

## **Regulation Inconsistency in the Transfer of Functions of Rice Field**

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**Abstract:** *Constitutionally, based on Article 33 of the 1945 Constitution of the Republic of Indonesia, the state has a crucial role in the effort to manage the national economy through the right to manage of state. One effort that can be done is through food security. Agricultural potential, especially in the rice fields in Indonesia, is very likely to be optimized and become a green economic power. Especially if you see that rice fields are part of local wisdom. However, along with the times, it turns out that many rice fields underwent massive conversion. Based on the root of the problem, two main problems can be drawn. First, why is there still a massive conversion of rice fields? and what legal measures can be taken to maintain the availability of rice fields to build a green economy? The massive land use change cannot be separated from its regulatory aspects. If examined there are inconsistencies in Law Number 41 Year 2009 and Government Regulation Number 1 Year 2011. Therefore, further efforts are needed to create a harmonious order and able to realize ecological balance. Done through a legal perspective, with a culture, structure and substance approach.*

**Keywords:** *Inconsistency, Transfer of Function, Rice Field.*

### **1. Introduction**

Indonesia is a country with very diverse regional potential, both in terms of natural resources, to culture. The strategic location and geographical conditions of Indonesia are widely used by various parties to increase capacity in terms of economic value. One of these uses is realized in the form of agricultural land, especially rice fields managed by the community. This also makes Indonesia known as an agricultural country.

It is undeniable that the existence of Indonesia as an agricultural country is closely related to its demographic factors. Since the royal era (recorded) during the Mataram era, the Indonesian people at that time had cleared land for farming, one of which was in the form of rice fields. The basic philosophy that was built in farming at that time also strongly adhered to traditions and spiritual nuances. There is even a mythology, one of which is "Dewi Sri", which is the goddess of rice Mudiono dan

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Wasino, 2015). Based on that philosophy, the people by this time appreciated nature, which was a gift from God or the Creator. Here is what then at this time gave rise to the term local wisdom, primarily if it is associated with the pattern of green economic development.

However, looking at the current conditions, shows that there are inconsistencies in existing legal products, especially those related to the regulation of rice fields. Based on data from the Central Statistics Agency (BPS), regarding the area of rice fields in Indonesia in 2017, which was 7.75 million hectares of land. In just one year, namely in 2018, the area of rice fields has decreased drastically to 7.1 million hectares of rice fields. This significant decrease was due to the conversion of rice fields to industrial (factory), toll roads, and housing. Based on Law Act No. 41 of 2009 concerning the Protection of Sustainable Agricultural Land (hereinafter referred to as Law No. 41 of 2009), has provided a basis for preventing the conversion of rice fields.

The existence of Government Regulation No. 1 of 2011 concerning the Determination and Transfer of Functions of Agricultural Land for Sustainable Food (hereinafter referred to as PP No. 1 of 2011), apparently also has not been able to limit the conversion of rice fields. Massive land conversion is still happening. The absence of legal certainty in terms of hierarchical arrangements is also one of the reasons for the massive land conversion, especially in the regions. Of course, this problem must be resolved immediately, considering that rice fields have a crucial role in maintaining national food security. Moreover, with the use of digital technology, efforts are made to minimize the occurrence of land conversion. At that point, the law (in the form of legislation and policies), becomes the main legitimacy in strengthening its enforcement. Therefore, in this paper, two basic aspects are discussed, namely, why is there still a massive conversion of rice fields? and what legal measures can be taken to maintain the availability of rice fields in order to realize social welfare?

## 2. Theoretical Framework and Hypothesis Development

Land is a fundamental aspect in building the civilization of a country. Land (earth) also becomes part of the wealth of the state, which is controlled by the state. Judging from the legal aspect, land is an element that must be protected, especially in the context of its use. Viewed from the economic aspect, land is able to provide economic improvement for the community. Become a means for the community to be used in production activities, especially in the agricultural sector. From the sociological aspect, land is part of people's lives to interact with each other. Building family values within the scope of Indonesian society (Syarif, 2018).

