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Perspective of Public Interest and Protection of Sustainable Food Land in Java Integrated Industrial and Ports Estate Indonesia

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Abstract: Industrial growth and rural development promote balanced development to protect the public interest. Governmental oversight ensures regulation and governance for sustainable industrial growth. The research aims to clarify the modifications in agricultural land use within the Gresik Special Economic Zone or Java Integrated Industrial and Port Estate (JIPE) from the viewpoint of public interest and land conservation in adherence to Law Number 41 of 2009 on the Protection of Sustainable Food Agricultural Land. The legal norms studied in this research are changes in the function of agricultural land into industrial land from the perspective of public interest, the Farmland Preservation Act, and the Welfare State. Changes in the conversion of agricultural land in Manyar District, Gresik Regency, East Java Province for industrial purposes in the Java Integrated Industrial and Port Estate (JIPE) Area which was formed based on PP No. 71 of 2021. The Law on the Protection of Sustainable Food Agricultural Land and the Land Acquisition for Development for the Public Interest, as amended by the Job Creation Law, stipulates development in the public interest for the prosperity and improvement of the people's economy. Sustainability solutions seeking sustainable models for industrial growth without compromising public welfare.

Keyword: Agricultural Land, Industrial Estate, Java Integrated Industrial and Port Estate, Public Interest.

INTRODUCTION

Agricultural land has a key purpose and function in the life of an agrarian civilization that relies on agriculture; agricultural land has economic, social, and religious importance (Kasdi et al., 2022). The importance of land makes agricultural land scarce because the amount of agricultural land does not increase but the need for land always increases rapidly with the need for industrialization or settlement. Change from agricultural land to industrial areas impacts food security and rural livelihoods. Public interest law governs land conversion to protect rural populations.

It has been regulated in Article 28A and Article 28C of the 1945 Constitution of the Republic of Indonesia, which corresponds to Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social, and Cultural Rights

(ICESCR) in protecting the interests of agricultural land to ensure the availability of the right to food for all people then governed by Law No. 41 of 2009 Concerning the Protection of Sustainable Food Agricultural Land, which safeguards agricultural land from hazards (Rahmanto et al., 2022). Land conversion is linked to the rural population's loss of access to key resources that can ensure people's welfare.

In contradiction to the efforts to protect agricultural land, industrialization efforts aim to improve people's welfare through the industrial sector by opening up greater employment opportunities than employment in the agricultural sector, hence the emergence in various regions of Special Economic Zones (hereinafter referred to as KEK) with the implementation of the requirements of Article 7 paragraph 4 of Law No. 39 of 2009 on Special Economic Zones, as modified by Law No. 11 of 2020 on Job Creation (Indonesia, 2009, 2020). One of them is the formation of Gresik Special Economic Zones in East Java Province under the Government Regulation of the Republic of Indonesia Number 71 of 2021 concerning Gresik Special Economic Zones.

The Gresik Special Economic Zone was proposed by PT Berkah Kawasan Manyar Sejahterah until finally through Government Regulation it was determined to be a special economic zone with an area of 2,167 hectares located in Manyar District, Gresik Regency, with corporate operations such as manufacturing and processing; research; energy development; technology development; logistics and distribution; with the aim of attracting high-value investment and create jobs, the Gresik Special Economic Zone is also known as the Java Integrated Industrial and Port Estate (hereinafter abbreviated as JIPE).

The land used for the JIPE area was previously pond agricultural land, in terms of the need for agricultural land for food security, the conversion of agricultural land into industrial land has legal issues regarding agricultural land preservation, which is an integral component of agrarian reform and comprises structural work linked to elements of ownership and aspects of use/utilization as confirmed in Agrarian Reform and Natural Resource Management.

The impacts of industrial land conversion on rural welfare are resource loss, welfare concerns, and public interest La. Resource loss means rural population loses access to key resources impacting their welfare. Next impact is lack of access to resources affects the well-being of rural communities. Contribution public interest law that regulating land conversion to safeguard the welfare of rural population.

Based on this background, researchers are interested in examining how changes in the function of agricultural food land in the Gresik Special Economic Zone or Java Integrated Industrial and Port Estate (JIPE) in the public interest and for land conservation, as stated in Law Number 41 of 2009 Concerning the conservation of Sustainable Food Agricultural Land for Java Integrated Industrial and Port Estate (JIPE).

METHOD

This research is normative legal research, which examines and analyses the object of research based on applicable legal norms (*ius conctituendum*) (Suyanto, 2022a), doctrines and opinions of legal experts, and legal principles by using legislative, conceptual, and philosophical approaches to examine legal norms related to conflicts of legal norms, vacancies of legal norms and vagueness of legal norms. The legal norms studied in this research are the change of function of agricultural land into industrial land from the perspective of public interest, and the Agricultural Land Protection Law with a study of the welfare state theory.

