The role of notaries in obtaining permits for agricultural land conversion

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Abstract. One of the government's efforts to protect productive agricultural land is by regulating Land Use Conversion Permit (LUCP). This permit must be obtained by every citizen wanting to convert agricultural land into non-agricultural land. This study aims at analysing the role of the notary in obtaining LUCP to convert agricultural land into a residential area and its relation to the sustainability of food agricultural lands in Indonesia. This research uses a normative juridical approach. The results show that applying permission to convert agricultural land to non-agricultural land is submitted to the Office of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (AASP/NLA). The role of a Notary and Land Deed Officer in converting agricultural land to non-agricultural land, as stipulated in the Notary Law, is to provide guidance or counselling on legal matters to any individual in any condition. So, LUCP concerning the conversion of agricultural land is one of the government's efforts to protect sustainable food agricultural lands. Notaries/LDOs should continuously provide counselling regarding the importance of land use management by complying with the laws and regulations to maintain, control, and protect agricultural land so that the conversion of agricultural land to non-agricultural land can be minimized.

1. Introduction
The accelerating of population growth without being matched with land availability will just create new problems because the growth rate and population growth will also encourage the growth of their needs. These needs include housing needs and places of economic activity such as factories, shops, and markets. If the land demand for housing and economic activities is high while it is not matched by land availability, it will eventually shift agricultural land. Switching agricultural lands to become housing then affects food supply and security [1].

The 2009 Constitution Number 41 concerning Protection of Sustainable Agricultural Land is one of the legal products aimed to maintaining the availability of agricultural land to meet people's food needs. The 2009 Constitution Number 41 concerning Protection of Sustainable Agricultural Land is intended so that productive agricultural lands do not change functions. It is undeniable that population growth and land demand are increasing every year. In the end, agricultural lands are exposed by the impact. This condition is exacerbated by the dispute between farmers and developers or even farmers with the government or local government. Efforts to control land are needed so that agricultural areas can be maintained in order to maintain national food security. This proves that the existing regulations are inadequate and gives the image that the government itself supports the transfer of land functions that have occurred so far.
Solving this problem, the structuring process for controlling spatial use is needed. Current spatial use control is inefficient and ineffective because licensing instruments, which are the first step in controlling spatial use, often results in conflict with one another and even violate existing spatial planning. One of the instruments used in the context of controlling spatial use is the Land Use Conversion Permit (IPPT). It is a permit that must be owned by every citizen who will convert agricultural land to non-agricultural land. The function of this is to suppress and control land use conversion that occurs. Agricultural land to be converted to non-agriculture must of course be in accordance to the spatial and territorial plan. With this permit, all land use conversions are required to obtain a permit from the government or regional government without exception, so that it does not violate existing spatial plans.

Permission to convert land use is given to individuals or legal entities intended to convert agricultural land to non-agricultural land. The involvement of a notary in the process of obtaining an IPPT is very important. The procedure for converting agricultural land to non-agricultural land begins with checking the certificate, payment of non-tax state tax revenue, checking the location of the requested land, IPPT team coordination meeting until the IPPT decision is issued. The role of the notary in terms of the conversion of agricultural land to non-agricultural land is contained in the UUJN. In addition to making a deed, a notary and Land Deed Making Officer (Conveyancer) have an obligation to provide guidance or counseling about legal matters to anyone and anywhere and especially those who come to the notary's office and conveyancer (Land Deed Making Officer) to request an explanation related to changing status of agricultural land to non-agricultural. This research discusses how does the role of the notary in the process of obtaining a Land Use Conversion Permit (IPPT) to support the sustainability of food agriculture land in Indonesia.

2. Methods
This research employed the juridical normative study. In the juridical normative study, library materials are basic data in research (science) classified as secondary data. Furthermore, the data collected will be analyzed qualitatively and described systematically to answer the problems [2]. This study analyzes the role of the notary in the process of obtaining a Land Use Conversion Permit (IPPT) to support the sustainability of food agriculture land in Indonesia.

