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RESEARCH ARTICLE

RECONSTRUCTION OF THE LEGAL PROTECTION OF LAND RIGHTS HOLDERS IN LAND PROCUREMENT IN THE PUBLIC INTEREST BASED ON THE VALUE OF PANCASILA JUSTICE.

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Abstract

Normatively, the constitution guarantees the protection of the holders of land rights to the land it owns as stipulated in Article 28 H paragraph (4) and Article 28 J paragraph (2) of the NRI Constitution of the Year 1945. Land acquisition for the public interest often cannot run well, because land holders are reluctant to relinquish their land, because they feel they have not received proper compensation. Therefore, to realize the values of justice there is a need for several means of settlement, such as the mechanism of deliberation and compensation mechanisms. The ideal concept of land development for public interest is not by buying and selling but by releasing rights or revoking rights along with compensation based on the sale price rather than based on the selling value of the tax object. Determination of the value of fair compensation can also be seen as legal recognition and legal protection of land rights holders while taking into account the social functions of land. The reconstruction is done against Article 6 BAL, ie all land rights have so s ial function, with the protection of individual ownership.

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Introduction:-

Land as a gift of God Almighty has a very function important to build a just and prosperous Indonesian society [2] . In connection with this in mind, the Agrarian Basic Law is an implementation directly from Article 33 paragraph (3) of Act Constitution of the Republic of Indonesia Year 1945 [3] , at the same time is an embodiment of Indonesia's aspirations in the renewal of the National Land Law (Basic Agrarian Law) [4] .

Land is a natural resource which is a primary human need. There are almost no human activities that are not related to land. To be issue, when the construction should be done, while the availability of n egara (land directly controlled by the countries are) very limited.

In the present time it is difficult to develop for public interest in state land. Reality shows development requires land, but on the other hand the land countries are available increasingly limited, because the land is there some have been owned / owned by the community with a right. Order for momentum development can still be maintained, especially the construction of various facilities for public purposes that require land parcels, then legal efforts from the government to acquire these lands in fulfilling development among others, carried out through the approach to the liberation of rights and revocation of rights. [5]

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For the sake of implementation development, the way out is to take land - land rights. Activities to take land (by the government in the context of implementation) development for the public interest) which is then called land acquisition. The development that is currently being actively carried out by the government is often in conflict with the problem of land acquisition. So as not to violate the owner's rights land, the land acquisition must be carried out by taking into account the principles of the public interest in accordance with the legal provisions apply. [6] With the enactment of Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest is expected to be legal umbrella for the people of Indonesia, but what is this law provide legal protection for holders of rights to land whose land used for development in the public interest.

Procurement tanah is activities provide soil with way provide proper and fair compensation to the rightful parties such as written in Article 1 number 2 of Act Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. As the implementing regulation of Law Number 2 Year 2012 which regulates the technical land acquisition, the President has issued Presidential Regulation Number 71 In 2012, amended by Presidential Decree No. 99 Year 2014, and the last Adala h of Presidential Decree No. 40 Year 2014 on the Implementation of the Land Acquisition Development for Public Interest.

Land procurement especially for development for the public interest by the government and regional government carried out by revoking land rights. In this case a lot problems arise because of regulatory weakness. Existing regulations not yet able to provide legal certainty regarding procurement land for public use. Besides the material aspects of all regulations there is, inadequate, causing problems. Among others : definition and coverage of public interests, mechanisms for land acquisition, compensation, and application of consignment.

Land acquisition in the public interest requires proper compensation to holders of land rights and objects on it. Replace it the loss is the right of the community that must be carried out by the government as the party that needs the land. The interests of the community and individual interests must balance each other, so that the ultimate goal, prosperity, justice and happiness can be achieved for the whole people. However, often the compensation process creates disputes and conflicts between the people whose land is liberated by the Government, resulting in losses on both sides. On the one hand the Government's plan to build public facilities has been hampered, on the other hand the community has suffered due to the emergence of uncertainty over their land affected by the release.

Normatively, the constitution guarantees the protection of holders of land rights to the land it owns as stated in Article 28 H paragraph (4) of the Constitution of the Republic of Indonesia Year 1945 (NRI Constitution of 1945) that every person is entitled to have private property rights and property rights should not be taken over arbitrarily by anyone.

This provision is strengthened by Article 28 J paragraph (2) of the NRI Year Constitution 1945 that in exercising their rights and freedoms, every person is obliged to submit to the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values , security and legal order in a democratic society.