RESULTS AND DISCUSSION

The Welfare State Concept and National Strategic Projects in Gresik Special Economic Zone

As stated in the preamble of the 1945 Constitution, the architects of the Unitary State of the Republic of Indonesia envisioned the prosperity and well-being of the people, "the

government protects the entire nation and all spilled blood, promotes the general welfare and educates the nation's life", this is in line with the notion of a welfare state in which the state is independently considered to be the holder of an important role in ensuring the welfare of each of its citizens(Kresno, 2019).

The welfare state is a concept embraced by the Indonesian Constitution, but in practice, in everyday life, the concept is biased by the overlapping of regulations relating to the livelihood of the people, especially the concept of how to prosper the people and the entire nation of Indonesia. The articles on welfare in the 1945 Constitution and its amendments are more numerous when compared to the constitutions of other countries that aim for welfare such as Norway, Japan, America, and Malaysia which have a relatively high human development index. Indonesia has 14 welfare articles in the 1945 Constitution but does not have the power to form a Prosperous Society when compared to the constitutions of other countries with the same goal such as Norway, Japan, the USA, and Malaysia which have a relatively high Human Development index. Norway only includes 3 articles in its Constitution, namely articles 110, 110a, and 110b but was able to achieve an almost perfect HDI.(Ministry of Justice and Public Security of Norway, 2020) Similarly, Japan has only one article on welfare in its constitution(Mikanagi, 2016).

The welfare state idea is an essential component of thought in developing a populist economic system because the welfare state idea contains the spirit of economic growth based on the ideals of fairness, which is more popularly called the modern legal state. Bagir Manan said the welfare state idea is: "The state or government is not merely the guardian of security or public order, but the main bearer of responsibility for realizing social justice, general welfare, and the greatest prosperity of the people"(Wibowo, 2022).

The founding father of the Indonesian state 'just and prosperous', 'general welfare', and 'social justice', uses the phrases welfare state legislation, where the state plays an active role in controlling the economy, all of which are contained in the preamble of the 1945 Constitution, this shows that constitutionally Indonesia follows the welfare state model, ideology even though the reality is increasingly biased(Gunawan, 2020). Vilhem Lundsted argues that to achieve a prosperous country in terms of its social order is the need to encourage People who live at a specific degree of civilization to attain society's aspirations, this is the same opinion as Roscoe Pound's, but Vilhem Lundsted emphasizes more on human desires, namely the development of life for a more decent next life(Riskanita & Widowaty, 2019).

Land use changes from agricultural to industrial land such as in special economic zones in Gresik Regency cannot be avoided, because as a developing district, it has a fairly high productive growth, which is then supported by the increasing need for land for industrial purposes. The occurrence of land conversion is impacted by several factors. First, extrinsic variables such as the dynamics of demographic growth and economic areas(Salvia et al., 2020). Second, in the form of socio-economic conditions of users or owners of agricultural land, and third in the form of regulations and legislation regarding the transfer of land functions.

Therefore, the outcome indicates that there is a greater need for protection and a decrease in the rate at which agricultural land is being withdrawn from the agricultural land fund. This is necessary to stabilize the agro-sector, which is essential for maintaining the landscape, protecting biodiversity, and ensuring food self-sufficiency, among other things. Since state policy does not prioritize protecting agricultural land as a component of the environment, its execution is ambiguous and non-conceptual concerning societal requirements and contemporary advancements(Lucia et al., 2022).

The National Strategic Project is one of the realizations of President Joko Widodo's vision since 2016 to overcome the infrastructure deficit and the decline in investment after the global crisis designed through the 2020-2024 National Medium-Term Development Plan which focuses on integrated infrastructure development such as Industrial Estates, Special Economic

corporate model (Bismarck, Residual Model, and Minimalist Model. Besides Indonesia, the minimalist model is also adopted by Latin countries such as Brazil, Italy, Spain, Chile, and countries in the Asian region such as Sri Lanka, the Philippines, and South Korea. Indonesia is categorized as applying the minimal welfare state model, it can be seen from the basic foundation, namely the 1945 Constitution, Law No. 40 of 2004 concerning the National Social Security System, and government spending on social development is still too small(Suharto, 2010).

Land Use Change in Special Economic Zones and Land Acquisition for Public Interest

The development of the Gresik Special Economic Zone requires the availability of land, one of the mechanisms taken in realizing the welfare and prosperity of the nation, state, and society while still guaranteeing the legal interests of the entitled parties is procuring land for the public interest(Suyanto, 2022b). Through the stages of planning, preparation, implementation, and submission of results(Suyanto et al., 2001).

