

THE CONVERSION RECONSTRUCTION OF AGRICULTURAL LAND TO NON AGRICULTURAL LAND BASED ON JUSTICE VALUES

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ABSTRACT

The purpose of this study was to examine and analyze the implementation of land conversion of agricultural land into non-agricultural land, and to reconstruct the implementation of land conversion of agricultural land into non-agricultural land based on the value of justice. The research method used was sociological juridical by using primary and secondary data. The results of the study found that the implementation of the control of the conversion of agricultural land into non-agricultural land by the government through legislation, especially Law No. 41 of 2009 on the Protection of Land Sustainable Food Agriculture, it has not been worth the justice because there is still inequality of equal position and treatment in law and also the abandonment of the rights of the peasants as landowners is not noticed. The reconstruction of the value of the control of the conversion of agricultural land into non-agricultural land based on the value of justice is to realize the availability of agricultural land for food self-sufficiency and the availability of agricultural land converted to non-agricultural land for the benefit of equitable public facilities development, while the legal reconstruction is in Article 44 Law no. 41 of 2009 on the Protection of Sustainable Food Agriculture.

Keywords: Reconstruction, Functioning of agricultural land, justice.

Introduction

Development of the concept of the State has begun even since the days of the ancient kingdom of Babylon, until during the Greek, Roman and then spread to mainland Europe today. However, the concept of the State in the past, better known in the kingdom, Empire (dynasty) putting the power lines on the absolutism of the king. It was once in Europe and Europe.¹

The Preamble of the 1945 Constitution of the Republic of Indonesia mandates that the national objective is to protect the entire nation and the whole of Indonesia's blood sphere promotes the general welfare, the intellectual life of the nation, and the participation of a world order based on freedom, eternal peace, and social justice. To achieve the mandate of the 1945 Constitution of the Republic of Indonesia, it requires the joint efforts of all Indonesian people.²

The use of natural resources must be harmonious, and balanced with environmental functions. Consequently, development policies, plans and/or programs must be imbued with the obligation to conserve the environment and realize sustainable development objectives. The Indonesian environment must be protected and managed properly based on the principle of state responsibility, the principle of sustainability, and the principle of justice. In addition, environmental management should be able to provide economic, social and cultural benefits based on prudent principles, environmental democracy, decentralization, and recognition and respect for local wisdom and environmental wisdom.³As well as environmental issues are not only a

¹Ahmad HasyimAs'ari T.R, ArifHidayat, AnisMashdurohatun,*Constitution And Design Of The Rule Of Law Based On Justice*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 11, Issue 4 (Dec.) ISSN 2289-1560, 2016, page.59.

²Said Gunawan, AnisMashdurohatun, TeguhPrasetyo, I GustiAyuKetutRachmiHandayani, *Development Concept Of Non Alutsista Abuse By Indonesian National Army*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August) ISSN 2289-1552, 2017.page.180.

³Elucidation of Law Number 32 Year 2009 on Environmental Protection and Management.

domestic issue, but they have become a global issue, this is because the environmental context, between the source or the cause and effect it generates can not be localized to a certain damnation.⁴

Indonesia as an agrarian country needs to ensure the sustainable provision of agricultural land as a source of decent work and livelihood for humanity by promoting the principles of togetherness, fair efficiency, sustainability, environmental insight and independence and by maintaining the balance, progress and unity of the national economy.⁵

In Jombang district, thousands of hectares of agricultural land shrink. Depreciation occurs due to the large number of agricultural areas that became one of the largest contributors of national rice production, now turned into a settlement. In addition triggered the increasing number of residents, shrinkage is also due to the many farmers who choose to sell their land to survive because it considers cultivating less prosperous. Even some productive areas of rice fields have now begun to appear to change into housing.

Factor causing the occurrence of the conversion of agricultural land into non-agricultural land is generally caused by economic factors. Besides, the conversion of agricultural land to non-agricultural land can also be caused by social factors such as behavioral changes due to the progress of transportation and communication, resulting in changing their perspective where the profession of farmers is considered a profession that is unfounded, dirty and miserable. The transfer of functions also occurs due to inheritance and marriage. The location of farmland far apart or apart from the owner's residence will also encourage the owner to sell the land because it is considered inefficient. In addition, the potential for land transfer function occurs as a result of the implementation of Spatial Planning by Local Government/Regency/City which is less in favor of agriculture.

