

Legal Protection of Farmers' Rights Regarding the Conversion of Agricultural Land Functions for Non-Agricultural Investment Purposes in Indonesia



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ABSTRACT: The rate of conversion or conversion of agricultural land to non-agricultural land is increasing in tandem with government initiatives designed to attract foreign investment in Indonesia's non-agricultural sectors, including the industrial, mining, and infrastructure sectors. This policy has a significant impact on the rights of farmers on progressively damaged agricultural land. Government regulations do not offer maximal legal protection for farmers' rights to their agricultural land, rather they facilitate the transformation of agricultural land into non-agricultural land. Then, a juridico-normative approach is taken to study legal legislation controlling the protection of agricultural land, focusing on the place of Sustainable Food Agricultural Land Protection in the development of national legal regulations. This research is also integrated with an empirical research methodology by personally seeing the object of study in the Karawang Regency area, which has vast agricultural land but is slowly depreciating owing to land conversion for the benefit of non-agricultural sector investment.

KEYWORDS: Agricultural land, conversion of land, and land protection

INTRODUCTION

This study is the outcome of field research undertaken by the research team in the region of the Karawang Regency, one of the agricultural regions in West Java with the largest rice granaries. The practice of converting agricultural land for investment purposes in the non-agricultural sector has resulted in a reduction or depreciation of agricultural land in areas that formerly included a sizable amount of such property. According to data from the Karawang Investment and Integrated Services Service, investment realization in this district reached IDR 10.4 trillion in the third quarter of 2022.¹ The growth of investment in the Karawang region is a result of a rise in infrastructure development, particularly the transportation route that is currently being developed in Karawang, as well as the presence of several national strategic projects in the Karawang region, which serve as a particular magnet for investors.²

There are tens of thousands of agricultural lands that preserve food security in the region that have the potential to be converted into industrial regions, which must be considered amongst the expanding industrial sector. According to data from the Karawang Regency Government, industrial land being developed in Karawang comprises 13,718 hectares, or 7.85 percent of Karawang's total area.³

There are still agricultural lands in these industrial development zones, which have the potential to be turned into industrial zones for investment purposes. It is feared that the Karawang Regency Government's plan to modify the Regional Regulation on Regional Spatial Planning (RTRW) to suit investor desires for industrial expansion strengthens this indication.

The information gathered from the Karawang Region is only representative of the rise of investment in Indonesia, which has resulted in an increase in the conversion of agricultural land to non-agricultural activities in the form of expanding industrial operations. According to reports, the pace of rice field conversion in Java is substantial. The result of the Infrastructure Summit, which influenced the construction of the 652 km Trans Java toll road to assist Java Island's industry. Consequently, 655,400 hectares of agricultural land had to be transformed, except 60 hectares of protected forest land in the provinces of Central Java and East

¹ M.Ali Khumain, Keeping the area of agricultural land in the middle of the investment rate in Karawang, see, <https://megapolitan.antaranews.com/berita/219017/menjaga-areal-lahan-pertanian-di-tengah-laju-investasi-di-karawang>. Access on November 23, 2022, at 16.00 WIB.

² *Ibid.*

³ *Ibid.*

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Java.⁴ The rate of land conversion in Java has reached an average of forty thousand hectares per year,⁵ and Java has supplied 53 percent of the nation's rice production to date.⁶ Shrinkage of agricultural land because of the conversion of agricultural land to non-agricultural property has a significant impact on the loss of farmers' rights to agricultural land, which is the primary source of capital for farmers.

RESEARCH PROBLEMS

Based on the conditions, the need for investment in a region of Indonesia is crucial for its development; however, the need for investment does not have to stifle or negate the interests of farmers in agricultural land, which is the fundamental requirement of farming communities. Moreover, agriculture is one of the primary industries that sustains the lives of the people of Indonesia. Therefore, this study investigates how legal protection is afforded to farmers because of the policy of converting agricultural land into non-agricultural land, and how a policy should ideally be implemented by the government, both the central government and local governments, to protect the rights of farmers on agricultural land.

