

# **Legal Policy and Challenges in Protecting Sustainable Food Agricultural Land in Indonesia: A Constitutional and Criminal Law Perspective**

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## Abstract

Indonesia, as a legal state under Article 1(3) of the 1945 Constitution, aspires to achieve sovereignty, justice, and prosperity. Food sovereignty is essential to realizing these constitutional ideals. Law Number 41 of 2009 on the Protection of Sustainable Food Agricultural Land (PLP2B) serves as a key legislative framework to safeguard agricultural land. However, its implementation faces significant challenges, including weak enforcement mechanisms, limited coordination among stakeholders, and insufficient public awareness. These obstacles hinder efforts to prevent land conversion and ensure sustainable food security. This research addresses the urgency of fulfilling the constitutional mandate outlined in the second and fourth paragraphs of the Constitution's Preamble, emphasizing sustainable development and societal welfare. Through a normative juridical approach, this study analyzes the legal policy for protecting agricultural land from constitutional and criminal law perspectives, offering a novel critique of the existing framework. Findings indicate gaps in regulatory synchronization, the absence of effective criminal sanctions to deter violations, and weak institutional coordination. To address these issues, the study recommends strengthening legal provisions, imposing stricter sanctions for land conversion, and improving inter-agency collaboration to ensure effective land protection. This research contributes to the development of legal science by offering practical recommendations for enhancing sustainable land protection policies. It provides valuable insights for policymakers, legal practitioners, and law

enforcement agencies, supporting efforts to achieve food sovereignty and improve community welfare in Indonesia.

## Keywords

*Legal Policy; Sustainable Food Agricultural Land Protection; Constitutional law; Criminal law*

## I. Introduction

Indonesia, as a state founded on the rule of law (*rechtsstaat*), has a constitutional obligation to ensure the welfare of its people through sustainable development. One critical aspect of this obligation is the protection of sustainable food agricultural land, which is integral to achieving food sovereignty and fulfilling the nation's ideals as articulated in the 1945 Constitution.<sup>1</sup> The protection of agricultural land is not only a matter of economic importance but also a constitutional mandate, as reflected in various legislative instruments, including Law Number 41 of 2009 on the Protection of Sustainable Food Agricultural Land (Law No. 41 of 2009). This law, along with its derivative regulations, seeks to prevent the conversion of agricultural

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<sup>1</sup> See Widhiyastuti, Alfia Nisa, et al. "Sustainable food agricultural land preservation at Sleman Regency, Indonesia: an attempt to preserve food security." *AgriHealth: Journal of Agri-Food, Nutrition and Public Health* 4, no. 1 (2023): 41-52; Anggalini, T. D., et al. "Sustainable food agriculture land protection policy for Gunungkidul, Yogyakarta, Indonesia: Solution or dilemma?." *IOP Conference Series: Earth and Environmental Science*. Vol. 423. No. 1. IOP Publishing, 2020; Handayani, Sri Wahyu, Muhammad Fauzan, and Abdul Aziz Nasihuddin. "Conversion of agricultural land policy in Indonesia." *2018 3rd International Conference on Education, Sports, Arts and Management Engineering (ICESAME 2018)*. Atlantis Press, 2018.

land for non-agricultural purposes, thereby safeguarding the nation's food security.<sup>2</sup>

The background of this research focuses on the legal issues and gaps between *das Sollen* (what ought to be) and *das Sein* (what actually is) in the context of protecting sustainable food agricultural land. While Law No. 41 of 2009 explicitly provides for the protection of such land, its implementation has revealed numerous inconsistencies and challenges. This law was partially amended by the Job Creation Law, specifically Article 124 of Law No. 6 of 2023, which ratified Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. These amendments, along with various derivative regulations, aim to further elaborate and strengthen the legal framework.<sup>3</sup>

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<sup>2</sup> Dirman, E. N., A. Saleng, and A. S. A. Sapiddin. "Food agricultural land legal protection to improve food security in Indonesia." *IOP Conference Series: Earth and Environmental Science*. Vol. 196. No. 1. IOP Publishing, 2018. See also Angrainy, Yeny Ike, and Johan Erwin Isharyanto. "Implementasi Undang-Undang Nomor 41 Tahun 2009 Tentang Perlindungan Lahan Pertanian Pangan Berkelanjutan Sebagai Upaya Untuk Pengendalian Laju Alih Fungsi Lahan Pertanian Di Kota Semarang." *Notary Law Research* 3, no. 1 (2021): 28-40.