Research Methods

The paradigm⁶ used in this research was constructivism paradigm⁷. The approach method used in this research was juridical-sociological or social legal research. Data used in this research were secondary data and primary data. Secondary data was data sourced from the primary law material, secondary and tertiary. Primary data, ie data obtained directly from the source, either through interviews, observations or reports in the form of unofficial documents that are then processed by researchers. Furthermore, the data will be analyzed descriptively analysis.

Results and Discussion

1. Implementation and Weakness of Function of Agricultural Land into Non Agriculture

Progressive law means advanced law. The term progressive law, introduced by SatjiptoRahardjo, is based on the basic assumption that law is for man. SatjiptoRahardjo defines progressive law as a series of radical acts by changing the legal system (including changing the rules of law if necessary) to make the law more useful, especially in raising self-esteem and ensuring human happiness and prosperity.⁸

Based on the above assumptions the progressive legal criteria are:

- a. Has a great purpose in the form of human welfare and happiness.

⁴Bambang Tri Bawono, Anis Mashdurohatun, *Penegakan Hukum Pidana Di Bidang Illegal Logging Bagi Kelestarian Lingkungan Hidup Dan Upaya Penanggulangannya*, Jurnal Hukum Vol XXVI, No. 2, Agustus 2011, diterbitkan oleh Fakultas Hukum Unissula, Semarang. page 590.

⁵Law No. 41 of 2009 on Sustainable Land Farming Protection

⁶Paradigm is a foothold in seeing a reality, how we see things, what is considered a problem, what methods for completion. Thomas Kuhn, *The Structures of Scientific Revolution*, dalam Widodo Dwi Putro, 2011. *Kritik Terhadap Paradigma Positivisme Hukum*, Genta Publishing, Jogjakarta, Page 2

⁷Egon G. Guba dan Yvona S, Lincoln, 1994, *Handbook of Qualitative Research*, London & New Delhi : Sage Publications International Education and Professional Publisser, page 100

⁸Rahardjo, Satjipto, 2010. *Penegakan Hukum Progresif*. Jakarta, PT Kompas Media Nusantara, page 4.

- b. Contains a very strong humanitarian morality.
- c. Progressive law is a liberating law covering a vast dimension that not only moves in the realm of practice but also theory.
- d. Critical and functional.

The characteristics embodied in progressive law are:

The progressive legal paradigm strongly rejects the mainstream centered on positivistic legal rules/mechanisms, and the progressive law reverses this notion. Honesty and sincerity becomes the crown of law enforcement. Empathy, caring, and dedication bring justice; become the spirit of the organizer of the law. Human interest (welfare and happiness) becomes the point of orientation and the ultimate goal of the law. Law enforcers become a spearhead of change.⁹

Progressive law, as other laws such as positivism, realism, and pure law, has characteristics that distinguish them from others, as will be described below.¹⁰

- a. The paradigm in progressive law is that "law is an institution that aims to bring people to a just, prosperous and happy human life." This means the progressive legal paradigm says that the law is for man.
- b. Progressive law refuses to maintain the status quo in punishment. Maintaining the status quo gives the same effect, as when people argue, that the law is the benchmark of everything, and man is for the law.
- c. Progressive law gives great attention to the role of human behavior in law. This is diametrically opposed to the notion that the law is only a matter of regulation. The role of humans here is a consequence of the recognition that we should not hold absolutely to the formal text of a rule. Above has explained how great the risks and consequences to be faced if we "give up" to the rules.

Formulating the concept of justice in progressive legal thinking is how to create substantive justice rather than procedural justice. Progressive justice is not justice that suppresses procedure but substantive justice. Justice based on equality values of equal rights and obligations. Justice values are derived directly from the community and not the textual and black-and-white justice values that have limited meaning. It is not justice that procedures are gained through a variety of procedures that sometimes obscure the values of justice itself.

