

Productive Land Conversion from the Perspective of Lon Fuller's Legal Structuralism

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Abstract— This article aims to formulate the concept of legal protection for productive land from the perspective of Lon Fuller's theory of Legal structuralism. This doctrinal legal research (juridical normative) is descriptive-qualitative. It is a study to describe legal protection for productive land from conversion using an interactional approach or micro approach with qualitative analysis. The data were analyzed logically and systematically using qualitative methods. Land conversion occurs because of the growing land needs for housing, roads, and others. The rapid land conversion can be disastrous for Indonesian citizens. The government through legal instruments and legal structures, namely regulations and apparatus, takes firm action against the perpetrators of land conversion. Lon Fuller's legal structuralism theory is rarely put forward, especially in land conversion, so this perspective is novel.

Keywords— Land Conversion, Legal Structuralism, Legal Protection, Lon Fuller.

INTRODUCTION

High population growth is experienced by developing countries like Indonesia. Based on Indonesia's statistical data, Indonesia's population currently reaches 240 million people with a growth rate of 1.34% (Setiadi). Increasing population growth without the availability of land will cause new problems

because the high demand for land for a place to live is not matched by the availability of land. High population growth can also cause food production to decline because the productive land used as rice fields is now converted to a residential area. This conversion can result in environmental damage caused by the actions of stakeholders (Soeikromo, 2016).

Allowing certain groups to carry out the conversion of productive land without supervision or control will have an impact on ecosystems, especially in the environmental and productive fields. If this land conversion is allowed, there is no clarity on legal protection for productive land. This conversion will trigger a food crisis in the future (Setiawan, 2000) because, according to Sahid Susanto as quoted by Zaenil Mustofa and Purbayu, productive land, especially rice fields with irrigation, has a major role in maintaining the flow of food supply, especially rice, maintaining ecological functions, creating social and economic activities for rural communities, and helping to form community civilization based on an agrarian basis (Mustofa & Santosa, 2011).

Economic growth can change socio-economic conditions on non-productive land so that its economic value increases. This event causes the conversion of productive land to continue to increase in line with the

inevitable rate of growth and development in the economic sector (Nursaid, 2011). According to Mubyarto, land is a production factor that cannot be reproduced by humans or is often referred to as non-produced input, so conversion results in degradation (Mubyarto, 1996). Conversion of productive and non-productive land also causes environmental problems also caused by technological advances that can produce massive and efficient production but cause side effects in the form of pollution.

Land conversion has a major effect on the sustainability of ecosystem relationships. Yoshida and Kenkyu (1994) remind that productive land in environmental aspects can provide several benefits.

1. To prevent flood
2. To control regional water system balance
3. To prevention erosion
4. To reduce environmental pollution from household waste
5. To prevent or reduce air pollution from motor vehicle exhaust gases

If this conversion of productive land into non-productive land is allowed to continue, the area of productive land will become increasingly narrow, and productive food and non-food commodities will decrease. The long-term effect is there will be a food deficit. In the future, Indonesia will be dependent on food and need to import rice from other countries. This will decrease the carrying capacity of productive land and the environment.

According to Gatoet Sroe Hardono et al., the conversion of productive land to non-productive land is a serious threat to Indonesia's food security and self-sufficiency.

Food independence is a condition where food can be fulfilled for the people, which is reflected in the availability of sufficient food, both in terms of quantity and quality, in a safe, affordable, and equitable manner (Hardono et al., 2004). Efforts to manage productive lands and monitor the conversion of productive lands require comprehensive regulations and decision-making processes or policies so that they can be effective and sustainable.

In Lon Fuller's legal structuralism theory, this theory highlights the relationship between legalism and morals. This theory concentrates on the nature of the law identified in the legal structure. Fuller's structuralism theory offers an understanding of law from the moral perspective of law enforcement. There are 3 factors that affect the law, namely the unit of the legal structure, the hierarchy of the legal structure, and morals and internal knowledge of the legal structure (Congklin, 2006).

Why is legal structuralism the most important aspect of law according to Lon Fuller? This is because the legal structure is the operator or implementer of the law or even the legislator. Lon Fuller considers that the legal structure is not only an implementer but a lawmaker. For him, the legal structure is not an inanimate object but an organic one who has thoughts, desires, interpretations, and prejudice (judgments, prejudices) in realizing the law. For example, when a police officer has prejudgment over a case, law enforcement errors will likely occur or the realization goes beyond what should be (Fuller, 1949).