The value of compensation becomes very important for holders of land rights because land is a resource that in addition to having economic value as well as social, political values, even for the people of Indonesia the land also has a connection with religious values. For most people, land is the place where they live and the source of their livelihood, so that the takeover of their land by other parties must consider the economic and social impacts it causes. A farmer whose livelihood depends on land will certainly lose his livelihood if his cultivated land will be taken over and that has the potential to greatly reduce the level of welfare of these farmers and their families.

In the reality of life in the community of land acquisition for development in the public interest it causes turmoil in practice, where it is coercion from parties, both the government, who set prices unilaterally and landowners demand prices that are considered unnatural, meanwhile existing legal instruments have not been able to accommodate two interests these differences, eventually occur by coercion and intimidation community in terms of land acquisition for development in the public interest.

Study of the Theory of Legal Protection of Land Rights Holders in the Procurement of Land for Public Interest

National land law provides legal protection to holders land rights. Mastery and use of land by anyone, for any need must be based on the rights to the land provided, protected by law against interference from any party, both fellow community members and even the ruler, if the disturbance has no foundation the law.

This principle is important to understand because it contains principles respect for land rights. If land is legally controlled by the rights holder, if necessary for development, it must be preceded deliberation first. If not reached agreement, then the project may not be forced to be carried out on site that is. However, if the project is related to the public interest, according to the provisions of the law can be carried out revocation of rights, while taking into account the principle of respect for land rights. [7]

Legal protection for the community in the procurement of land for general interests contained in the Presidential Decree Number 55 of 1993 which originally in the Minister of Home Affairs No. 15 of 1975 t Entang Conditions - Procedures Regarding provision Pembe n land bases, which revamped by Presidential Regulation Number 36 of 2005 in conjunction with Presidential Regulation Number 65 In 2006.

This change includes the meaning of public interest, type of land acquisition in the public interest, the definition of the rights to which g anti losses. Change Decision President Number 55 Year 1993 is change substance improvement for achieve better things than the prearranged, in a sense, the most not expected to be able to better guarantee justice and legal certainty for the parties concerned. [8]

Indonesia as countries are legally obliged to protect all the people of Indonesia and all of Indonesia's bloodshed to advance public welfare, educate the life of the nation and participate in carrying out world order based on freedom, eternal peace and social justice, this can be seen in Destination countries are in the fourth paragraph of the Act of 1945. [9] Then Sri Soemantri Martosoewignyo (quoting from Antje M. Mak'moen), proposed s h ukum sa country must meet 4 (four) criteria namely : [10]

1. That the government must carry out its duties and obligations based on law or legislation;
2. Guaranteed human rights (citizens country);
3. Power sharing within countries are;
4. There is supervision from judicial bodies (rechterlijke controle).

Of the criteria countries are the laws made must protect its citizens and benefit the community, as Jeremy Bentham stated that the law must beneficial for the community to achieve a happy life. [11] Aspect juridical from something regulations legislation begins from the substance, namely the regulation must be able to translate the underlying philosophy in its provisions. Besides that the container is an arrangement determined by the material content. [12]

Changes / improvements to Presidential Decree Number 55 of 1993 for support development infrastructure, especially Street toll road. Changes / improvements to the legislation have not been based the philosophy that should be in a law. Procurement philosophy land for public use in Indonesia is a communalistic-religious one enabling individual land tenure, with land rights personal, while containing elements of togetherness. [13] Togetherness elements in article 6 U UPA is formulated in words : All land rights have a social function, which among other things means that problematic interests that must take precedence. Individual interests must be submit to public interest. However, this change is expected to be obtained better guarantee justice and legal certainty for related parties.

In the second amendment to U UD NRI in 1945, this was contained in the Chapter XA concerning Human Rights, Article 28 H paragraph (4). Implicitly U UD NRI in 1945 recognized the existence of property rights / land ownership as a matter of things human nature, namely the right that must be in every person to live naturally as individuals as well as members community, in harmony with their dignity and dignity as a respectable person. These are human rights is the right that belongs to every o rang which essentially should not be contested by anyone with a reason anything, as long as the person does not abuse his rights or do something which endangers or harms others. Human rights is a right that cannot not always accompany everyone's life in the sense that it should and appropriately .

implicitly UUD NRI of The year 1945 recognized the existence of land rights as rights that is nature principle. Although thus, remembering human should life community, the use of human rights will not be absolute, it will but experience certain limitations. This is manifested by the provisions of Article 6 UUPA which affirm ownership rights on land of social functioning. Consequently the act of reducing or eliminating someone's right to land because it is needed by another party must be regulated in law.