Based on the Joint Instruction of the Minister of Home Affairs and Regional Autonomy with the Minister of Agrarian Affairs January 5, 1961 The Sekra 9/1/12 Number of agricultural lands is described as follows: "Agricultural land is all plantation land, fishponds, cattle grazing land, the forests that are the livelihood for the rightful. If on a large plot of land stood one's home, then the local opinion is what determines, how much area is considered the home page and what is the agricultural land¹¹". In Indonesia agricultural land is also known as Rice or Moorish In the registration of land known some classification of land in the form of D II, D III, D IV or S III and S IV. Classification of soil Class D II is a dry soil that cannot be utilized for agriculture anymore. Class D III land is dry farmland, usually located on a hill or not rain-fed, class D IV land is productive dry farming land. Land class S III is a paddy field or agricultural land but it is no longer productive because of its location can be in the highlands can also in the lowlands. Land class S IV is a productive agricultural land that is still flooded water because it has a spring that irrigates the agricultural land.

The Indonesian Government in controlling the conversion of agricultural land into non-agricultural land is in the form of:

1. Through the making of Spatial Plan by using zonation system;
2. Licensing optimization;
3. Through the mechanism of the establishment of the Regional Land Agency (BPPD);¹²
4. Creating eternal land;

⁹Sudjiono Sastroatmojo, 2005. *Konfigurasi Hukum Progresif*. Artikel dalam *Jurnal Ilmu Hukum*, Vol.8 No 2 September 2005, page.86.

¹⁰Satjipto Rahardjo, 2007. *Biarkan Hukum Mengalir*. Jakarta, Kompas, page 139-147.

¹¹Boedi Harsono, 07 Oktober 1977. *Perkembangan Hukum Tanah Adat Melalui Yurisprudensi*. (Ceramah disampaikan pada simposium Undang-undang Pokok Agraria dan Kedudukan Tanah-tanah Adat Dewasaini). Banjarmasin, page 358.

¹²Deborah Oktavia Tobing, 2005. "Perubahan Penggunaan Tanah Pertanian Menjadi Non Pertanian dalam Kaitannya dengan Kebijakan Penataan Ruang di Kab. Sleman, DIY". *Penulisan Hukum*. Yogyakarta, Fakultas Hukum UGM, page 82.

5. Providing incentives and imposed disintegrating to holders of land rights in guidance and control of land administration;¹³
6. Through Incentive Tax Program (taxincentive plan);¹⁴
7. Arranging abandoned land;¹⁵
8. Carry out Agrarian Reform.¹⁶

The implementation of control over the function of agricultural land into non-agricultural land through legal instruments according to the people of Jombang, Mojokerto and Nganjuk not yet based on the value of justice, it is due to several things, including:

- a. Procedures for obtaining permits for legal entities and for individuals are different

Control over the conversion of agricultural land into non-agricultural land is done by the three districts where Mojokerto regency is more advanced than Jombang and Nganjuk regencies because Mojokerto regency has a local regulation on the protection of sustainable agriculture land. The control of the conversion of agricultural land to non-agricultural land through legal instrument is done by determining the territory or zone of agricultural land as well as the establishment of eternal land for agricultural land included in sustainable food agriculture. In addition, Jombang regency, Mojokerto regency, Nganjuk regency controls the conversion of agricultural land into non-agricultural land by tightening licenses. Any submission of the function of agricultural land into non-agricultural land should apply for Space Use Permit (IPR) addressed to the Regional Development Planning Board (BAPPEDA). Applicant of this IPR must be a Legal Entity and land requested not more than 1 hectare because if it is more than 1 hectare must be accompanied by the application of Location Permit. After obtaining approval from BAPPEDA it will be issued Spatial Use Recommendation for the management of Land Technical Consideration Issues in the Issuance of Land Use Change Permit. After the Land Technical Consideration Issues in the Issuance of Land Use Change Permit must be taken care of Permit of Land Use Change, after the Issuance of Permit of Land Use Change will be issued License of Space Utilization.

In the application of Space Use Permit the requirements to be addressed or completed are proof of ownership of the requested land, where the ownership must belong to the Legal Entity requesting because according to the staff of the Licensing Service Agency in Jombang Regency stated that this requirement to prevent the land after the request will be ignored.