Along with the development of the times, a lot of land conversion is carried out, especially from rice fields. Many rice fields have been converted or converted into industrial areas. This land conversion is often negative, especially for the ecosystem. Basically, land conversion is a change in basic functions into other functions, which also have implications for the social community, the environment and even the economy (Isdiana and Benny, 2018).

From the regulatory aspect, there are actually criteria for land conversion. This is as regulated in Law No. 41 of 2009 concerning Protection of Sustainable Agricultural Land (hereinafter referred to as Law No. 41 of 2009). Based on Article 44 paragraph (3) of Law no. 41 of 2009), affirmed:

*“Peralihfungsian lahan yang sudah ditetapkan sebagai lahan pertanian pangan berkelanjutan untuk kepentingan umum, sebagaimana dimaksud pada ayat (2), hanya dapat dilakukan dengan syarat:*

- a. Dilakukan kajian kelayakan strategis;*
- b. Disusun rencana alih fungsi lahan;*
- c. Dibebaskan kepemilikan haknya dari pemilik, dan*
- d. Disediakan lahan pengganti terhadap lahan pertanian pangan berkelanjutan yang dialihfungsikan.”*

Based on that regulation, it cannot be denied that there are still inconsistent aspects. Among them when they have to conduct studies and provide replacement land. This also takes into account that land is non-renewable. When the rice fields have changed functions, it will be very difficult and even impossible to return to their original function.

### **3. Research Method**

Research is one of activity that provide the problems and analysis to become solution or novelty. Fundamental purpose in legal research is how to create ideal justice, even it's difficult. This paper, is based on normative legal research (Soerjono Soekanto, 1984). The approach of this study using statute approach, theoretical approach. Regarding to main topic of this research, so the theoretical perspective is based on right to manage by the state, ecology, and local wisdom. It will help to do the qualitative analysis.

### **4. Results and Discussion**

#### *4.1. Regulation Inconsistency In Protecting Rice Field*

Along with the development of civilization, through the rapid growth of industry and technology, there is also a change in the pattern of people's lives. Most of the people who used to be owners and cultivators of rice fields, in fact many have turned to selling their land which later changed functions. The occurrence of such a paradigm shift, cannot be separated from social, economic, political and legal factors that slowly affect life in the community, especially with regard to the management of rice fields. The results of paddy field production, namely rice, no longer provide maximum and sustainable results for the community, especially those who directly own and/or only cultivate. As a result, it was converted into a factory or housing. If viewed from the perspective of environmental law, it also indicates that there is an act of overriding justice between and across generations. Norm inconsistency, which leads to norm conflict, is the main factor in the massive conversion of rice fields.

Based on Article 33 of the 1945 Constitution of the Republic of Indonesia, the state has the right to control land, water, and air. On that basis, the state has the responsibility to protect and fulfill the rights and basic needs of its citizens, as well as to guarantee legal protection for assets (land rights) owned by the community. However, concerning rice fields, there is a form of inconsistency, especially from the aspect of regulation. First, the state's responsibility to protect land and prevent land conversion does not work properly. Whereas the state, as mandated in the constitution,

should protect following the control rights it has. Based on Article 35 PP No. 1 of 2011, it can be understood that any conversion of rice fields must be through a permit from the government or local government. It is not possible to immediately change the function of rice fields even if it is privately owned land.

Indeed, there is often a dilemma, that the paradigm that emerges in the community when they think that land is privately owned is the owner's full right to everything from the land. This is the basis for the community to shift the function of rice fields into housing, or factories.

On the other hand, there are also provisions based on Article 6 of Law no. 5 of 1960, that land has a social function. The existence of the provisions of Article 6 is not intended to corner or limit the landowner to use his land. However, it should be understood that every use of the land, including if you want to transfer its function, must also pay attention to the environment, as well as be adapted to its conditions and the nature of its rights so that it is beneficial both for the welfare and happiness of those who own it and also for the community and the State. Moreover, it has also been emphasized in the basics of national agrarian law, which is contained in the explanation of Law no. 5 of 1960, that there is an obligation for landowners, including every person or legal entity, to maintain the land properly, so that its fertility increases and its damage is prevented.