3. Results and discussion

3.1. Factors driving land use conversion
Conversion of land is a condition that cannot be avoided. There are several factors that drive the conversion of agricultural land into non-agriculture namely:

a. Population factor
The rapid increase in population has increased the demand for land for housing, services, industry and other public facilities. In addition, an increase in the standard of living of the community also plays a role in creating additional land demand due to increased intensity of community activities, such as golf courses, shopping centers, highways, recreation areas and other facilities.

b. Land need for non-agricultural activities
Land need for non-agricultural activities include real estate development, industrial estates, trade zones, and other services that require extensive land, some of which come from agricultural land including rice fields. This is understandable, given that the location is chosen in such a way that it is close to service users who are concentrated in urban and surrounding areas (sub-urban areas). The location around the city, which was previously dominated by the use of agricultural land, was targeted for the development of non-agricultural activities, considering that the price is relatively cheap and has been equipped with supporting facilities and infrastructure such as roads, electricity, telephone, clean water, and other facilities. In addition, there is the presence of “trapped rice fields”, i.e. paddy fields which are not too broad because the surrounding area has
turned into housing or industrial areas, so farmers on these lands have difficulty in obtaining water, labor, and other production facilities, which force they divert or sell their land [3].

c. Economic factors
The land rent obtained by non-agricultural sector activities compared to the agricultural sector is high. The low level of intensive farming is due to high production costs, while prices for agricultural products are relatively low and fluctuating. In addition, because of the needs of farmers' families who are pressured by business capital needs or other family needs, it often leaves farmers with no choice but to sell part of their farmland [4].

d. Socio-cultural factors
The existence of inheritance law that causes the fragmentation of agricultural land does not meet the minimum limit of economically profitable scale of business.

e. Environmental degradation
The long dry season that causes lack of water for agriculture, especially rice fields; excessive use of fertilizers and pesticides that have an impact on increasing the attack of certain pests due to the destruction of natural predators of the pests concerned, as well as irrigation water pollution; the damage of the environment around the coastal fields causes intrusion (infiltration) of sea water to the mainland, which has the potential to poison rice plants.

f. Regional autonomy
Regional autonomy prioritizes development in sectors that promise higher short-term benefits to increase Local Revenue (PAD), but does not pay attention to long-term national interests that are actually important for society as a whole. This is reflected in, among others, the Regional Spatial Plan (RTRW) which tends to encourage the conversion of agricultural land to non-agricultural land use, as well as the low political will of the local governments (provincial and district/city) to consistently and decisively make at once implementing regional regulations related to agricultural land conversion.

g. The weak law and law enforcement system of existing regulations
The obligation to preserve the land, including adding to its fertility and preventing its damage, actually already exists in the 1960 Constitution Article 15 concerning Basic Agrarian Regulations (UUPA), which is supplemented with criminal sanctions as stipulated in Article 52 paragraph (1) of the UUPA. However, law enforcement of this provision has not been implemented as it should. Furthermore, the provisions regarding violations of land designation in the Regional Spatial Plan still have no legal sanctions, as well as violations of the provisions on the RTRW preparation which should have considered various aspects, including prevention of conversion of productive agricultural land, especially irrigated fields.

Various policies have been established in order to reduce the conversion of agricultural land because it is included in the priority of food security with core substances, namely Land, Regional Development and Spatial Planning, among others by structuring regulations to ensure legal certainty over agricultural land [5].

One of the legal products in controlling the rate of agricultural land conversion is the 2009 Constitution Number 41 concerning Protection of Sustainable Food Agricultural Land. Based on the 2009 Constitution Article 1 point 7 Number 41 concerning Protection of Sustainable Food Agricultural Land. In order to optimize the protection of productive agricultural land, it can also apply sanctions in the form of both administrative and criminal provisions contained in the 2009 Constitution Article 70 section (2) Number 41 concerning Protection of Sustainable Food Agricultural Land.

3.2. Issuing the agricultural land use conversion (IPPT) permit
The 1945 Constitution of the State, article 33 section (3) mandates that the earth, water and wealth contained therein are controlled by the state and are intended for the maximum prosperity of the people. The existence of the 1960 Constitution Article 2 section 2 Number 5 concerning Basic Regulations on Agrarian Principles (UUPA) authorizes the head of government to regulate and plan.
the use, designation and maintenance of land affairs. This authority is meant by the right to control the state. Based on this authority, the government is obliged to make a general plan regarding the allotment and use of the earth, water, and air space and natural resources contained therein as stated in Article 14 section 1 of the UUPA. In the sense of planning, it is possible to covert the function of land use including conversions in the use of agricultural land for non-agricultural purposes [6].