The conversion of agricultural land to non-agricultural land by an individual or sole proprietor of its application for a Land Use Change Permit shall be sufficient only to the National Land Agency/Agrarian Spatial Planning.

If it is reviewed on the License Utilization Permit and Land Use Change Permit, it is seen that the request for the transfer of land by Legal Entity and individual there is a difference, where for legal entity the process of licensing for the process of converting the function of agricultural land into non-agricultural land through a long process while the individual through easy and not long application process. This difference of treatment resulted in a sense of injustice in the implementation of the control of the conversion of agricultural land into non-agricultural land. The difference is not in accordance with the principle of Equality Before The Law, a rule is said to be fair if the regulation treats every person or citizen before the law of equal standing, the meaning of equality before the law means in this Unitary State of the Republic of Indonesia is everyone receive equal treatment before the law (*Audi Et AlteramPartem*) in the dynamic sense that everyone will have equal access to justice, and if there are exceptions, the exceptions are clear and regulated by a separate rule.

- b. The conversion of agricultural land to non-agricultural land is only for public interest or public interest development without accommodating the interests of farmers

The existing legislation prohibits the conversion of agricultural land into non-agricultural land except for land acquisition for public interest and disaster. Regulation of the Minister of Agriculture No. 81/Permentan/OT.140/8/2013 Concerning Technical Guidelines for Procedures for Sustainable Land Function of Food Farming in *CHAPTER III CRITERIA ALIH FUNGSI LAHAN*(the criteria of land conversion), stated that: "Public procurement of land covering public roads, dam, irrigation, drainage or water supply, drainage and sanitation, irrigation buildings, ports, airports, railway stations and stations, terminals, public safety facilities, nature reserves and/or power stations and networks ". In the event of a disaster, the determination of the

¹³ See paragraph 28 PP 16/2004 Tentang *Penatagunaan Tanah*.

¹⁴ See UU 28/2009 *Tentang Pajak Bumi dan Bangunan Perkebunan dan Perikanan yang mulaiberlaku Januari 2014*.

¹⁵ See PP 36/1998 *Tentang Pendayagunaan Tanah Terlantar*.

¹⁶ See Tap MPRRI/IX/MPR Tahun 2001.

disaster area is carried out by the institution conducting the affairs in the field of disaster control. In addition to the public interest and disaster the conversion of sustainable agriculture land can be done for the procurement of land for development for the public interest in accordance with the provisions of legislation.

The conversion of agricultural land to non-agricultural land, especially sustainable food agriculture land can only be done for the procurement of land for public interest and for the construction of public interest, which becomes the question how the conversion of agricultural land into non-agricultural land by landowners caused by economic factors, cultural factors and for any other reason, whether allowed or disallowed. If the review of the existing legislation is clear that this is not allowed but in its implementation still goes through the IPPT permit application process, who is wrong and why it is not considered every citizen is entitled to the right and is treated equally right before the law.

According to Lawrence Friedman, elements of the legal system consist of legal structure, legal substance and legal culture¹⁷. The legal structure includes the executive, legislative and judiciary bodies as well as related institutions, such as the Prosecutor's Office, Police, Courts, Judicial Commission, Corruption Eradication Commission (KPK) and others. While the substance of the law is about norms, rules and laws. The legal culture involves the views, habits and behavior of the community on the thoughts of the values and expectations of the prevailing legal system, in other words, the legal culture is the climate of social thinking about how the law is applied, violated or implemented.

The disadvantages of controlling the conversion of agricultural land to non-agricultural land in view of Law No. 41 of 2009 on Sustainable Food Protection, Government Regulation of Republic of Indonesia Number 1 Year 2011 on the Stipulation and Transfer of Sustainable Land Agriculture Function and the existing Regional Regulation, there are inconsistent and contradictory contradictions, whereby the Local Regulation establishes the extent of perennial agricultural land for sustainable food crops in Mojokerto District which has a Regional Regulation on Sustainable Land Farming Protection (PLP2B) establishes sustainable food crops and sustainable land for sustainable food agriculture 27,535 hectares whose distribution is determined by the Regent, and for those farmers who have only the land, the only one is allowed to convert a 300 m2 area to be built.