If examined further in Law no. 41 of 2009 as well as in PP No. 1 of 2011, there are inconsistencies in protecting rice fields. As has been explained, that one form of agricultural land is rice fields. Based on Article 18 of Law no. 41 of 2009, providing legitimacy related to the protection of rice fields by establishing sustainable food agricultural land. This means that, based on these provisions, rice fields, especially those that have been designated, are prohibited from being transferred to their functions (as also confirmed in Article 44 paragraph (1) of Law No. 41 of 2009). These efforts are carried out by the government at the national, provincial, and district/city levels.

However, even though there are provisions regarding such protection, it can still be excluded, in the name of the public interest. Article 44 paragraphs (2) and (3)

explicitly provide opportunities to open up opportunities for land conversion, including land that has been designated as sustainable food agricultural land. Fundamentally, this is contrary to the philosophical nature of providing legal protection for agricultural land, especially rice fields. Legal protection measures are actions to protect against threats, or arbitrariness, which is arranged based on the provisions of the regulations. Protect one thing from another (Philipus M. Hadjon, 1987). This also shows that the legal protection contained in Law no. 41 of 2009, not fully given.

This inconsistency is increasingly visible in PP No. 1 of 2011. Based on Article 36 paragraph (1) PP No. 1 of 2011, has provided a classification of what is referred to as public interest. Otherwise, in article 36 section (3), there are more possibilities in the conversion of rice fields in the name of public interest. Even the conversion of land to become factories or housing can also be categorized as public interest. This opens up opportunities for massive land-use change, especially in areas that have rice fields, such as rural areas. This regulatory inconsistency also has an impact on uncertainty in understanding existing regulations.

On the one hand, the government's efforts to facilitate community cultivators/farmers are also not carried out optimally. The existence of Government Regulation No. 12 of 2012 concerning Incentives for the Protection of Sustainable Food Agricultural Land (hereinafter referred to as PP No. 12 of 2012), is also not consistently implemented. In principle, the existence of these incentives is intended to attract the interest of farmers or rice field owners, to maintain their land. However, to get these incentives, of course, there is also a need for guidance from the government, both central and regional. If Law No. 41 of 2009, has indeed regulated related to the coaching. However, if you look at one of the existing cases, namely the arrest of one farmer who sold his rice seed innovation, as a result of being reported by the Aceh Agriculture and Plantation Service to the police, it shows the opposite condition. The report was carried out based on the absence of certification for marketed innovative rice seed products (Rakhmad Hidayatullo Permana, 2019 and David Oliver Purba, 2019).

If viewed from the perspective of Law Number 12 of 1992 concerning Plant Cultivation, it is confirmed in Article 13, there is a provision which states that every seed marketed must have certification. If there is no certification, then the product is considered to be detrimental to the community, and producers may be subject to criminal sanctions. There is nothing wrong with this provision. However, the attitude of the local government through the Aceh Agriculture and Plantation Service, reporting to the police, is contrary to the mandate of Law no. 41 of 2009. Ideally, there should be a form of coaching first related to product certification. Not necessarily reporting to the police and arresting the person concerned. This can cause a domino effect for other farmers who want to innovate. The long-term consequences also do not rule out the possibility of more and more conversion of rice fields, because the community, especially farmers, cannot increase the economic productivity of rice fields (rice). This condition is the main basis for the massive land conversion. Inconsistency in providing legal protection through the regulation of land conversion, as well as concerning providing guidance to rice field owners or farmers.

#### *4.2. Harmonization of Regulation on Rice Field Conversion*

Building and improving the economy of a country to prosper its people can be done in various ways. However, the method taken must still pay attention to regional and social conditions, including the carrying capacity of the environment. The potential through rice fields, which is also part of local wisdom, should ideally be able to be synergized as an effort to build national economic strength. The conversion of paddy fields does seem to be an unavoidable necessity because it is part of the wheel of life. But at least there needs to be a balance in carrying out the land conversion.

Looking at the current regulations (*ius constitutum*), it must be admitted that no regulation explicitly emphasizes the form of strengthening rice fields as a form of improving the national economy. This means that the efforts regulated in the current regulations only focus on the provisions on guidance, legal protection (with exceptions), or normative forms of supervision. In addition, the imbalance in the sales

chain of crops from farmers affects the income of farmers or rice field owners. Therefore, there are a series of efforts that can be made based on a legal perspective.