RESEARCH METHOD

In this study, a juridical-normative research method⁷ with a statute-based approach to regulations controlling Farmers' Rights to the Transfer of Functions of Agricultural Land for Investment Purposes was employed. The statute approach is an approach to the study of various regulations or legal rules pertaining to the use of agricultural land, such as the Basic Agrarian Law, the Agriculture Law, the Law on the Protection of Sustainable Food Agricultural Land, and the Job Creation Law, as well as other related legal products under laws, such as Government Regulations, Presidential Decrees, and other technical regulations. In addition to the juris-normative approach, this research employs an empirical approach by performing direct research on the agricultural area that serves as the research site. The research results were then assessed qualitatively by interpreting, describing, and assembling the obtained data, both primary and secondary data, in a logical and systematic manner in accordance with the specified problems.

DISCUSSION

A. Agricultural Land Function Conversion for Investment

Indonesia is an agrarian nation with agriculture as its primary economic foundation. Most Indonesians continue to rely on the agriculture industry. Land is a crucial resource for farmers and agricultural growth alike. This is since agricultural activities in Indonesia are still dependent on land (land based agricultural activities).⁸ The agricultural sector has contributed significant contributions to national development, such as boosting national food security, employment, people's incomes, Gross Regional Domestic Product (GRDP), foreign exchange earnings through export-import, and inflation control. operate optimally

The conversion of agricultural land is not a new issue. Population increase and economic growth necessitate the construction of infrastructure in the shape of roads, industrial buildings, and towns; this, of turn, requires the availability of land. The conversion of agricultural land can be carried out directly by farmers who own the land, or indirectly through parties who first engaged in the purchase and sale of agricultural land. Land prices influence landowners' decisions to convert or sell their agricultural land.

Land conversion can be defined as a shift in the function of a land area from its original use to another function that can have adverse effects on the environment and the land's potential.⁹ According to Irawan and Friyatno (2005),¹⁰ the micro-level conversion of agricultural land can be carried out by farmers or by third parties. In this scenario, the other party is carried out by the federal or local government. Land conversion carried out by the central government or local government for investment objectives typically has a bigger influence on food production capacity since the process of land conversion typically encompasses a very large area of land, particularly for industrial investment purposes.¹¹

In addition to the government, other parties who can play a role in converting agricultural land to industrial land are corporate players or capital owners who can acquire land for investment purposes. In 2011, 75% of the mining sector in Indonesia encroached into agricultural, plantation, and forestry properties, including protected forests and nature conservation zones. This is an increase from May 2009, when the oil and gas industry sector reached 69.9%. (oil and gas). Approximately 70% of this amount

⁴ Poltak Partogi Nainggolan, *Kapitalisme Internasional dan Fenomena Penjarahan Lahan di Indonesia*, *Politica Vol. 4 No. 2 November 2013*, p. 227

⁵ Ahmad Yakub, "Perampasan Tanah di Indonesia: mencabik hak konstitusi rakyat tani," *Presentation paper*, Jakarta: SPI, 2013.

⁶ Poltak Partogi Nainggolan, *Op.cit*

⁷ Soetrisno, *Metodologi Research*, UGM, Yogyakarta, 1978, p. 49

⁸ Ika Devy Pramudiana, *Dampak Konversi Lahan Pertanian Terhadap Kondisi Sosial Ekonomi Petani Di Kecamatan Tikung Kabupaten Lamongan*, *Asketik Vol. 1 No. 2 Desember 2017*, p. 129

⁹ Muhajir Utomo, et.al, *Pembangunan dan Pengendalian Alih Fungsi Lahan*, Lampung: Universitas Lampung, 1992.

¹⁰ Irawan and Friyatno, *Perumusan Model Lahan Pertanian*, Pusat Penelitian Sosial Ekonomi, Bogor, 2005.

¹¹ *Ibid.*

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is held by American corporations.¹² There are companies from Malaysia (Guthrie Bhd, Kuala Lumpur Kepong Bhd, and the Golden Hope Group), Singapore (Wilmar International Group), the United States of America (Hindoli-Cargill), and Belgium involved in the palm oil industry, which is land-hungry and extremely detrimental to the structure and condition of the soil (SIPEF Group). Guthrie Bhd has 167,908 hectares of land, whereas Wilmar International Group owns 85,000 hectares, Hindoli-Cargill owns 63,455 hectares, Kuala Lumpur Kepong Bhd owns 45,714 hectares, SIPEF Group owns 30,952 hectares, and Golden Hope Group owns 12,808 hectares.¹³

Regulatory policies of the central government and regional governments enacted in the form of government regulations and regional regulations for the use of agricultural land for the benefit of non-agricultural industries, resulting in land narrowing, are primarily responsible for land conversion in investment activities. The narrowing of land will have a direct effect on the quantity of rice produced by farmers in a region or regions. This narrowing of land will also affect the economic conditions of farmers, as this change in land usage demonstrates a shift from the agricultural to the non-agricultural sector.