In Jombang regency to realize the policy of perennial agricultural land area of 40,676 hectares as perennial agricultural land, with a minimum area must be maintained for 31,569 hectares. While Nganjuk regency area of the cultivation of food crops that are maintained and developed as a sustainable food farm with an area of approximately 51,630 hectares. When they are compared with the existing agricultural land area, then for the Mojokerto Regency can divert the function of the agricultural land area of 9,263 hectares, Jombang Regency is still possible the existence of the function of agricultural land 17,138 hectares¹⁸. In contrast to Nganjuk regency there is a lack of extent on its eternal agricultural land of 8,712 hectares. It is true that in Mojokerto District and Jombang District still allowed to convert the function of the agricultural land. The exact answer is not permissible because Law No. 41 of 2009 on Sustainable Food Protection in Article 44 is clearly stated:¹⁹

- (1) Land that has been designated as Sustainable Food Agriculture Land is protected and prohibited to be converted.
- (2) In the case of public interest, the Sustainable Agriculture Farm as referred to in paragraph (1) may be converted, and implemented in accordance with the provisions of legislation.
- (3) The Landfill Distribution that has been designated as Sustainable Food Farm for the public interest as meant in paragraph (2) can only be done on condition:
 - a. a strategic feasibility study was undertaken;
 - b. arranged land conversion plan;
 - c. exempted ownership of rights from owners; and
 - d. provided replacement land for Sustainable Food Farming Land that is converted.
- (4) In the event of a disaster so that the transfer of land functions for infrastructure can not be postponed, the requirements referred to in paragraph (3) a and b shall not be applied.
- (5) The provision of replacement land for Sustainable Food Farming Land which is converted to function for disaster infrastructure as referred to in paragraph (4) shall be done no later than 24 (twenty four) months after the transfer of function is done.
- (6) The exemption of ownership of land rights transferred as referred to in paragraph (3) letter c shall be conducted by providing compensation in accordance with the provisions of laws and regulations.

¹⁷Lawrence Friedman, 1984. *American Law*. London, W.W. Norton & Company, page 6.

¹⁸Source Agriculture Department Kabupaten Jombang, Mojokerto Regency and Nganjuk Regency.

¹⁹Undang-Undang Republik Indonesia Nomor 41 Tahun 2009

This is reaffirmed in Government Regulation No. 1 of 2011 on the Stipulation and Transfer of Land Sustainable Food Farming Article 35 which reads:

- (1) Land that has been designated as Sustainable Food Agriculture Land is protected and prohibited to be converted.
- (2) The transfer function of Sustainable Agriculture Farm can only be done by the Government or local government in order to:
 - a. public procurement of land; or
 - b. disaster.

Therefore, Law No. 41 of 2009, and Government Regulation No. 1 of 2011, the conversion of agricultural land for sustainable food crops is not allowed except for the public interest or for the construction of public interest. However, in the Local Regulation the determination of the land area for sustainable agricultural land gives the possibility of the existence or permissibility of the conversion of sustainable agricultural land.

This condition is called the contradiction and inconsistency of the legislation. Contradictive because on the one hand the function of sustainable agriculture land should not be converted, but on the other side sustainable food agriculture can be converted for the interest or development of public interest. While its inconsistency in the Regional Regulation which contains the Spatial Plan as a tool to control the conversion of agricultural land into non-agricultural land prohibits the transfer of the function of sustainable agricultural land except for the interest or the development of the public interest but the Regional Regulation also determines the area of sustainable agriculture that must maintained.

Law No. 41 of 2009 on Sustainable Land Protection of Food Agriculture, Article 44 states that:

- (1) Land that has been designated as Sustainable Food Agriculture Land is protected and prohibited to be converted.
- (2) In the case of public interest, the Sustainable Agriculture Farm as referred to in paragraph (1) may be converted, and implemented in accordance with the provisions of legislation.

In Article 5 stated:

Food Agriculture Land that is designated as Sustainable Food Agriculture Land can be:

- a. irrigated land;
- b. reclamation land of tidal swamps and non-inundation (lebak); and / or
- c. irrigated land.