Fundamentally, the efforts made are related to governance. Can be classified into three basic components, namely culture, structure, and substance (Friedman, 1978). Starting from the cultural component. The government as the ruler needs to compile and open the possibility of agricultural workers, especially rice fields. Of course, the farmer's workforce is prioritized for the younger generation. Rural areas which have been recorded as having the potential for extensive rice fields, of course also require a high workforce. It is also undeniable that young people who live in the village prefer to try their luck in the city. Based on data from the National Development Planning Agency (Bappenas), the average increase in urbanization is 2.3% per year. This means that every year, people always try to find new jobs in the city. Assuming that there is no proper work to be done in the village. This is where the control function of the government works. Changing community culture through a systemic coaching pattern to provide competence in the agricultural sector, so that new workers appear in the agricultural sphere, especially rice fields. This systemic coaching can start from the level of formal education or when graduating from formal education. Such guidance also needs to be balanced with competence in the field of digital technology. The use of digital technology can provide wider marketing opportunities for rice field products. Thus, the development that has been carried out so far is not only focused on the needs of modern industry. But it is also balanced by guiding the perspective of local wisdom.

Structurally, it is necessary to establish a supervisory body for land conversion. If you look at Law no. 41 of 2009, in Chapter IX regarding supervision, there is no clear subject in terms of conducting supervision. Article 56 paragraph (1) only provides provisions for the implementation of supervision carried out in stages starting from the village/kelurahan government to the central government. Such supervision provisions, of course, can have an impact on ineffective supervision patterns. There will likely be mutual responsibilities.



Supervision activities that include action, reporting, monitoring, and evaluation, as regulated in Article 55 of Law no. 41 of 2009, ideally it should also be added with action, after monitoring actions. Such action is part of repressive measures when violations are found. This supervisory body must also consist of law enforcement agencies (such as the police), experts as well as state civil servants. The formation of a supervisory body is also more appropriate to be placed at the district/city-regional government level. Also considering the existence of Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as Law No. 23 of 2014), which gives authority to regions to manage in the field of agriculture and spatial planning.

It is also possible, based on the results of supervision from the supervisory agency, to then be able to provide recommendations in the form of a moratorium on the conversion of rice fields. Especially if it is assessed that the existing land is already very critical. These recommendations will also be different in each region. As a form of legitimacy, substantially a statutory regulation was formed, both in the form of laws and government regulations for these efforts. Amendments to Law no. 41 of 2009, and PP No. 1 of 2011 also need to be carried out, considering that in substance there are still many inconsistencies in the regulation. The preparation of changes to existing regulations, as well as the formation of new regulations, must also pay attention to other regulations. The goal is to avoid overlap in providing settings. In addition, it also aims to create a harmonious order with other interests. Not being conservative towards industrialization, but still paying attention to ecological sustainability to achieve a proportional balance.

## **5. Conclusion, Implication and Limitation**

### *5.1. Conclusion*

Rice fields are part of the agricultural sector that contributes to national security. However, there has been a very massive degradation of the number of rice fields from year to year. The biggest point of the massive conversion of rice fields is due to inconsistencies in regulating rice fields. The legal protection given to the existence of

rice fields, including those that are part of sustainable food agricultural land, is not carried out in its entirety. This is also contrary to the theoretical conception of the nature of legal protection. Efforts to foster normatively have also been confirmed in Law no. 41 of 2009 and PP No. 1 of 2011, in fact also did not run optimally. This then has an impact on the conversion of rice fields into industry, or housing which provides greater economic value to landowners.

## 5.2. Implication and Limitation

It is necessary to make a series of other efforts from a legal perspective, in this case through three basic approaches, namely culture, structure, and substance. In the cultural approach, it is directed to change the paradigm that exists in the community regarding farmers. This is where the government's role is to create jobs and coaching related to agriculture, especially rice fields. Structurally, it is also necessary to establish a supervisory agency for land conversion. Given the form of supervision regulated in Law no. 41 of 2009, has not provided clarity on the formulation, both in terms of subject and mechanism. Substantial reinforcement is to function as a foundation in providing targeted legitimacy.

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