B. Impact of Conversion of Agricultural Land

In addition to posing a threat to food security, the impact of converting agricultural land has repercussions for employment, the distribution of welfare, the quality of the environment, and the stability of the social structure of a community. The concrete transfer of agricultural land has the following effects:

1. The Risks to Food Security

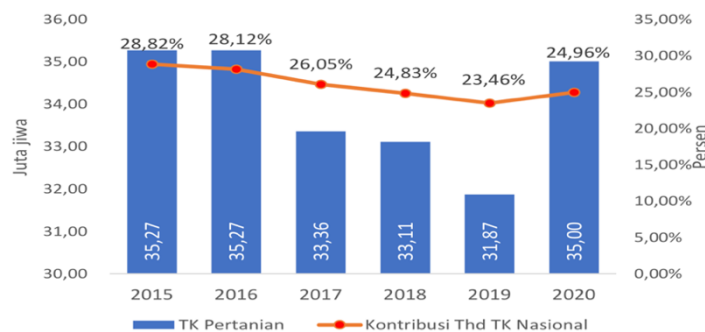
The reduction in food production caused by the conversion of agricultural land is permanent because the process of converting agricultural land to non-agricultural nature cannot be reversed (irreversible), i.e., once agricultural land has been converted to non-agricultural nature, it can no longer be used as rice fields. Reduced access to land for agricultural purposes has a negative influence on farmer production, which can endanger national food security.¹⁴

2. The Deterioration in Environmental Quality

Environmental quality threats in addition to providing as a location for rice cultivation, agricultural land can also be utilized to absorb excess runoff water, manage flooding, and protect the environment. If a stretch of paddy fields is converted into a residential neighborhood, a hotel, or an industrial facility, the surrounding land will be impacted automatically. There will be less room for excess water, resulting in a rise in the frequency of natural disasters such as floods.

3. Threats to The Job Market

According to data from the Central Statistics Agency (BPS), in 2020, a labor market share of 24.96% or 35.00 million persons out of a total workforce of 140.22 million will be employed in the agriculture industry in Indonesia.



Narrow Agricultural workforce 2015-2019.

Essentially, the conversion of agricultural land results in the loss of both food production and employment prospects. As is generally known, farming has ties to numerous upstream and downstream companies; therefore, converting farmland will eliminate employment opportunities.

¹² Kompas Research and Development data source, in Hadi, Syamsul et al. *Kudeta Putih: Reformasi dan Pelembagaan Kepentingan Asing dalam Ekonomi Indonesia*. Jakarta: Independent Indonesia, 2012, p. 48

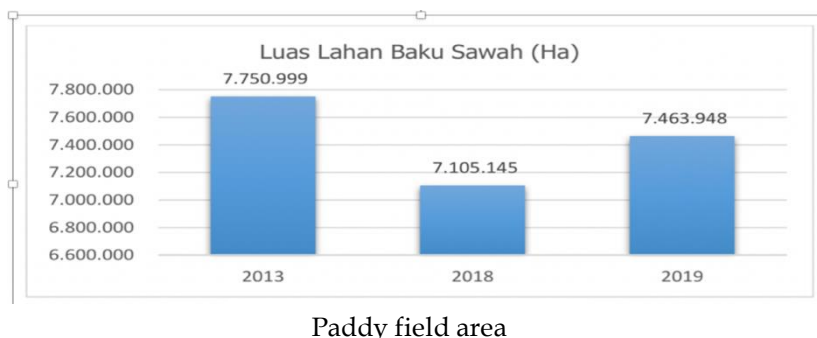
¹³ See "Capping land ownership," the Jakarta Post, April 8, 2013, p. 6

¹⁴ Land conversion, which mostly occurs in Java Island, will directly result in a decrease in rice production by up to 7.43%. This does not include the impacts borne by related sectors and other parties, non-farmers, such as retailers, distributors and the food processing industry. Hadi, Syamsul et al. *The White Coup: Reform and Institutionalization of Foreign Interests in the Indonesian Economy*. Jakarta: Independent Indonesia, 2012, in, Partogi Nainggolan Poltak, *Op.cit.*, p. 248

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4. Decrease in Agricultural Land Area

Land conversion is one of the most significant challenges facing the agricultural sector, as it not only reduces food production but also causes investment loss, degradation of agro-ecosystems, and degradation of agricultural traditions and culture, resulting in a reduction in the cultivated area of farming and a decline in the welfare of farmers to the point where farming cannot guarantee a decent standard of living.