Law Number 41 Year 2009 on Sustainable Land Protection of Food Agriculture, Government Regulation No. 1 of 2011 on the Stipulation and Transfer of Sustainable Agriculture Food Function and Regulation of the Minister of Agriculture No. 07/Permentan/Ot.140/2/2012 About Guidelines Technical Criteria And Requirements Regions, Land, and Land Reserves Sustainable Food Farming contains only about sustainable food agriculture, how about agricultural land that is not included in sustainable food agriculture.

Agricultural land not included in sustainable food crops is in principle also protected under the Circular Letter of the Minister of Home Affairs No. 590/11108 / SJ, dated October 24, 1984, Subject: Land conversion to Non-Agricultural, Circular Letter of the State of Agrarian Affairs/Head of Land Agency National, Number: 460-1594, dated June 5, 1996, Subject: Prevention of Conversion of Irrigated Rice Land, but the prohibition on which the legal basis in the prohibition of agricultural land into non-agricultural land which is not defined as sustainable agricultural land is only a Circular Letter so that the prohibition its only appeal and the specification of agricultural land is not much different from sustainable agriculture land that is technical irrigation. Thus, it can be said that the Agricultural Protection Act only concerns sustainable food crops whereas agricultural land that is not sustainable food crops does not yet have a Law-level regulation. Besides, it is also a diversion of agricultural land which is not a sustainable food farm having no rules on the transfer of its function. Another disadvantage of legal instruments controlling the conversion of agricultural land to non-agricultural land is in the case of compensation. Law Number 41 Year 2009 on Sustainable Food Protection, Article 44 paragraph (6) reads:

- (6) The exemption of ownership of land rights transferred as referred to in paragraph (3) letter c shall be conducted by providing compensation in accordance with the provisions of laws and regulations.

In Government Regulation No. 1 of 2011 on the Stipulation and Transfer of Sustainable Food Function of Food, Article 50 shall be declared about the compensation which reads as follows:

- (1) Any owner of Sustainable Food Farming that is converted shall be compensated by a functioning party.

Compensation in practice is often a problem as happened in Jombang regency in toll land acquisition where at the time of the exemption there was a rejection from the land owner because it was deemed unsuitable so for exemption execution conducted in Watudakon Village Kesamben Subdistrict, Mojokerto Regency happened rejection of purchase price land by the government for the Trans-Java toll road project of the Kertosono-Mojokerto section of Gedeg, Pagerluyung, Sidoharjo and Kemantren in Gedeg sub-district and Penompo village, Jetis district.²⁰ The hampering of land acquisition was caused by the people's disapproval of the price offered by the appraisal team of the government, so that in the liberation and conversion of agricultural land into non-agricultural land for the interest or construction of public interest must be beneficial rather than harmful.

Besides, the weakness of the control of the conversion of agricultural land into non-agricultural land is the lack of socialization of legislation by the relevant agencies, so that the laws and regulations that function as the regulation of controlling the function of agricultural land into non-agricultural land is not known by the owner agricultural land, so they only know when will manage the land.

No matter how good legislation is made but not or less socialized and submitted then the rule will not be implemented properly and correctly. When associated with the theory of Lawrence Meir Friedman that the effectiveness of the enactment of a rule is determined by aspects of legal substance, legal structure and legal culture, when linked with the description above then these aspects can be described as follows:

- a. Legal Substance Aspects

In this case the strict rules governing the prohibition of the conversion of agricultural land are Law No. 41 of 2009 on Sustainable Land Farming Protection and the Government's Declaration of the Republic of Indonesia No. 1 Year 2011 on the Stipulation of Land Function of Sustainable Food Agriculture, but the regulation has weakness namely the prohibition of the transfer of functions in Law No. 41 of 2009 is only seventh on sustainable food agriculture, while for agricultural land that is not sustainable agricultural land there is no regulation on the matter. This situation leads to an understanding of the conversion of agricultural land to non-agricultural land so that the implementation of the field for the owners of agricultural land that is not designated as food agriculture land that the land can be converted, but the government especially the National Land Agency considered that the conversion of agricultural land, sustainable food agriculture should not be converted. This is what causes conflict in the implementation of the control of the conversion of agricultural land into non-agricultural land.