Permits to convert land use into non-agricultural land (housing) for a residence can only be granted or issued if the land for which the permit is requested is located in an urban residential area or a rural or industrial estate. Permitting conversion to land use will not be issued on lands whose designations are other than residential areas and are avoided on fertile or productive agricultural lands, because they affect food security both nationally and locally. Therefore, in order for fertile or productive agricultural lands or known as the Sustainable Food Agricultural Land (LP2B) to be maintained from being converted to non-agricultural, the Government has issued various circulars and regulations to protect the lands that are fertile, which include: a) Law No. 41, 2009 concerning Protection of Sustainable Agricultural Land (LP2B); b) Republic of Indonesia Government Regulation No. 1, 2011 concerning the Designation and Transfer of Functions of Sustainable Agricultural Land; c) Circular of the Minister of Agrarian Affairs or Head of BPN No. 5335/MK/1994 basically the preparation of Level II Region Spatial Plan prohibits the conversion of Technical Irrigation Rice Fields for no Agriculture; d) Circular of the State Minister for Agrarian Affairs or Head of BPN 5417/MK/10/1994 about the efficiency of land use for housing construction; e) Circular of the Minister of Home Affairs Number: 474/4263/SJ/1994 in essence to maintain technical irrigation fields to support food self-sufficiency.

According to Soerjono Soekanto, there are the factors that influence with the operation of law in society, namely: a) regulatory factor; b) executing apparatus; c) facilities and infrastructure; d) cost; e) society. The above opinion is in line with the opinion of Lawrence M. Friedman, who states that the law can work well if the factors related to law enforcement can work optimally. The legal system consists of a set of legal structures (in the form of legal institutions), legal substance (statutory regulations) and legal culture. First, regulatory institutions that have the authority and legitimacy in making rules or laws. In relation to the quality of normative material, it must meet the requirements and clear formulation. Second, the importance of implementing regulations carried out according to the law, without discrimination or equal justice under law. Third, the stakeholders in this case are the people who are expected to obey the law. Behavior and reaction of stakeholders is feedback to the regulatory agencies and the implementation of regulations, so as to show whether the two elements have performed their functions optimally [7].

3.3. The role of notaries in the process of obtaining the land use conversion permit (IPPT)

The position of notary is held or his presence is desired by the rule of law with a view to assisting and serving the public who need authentic written evidence regarding the circumstances, events or legal actions. With this basis, those who are appointed as notaries must have the spirit to serve the community and for the service. The people who feel that they have been served by a notary in accordance to their duties and positions can give a notary honorarium. Therefore, a notary does not mean anything if the community does not need him or her [8].

Based on the explanations about the 2004 Constitution Number 30 regarding the Position of Notary (UUJN), a notary is a public official authorized to make an authentic deed as long as the making of an authentic deed is not specific to other public officials. The making of an authentic deed is required by statutory regulations. Besides the authentic deed was made because it was desired by the parties concerned to ensure the rights and obligations of the parties. Both aim to achieve certainty, order and legal protection for the parties concerned as well as for society overall.

In carrying out their duties, a notary must uphold the notary code of ethics, because without it, the dignity and professionalism will be completely lost [9]. According to Bertens, the professional code of ethics is the norm established and accepted by professional groups which directs or instructs members
how they should act and at the same time guarantees the moral quality of the profession in the eyes of the public.

The notary has authority to make all matters concerning the actions, agreements and stipulations that are supposed to be by a general regulation or by the interested parties to be stated in an authentic deed. Authentic deed is evidence for parties to enter into legal relations. The existence of this deed is in the interest of the parties, and is made by the parties. As evidence, such a deed has perfect proof strength, meaning that the truth stated in the notarial deed does not need to be proven with the assistance of other evidence. The law provides such proof strength for the deed because the deed was made by or before a notary as a public official appointed by the Government.