In addition to the issue of diminishing land area, another land-related issue is farmers' increasingly restricted land ownership. According to the 2018 Inter-Census Agricultural Survey (SUTAS), the total amount of agricultural land held by agricultural business households is less than 0.5 hectares, comprising 15,89 million households, or 59.07% of all farming families. The number of farmer households with fewer than 0.5 hectares of land increased from 14.62 million in 2013 to 15.89 million in 2018. This condition of land ownership was brought about by the increased conversion of agricultural land to agricultural purposes settlements and public amenities, the occurrence of land fragmentation because of the inheritance process, and the sale of paddy fields.

5. Marginalization of the Population

Without government protection, land convention policies that favour excessive investment in industry and mining can isolate up to 90 percent of the population.¹⁵ According to the Agrarian Reform Consortium's data, there are at least 28 million Farmer Households (RTP) in all of Indonesia, of which 6.1 million RTP on Java Island and 5 million RTP outside of Java Island have no agricultural land. In contrast, the average land area owned by landowners is merely 0.36 hectares. Consequently, it may be stated that there are around 32 million farmers who are merely agricultural laborers and 90 million subsistence farmers in the world today. Even though most Indonesian farmers reside in rural areas, 45 percent of administrative villages are classified as undeveloped. Another fact reveals that up to 75 percent of the village's inhabitants are farm laborers and smallholders.¹⁶

80% of Indonesia's geography is rural, home to 135 million farmers, or 57% of the country's total population; hence, the portrayal of unequal land tenure data is very susceptible to agrarian disputes. According to 2011 Bappenas data, 16.7% of the rural population is extremely poor, hence social insecurity is a cause for worry.¹⁷

C. Functions of Legal Protection for Farmers' Rights Regarding the Conversion of Agricultural Land

1. Legal Protection of Agricultural Land Regulation

The classification of Indonesia as an agricultural nation reflects the importance of agriculture to the national economy; in reality, Indonesia is the third-largest agricultural nation in the world after India and China.¹⁸ Agriculture is a crucial sector for the improvement of the Indonesian economy, even though it has a very little contribution, because it is so important to the food security of the people.¹⁹ Most Indonesians continue to rely on the agriculture industry.²⁰ The agricultural sector is a priority for legal protection in the growth of the Indonesian economy because of its importance and relevance to the economic demands of the Indonesian population.

In the design of Law No. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, the importance of safeguarding the agricultural industry is manifest (PLP2B). This statute establishes a system and procedure for planning and

¹⁵ "Indonesian NGO coalition to stage protest during ASEAN Summit," Land Watch Asia-WALHI, 18 November 2012, accessed on 10 January 2013; "Indonesia protests, land grabs Indonesia," Land Watch Asia-WALHI, 18 November 2012, accessed 24 November 2022.

¹⁶ *Ibid.*

¹⁷ Poltak Partogi Nainggolan, *Op.cit.* p. 250

¹⁸ Tambunan, Tulus T. H. A Survey of Business Models for Agricultural Investment in Indonesia. *TKN Report, International Institute of Sustainable Development*, 2012.

¹⁹ Karina & Sutrisna, Pengaruh Tingkat Produksi, Harga, dan Konsumsi terhadap Impor Bawang Merah di Indonesia. *E-Jurnal EP Unud*, 5 (1), 2016, p. 139-149, in, Ni Putu Riska Aryawati, and Made Kembar Sri Budhi, Pengaruh Produksi, Luas Lahan, dan Pendidikan Terhadap Pendapatan Petani dan Alih Fungsi Lahan Provinsi Bali, *E-JURNAL EKONOMI PEMBANGUNAN UNIVERSITAS UDAYANA*, VOL. 7, No.9 September 2018.

²⁰ Minot, Nicholas, Randy Stringer, Wendy J. Umberger & Wahida Maghraby, Urban Shopping Patterns in Indonesia and Their Implications for Small Farmers, *Bulletin of Indonesian Economic Studies*, 2015, p. 375-388.