- b. Legal Structure Aspects

In this second aspect of concern is the law enforcer of the regulation and sanctions for violations of the conversion of agricultural land to non-agricultural land. In Law No. 41 of 2009 on Sustainable Food Protection, any person who violates the prohibition of the conversion of sustainable agricultural land into non-agricultural land shall be liable to sanctions, but in practice the sanction is never implemented because of the difficulty in proving who is responsible function of agricultural land into non-agricultural land, so enforcement of the law against its violators is difficult. The government as the regulator should not only fix on the act of making regulations but also actively trying to socialize and apply strict sanctions, especially for officials who have converted agricultural land into non-agricultural land. With the imposition of strict sanctions against government officials can create a balance in the process of agriculture land conversion into non-agricultural land in accordance with what has been determined by the world community in Sustainable Development Goals / SDGs is sustainable development that incites all poverty and end hunger, reaching food security and nutrition improvement, and promoting sustainable agriculture.

- c. Legal Cultural Aspects

In this aspect which is highly expected is the awareness of landowners, government and society to overcome the weaknesses of the substance and structure of the law which with this awareness will provide ease in controlling the conversion of agricultural land into non-agricultural so that the realization of Sustainable Agriculture is a decent agriculture economically, environmentally accountable, socially acceptable, just and socially culturally appropriate to local circumstances, and implemented holistically and sustainable food security are the main objectives of sustainable development ie food security by utilizing local agricultural diversity will create a national food security steady and long term.

²⁰<https://www.tempo.co>, 31/8/2016, accessed 1/1/2018

2. Reconstruction of Function of Agricultural Land into Non-Justice Value-based Farming

Justice or *justicia* has the meaning not one-sided, impartial, siding with the right, rightly, not arbitrary. The meaning of justice is divided into two namely the meaning of justice by attributes and the meaning of justice in action. The meaning of justice by attribute is a fair or just quality. On the other hand, the meaning of justice in action is the act of running and determining the right or punishment.

In Big Indonesian Dictionary (KBBI) justice comes from the word *adil*, which has the meaning of honesty, straightness, and sincerity that is not biased. From the above understanding there are two formulations of justice: the view that the intended with justice is the harmony between the use of rights and the implementation of obligations in harmony with the law's legal proposition dosage of rights and obligations.

Justice when viewed from the implied meaning contains the very philosophical and most fundamental meaning that is always coveted every person who lives in any world with any cultural, religious, ethnic and national background and with Governance Any system also desperately longs for the nature of justice.²¹

Justice is a state or condition which is a meaning that cannot be terminologized by words and sentences alone, but more to the essential meaning felt by the feeling.²²

The view of the jurists who basically formulate that justice is the harmony between legal certainty and the law's comparability²³. Pancasila as the foundation of the State and the view of life of the Nation also contains the principle of justice as set forth in the second and fifth precepts, of which the two precepts can be stated two things:

First: justice embodied in the second precept is individual justice that must be embedded in every citizen's behavior. If justice is implemented well collectively, it will give birth to social justice especially for Indonesian citizen. The second philosophy of the meaning of the second precepts is justice that goes beyond the law, namely the justice of God in the form of light of justice, Justice is expected to illuminate human law.

Secondly: as for justice contained in the fifth precept constitutes social justice. This justice is called legal justice. Everything must be in accordance with the law that has been agreed. Otherwise it would be unfair.

Justice is meant in Islam, not to equate all members of the community, but to equate them in the chance of achievement. Accordingly, MurtadhaMothahhari uses the word just in three ways; firstly, what is meant by fair is a balanced state; second, equality and disclaimer (neglect) of any difference; third, to preserve the rights of the individual and to grant the right to every person entitled to receive it.²⁴

Justice in its implementation depends on the structures of power in society, which structures are in the political, economic, social, cultural, and ideological fields. Building justice means creating structures that enable the implementation of justice. The question of justice is how to change the power structures that seem to have ensured injustice, meaning ensuring that at the same time where there are still poor groups in society, there are also groups who can live arbitrarily because they control some of the work and the rights of the poor.

²¹Jonathan Wolff, *Pengantar Filsafat Politik*, Bandung,Nusa Media, 2013, Page 288

²²Stephen Palmquis, *Pohon Filsafat : The Tree Of Philosophy*, Yogyakarta, Pustaka Pelajar, 2007, Page 336.