The notary is only authorized to make an authentic deed if it is requested by the parties concerned. In other words, it is not an act of the notary. The notary is given the authority to concretize acts which are not legal actions; the acts are in two groups. The first class includes actions in which the notary publics real actions which are included in making ordinary notary deeds, for example actions in the form of reading and signing of the deed, the act of declaring the formalities specified in the deed. The second group includes acts in which the notary conveys certain actual acts separately, for example, the bundle deed, the minutes of the event regarding events at a general meeting of shareholders in a limited liability company, bills of protest, offer deed of payment cash and consolidation and so on. In all of the above, the notary concludes the actions, both the acts which he did himself and those carried out by others, which are not legal actions.

In addition to making authentic deeds, notaries are also tasked with registering and validating letters or deeds made under the hand. The notary also provides legal advice or legal counsel and explanation of the law to the parties concerned. Also, as stated above, in reality, the notary duties coincide with the development of time, the notary duties as according to the law and, the notary tasks according to the actual tasks and tasks that must be carried out, attached to them by the Constitution, are very different from the tasks assigned to him/her by the public in practice.

The procedure to obtain an IPPT is basically left to the regional governments, which are regulated in their respective Regional Regulations. In general, the applicant must first know whether the land use can be converter. Applications are submitted through an integrated licensing service unit. Furthermore, administrative research and field visits will be carried out. Administratively, the research will be conducted at the office of Agrarian Affairs and the Spatial Planning or National Land Agency (ATR/BPN). After a review, a technical team meeting is held to provide recommendations to the regional head whether an application is accepted or rejected, which is then submitted to the regional head for decision. Decisions of the head of the region that have been completed are returned to the ATR/BPN Office, both received and rejected and then sent back to the integrated licensing service unit. The applicant takes the completed permit while paying the fee in the form of a levy that has been determined. In this stage, the notary plays an important role, both in terms of fulfilling the administrative requirements of the applicant and as legal advisor (in house lawyer). The process is not free from obstacles. There are several obstacles in the submission of IPPT from agriculture to non-agriculture, including:

a. Lack of understanding from the community about the importance of permission to convert the land use;
b. There are differences in interests regarding the purpose and intention of controlling agricultural land use with the interests of the construction developer;
c. Lack of coordination and supervision, resulting in frequent conversions in land use without permission in the defense office;
d. Realization of the granting of permission for land use conversion that is not in accordance to the decision letter granting the permit;
e. The location to which the land use conversion permit will be applied is contrary to the regional spatial plan.

The role of the notary as a public official must be able to uphold the Oath of Notary's Profession, the Notary Position Law and the Notary Ethics Code. The Notary Code of Ethics Article 1 section (1)
states that in carrying out their duties the notary is obliged to prioritize his service to the interests of the community and the state. While UUJN Article 16 section (1) letter a, a notary is required to be able to act fairly in carrying out his duties based on the Law, such as acting honestly, thoroughly, impartially and protecting the interests of the parties concerned. Maintaining interest in this matter can be in form of holding legal counseling to the community both individuals and legal entities that apply for IPPT. On the one hand, the notary is expected to play a role in carrying out his obligations to safeguard the interests of the parties involved in legal actions in accordance with UUJN Article 16 section (1) letter a, but in this case the notary is passive, accepting the wishes of the parties who will enter into an agreement using his services, pouring out what the parties desire is in the deed, to get authentic evidence. But on the other hand the notary is expected to provide legal protection so that consumers who use his/her services feel comfortable and their rights are protected.

4. Conclusions

The issuing of the Land Use Conversion Permit (IPPT) is one instrument that is quite effective for the control and use of space. Land Use Conversion Permit must be owned by every citizen who will convert agricultural land to non-agricultural land. Lack of community knowledge on procedures to obtain IPPT, even strategic considerations on land use conversion, requires the assistance of a notary or conveyancer to be asked for clarification and assistance related to change in land status. In this case, the notary or conveyancer acts as an in house lawyer for the applicant, both individuals and legal entities. In addition, the notary also plays a role in protecting the interests of the parties by conducting legal counseling to the public who submit an IPPT. In order the implementation of the IPPT runs properly, the government or regional government must first complete every required legal instrument. In addition, there is a need for coordination between the parties, starting from the parties involved in the procedure to those who supervise the issuance of permits. The notary and conveyancer must also be more actively involved in controlling spatial use through providing public outreach programs. This is intended to increase public understanding to the importance of conserving and controlling sustainable food of agriculture land.

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