<sup>3</sup> Sumarja, F. X., et al. "Problematika Perlindungan Lahan Pertanian Berkelanjutan Pasca Undang-Undang Cipta Kerja." *Sasi* 27, no. 4 (2021): 493-503; Sukarman, Hendra, and Wildan Sany Prasetya. "Degradasi Keadilan Agraria dalam Omnibus-Law." *Jurnal Ilmiah Galuh Justisi* 9, no. 1 (2021): 17-37. Furthermore, it is emphasized that the protection of sustainable food agricultural land in Indonesia has faced significant challenges, particularly after the implementation of the Omnibus Law. The Omnibus Law, enacted through Law No. 11 of 2020, aimed to streamline regulations and promote investment. However, its provisions have been criticized for potentially undermining efforts to safeguard agricultural land, particularly through deregulation and the reduction of environmental protection measures. One of the key concerns is the weakening of land use controls, which may accelerate the conversion of agricultural land for non-agricultural purposes, such as industrial development and infrastructure projects. In particular, the Omnibus Law has amended various laws, including the Law on Spatial Planning and the Law on Environmental Protection, leading to more lenient provisions for land use changes. This creates a gap between the legal framework's ideals and its practical application, as local governments may be less empowered to prevent land conversion. Furthermore, the law's impact on smallholder farmers is also concerning, as it fails to adequately address land tenure issues and the concentration of land in the hands of large corporations. As a result,

However, despite the existence of these laws, the practical implementation of agricultural land protection remains problematic. Key challenges include regulatory inconsistencies, weak enforcement mechanisms, lack of institutional coordination, and inadequate criminal sanctions to deter violations. These issues highlight a persistent disconnect between *das Sollen* and *das Sein*, emphasizing the need for a more comprehensive and effective legal policy. This research addresses these gaps by exploring the integration of constitutional and criminal law perspectives to strengthen the protection of sustainable food agricultural land.

The legal provisions governing the protection of sustainable food agricultural land are firmly rooted in Indonesia's positive law, spanning from constitutional provisions to the lowest hierarchical statutory regulations. However, despite this comprehensive legal basis, discrepancies between the normative ideals and practical realities highlight the need for a critical examination of the legal and policy frameworks.<sup>4</sup>

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the post-Omnibus Law period has highlighted the need for stronger enforcement mechanisms, clearer regulations, and political will to protect sustainable food agricultural land in Indonesia. *See also* Ikhsan, Edy. "The Omnibus Law in Indonesia: Assessing Its Consequences on Environmental Sustainability and Land Rights." *Journal of Human Security* 18, no. 2 (2022); Rasyid, Tengku Harunur, and Yeni Kusumawaty. "Omnibus law and the challenges of the Indonesian agricultural sector: An islamic perspective." *Islamic Research* 5, no. 1 (2022): 49-61; Mariane, Irene, Listyowati Sumanto, and Ignatius Pradipa Probondaru. "Problems of Converting Agricultural Land and the Need to Anticipate Its Control After the Enactment of the Job Creation Law." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (2024).

<sup>4</sup> Kusniati, Retno. "Analisis Perlindungan Hukum Penetapan Lahan Pertanian Pangan Berkelanjutan." *INOVATIF: Jurnal Ilmu Hukum* 6, no. 2 (2013); Ayunita, Komang Triana, Ida Ayu Putu Widiati, and I. Nyoman Sutarna. "Pengendalian Alih Fungsi Lahan Pertanian Pangan Berkelanjutan." *Jurnal Konstruksi Hukum* 2, no. 1 (2021): 160-164; Wulandari, Dian Ayu, and Amni Zarkasyi Rahman. "Implementasi Kebijakan Perlindungan Lahan Pertanian Pangan Berkelanjutan (LP2B) Di Kabupaten Tegal (Studi Implementasi Peraturan Daerah Kabupaten Tegal Nomor 10 Tahun 2012 Tentang Rencana Tata Ruang

Although sustainable food agricultural land protection has been legally regulated with an orientation toward maintaining agricultural land in a sustainable manner, empirical data indicates a continued decline in agricultural land area (*das Sein*). Land conversion, particularly of rice fields, remains a significant issue. In 2009, the area of raw rice fields was recorded at 8.07 million hectares, but by 2019, this had decreased to 7.46 million hectares. Furthermore, data from Statistics Indonesia (BPS), as reported by *cncindonesia.com*, reveals that most farmers control less than 0.5 hectares of agricultural land. Specifically, 15.89 million farmers operate on less than 0.5 hectares, 4.34 million manage between 0.5 and 0.99 hectares, 3.81 million cultivate 1 to 1.99 hectares, and only 1.5 million farmers have land holdings of 2 to 2.99 hectares.

The persistent reduction in agricultural land, coupled with the limited landholdings of farmers, raises questions about the effectiveness of existing laws aimed at protecting sustainable food agricultural land. These laws can be critically examined through the lenses of constitutional law and criminal law, providing insights into the formulation of a more effective legal policy framework for the protection of agricultural land. Such a framework is essential to address ongoing challenges and ensure food sovereignty and sustainable development in Indonesia.<sup>5</sup>

Several studies have been conducted on the legal protection of sustainable food agricultural land; however, only a few have specifically focused on the legal policy aspect. Some of these studies represent the *state of the art* in this field, offering valuable recent contributions. For instance, Masrukhin's research on the protection of sustainable food

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Wilayah Kabupaten Tegal Tahun 2012-2032)." *Journal of Public Policy and Management Review* 6, no. 2 (2017): 696-708.