To understand Lon Fuller's theory of legal structuralism, we need to understand that legal structuralism has a different awareness or eunomics, which, according to the Oxford dictionary, means "obey the law to make orderly society", and it cannot automatically occur. We need a good climate (social conditions) so that the law can be realized to create a good order which that constitution brought or ideal conditions. The embodiment of law occurs after going beyond what is known as a compromise of integrity between structures, awareness of the intentions of lawmakers, and the real conditions of law in society, including the goals of each legal structure (Fuller, 1969).

The law can be enforced, but it will be effective if it is carried out by a legal structure, or legal structure that has awareness and the legal structure as a subject has intentions. The legal structure can be a translator and determinant of the text. The law is not just a book if it is interpreted and operationalized by the legal structure. The legal structure has legitimacy in interpretation. It can be a pillar in the realization of law rationally and

irrationally. The realization of the law will only be accepted by mutual agreement of the legal structure.

In Fuller's legal structuralism perspective, the conversion of productive land to non-productive land requires supervision and policies determined by the understanding of the legal structure, awareness of the intentions of the legal structure units, and their respective goals. Land conversion requires a sustainable policy because this is a policy aimed at protecting land and the environment, as well as creating a sustainable food supply. Another thing that makes the researchers interested is there have been several legal regulations related to controlling to inhibit the rate of conversion of productive land, but the researchers have found ineffectiveness in the implementation.

The legal products in the form of the law ratified not long after Indonesia's independence are Law concerning Agrarian Matters No. 5/1960 concerning Agrarian Principles (land reform, eigendom land, etc.) the management by the State and its citizens, Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, and Law No. 41/2009 concerning Protection of Sustainable Productive Land. Prevention of the conversion of productive land to non-productive land will be effective with legal protection. Based on the description above, the problem formulation is how is the legal protection of productive land from the perspective of Lon Fuller's theory of legal structuralism.

RESEARCH METHOD

Legal research is a scientific activity, which is carried out based on certain systematics, methods, and thoughts. It aims to study legal phenomena by analyzing them. Research methods are ways of thinking and doing to conduct and achieve the research objectives. The research will not be able to formulate, find, and analyze or solve problems without research methods (Soekanto, 2006). This research is non-sociological (doctrinal) legal research. It is qualitative descriptive research. It is a study to describe legal protection for productive land from conversion. The research approach is a theory-based theoretical approach developed by Lon Fuller on legal structuralism. The author used a micro approach with qualitative, logical, and systematic analyses using qualitative methods. Qualitative analysis is a continuous and repeated effort according to Miles and Huberman (Miles & Huberman). Qualitative method aims to obtain descriptive analysis data stated by the respondents in writing or orally manifested through real behavior, which is studied and researched as a whole (Soekanto, 2006).

DISCUSSION

Currently, the conversion of productive land to non-productive land continues to expand with economic development (Nursaid, 2011). With the increasing population (heredity), the next generation also needs a place to live (land) from the productive land in the form of settlements. Economic and industrial growth will constrict/reduce the area of productive land. In addition to settlements, conversion is also carried out for the benefit of industry and other infrastructure to change the existing productive land, and each has its advantages and disadvantages. Social factors as the driving force for land conversion are changes, the behavior of the legal structure, and the need for land. Political factors are also a concern in the perspective of legal structuralism in terms of the dynamics of the effects of regional autonomy. Lawmakers as a part of the legal structure at the regional level even at the village level use their political power (Fuller, 1981).

Larger and real (independent) land management for agriculture is reduced, so there is a desire to change productive land (conversion of productive land use) for investment (Nursaid, 2011). All these factors lead to the influence of legal structuralism on landowners and other related parties. This conversion occurs because the income from productive yields (especially rice) is less, so the farmers do not get profits from their land. Productive yields cost lower than non-productive businesses products such as industry and housing development, etc.

This encourages farmers and productive landowners to do other businesses in the hope that their income will increase (although not necessarily increase because most of them have limited skills) by converting productive land (rice fields) into non-productive land. It means that the utility of productive land is lower. Land is a natural resource that is very important for the development of a country.

One of the different objectives of the awareness of legal structure is that there are benefits from the development process in all sectors requiring lands such as the productive sector, infrastructure, industry, and trade. In the productive sector, land is a crucial resource for both farming and productive development is because land has a role in production activities that can produce the food needed by every human being (Putri, 2015).

This brings benefits in the form of tax funds or other funds that change awareness or provide a differentiator to the legal structure according to Fuller so that the legal structure takes a distraction in the realization of the ideal law.