²³A. Ridwan Halim, 2005. *Pengantar Ilmu Hukum Dalam Tanya Jawab*. Jakarta, Ghalia Indonesia, page 176.

²⁴MurtadhaMuthahhari, 1981, *KeadilanIlahi: AsasPandanganDunia Islam*, TerjemahanAgusEfendi, Bandung, Mizananggota IKAPI, page 53–56. In his writings "Rhetorica", Aristotle distinguishes two kinds of justice, namely distributive justice and numerality. Distributive justice is justice that gives everyone ration according to their services (sharing according to their respective rights). He does not demand that everyone share as much; not an equation, but a comparison. Whereas commutative justice is justice that gives to everyone as much as not remembering personal services. It holds a role in exchange, on the exchange of goods and services, in which there may be many similarities between what is exchanged. Commutative justice is more capable of mastering the relationship between specialized individuals, whereas distributive justice primarily controls the relationship between society (especially the state) with special individuals. C.S.T. Kansil, 1986, *PengantarIlmuHukumdan Tata HukumIndonesia*, Jakarta, BalaiPustaka,page 42.

In this reconstruction the value of justice is defined as the balance as it turns out in the Indonesian life view of Pancasila as it is found in the second and fifth precepts as well as the religious norm of Islam which defines justice as a balanced state or negates the differences and maintains and gives individual rights to the right so that the justice in controlling the conversion of agricultural land into non-agricultural land can be interpreted as a principle of balance between agricultural land for food crops with the conversion of agricultural land into non-agricultural land for public interest or public interest development that pays attention to economic, environmental, social and culture.

In performing the reconstruction of the law which as the basis for the control of the conversion of agricultural land into non-agricultural land is Law No. 41 of 2009 on Sustainable Land Farming Protection which is contained in Article 44 Paragraphs (1), (2), and (6). Reconstruction in Paragraph (1) Agricultural land is prohibited to be converted except for the interest of public facilities development. This is because sustainable agricultural land and agricultural land that are not sustainable food crops have no difference in the criteria. Whereas in Paragraph (2) it should read: (2) Agricultural land that is converted to function for the construction of public interest, implemented in accordance with the provisions of legislation. With the regulation governing the conversion of agricultural land into non-agricultural land, the implementation of the control of the conversion of agricultural land into non-agricultural land will be carried out properly and equitably.

The reconstruction of the next paragraph shall refer to compensation, where this paragraph should read: (6) The exemption of ownership of the land rights that have been inactive as referred to in paragraph (3) letter c shall be conducted by giving compensation or reimbursement of profits in accordance with the provisions of the law. Although the displacement is intended for the public interest or the development of the public interest, but in doing the replacement should benefit the farmer as the owner of the farm, and therefore the compensation must be based on a legislation so that the implementation there is a basis and guidance for so that there is no prejudice that is not good and also can give justice value.

Conclusion

1. Implementation of control over the function of agricultural land into non-agricultural land by the government through legislation, especially Law No. 41 of 2009 on Sustainable Land Protection of Food Agriculture has not been worth the justice because there is still inequality of equal position and treatment in law and also the abandonment of the rights of the peasants as landowners is not noticed. Control of the conversion of agricultural land to non-agricultural land in its implementation has a weakness because the regulation of control is contradictory and inconsistent and the prohibition of agrarian soil agriculture become non-agricultural land in Law No. 41 of 2009 only directed to sustainable food agriculture while the agricultural land not defined as sustainable food agriculture land not yet set when the difference between the two land is not there. Besides, the socialization of the regulation banning the conversion of agricultural land into non-agricultural land is not carried out by the relevant institutions so that people's understanding of the regulation does not exist.
2. Reconstruction of the value of the control of the conversion of agricultural land to non-agricultural land based on the value of justice is to realize the availability of agricultural land for food self-sufficiency and the availability of agricultural land converted to non-agricultural land for the benefit of equitable public facilities development, while the legal reconstruction is in Article 44 of Law no. 41 of 2009 on the Protection of Sustainable Food Agriculture.

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