<sup>5</sup> Putri, Aulia Mutiara Hatia. "Petani Berkurang & Lahan Menyempit, 20 Tahun Lagi Makan Apa?". *CNBC Indonesia*, 16 May 2023. <https://www.cncindonesia.com/research/20230516072308-128-437631/petani-berkurang-lahan-menyempit-20-tahun-lagi-makan-apa/2>.

agricultural land from the perspective of land conversion in Cirebon Regency highlights significant issues. The study reveals that the implementation of Law No. 41 of 2009 (PLP2B) in Cirebon Regency remains suboptimal. Land conversion continues to occur despite the existence of positive law, and sanctions for violations have not been effectively enforced against the offenders. This research underscores the gap between the legal framework's theoretical intentions and its practical application, emphasizing the need for more robust legal policy and enforcement mechanisms.<sup>6</sup>

Research by Ulfa Nur Oktiana, Waluyo, and Asianto Nugroho on the implementation of sustainable food agricultural land protection in the context of spatial planning regulations in Sleman Regency reveals significant challenges. Their study indicates that while the implementation of Law No. 41 of 2009 (PLP2B) in Sleman focuses on controlling land conversion, there has yet to be a formal designation of a Sustainable Food Agricultural Area (KP2B). This limitation is attributed to various obstacles, highlighting that spatial planning policies alone are insufficient to effectively curb the conversion of agricultural land.<sup>7</sup>

Similarly, research by Endang Dyah Ayu Pitaloka on sustainable food agricultural land protection policies within the framework of spatial planning law suggests that the implementation of PLP2B in Indonesia, particularly through regional spatial planning regulations, remains notably weak. The study identifies several factors that contribute to this deficiency, with a key issue being the lack of political will among local authorities to enforce and prioritize these policies. These studies collectively emphasize that legal and spatial planning

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<sup>6</sup> Masrukhin, Masrukhin. "Perlindungan Lahan Pertanian Pangan Berkelanjutan dalam Perspektif Alih Fungsi Lahan di Kabupaten Cirebon." *HERMENEUTIKA: Jurnal Ilmu Hukum* 3, no. 2 (2019): 369-373.

<sup>7</sup> Oktiana, Ulfa Nur, Waluyo Waluyo, and Asianto Nugroho. "Pelaksanaan Perlindungan Lahan Pertanian Pangan Berkelanjutan Berdasarkan Regulasi Rencana Tata Ruang." *Jurnal Discretie* 1, no. 1 (2020): 16-24.

frameworks must be strengthened, and political commitment is crucial for more effective protection of sustainable agricultural land.<sup>8</sup>

The novelty of this research lies in its focus on the legal policy for the protection of sustainable food agricultural land through the lenses of constitutional and criminal law, with an emphasis on future prospects. While existing studies have explored various aspects of agricultural land protection, this research specifically aims to bridge the gap between theoretical legal frameworks and their practical implementation by integrating constitutional and criminal law perspectives. Given the challenges identified in current legal mechanisms, this study will analyze and examine the legal policies that should be pursued within constitutional and criminal law to effectively protect sustainable food agricultural land.

The findings of this research are expected to offer new insights into the development of more robust legal frameworks that can address existing gaps, proposing concrete solutions to strengthen land protection efforts. This research further aims to identify the challenges that hinder the effective implementation of these legal policies, while proposing reforms that can enhance their success. Ultimately, the study contributes to the development of legal mechanisms that support food sovereignty, promote sustainable development, and enhance community welfare in Indonesia.

## II. Method

This study employs a doctrinal or dogmatic approach to legal research, focusing on positive law (i.e., existing legal frameworks). Using a normative juridical approach, it examines applicable laws and

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<sup>8</sup> Pitaloka, Endang Dyah Ayu. "Kebijakan Perlindungan Lahan Pertanian Pangan Berkelanjutan dalam Dimensi Politik Hukum Penataan Ruang." *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 1 (2020): 49-78.



regulations related to the protection of sustainable food agricultural land. This approach emphasizes both the hierarchical (vertical) structure of statutory regulations and their harmonious interrelationship (horizontal). The research is qualitative in nature, relying on a naturalistic paradigm that considers the context and real-world application of the law.<sup>9</sup>

The study analyzes legal issues through the lens of statutory regulations, investigating the legal policy of sustainable food agricultural land protection, its challenges, and prospects within constitutional and criminal law. The research method is centered on the examination of positive law, legal principles, doctrine, and relevant case law. It also considers legal systematics, the alignment of regulations, comparative law, and legal history to provide a comprehensive understanding of the issues at hand. This normative legal research aims to explore and clarify the legal framework surrounding the protection of agricultural land and propose potential improvements.

### III. Projecting Constitutional and Criminal Legal Policies for Protecting Sustainable Food Agricultural Land

#### *Legal Policy of Sustainable Food Agricultural Land Protection Law: An Introduction*

A sound legal system requires effective legal policy. Legal experts hold varying views on the concept of legal policy. For instance, Satjipto

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<sup>9</sup> Soekanto, Soerjono. *Pengantar Penelitian Hukum*. (Jakarta: Universitas Indonesia, 2013); Marzuki, Peter Mahmud. *Pengantar Ilmu Hukum*. (Jakarta: Kencana, 2008). See also Hutchinson, Terry, and Nigel Duncan. "Defining and describing what we do: doctrinal legal research." *Deakin Law Review* 17, no. 1 (2012): 83-119.