The concept of the rule of law and rechtstaat places recognition and protection of rights human rights as a central point, whereas for N egara Republic of Indonesia is the central point of the people based on the principle harmony, [14] so that human rights according to Pancasila are the functional relationship between power countries are proportionate, Dispute resolution through deliberation and justice is a means last one. [15] So that conclusions can be drawn from the state of Pancasila law :

1. Harmony of relations between government and people based on principles harmony;
2. Proportional functional relationship between the powers of countries are;
3. The principle of dispute resolution by deliberation and justice is the last means;
4. Balance between rights and obligations.

Based on these elements, legal protection for the community is directed to :

1. A need to prevent disputes or wherever possible reduce the occurrence of disputes; in this connection means perlindungan preventive law should take precedence over the protection of the law repressive;
2. Efforts to resolve (legal) disputes between the government and the people by means of deliberation;
3. Dispute resolution through the judiciary is the last resort, the court should be ultimum remedium and justice not a forum confrontation so the judiciary must reflect a peaceful atmosphere and peaceful, especially through the law.

If analyzed based on the theory put forward by Jeremy Bentham the utilitarianism in which he saw the duty of law was nurturing kindness and prevent evil. Bentham looked at interests society and also individual interests must be considered in all steps taken by the Government. Legal protection in the procurement of land for public purposes can be analyzed in its legal rules in a way :

1. Limit the definition of public interest in land acquisition;
2. Protecting land rights;
3. Protecting compensation.

If Bentham's opinion is related to legal protection as follows : Article 18 U UPA which is the basis for revocation land rights which are then implemented by Law Number 20 1961 stating public interests including interests the state and the common interests of the people, land rights can be revoked give proper compensation. This legal protection is in accordance with the theory J Eremy Bentham because it was implemented under the law.

Protection of land rights is protected by UUD 1945 Constitution of the Republic of Indonesia stated in Article 28 letter h paragraph (4) , that everyone has the right have private property rights and such ownership rights may not be taken arbitrary and must be offset by compensation. Compensation in addition to payments with the value of money must also be able to provide better survival rates before social life affected by land acquisition, resulting in a balanced compensation.

Legal protection in the principle of social function as well must be concrete in the norms and conditions in the form of government regulations. Legal protection must be in the formulation of concrete articles contained in inside it. Formulation of articles of understanding of public interest, article formulation legal protection of land rights, formulation of compensation articles, all of that must be adapted to the philosophy of Jhering, namely the balance between interests individuals, community interests and public interests that are harmonized within social function of land rights.

Problems and Settlements in the Procurement of Land for Public Interest based on the Value of Justice Compensation

The main problems in implementing land acquisition for development in the public interest is about determining the amount of compensation. Replace it loss is compensation for damages suffered by the holder of the right land for the transfer of rights.

The problem of compensation is a component most sensitive in the land acquisition process. Exemption form and size change loss is often a long process, and protracted due to not an agreement between the parties concerned. [16] Compensation in Law Number 2 of 2012 is stipulated in Article 1 number 10 that compensation is a proper and fair replacement to the rightful party in the process of land acquisition. Emphasis on compensation for aspects of feasibility and justice for holders of land rights.

Article 18 U UPA , change Decent losses will be arranged in undang reserved. The said law is Law Number 20 of 1961, which is described in detail in the Explanation of number 5, as follows :

The appropriate compensation will be based on the real / actual value of the land or the object in question. Prices are based on value the truth is, it doesn't have to be the same as the general price, the general price can is the price of paint. But on the contrary the price does not mean too cheap price. Not only are people entitled to the land or whose rights are revoked only those who will receive compensation. But the people who occupy it the house or working on the land in question will also be considered. For example, they will be replaced with residences or other cultivated land. Or if it is not possible to be implemented, will be given compensation in the form of money or certain facilities, such as transmigration.

In Presidential Regulation No. 36 of 2005 Juncto Presidential Regulation Number 65 of 2006 and Regulation of the Head of BPN-RI Number 3 of 2007, Article 1 number 11 states : Compensation is a replacement for good losses physical and / or non-physical as a result of land acquisition to the have land, buildings, plants, and / or other related objects with soil that can provide better survival than level of socio-economic life before being exposed to land acquisition. [17]

Article 12 regulating compensation issues provided for : Rights to land, buildings, plants, other objects related to land. Article 13 paragraph (1) explains regarding the provision of this form of compensation can be in the form of money, substitute land, resettlement. Whereas in paragraph (2) regarding compensation if the holder of land rights does not want compensation as mentioned in paragraph (1) the form of loss is given in the form compensation in the form of equity participation (shares). [18]

Consignment

In the Big Indonesian Dictionary, the word consignment is defined as safekeeping money. In Civil Law , the consignment is defined as deposit of money in The District Court, which is based on the existence of a relationship between accounts payable debtor and creditor.