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establishing, developing, utilizing and cultivating, governing and overseeing food-agricultural lands and their surrounding areas in a sustainable way. In restricting the rate of conversion of agricultural land in Indonesia, the establishment of the PLP2B Law is a tangible form of government policy to conserve agricultural land. The protection of agricultural land as emphasized in Article 3 of the PLP2B Law so as to (1) protect areas and food agricultural land in a sustainable manner, (2) ensure the availability of food agricultural land in a sustainable manner, (3) realize self-sufficiency, food security and sovereignty, (4) protect the ownership of agricultural food land owned by farmers, (5) increase the prosperity and welfare of farmers and the community, (6) increase the protection of agricultural land.²¹

Article 20, Article 21, Article 27 paragraph (2), Article 28A, Article 28C, and Article 33 of the 1945 Constitution of the Republic of Indonesia stipulate constitutional responsibilities regarding the protection of agricultural land (UUD 1945). Implemented in a more specific manner by Government Regulation No. 1 of 2011 on the Determination and Transfer of Functions of Sustainable Food Agriculture Land. Given the issue of the conversion of food-producing agricultural land, particularly agricultural land (rice fields), to non-agricultural land, which occurs annually. Efforts to develop food security and sovereignty to realize the well-being of the populace are crucial to achieve. To achieve food security and independence, sustainable agricultural development is required, the majority of which is still dependent on land-based agricultural patterns.

However, the construction of legal protection for the interests of agricultural land as the main foundation of the Indonesian people's economy, as stipulated in the 1945 Constitution, the PL2B Law, and Government Regulation No. 1 of 2011, stands in stark contrast to the speed of the process of transferring agricultural land to the interests of investment in the non-agricultural sector. Even though severe legislation has been enacted to safeguard agricultural property from the practice of land conversion, no significant concrete measures have been taken to restrict the pace of conversion of agricultural land to non-agricultural investment uses. As a result of the amendment of the PLP2B Law and the enactment of Job Creation Law No. 11 of 2020, it is anticipated that the conversion of land functions that has continued unabated has accelerated significantly.²²

Increasingly, food agricultural land is being converted to non-agricultural uses, such as industrial land and road construction,²³ as evidenced by the amendments to Article 44 of the PLP2B Law in the Job Creation Law, which provide various facilities for land conversion for the public interest on land that has been designated as Sustainable Food Agriculture Land. The provisions of the Job Creation Law eliminate four (4) essential prerequisites for the conversion of agricultural land to non-agricultural land. These prerequisites consist of 1) a strategic feasibility analysis, 2) the development of a land conversion plan, 3) the release of the owner's ownership rights, and 4) the provision of replacement land for the converted Sustainable Agricultural Land.

Clearly, the abolition of the four parameters that are carefully regulated by the PLP2B Law will result in a large reduction of agricultural land. This is since the four requirements highlighted in the PLP2B Law were originally unable to stem the trend of agricultural land loss. This clause regarding the requirements for the transfer of agricultural land is eliminated and replaced with the phrase "performed in accordance with applicable laws and regulations" in the Job Creation Law.²⁴ With the implementation of Government Regulation (PP) Number 26 of 2021 about Implementation of the Agricultural Sector, which is a derivative regulation of Law Number 11 of 2020 concerning Job Creation, the eviction of paddy fields has become even more imminent. This is since the rules of Article 103 paragraph 3 stipulate a number of prerequisites for the conversion of agricultural property that facilitate the conversion process. In fact, the Job Creation Law no longer regulates the government's requirement to replace twice the amount of agricultural land that is being converted, making it simpler to accelerate the rate of land conversion without the obligation for local governments to replace land.²⁵

Consequently, it can be stated categorically that the Job Creation Law does not guarantee maximal protection for the interests and rights of farmers during the conversion of agricultural land for non-agricultural investment reasons. The establishment of the Job Creation Law has further eroded the position and standing of farmers' rights to agricultural land, which is the primary asset of their agricultural foundation. The existence of the Job Creation Law should increase the standards for the conversion of agricultural land to non-agricultural land as a form of legal protection for the rights of farmers against the threat of taking over the rights of farmers to converted land.

²¹ Abdilah, UU Cipta Kerja Tetap Lindungi Petani Dan Lahan Pertanian <https://mediaindonesia.com/ekonomi/356974/uu-cipta-kerja-tetap-lindungi-petani-dan-lahan-pertanian>. Dalam, FX. Sumarja, et.al, Problematika Perlindungan Lahan Pertanian Berkelanjutan Pasca Undang-Undang Cipta Kerja, Research with DIPA funds from the Faculty of Law, Unila. 2021, p. 3.