Rahardjo, in his book *Ilmu Hukum* (Legal Studies), defines legal policy as an activity that involves selecting particular social goals. According to Rahardjo, policy is intrinsically linked to societal objectives, whereas law is tasked with making decisions regarding the means or methods to achieve these goals.<sup>10</sup> In contrast, Moh. Mahfud MD, in his book *Politik Hukum di Indonesia* (Legal Policy in Indonesia), offers a broader definition. He views legal policy as an official course of action that directs the enforcement of laws, whether through the enactment of new laws or the revision of existing ones, with the ultimate aim of realizing state objectives. This divergence in perspectives highlights the multifaceted nature of legal policy and its central role in shaping legal systems to meet societal and state goals.<sup>11</sup>

The legal policy surrounding the protection of sustainable food agricultural land is crucial for ensuring long-term food security, environmental sustainability, and socio-economic stability. As countries face increasing pressures from urbanization, industrialization, and climate change, the protection of agricultural land, particularly that used for food production, has become a key area of legal and policy focus. Sustainable food agricultural land refers to land that is utilized in a way that supports the continued production of food, protects biodiversity, and ensures the welfare of farming communities. Legal policies play an essential role in establishing frameworks that govern the use and protection of such land.<sup>12</sup>

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<sup>10</sup> Rahardjo, Satjipto. *Ilmu Hukum*. (Bandung: Citra Aditya Bakti, 2006).

<sup>11</sup> Mahfud MD. *Politik Hukum di Indonesia*. (Jakarta: Rajawali Press, 2017).

<sup>12</sup> See Basiago, Andrew D. "Sustainable development in Indonesia: A case study of an indigenous regime of environmental law and policy." *The International Journal of Sustainable Development & World Ecology* 2, no. 3 (1995): 199-211; Handayani, Sri Wahyu, and Siti Kunarti. "The Dynamics of Paddy Land Legal Policy in Indonesia." *SHS Web of Conferences*. Vol. 54. EDP Sciences, 2018; Jaelani, Abdul Kadir, et al. "Green Tourism Regulation on Sustainable Development: Droning from Indonesia and China." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 663-706.

In Indonesia, the protection of sustainable food agricultural land has been regulated by various laws and policies. Law No. 41 of 2009 on the Protection of Sustainable Food Agricultural Land (PLP2B) was introduced to safeguard agricultural land from rapid urban expansion and land conversion. This law aims to prevent the conversion of vital agricultural land into non-agricultural uses and encourages the sustainable management of agricultural resources. Despite the legal framework in place, challenges remain in the implementation of these policies. Land conversion continues at an alarming rate, undermining efforts to maintain food sovereignty and environmental sustainability.<sup>13</sup>

Legal policy in this context involves not only the creation of laws but also their effective enforcement and the political will to prioritize agricultural land protection. It requires a comprehensive approach that integrates constitutional law, environmental law, criminal law, and land use planning. The role of legal policy is to ensure that agricultural land is protected against illegal conversions, incentivize sustainable farming practices, and provide appropriate sanctions for violations. Furthermore, legal policy should address socio-economic factors, such as land tenure security, the empowerment of smallholder farmers, and the promotion of food sovereignty.

The Legal Policy of Sustainable Food Agricultural Land Protection refers to the official legal framework that guides the direction, structure, and substance of laws intended to protect agricultural land. This policy encompasses the formulation, implementation, and enforcement of laws designed to achieve societal and state objectives related to the sustainable management of food

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<sup>13</sup> Sihombing, Eka NAM, Andryan Andryan, and Mirsa Astuti. "Analisis Kebijakan Insentif dalam Rangka Perlindungan Lahan Pertanian Pangan Berkelanjutan di Indonesia." *Jatiswara* 36, no. 1 (2021): 1-10; Rofi Wahanisa and Septhian Eka Adiyatma, "Konsepsi Asas Kelestarian Dan Keberlanjutan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Nilai Pancasila," *Bina Hukum Lingkungan* 6, no. 1 (2021).

agricultural land.<sup>14</sup> It involves both the creation of new legal provisions and the revision of existing laws to ensure the effective protection of agricultural land, thereby supporting broader state goals such as food security, environmental sustainability, and economic stability. As such, legal policy in this context is central to shaping the legal landscape for sustainable land use and the protection of agricultural resources.

The understanding of the legal policy of sustainable food agricultural land protection, as outlined above, extends beyond a mere discussion of legal frameworks; it underscores that legal policy is a means to achieve broader state objectives. In the context of Indonesia, the state's goals related to the protection of sustainable food agricultural land are explicitly tied to the principles enshrined in the Preamble of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945). Specifically, two key points in the fourth paragraph of the Preamble are relevant to this legal policy:

*First*, the state aims to "*protect the entire Indonesian nation and all of Indonesia's bloodshed.*" This objective highlights the duty of the state to ensure the well-being of its citizens, including safeguarding essential resources like agricultural land, which are vital for the sustenance of the population. By protecting sustainable agricultural land, the state fulfills its constitutional responsibility to provide security and stability for its people, especially in the face of challenges like urbanization and environmental degradation.<sup>15</sup>

*Second*, the Preamble emphasizes the importance of "*promoting the general welfare.*" This goal aligns with the need to ensure equitable

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<sup>14</sup> Setiawati, Tity Wahyu, Mardjo Mardjo, and Tutut Ferdiana Mahita Paksi. "Politik Hukum Pertanian Indonesia dalam Menghadapi Tantangan Global." *Jurnal Hukum Ius Quia Iustum* 26, no. 3 (2019): 585-608; Ibrahim, Zumiyati S. "Land Reform dalam Kebijakan Politik Hukum Pertanahan." *Al-Mizan (e-Journal)* 16, no. 2 (2020): 401-414.