In Article 10 of the Presidential Regulation Number 65 of 2006 stated :

1. In the case of development activities for the public interest that cannot transferred or transferred technically to the layout of the place or other location, then the deliberation takes place in the longest period of 120 (one hundred twenty) calendar days from the date of the first invitation;
2. If after deliberation as referred to in paragraph (1) no agreement was reached, the land procurement committee applied the amount compensation as referred to in Article 13 letter a and deposit compensation to the District Court whose jurisdiction covers location of the land concerned;
3. If happen dispute ownership after determination replace it loss as referred to in paragraph (2), the committee leaves compensation to the District Court whose jurisdiction covers the location of the farm concerned.

Land acquisition for public interest as stipulated in the Regulation President Number 36 Year 2005 Juncto Presidential Regulation Number 65 Year 2006 allowing safekeeping of compensation or consignment. Institution indemnity safeguards in Presidential Decree No mor 55 of 1993 , that change loss is deposited in the local District Court if the object of land acquisition jointly owned by several people and one or several of them not can be found.

In Presidential Regulation No. 36 of 2005 Juncto Presidential Regulation Number 65 of 2006: compensation is deposited at The local District Court if the deliberations are repeated about giving compensation failed, while still giving the possibility of revocation efforts land rights in accordance with Law Number 20 of 1961. While inside Law Number 2 of 2012: compensation is deposited in the District Court in the case of parties who have the right to reject the form and / or amount of compensation loss based on deliberation, or the decision of the District Court / Court Agung without the possibility of taking measures to revoke land rights accordingly Law Number 20 of 1961.

Land acquisition for the public interest often cannot run well, because land holders are reluctant to relinquish their land, because they feel they have not received proper compensation. Therefore, to realize the values of justice there is a need for several means of settlement, such as the mechanism of deliberation and compensation mechanisms.

Deliberation is a means used by the state to prove the goodwill of the state in respecting community property rights guaranteed by the constitution. In Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia that individual property cannot be arbitrarily confiscated by anyone. Protection provided by the constitution in land acquisition reflects the noble value of deliberation to avoid violations of the rights holders of the right soil.

The musyawarah mechanism needs to be based on principles of land acquisition that reflect the value of justice, in the form of principles respect for the rights on land owned by the people who are part of the rights of citizens countries are.

Deliberation itself is an activity that hears each other, gives and accepts each other's opinions, and desires to reach agreement on the form and magnitude of compensation and other issues relating to land acquisition on the basis of volunteerism and equality. In practice, deliberation often cannot be done well, because the parties who deliberate are not in the same position, so it is more likely to be directed.

Although procedurally the meeting meets the conditions, if the resulting decision is based on pressure, then an agreement cannot be reached because the pressure is the embodiment of the coercion of the will of one party to pressure the other party to follow his will. In other words the agreement takes place in a forced state, besides, the presence or involvement of people outside the official committee whose functions or responsibilities are clearly unclear will further obscure the meaning substantive deliberation . [19]

Past experience shows a tendency that what is considered deliberation is more focused on the aspect of formalities or procedures. Whereas a deliberation to be able to produce an agreement must be based on the principle of alignment between the parties who deliberate and carried out without any form of pressure . [20] In Article 2 letter f of Law Number 2 Year 2012 that what is meant by the principle of agreement is that the process of land acquisition is carried out by the deliberations of the parties without the element of coercion to obtain a collective agreement.

According to Maria SW Sumardjono that all land acquisition activities are carried out based on an agreement between the parties requiring land and holders of land rights. Physical activities of new development can be carried out if an agreement has been reached between the parties and compensation has been submitted. The principle of respect especially the principle of agreement is embodied in the form of deliberation. Deliberation must be based on the equality of position of the parties. In deliberation there must be no coercion, deception, oversight or misuse of circumstances. The deliberation process is the same as the negotiation process in an agreement in which the parties try to bring together their respective desires to achieve a win-win solution . [21]

In Law No. 2 of 2012 it stipulates that the implementation of deliberations is carried out in two stages. The first stage is a public consultation carried out to obtain a location agreement for the development plan. The implementation is limited to a period of 90 days; and The second stage is the deliberation of compensation. The meeting was held between the National Land Agency (BPN) and the parties entitled to the maximum 30 days from the results of the assessment from the assessor submitted to the BPN.

The problem of compensation is a central issue in efforts to procure land by the government, almost always feeling dissatisfied people whose land rights are affected by land acquisition in the public interest . The shape of the dressing k erugian stipulated in the Act Number 2 of 2012 in the form of: money, replacement land, resettlement, share ownership, and other forms agreed to by the parties concerned. In the event that there is no agreement regarding the form and / or amount of compensation based on the Act Number 2 of 2012, the entitled party can submit an objection to the local District Court within a maximum of 14 (fourteen) working days after deliberation on the determination of compensation.

