Number 2 of 2012 concerning Land Acquisition, namely the interests of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people. Land acquisition for public purposes aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state and society while still guaranteeing the legal interests of the entitled parties.

The development of an area requires an increase in road construction in order to facilitate the mobility of the population and streamline traffic flow. Land acquisition is an activity that must be carried out and funded by the Government. Procedures for land

acquisition for public purposes based on Article 13 of the Land Acquisition Law go through several stages that must be carried out systematically, the stages are:

- a. Planning
- b. Preparation
- c. Implementation
- d. Results submission

The planning stage is the initial stage of the implementation of land acquisition. This stage is regulated in Article 14 of the Law on Land Acquisition which states that plans are drawn up by agencies that require land based on Spatial and Regional Layout Plans and priorities adjusted accordingly. The preparatory stage in Article 16 of the Law on Land Acquisition means that the government, after having the documents, will notify the development plan, conduct initial data collection, and carry out development public consultations with the community. The implementation phase pursuant to Article 27 paragraph (2) of the Land Acquisition Law includes an inventory and identification of land tenure, ownership, use and utilization, assessment of compensation, deliberations on determining compensation, awarding of compensation, and land release. The last stage, namely the delivery of results means that the release of rights has occurred and compensation has been made.

The form of compensation that has been determined when viewed directly, the form of compensation that is easy to do is money. The form of compensation given to the community must be fair and proper. The provision of compensation is not the result of a stipulation from the Government but comes from the results of deliberations between the community and the land acquisition committee. The government more often uses compensation in the form of money because it is considered easier and less complicated, while from the public that compensation in the form of money provides more legal certainty than other forms that have a period of fulfillment.

Forms of Legal Protection for Agricultural Land Due to Land Function Transfer

Protection of agricultural land has actually been regulated in Law 41/2009 Article 44 paragraph (1) Law 41/2009 states that land that has been designated as sustainable food agricultural land is protected and prohibited from being converted. However, there are exceptions regarding this protection, namely when the transfer of function occurs due to the public interest. The conversion of agricultural land for public purposes has been regulated in Article 44 paragraph (3) of Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land, which states that: Conversion of land that has been designated as sustainable food agricultural land for the public interest as referred to in paragraph (2) can only be done with the following conditions: 1). Conduct strategic feasibility studies; 2). A plan for land conversion is prepared; 3). Freed of ownership rights from the owner, and; 4). Replacement land is provided for sustainable food agricultural land that is converted."

Protection of agricultural land when it is converted into non-agricultural because land acquisition can pay attention to the article. When the conversion of agricultural land turns into settlements or industrial areas, it becomes a different problem because these changes are carried out by the community and for their own interests. Article 6 of the UUPA explains that every land has a social function, so that the use of land, including changes to its function, must not override social functions. The principle that every land has a social function cannot be applied to several lands, agricultural land that has a

function for community food often changes its function only to meet the needs of its owner. The government makes policies so that agricultural land is not easily transferred to other people or changes its function.

CONCLUSION

Legal protection for agricultural land has been given by the Government by issuing several regulations such as Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land. This rule emphasizes that sustainable food agricultural land must be protected and cannot be converted unless it is in the public interest. When the conversion of agricultural land is owned by private individuals, the conversion cannot be carried out automatically but must go through a Land Use Change Permit applied for at the local Land Office.

Thank-you note

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