<sup>15</sup> Rondhi, Mohammad, et al. "Agricultural land conversion and food policy in Indonesia: historical linkages, current challenges, and future directions." *Current Trends in Landscape Research* (2019): 631-664.

access to resources and opportunities, particularly in the context of sustainable food production. The protection of agricultural land is crucial for achieving food security, improving rural livelihoods, and promoting sustainable development. By ensuring the continued availability of fertile land for agriculture, the state can work towards economic prosperity, reduce poverty, and support the overall well-being of its citizens.<sup>16</sup>

Thus, the legal policy for the protection of sustainable food agricultural land is not just a technical or regulatory issue; it is fundamentally linked to the realization of Indonesia's constitutional goals of protection and welfare. Legal policies in this area must therefore be designed and implemented in a way that advances these overarching state objectives, ensuring that agricultural land is protected for future generations while also contributing to national development and social justice.

### *Scope of Study on the Legal Policy of Sustainable Food Agricultural Land Protection*

The scope of legal policy according to Satjipto Rahardjo includes: *first*, the objectives of current legal system; *second*, the best means to achieve those objectives; *third*, the time to regulate either through creating a new law or simply changing the existing laws; and *fourth*, establish pattern to select particular objectives and the ways to achieve

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<sup>16</sup> Gultom, O. B., et al. "Repercussions of agricultural land conversion policy on food security in Indonesia." *IOP Conference Series: Earth and Environmental Science*. Vol. 782. No. 3. IOP Publishing, 2021; Holqi, Fikri Gali Fernando, and Muhamad Fikhar Azqeel Kusuma. "Protection of Sustainable Agricultural Land and Food (PLP2B) as an Indonesian Strategy for Sustainable Development Goals (SDGs): Banyuwangi Agrarian Conflict Study, Indonesia." *Journal of Governance and Development (JGD)* 20, no. 2 (2024): 217-239.

those objectives.<sup>17</sup> Meanwhile, according to Moh. Mahfud MD, the scope of legal policy includes: *first*, state policy on laws that will be enacted or not enacted in order to achieve state goals; *second*, the political, economic, social, cultural background of the birth of legal products; and *third*, law enforcement in field reality.<sup>18</sup>

This research examines the scope of Legal Policy of Sustainable Food Agricultural Land Protection according to Satjipto Rahardjo. Analysis of the scope of Policy and Legal Protection of Sustainable Food Agricultural Land as intended as follows:

### 1) **The objectives of current legal system**

Ideally, regulations regarding the Protection of Sustainable Food Agricultural Land are in line with the objectives contained in the written constitution of the Indonesian nation, namely the objectives of the state as intended in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, especially 2 (two) points, namely *first*, protecting all the Indonesian nation and all of Indonesia's bloodshed; and *second*, promoting general welfare.

Furthermore, in the preamble to Law No. 41 of 2009, it can be seen the main ideas that were the background and reasons for making Law No. 41 of 2009, including the following:

- a) that food agricultural land is part of the earth as a gift from God Almighty which is controlled by the state and used for the greatest prosperity and welfare of the people as mandated in the 1945 Constitution of the Republic of Indonesia;
- b) that Indonesia as an agricultural country needs to guarantee the provision of sustainable food agricultural land as a source of work and a decent living for humanity by prioritizing the principles of togetherness, fair efficiency, sustainability, environmental awareness and independence, as well as by maintaining balance, progress and unity of the national economy;

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<sup>17</sup> Rahardjo, *Ilmu Hukum.*, pp. 352-353.

<sup>18</sup> Mahfud MD, *Politik Hukum di Indonesia*, p. 4.

- c) that the state guarantees the right to food as a human right of every citizen so that the state is obliged to guarantee food independence, security and sovereignty;
- d) that increasing population growth and economic and industrial development have resulted in degradation, conversion and fragmentation of food agricultural land which has threatened the regional carrying capacity nationally in maintaining food independence, security and sovereignty;
- e) that in accordance with agrarian reform which concerns the restructuring of control, ownership, use and utilization of agrarian resources, it is necessary to protect food agricultural land in a sustainable manner;

Thus, it is known that the objectives above indicate the objectives to be achieved according to the existing legal substance, namely the 1945 Constitution of the Republic of Indonesia and Law No. 41 of 2009. Because the legal system does not only include legal substance, the legal structure and legal culture of both the government and society must be in line with the ideals contained in the written constitution and the laws and regulations below it.

## 2) **The best means to achieve those objectives**

The best way to achieve the goal is of course to reconstruct the law for the protection of sustainable food agricultural land, not only the legal substance but also the legal structure and culture. The Legal Policy of Sustainable Food Agricultural Land Protection in this research is studied in 2 (two) legal studies, namely Constitutional Law and Criminal Law. Due to time constraints, this research is limited to reformulating some of the provisions in the law on the protection of sustainable food agricultural land (Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023). The reformulation to be carried out is as follows:

- a) Provides special limitations in interpreting "*public interests and/or National Strategic Projects*" in Article 44 (2) of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023;

In general, people and governments cannot deny that population growth has consequences on the need for housing and so on. For example, if the need for housing is insufficient, then developers will continue to look for new land to be able to fulfill one of the primary needs in life, namely housing. Thus, food agricultural land is certainly a land that is very likely to be converted. This explanation shows that there are in fact 2 (two) primary needs that are in tension with each other: *food and shelter*.