In addition to the social aspect, the conversion of productive land also has an existential legal aspect. In Fuller's opinion, the realization of the law depends on the legal structuralists. Sometimes, the structuralist units are against each other at a time or several times. There are differences in awareness, purpose, and interrelationship among units. Fuller's structuralism is a form of moral and political philosophy developed by Lon Fuller. This understanding is present as an alternative to jurisprudence which prioritizes judges and their decisions as law. According to Fuller's legal structuralism theory, the law is not only a judge but also another unit that is part of legal structuralism. Judges are only one of the legal structural units (Congklin, 2005).

Morality and law are based on the extent to which the legal structure makes this happen. In this case, if the legal structure is apathetic, the conversion of productive land into non-productive land causes productive land to be increasingly narrow. Productive commodities will decline, and, in the long term, Indonesia will experience a food deficit. The food deficit makes Indonesia dependent on rice imports from other countries.

Legal products, according to Fuller, must be morally supported and accepted by legal structure units in their realization to maximize their realization more broadly. The political and moral philosophy of Fuller's legal structuralism places the legal structure at the center of the formation, realization, and consideration of the law and includes its morality (Witteven and Brug, 1999). Frederick argues that there are similarities in the principles of legal and moral teaching for legal structures that can be damaged by hedonistic even though individuals in legal structures may have different awareness, intentions, perspectives, and goals, namely achieving benefits and not taking into account the conditions of the wider community (Schauer, 1984).

Fuller stated that the legal structure must have a responsible morality. The issue of land conversion at the level of structuralism must be based on moral principles and protected by rules embodied by a legal structure capable of providing sanctions for those who violate it. Such an action, land conversion according to Fuller's theory, is considered rightly as an act of moral responsibility if it results in the realization of law with good responsibility (Fuller, 1960).

According to this understanding, the form of norms, legal products, and actions, if accepted and carried out with full responsibility, will be realized even though they are bad; if it is not supported by the legal structure, its realization will not exist even though the purpose may be good (Fuller, 1965). Kymlicka as quoted by

Peter Singer views that legal structuralism is a teaching of consequentialism and an attraction for the importance of legal structure (Kymlicka, 1990).

In terms of the conversion of productive land, food independence is the right of the state and nation, which can independently determine its food policy. A state is obliged to guarantee the right to obtain food for its people and strive to provide rights for them to fulfill it under the potential of local resources. This is the utility of productive land that involves more people so that a haphazard land conversion can bring disaster on a national level while its benefits are only at the individual or corporate level.

Provision, use, and increasing the ability of land resources to be productive to increase the level of the economy freely without legal protection for productive land can lead to disasters in the future. Preserving productive land is fundamental and essential for all of us to avoid future disasters.

A planned development concept that is beneficial for many people and does not negate the factors that affect the sustainability of productive land is needed. The concept of sustainable productive land has been carried out in many developed countries which have achieved various advances in various fields, including technology, information, production, education, and social fields. This concept has improved the quality of human life in the country but has not forgotten the essence of food productivity which is needed by all citizens.

Legal structuralism in terms of productive land conversion has an appeal to consequences according to Amartya Sen. It has another important characteristic, namely welfarism. Welfarism is a policy or a legal policy related to state problems aimed at goodness for the state in general.

Legal structuralism for Fuller is a philosophy that serves as the foundation for making or implementing welfarist legal decisions as to the foundation for state or social institutions to formulate laws and regulations. The flow of structuralism seems very populist but limited because, to be accepted and effective, welfarism must be supported by legal structure (Fuller, 1978). Thus, whenever there is a problem related to the law, it is the legal structure that should be examined, reviewed, and corrected. The legal structure must be morally pro-people in the sense of realizing the law for the people to achieve people's welfarism. The legal structure must side with the people, and the realization of the law will be better.

Arbitrary land conversion without regard to the sustainability of the land is not good, and this only happens if the legal structure violates its function. The legal structure that should exist to prevent it is part of efforts to maintain the environmental sustainability. This action can be prevented if the legal structure is responsive.

Responsive legal structure means that the legal structure will always be related to the goals in the welfarism narrative of the law itself. All these processes are part of Fuller's theory of legal structuralism. Considering that the law has a limited capacity and scope, the embodiment of the law is entrusted to the legal structure, and a law that is not supported by a legal structure will become unrealistic. Structuralism theory agrees that only the legal structure can mobilize power in realizing the law (Hart, 1965).

Law is an effective tool in overcoming land conversion. Using legal instruments to prevent or regulate land conversion means providing food independence. Law can be progressively effective in regulating and preventing conversion only if the legal instrument is also accompanied by support from other instruments, in this case, the legal structure to support it, such as policies that promote the welfare of farmers. Incentives, disincentives, and compensation accompany the support of the legal structure.