Article 1 point 2 of Government Regulation No. 24 of the Republic of Indonesia relating to Industrial Estates, defined as a place of concentration of an industry that has been outfitted with supporting infrastructure and facilities that are maintained and developed by an industrial estate corporation with a business license in an industrial estate. The land is an environment that consists of several components, such as soil, climate relied on, vegetation where these factors affect use, while agricultural land based on Gresik Regency Regional Regulation No. 7 of 2015 Concerning the Protection of Sustainable Food Agricultural Land (hereinafter referred to as PLP2B), namely a plot of land used in agricultural business. Included in the agricultural business is the business of food crops, horticulture, animal husbandry, plantations, and fisheries(Sawale & Mahadevia, 2011). Pond land as land used for the Java Integrated Industrial and Port Estate (JIPE) in the Gresik Regency Special Economic Zone is part of agricultural land, in general, pond land is a pond made by humans in tidal areas to raise various types of fish, such as milkfish, shrimp, salt and other aquatic animals.

Law requires the conservation of sustainable food agricultural land No. 41/2009 implemented through Government Regulation (hereinafter referred to as PP) No. 1/2011 is a form of regulation against the problem of conversion of food agricultural land to non-agricultural land, which occurs every year, thus providing agricultural protection to ensure national food sovereignty(Indonesia Konstitution, 2009). The regulation specifies that 'land designated as sustainable food agricultural land is protected and cannot be altered, although there is a provision in the regulation a quo applying the exceptional clause in Article 44 paragraph (2) of the PLP2B Law, this permits the conversion of Sustainable Food Agricultural Land in the benefit of the public.

The requirements for the conversion of agricultural land identified as being in the public interest are not specifically controlled in the text of the PLP2B Law(Suyanto, 2019b) but are explained in Article 44 paragraph (2) of the Law a quo, which reads:

The majority of the Community's interests are represented by the creation of publicly owned roadways, reservoirs that hold water canals, watering, drinking water or clean water channels, drainage systems and sanitary conditions, irrigation purposes buildings, seaports, airports, commuter rail and highways, terminals, safeguarding facilities, conservation areas, and power plants and the networks.

There are three steps to making governmental policies and regulations. The first step of policy-making means the formulation of policies regulating land conversion. The second step is law enforcement of regulations to govern land conversion. Then the last step make sure that governing land conversion protects the public interest. The regulation of public interest as in the explanation of the article is not a binding legal norm under the PLP2B Law, then in Government Regulation No. 1/2011, in the body of Article 36 paragraph (1), the general

provisions are stipulated so that the limitations on the conversion of agricultural land for public purposes are binding and restrictive.

Against the conversion of agricultural land into industrial land in the Manyar District Area of Gresik Regency in the Gresik Regency Special Economic Zone Java Integrated Industrial and Port Estate (JIPE) whether based on the public interest as regulated in PP No. 1 Year 2011. If based on the provisions of the PLP2B Law, the regulatory norms of public interest are not binding and restrictive, so it is very possible that industrial interests are classified in the norm of public interest, even though there is PP No. 1 in the Year 2011, it is possible according to the law to limit the public interest as long as it does not conflict with the PLP2B Law, but refers to regulations that are specific to the regulation of public interest, namely Land Acquisition for Development in the Public Interest Act No. 2 of 2012, which establishes a generic description of public interest (general guideline), namely the interests of the entire nation, country, and community that the government must realize and employ to the maximum degree possible for the people's prosperity.

So that to find the problem of land conversion in the Java Integrated Industrial and Port Estate (JIPE) Area, it must examine two legal regulations that regulate public interest as a criterion for the conversion of Sustainable Agricultural Food Land, namely Article 44 paragraph (2) of the PLP2B Law along with its explanation in conjunction with Article 36 paragraph (1) of PP Number 1 of 2011 and Article 1 paragraph 6 in conjunction with Article 10 of the Law No. 2 Year 2012(Suyanto, 2019a).

The terms of the PLP2B Law changed with the passage of the Law on the Creation of Jobs, namely the provisions of Article 44 and Article 73, which regulate the transformation of Sustainable Agricultural Food Land, by adding new provisions related to the criteria for the conversion of Sustainable Food Agricultural Land, into three criteria, First, disaster, Second, Public Interest and, Third National Strategic Project (hereinafter referred to as PSN). There is an expansion with the passage of the Creation of Jobs Law, of the realm of public interest activities in the Public Interest Law, as the amendment of article 10 of the Land Acquisition Law by adding 6 (six) fields of activities classified as the public interest, including the following: a) Upstream and downstream oil and gas industrial estates initiated and/or controlled by the Central Government, Regional governments, State-Owned Enterprises, or Regional-Owned Enterprises; b) Special Economic Zones initiated and/or controlled by the Central Government, Regional governments, State-Owned Enterprises, or Regional-Owned Enterprises; c) Tourism areas initiated and/or controlled by the Central Government, Regional governments, State; d) Food security zones created and/or administered by the Central Government, regional governments, state-owned or regionally held corporations; e) Areas of technology development started and/or managed by the Central Government, Regional Governments, State-Owned Enterprises, or Regional-Owned Enterprises.