The conversion of food agricultural land is basically not only for residential purposes, but also for industry, offices, and other infrastructure development. This shows that the conversion of food agricultural land is not bad at all, because in reality it is also needed by the community. However, the law on the protection of sustainable food agricultural land must be able to minimize and complicate the conversion of food agricultural land.<sup>19</sup>

This research also emphasizes that there are restrictions on the discussion of Sustainable Food Agricultural Land Protection in the study of constitutional law, especially regarding laws and regulations. In short, Article 44 of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023 is an important provision, because it contains an important provision, namely the conversion of Sustainable Food Agricultural Land (LP2B).

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<sup>19</sup> See Fikri, Muhammad Adymas Hikal, Yustina Dhian Novita, and Moh Imam Gusthomi. "Development of the National Food System through Digitalization and Downstreaming to Strengthen National Food Security." *Indonesian Journal of Environmental Law and Sustainable Development* 2, no. 2 (2023); Rohman, Agus Taufiqur, and Aminullah Ibrahim. "A Discourse of Islamic Law on Environmental Protection and Sustainability: How are religious values transferred into Indonesian Environmental Law?." *Indonesian Journal of Environmental Law and Sustainable Development* 1, no. 2 (2022): 139-164.



The changes that occurred in Article 44 of Law No. 41 of 2009, namely the addition of the wording “and/or National Strategic Projects” or commonly called “PSN”, especially in paragraph (2), basically have serious implications. Although it is only a simple addition, the addition facilitates the conversion of protected Sustainable Food Agricultural Land that is prohibited from being converted and “*expands the exceptions*”.

Data from the Central Statistics Agency (BPS) states that the area of raw rice fields continues to decline. The decline is from 7.75 million hectares (2017) to 7.1 million hectares (2018). This data confirms the conversion of paddy fields, as stated by BPS Head Suhariyanto (2018).<sup>20</sup>

Examining other similar data regarding the area of agricultural land available at the national level based on BPS and Ministry of ATR / BPN data as contained in the “Statistik Lahan Pertanian Tahun 2015-2019” (Agricultural Land Statistics 2015-2019) Center for Agricultural Data and Information Systems, Secretariat General of the Ministry of Agriculture 2020 also confirms that the area of agricultural land in Indonesia in 2015-2019 is decreasing. Non-rice field agricultural land which initially in 2015 amounted to 29,392,325 Hectares (Ha) became 29,353,138 Ha in 2019 or a decrease of 39,187 Ha, while for agricultural land in the form of rice fields in 2015 amounted to 8,092,907 Ha then decreased to 7,463,948 Ha in 2019 (based on the Decree of the Minister of ATR / Head of BPN No.686 / SK-

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<sup>20</sup> CNN Indonesia. “BPS Sebut Luas Lahan Pertanian Kian Menurun”. *CNN Indonesia*, 25 October 2018. <https://www.cnnindonesia.com/ekonomi/20181025153705-92-341433/bps-sebut-luas-lahan-pertanian-kian-menurun>.

PG.03.03 / XII / 2019 Dated December 17, 2019) or decreased by 628,959 Ha.<sup>21</sup>

Thus, the data on the decline in agricultural land area above is in line with the “conversion of agricultural land use” or the conversion of food agricultural land to non-agricultural uses such as housing complexes, industrial areas, trade areas, and public facilities which can have negative economic, social and environmental impacts. If associated with national food security, the conversion of paddy fields is a serious threat, considering that land conversion is difficult to avoid, while the impacts on food problems are permanent, cumulative and progressive.<sup>22</sup> If there is a conversion of food agricultural land, it is very difficult to restore the converted food agricultural land. This will have an impact on the permanent, cumulative and progressive problems of food agricultural land.

On the other hand, the term contained in the current positive law, such as Law No. 41 of 2009, clearly shows that this law uses the term “*protection*” (KBBI or the Official Dictionary of Indonesia: *the act of protecting*).<sup>23</sup> In addition, according to Black’s Law Dictionary, the term “*protection*” refers to the act of safeguarding or defending something, often through legal means. It involves measures taken to preserve or secure an individual’s or entity’s rights, interests, or property. In the legal context, protection can pertain to laws and actions that ensure rights are upheld,

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<sup>21</sup> Pusat Data dan Sistem Informasi Pertanian. *Statistik Lahan Pertanian Tahun 2015-2019*. (Jakarta: Pusat Data dan Sistem Informasi Pertanian, Sekretariat Jenderal Kementerian Pertanian 2020).

<sup>22</sup> Irawan, Bambang. “Konversi Lahan Sawah: Potensi Dampak, Pola Pemanfaatannya, dan Faktor Determinan”. *Forum Penelitian Agro Ekonomi* 23, no. 1 (2005): 1-18.