²² Mita Ayu Andiyani, A Disruptive Threat to the Implementation of the Job Creation Law on Land Management in Indonesia <https://www.pasundanekspres.co/opini/ancaman-destruktif-penerapan-uu-omnibus-law-cipta-kerja-against-management-land-di-indonesia>, accessed on 25 November 2022.

²³ FX. Sumarja, et.al, *Op.cit.*

²⁴ Read, CNN Indonesia's article "Threat of Evicted Paddy Fields from PP Derivatives of the Job Creation Law" in full here: <https://www.cnnindonesia.com/ekonomi/20210224062823-532-610144/ancaman-lahan-sawah-tergusur-dari-pp-derivative-uu-create-work>. Accessed on November 25 2022. at 18.00 WIB

²⁵ Iwan Nurdin, in, CNN Indonesia article "Threat of Evicted Paddy Fields from PP Derivatives of the Job Creation Law". *Ibid.*

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2. The optimal step for the legal preservation of farmers' land rights

Referring to the regulatory conditions governing the transfer of agricultural land to non-agricultural land for the benefit of investment in various non-agricultural sectors, which places farmers in a weak position, the legal protection measures that must be taken by the Government for the existence of farmers in defending their rights to agricultural land as a form of the government's commitment and responsibility to achieve general welfare and educate the life of the n Therefore, it is essential to take legal precautions. These legal safeguards include:

- a. Revised the regulation on the Protection of Sustainable Food Agricultural Land by reverting to Law No. 41 of 2009 and its implementing regulations, which govern the Protection of Sustainable Food Agricultural Land in a stringent manner.
- b. Invest primarily in agriculture to preserve the function of the land, as well as the quality and amount of land for agricultural activities. Prior to the enactment of the Job Creation Law, there was a substantial growth in domestic investment in the agricultural industry between 2015 and 2019. (PMDN). This is evidenced by the fact that PMDN investment in 2015 amounted to IDR 12.4 trillion, increased to IDR 29.6 trillion in 2018, and again to IDR 43.6 trillion in 2019, but declined to IDR 32.1 trillion in 2020. This demonstrates that if the government is committed to and in favour of enabling the agricultural economy, the best course of action is to maximize domestic investment in the agricultural sector on a priority scale.
- c. Legal protection for the pace of conversion of agricultural land through spatial planning and regulation; raising the optimization of land rehabilitation and intensification; boosting agricultural company productivity and efficiency.
- d. Strengthening Land Reform policy. This component of land reform can be seen as a reorganization of land tenure and ownership, with legal issues (state and society), demographic pressures, and economic structure, such as the availability of non-agricultural occupations, serving as formation factors. Vertical and horizontal land tenure or ownership conflicts, legal inconsistencies, such as between agrarian law (UUPA) and other legal provisions in the field of natural resources, inequality of control and ownership, narrow control by farmers to the point where it is not economically viable, as well as incompleteness and inconsistency of data, are among the problems encountered in this regard. Pertinent agrarian reform policies relevant to this component of land reform include identifying land reform aims, determining beneficiary farmers, determining land prices and payment methods, distributing land to beneficiaries, enhancing tenure, and enhancing absentee land.
- e. Creating a dispute resolution model that is fair and accessible to the farming community to provide solutions and produce the right decisions in every business conflict resolution that occurs between the community and actors as a result of the transfer of agricultural land functions for the benefit of investment in the non-agricultural sector.

CONCLUSION

Due to the policy of transforming agricultural property into non-agricultural land, the above-mentioned study concludes that the legal protection of farmers' rights to agricultural land is inadequate. Regulations established by the government in the context of executing investments that tend to use land for the non-agricultural sector, such as industry, mining, and housing, have a negative impact on farmers' rights to agricultural land. After the implementation of the Law on Job Creation in Indonesia, the transfer of agricultural land tends to increase because the provisions of the Job Creation Law facilitate the process of transferring agricultural land for industrial or investment purposes in non-agricultural sectors in the public interest.

Ideally, the agricultural land transfer policy should be in accordance with the construction of land law or national agrarian law, as well as Law no. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land, which seeks to achieve self-sufficiency, food security, and sovereignty, as well as protect the ownership of food agricultural land belonging to farmers to increase the prosperity and welfare of farmers and the community. To reduce the conversion of agricultural land to non-agricultural interests, investment policies should promote the expansion of the agricultural sector, which provides most of the nation's food supply.

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