Substantively, there are the main legal instruments used in implementing land conversion policies so far.

First, Spatial and Regional Planning (Neighborhood/Community Association). Neighborhood/community association is legalized in every city/regency. It serves as a reference to determine the location and area of land for each type of development with the principle of providing as much benefit to the public as possible while taking into account the balance in environmental aspects and national resilience. Neighborhood/community association also functions to map areas that are designated or can be used for various purposes, from productive to non-productive.

The second is the location permit instrument. A location permit is an instrument to regulate the location of activities and efforts to control the extent of each development effort under the neighborhood/community association. Legally, the authority to issue location permits is under the National Land Agency (BPN) at the regency/city level. The third is various regulations regarding land conversion. The existing regulations are legal instruments to control the area and location of

productive land that can be converted for non-productive use. The instruments in the form of regulations should be considered when requesting or applying for a location permit.

The regency/city level has a mechanism that decisions regarding permits for productive land to be converted to non-productive concessions are handled by a cross-sectoral structure of land conversion control teams consisting of agencies related to land use. Conceptually, the above legal instruments should be sufficient to reduce land conversion that have (1) a clear roadmap on areas and types of land that can be used for productive and non-productive activities as formulated by neighborhood/community association, (2) clear regulatory instruments to consider the location of productive and non-productive activities in the form of granting location permits, and (3) a clear roadmap about the types of productive land that can be converted into non-productive uses in the form of various regulations on land conversion.

Sadly, the three policy instruments have the impression that they are not effective enough in reducing land conversion which can be observed through the paddy field area which continues to decrease because it is converted to non-productive uses. Improvement of legal instruments that are consistent with the main productive land conversion policies is related to the issue of sanctions for abuse of law on land conversion.

The sanctions must be formulated clearly regarding the type and severity of the sanctions against the violators. The sanctions must be strictly enforced for both parties who violate the policy, namely the implementer of the policy as a legal structure or the perpetrator of land conversion. Policymakers as a legal structure that violates and results in more massive conversion of productive land functions prove that the effectiveness of the law must be supported by the legal structure. Land conversion violations have repeatedly involved the bureaucracy in the government as a legal structure that acts to achieve their personal or organizational interests (Irfanislamy, 2004).

In the event that the legal structure does not support the law, a mechanism that can control the legal structure, including sanctions, is needed. The sanctions imposed need to be detailed based on the stages of the land conversion process, starting from the granting of land conversion permits, location permits, to implementation as an effort to reduce the negative impacts of land conversion. The concept of protecting productive land from land conversion using legal instruments also needs

to pay attention to non-legal aspects so that it will be more optimal.

So far, legal science and law not only live in a vacuum but also interact, touch, and intersect with other science and factors. Sanctions regulated in legal instruments can be a significant deterrent or deterrent factor if implemented properly. It must be admitted that there have been personal and organizational interests from legal structures such as among village governments who get an official amount of money if there is a sale of land in the village area so that the structure functions as an agent of land conversion. In the legal structure at the city and regency levels, conversion for economic assets such as factories, offices, and schools will provide income from legal permits, employment, and fees, which does not include the potential for illegality.

Some existing legal instruments have minimal consequences for the legal structure in the form of sanctions so that violations are difficult to act upon. In connection with the prevention of the conversion of productive land above, Pearce and Turner (Peace & Kerry Turner, 1989) recommend three efforts to control the conversion of productive land (wetland), regulation, acquisition and management, and incentives and charges. In addition to the regulations, sufficient incentives and sanctions are also needed for the legal structure to realize the prevention of land conversion.

CONCLUSION

Productive land conversion from the perspective of structuralism theory does bring benefits for the legal structure and other interested parties such as developers, investors, and other parties. Besides, it reduces the independence of the nation in producing food and can cause disasters. The decline in food production will make Indonesia dependent on imports. This structuralism theory has the principle of moral responsibility from the legal structure. This principle means that all legal structures (should) act responsibly based on the comprehensive principles of moral welfarism even at the personal level. All parties should play a role in supporting the law in terms of preventing land conversion.

Based on Fuller's theory, the prevention of land conversion will be effective if the legal structure including the government provides support and disrupts based on institutional or personal interests. To obtain support from the legal structure, sanctions and incentives can be given. Law according to Lon Fuller's theory of legal structuralism can be effectively realized if it is supported by the legal structure with a welfarism perspective for the nation. The sanction is taking firm

action on legal structures that act for organizational and personal interests and providing favorable incentives for the legal structure so that they will not abuse their power for organizational and personal interests to prevent the conversion of productive land.

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