<sup>23</sup> Kamus Besar Bahasa Indonesia.

prevent harm, and provide safety from external threats or violations.<sup>24</sup>

In the context of agricultural land, protection generally refers to legal measures designed to preserve land from harm such as overdevelopment, conversion to non-agricultural uses, or environmental degradation. It ensures the sustainability and proper use of resources for future generations. Meaning that there is protection for existing food agricultural land. Thus, it is clear that despite the difficulties and tensions between the need for food agricultural land and other needs, sustainable food agricultural land must be protected and if it is converted, there must be replacement land.

Law No. 6 of 2023 basically amends, deletes, or establishes new arrangements for several provisions stipulated in 2 (two) laws that are interrelated with the public interest, as stated in Article 122 of Law No. 6 of 2023: Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest (Law No. 2 of 2012) and Law No. 41 of 2009. However, Article 122 of Law No. 6 of 2023 indicates that the changes are intended to provide ease and smoothness in land acquisition for the purpose of job creation. Thus, it can be understood that the interest of the revision of Law No. 41 of 2009 by the government and the legislature is clearly not to further protect sustainable food agricultural land, but to facilitate and smooth land acquisition for the sake of job creation.

Examining the provisions of Law No. 2 of 2012 *jo.* CHAPTER VIII Land Acquisition Part Two Land Acquisition for Development in the Public Interest Article 123 of Law No. 6 of 2023 (Law No. 2 of 2012 *jo.* Article 123 of Law No. 6 of 2023), it can be seen that what is meant by “Land in the Public Interest” for development is contained in Article 10 letter a to letter x.

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<sup>24</sup> Black, Henry Campbell, et al. *Black's Law Dictionary*. Vol. 196. St. Paul, MN: West Group, 1999.

Meanwhile, the legal basis for National Strategic Projects can refer to Government Regulation Number 42 of 2021 concerning the Ease of National Strategic Projects (PP No. 42 of 2021) at the Government Regulation level. Meanwhile, at the Presidential Regulation level, namely Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects (Perpres No. 3 of 2016) as last amended by Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects (Perpres No. 109 of 2020).

In line with the intention of “*protection*” of sustainable food agricultural land, there needs to be a special limitation in interpreting “public interest and/or National Strategic Projects” in Article 44 (2) of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023. Public interest and/or National Strategic Projects actually have a very broad scope. Without clear limitations and provisions that make it difficult to change functions in the meaning of “public interest and/or National Strategic Projects”, the conversion of functions will easily occur according to the will of the government and/or existing stakeholders.

- b) Mandating Regional Governments to regulate derivative regulations from Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023 in Regency/City Regional Regulations, namely Regional Regulations concerning Protection of Sustainable Food Agricultural Land

LP2B control is closely related to land conversion. In this case, permits for the transfer of rights (IPH) of agricultural lands and regulations in local regulations are important keys in resolving issues up to the technical level in the regions.

Permits to transfer the rights of these agricultural lands must be complicated by the land office in the district/city and/or related

stakeholders. Thus, the level of “urgency” in seeing and considering the reasons for land conversion is an important measure and requires the progressivity of the district/city land office and/or existing stakeholders.

- c) Clarifying the meaning of “*issuing approval*” in Article 73 of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023

As previously stated, there are 2 (two) important keywords changes in the provisions of Article 73 of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023, namely “issuing a license” (Article 73 of Law No. 41 of 2009) and “issuing an approval” (Article 73 of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023). Both are not explained in the Explanation of Law No. 41 of 2009 or Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023 or the wording “Quite clear”. The change in wording from “issuing a license” to “issuing an approval” raises questions about the intent and difference. Thus, it is necessary to provide an explanation in Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023.

- d) Penal Policy for the protection of sustainable food agricultural land

The protection of sustainable food agricultural land needs to be supported by good penal policy. According to Barda Nawawi Arief, legal policy in criminal law or in foreign literature also known as “*penal policy*”, “*criminal law policy*”, or “*strafrechtspolitik*” means how to choose, seek or make, and formulate a good criminal legislation, in accordance with the objectives to be achieved. Furthermore, the politics of criminal law is a policy line to determine several things: first, how far the provisions of the applicable criminal law need to be changed and updated; second, what can be done to prevent criminal acts; and third, how the investigation, prosecution, trial, and execution of punishment should be carried out.<sup>25</sup>

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<sup>25</sup> Najih, Mokhammad. *Politik Hukum Pidana Pasca Reformasi*. (Malang: UMM Press, 2008).

The address in the criminal provisions for the protection of sustainable food agricultural land is addressed to several legal subjects:

1. “individuals” who carry out conversion or do not carry out the obligation to restore the state of sustainable food agricultural land (Article 72 (1) and (2) of Law No. 41 of 2009);
2. “government official”, namely, *first*, the aggravation of punishment (plus  $\frac{1}{3}$  or one-third of the threatened punishment) in the case of committing acts as referred to in Article 72 (1) and (2) of Law No. 41 of 2009 (Article 73 (3) of Law No. 41 of 2009); *second*, any government official who issues approval for the conversion of sustainable food agricultural land (Article 73 of Law No. 41 of 2009 *jo.* Article 124 of Law No. 6 of 2023);
3. “corporation” that commits a criminal offense as referred to in Article 72 paragraph (1) and (2) of Law No. 41 of 2009, the management is convicted (Article 74 of Law No. 41 of 2009). In fact, not only imprisonment and fines, corporations can also be sentenced in the form of: a. confiscation of assets resulting from criminal acts; b. cancellation of work contracts with the government; c. dismissal of the management; and / or d. prohibition of the management to establish a corporation in the same business field. In the event that the acts as regulated in this chapter cause losses, the punishment imposed may be added with the payment of losses.