The government's role in industrial land conversion has an important role. The government has to protect areas to ensure the availability of food for all people which means food security zones. It needs the participation of the central government and regional government. The central government ensures the creation and administration of food security zones. Regional governance collaborative efforts to protect and govern food security zones. The central role of food security zones is understanding food security zones.

Criteria for the public interest in the form of Special Economic Zones (hereinafter abbreviated as SEZs) initiated and/or controlled by the Central Government, Regional governments, State-Owned Enterprises, or Regional-Owned Enterprises are categorized as public interest to facilitate land acquisition in creating jobs(Starodumova & Sitdikova, 2022). Namely through the provision 'in the case of the public interest and/or National Strategic Projects, Sustainable Agricultural Food Land as referred to in paragraph (1) may be transformed and executed in compliance with applicable laws and regulations. There are at least two conditions for the transformation of land for the benefit of National Strategic Projects, namely.

First, the requirements for the conversion of Sustainable Food Agricultural Land for PSN are regulated at least the same as the requirements for the conversion of Sustainable Food Agricultural Land for the public interest, namely, a feasibility study strategic is conducted, a land conversion plan is prepared, the owner's rights are acquired as well as replacement land for the converted Sustainable Agricultural Food Land. Second, the requirements for conversion for PSN are lighter than those for a public interest, because PSN contains strategic projects and/or programs and has great urgency to realize the nation's welfare.

The Gresik Special Economic Zone formed based on Government Regulation of the Republic of Indonesia Number 71 of 2021 is based on the interests of accelerating job creation and regional development of Gresik Regency in supporting regional and national economic development based on the provisions of Article 7 paragraph (4) of Law Number 39 of 2009 as amended by Law Number 11 of 2020 concerning Job Creation (Indonesia Konstitution, 2020).

Industrial land conversion from agricultural land has challenges loss of rural resources and welfare due to land conversion. The solution by implement regulations and policies to protect the rural population's interests. The function of public interest law that enforce laws to govern land conversion in the public interest (Guo et al., 2022). Industrial land conversion has an economic impact or economic changes that challenge agricultural to industrial land conversion and government initiatives efforts to mitigate economic challenges in land conversion. Urban population, urbanization rate, industrial value added, food production, and overall population are the primary drivers of land use change. The Indonesian government will be able to manage and plan land more logically and scientifically and with more knowledge based on our research (Wang et al., 2023).

The Job Creation Law has an impact on the increasing activities of land conversion in Indonesia for the public interest and national strategic projects, the criteria in the Job Creation Law regarding the conversion of paddy fields for the public interest, are additional criteria compared to the previous regulation, namely Law Number 2 of 2012 concerning Land Acquisition for Development for the public interest. The additional criteria such as the permissibility of the transfer of function of paddy fields for upstream and downstream industrial areas, oil and gas, special economic zones, industrial areas, tourism areas. However, the land conversion must fulfill the criteria in Law No. 41/2009 on Sustainable Food Agricultural Land. For the public interest, land can be converted with requirements that must be met, including a strategic feasibility study, preparation of land conversion, acquisition of land rights ownership, and provision of replacement land.

In implementing the provisions of article 28 and article 185 of the Job Creation Law, Government Regulation Number 26 of 2021 on the Implementation of the Agricultural Sector was issued which has been further amended by government regulation Number 52 of 2023. Meanwhile, prior to the enactment of the Job Creation Law, in order to protect agricultural production and accelerate the determination of maps of protected paddy fields and the availability of paddy fields and support national food needs, an integrated team for controlling the conversion of paddy fields was formed, which was formed by Presidential Regulation Number 59 of 2019 concerning Controlling the Transfer of Paddy Field Functions.

CONCLUSION

Changes in the conversion of agricultural land in Manyar District, Gresik Regency, East Java Province for industrial purposes in the Java Integrated Industrial and Port Estate (JIPE) Area in the Gresik Regency Special Economic Zone formed based on PP No. 71 of 2021 is a form of exceptional clause of the Government in order to realize a welfare state, namely Development for the public interest for the prosperity and improvement of the people's economy as as specified in the Law on Sustainable Agricultural Food Land Protection and the Law on Land Acquisition for Development in the Public Interest, as revised by the Job Creation Law.

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