The three addresses above have good “legal formulations”, but what is needed is more attention and improvement in terms of “law enforcement”.

- e) The time to regulate either through creating a new law or simply changing the existing laws

Legislation needs to be changed when it cannot be implemented. It needs to be understood that reconstruction /

development / legal reform is essentially "renewal / sustainable development (sustainable reform / sustainable development). Legal reform is an ongoing and continuous activity without stopping. The National Legal Convention of 15-16 March 2008 in Jakarta also emphasized that "legal development is a continuous and never-ending concept".<sup>26</sup> Thus, the legal policy of protecting sustainable food agricultural land is expected to be a "generational" or sustainable study.<sup>27</sup>

### 3) Establish pattern to select particular objectives and the ways to achieve those objectives

The formulation of goals and methods to achieve them in legal policy, particularly in the protection of sustainable food agricultural land, necessitates the adoption of progressive laws. This is crucial because safeguarding agricultural land requires more than conventional protection measures; it demands innovative legal solutions that can effectively address the complex challenges posed by urbanization, land conversion, and environmental degradation. Traditional legal frameworks, based on established patterns, may not provide the necessary flexibility to meet these challenges. Therefore, laws should not merely aim to preserve the existing state of affairs but should actively seek breakthroughs that can promote long-term food security and environmental sustainability.

Progressive law is characterized by its dynamic approach, continually evolving to address societal issues in ways that reflect changing circumstances. It involves an ongoing search for solutions and

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<sup>26</sup> Arief, Barda Nawawi. "Beberapa Aspek Pengembangan Ilmu Hukum Pidana (Menyongsong Generasi Baru Hukum Pidana Indonesia)". *Pidato Pengukuhan*. Semarang: Universitas Diponegoro, 1994.

<sup>27</sup> Arief, Barda Nawawi. *Pembangunan Sistem Hukum Nasional (Indonesia)*. (Semarang: Badan Penerbit Universitas Diponegoro, 2021).

challenges existing norms to adapt to new realities. Satjipto Rahardjo<sup>28</sup> emphasizes the importance of legal breakthroughs, where conventional rules and frameworks may need to be reinterpreted or even discarded to address complex societal needs. In this context, Rahardjo suggests that a legal breakthrough should be achieved through spiritual intelligence, deep interpretation, and compassion.

Spiritual intelligence involves incorporating ethical values and moral considerations into legal decision-making, recognizing that law is not solely a tool for enforcement but also a mechanism for fulfilling societal obligations. Deep interpretation encourages a deeper understanding of legal texts, ensuring that laws are applied in a way that is relevant to the social, cultural, and environmental contexts in which they operate. Finally, compassion calls for the law to be applied not just with logic and reason but with empathy, especially for marginalized or vulnerable groups. This human-centered approach ensures that legal policies not only serve the broader societal good but also promote justice and equity. By embracing these principles, progressive law enables a legal system that continuously evolves to provide more effective and sustainable solutions for protecting agricultural land and ensuring food security.

## IV. Conclusion

In conclusion, this study has explored the legal policy and challenges in protecting sustainable food agricultural land in Indonesia through the lens of constitutional and criminal law. The analysis highlights the significant role of legal policy in shaping the framework for agricultural land protection, aligning it with the state's broader objectives as outlined in the 1945 Constitution of Indonesia, particularly in terms of

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<sup>28</sup> Rahardjo, Satjipto. "Hukum Progresif: Hukum yang Membebaskan." *Jurnal Hukum Progresif* 1, no. 1 (2005): 1-24. See also Suteki, Suteki. "Rekonstruksi Politik Hukum Hak Menguasai Negara Atas Sumber Daya Air (Studi Privatisasi Pengelolaan Sumber Daya Air)". *Dissertation*. (Semarang: Universitas Diponegoro, 2008).



protecting the nation and promoting general welfare. While Indonesia has established legal provisions, such as Law No. 41 of 2009 on the Protection of Sustainable Food Agricultural Land, the study has identified substantial gaps in the implementation of these laws. These gaps include inconsistencies in legal enforcement, insufficient penalties for land conversion, and inadequate coordination among relevant institutions.

This research emphasizes the need for a more integrated and robust legal framework that addresses both constitutional and criminal law perspectives. Strengthening the enforcement mechanisms, revising existing regulations, and ensuring political will at the local and national levels are essential steps toward improving the protection of agricultural land. Furthermore, the findings suggest that a comprehensive legal policy, which includes both preventive and punitive measures, is critical for overcoming the challenges posed by land conversion and ensuring the sustainability of food agricultural land in Indonesia. Ultimately, this study contributes to the ongoing discourse on legal reforms and offers practical recommendations for policymakers, legal practitioners, and stakeholders to enhance the protection of Indonesia's agricultural land, ensuring its preservation for future generations.

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Gouverneur c'est prévoir