The District Court decides the form and / or amount of compensation within a maximum of 30 (thirty) working days from the receipt of the objection. Parties who object to the decision of the district court within a maximum of 14 (fourteen) working days may submit an appeal to the Supreme Court (MA). The Supreme Court must provide a

decision within a maximum of 30 (thirty) working days from the receipt of an appeal . A. Decisions that have obtained legal force remain the basis for payment of compensation to the party filing the objection.

According to Maria SW Sumardjono compensation that must be given in land acquisition must be a fair compensation, meaning that compensation does not make a person richer, or poorer than before. [22] Whereas the meaning of reasonable and proper compensation is the amount of compensation sufficient to obtain land and / or buildings and plants in other places . [23]

The concept of compensation in civil law differs from compensation compensation in land acquisition. Compensation in civil law arises when defaults or unlawful acts. Compensation in civil law consists of 3 types, namely costs, losses and interest. R. Subekti defines three types of schadevorgoeding as follows: [24]

1. Cost (kosten) is that all real expenses have been incurred by one party;
2. Loss (schaden) is a loss of damage to the property of one party caused by negligence of the other party or default.
3. Bunga (interesten). Interest is a lost interest gain that has similarities to verbs which is interpreted as a loss in the form of losing profits that have been calculated by the creditor.

Compensation for the procurement of land is not related to the occurrence of defaults or illegal acts. Compensation in the law of land acquisition is a compensation for the loss of land rights holders who lost their land rights, because they were freed for public interest.

The principle of anti-loss g should be given to each person entitled based on the principle nemo plus jurists, namely the holders of rights to land, building owners as well as objects that exist and attached to the land. Compensation is the absolute right of the holders of land rights who release their land for public interest. There is no authority for the state to take land without compensation. Indonesia is not a communist ideology that allows confiscation of land without compensation. Land seizure is only possible for land proceeds of crime.

According to John Salindeho ,that is basically the same as the sale price and compensation. Juridical differences between the two terms are only differentiated according to their legal actions. If buying and selling is done then the land price is paid. Whereas if land acquisition is carried out, compensation for the land is paid. [25]

The government still has different interpretations of compensation and land prices. There are those who define compensation as different from the price of land. Because the government regulates and gives land rights, then if a piece of land is needed again by the government, it is enough to be paid with compensation instead of land prices. So the amount of compensation in itself is lower than the price of land. The government needs to change its pattern of view towards the nature of compensation. The compensation paid as compensation for land acquisition must be able to compensate for losses suffered by the people due to the release of their rights.

According to Schenk in AP Parlindungan that compensation must include: [26]

1. Any losses resulting directly from revocation of rights must be completely replaced;
2. Losses due to residuals that are not revoked are reduced in value;
3. Loss due to not being able to use the object, or because of loss of income;
4. Loss due to having to find another place of business as a replacement.

Schenk further stated that the person whose rights have been revoked must be in the same financial situation before his rights are revoked, and not below the actual, so he gets a loss. [27] Law Number 2 of 2012 in Article 36 regulates the form of compensation in the form of: Giving compensation can be given in the form :

1. Money
2. Replacement land
3. Resettlement
4. Shareholding
5. Other forms agreed by both parties.

In Law Number 2 of 2012 the basis for determining compensation is not included based on the sale value of land objects and variables valuation of land prices. The valuation of land prices is fully left to the land valuer . Based on Article 1 number 11, the Land Appraiser is : Land Appraiser, hereinafter referred to as Appraiser, is an individual

who evaluates independently and professionally who has obtained an assessment practice permit from the Minister of Finance and has obtained a license from the Land Agency to calculate the value / price of the object of land acquisition.

Payment of fair and decent compensation in land acquisition is a manifestation of the principle of respect for land rights. The balance between public interests and individual interests depends on the comparative aspects of the compensation provided with losses experienced by holders of land rights. Compensation in the Presidential Regulation Number 71 of 2012 stipulates that : Reasonable and fair substitution to the entitled parties in the land acquisition process . The appraiser is tasked with evaluating the amount of compensation for land division, including: a. soil; b. ground and underground space; c. building; d. plant; e. objects related to land; and / or f. other losses that can be assessed .

The form of compensation according to Law Number 2 Year 2012 jo Perpres Number 71 of 2012 that the award of compensation for the object of land acquisition is given directly to the rightful party, which in principle must be submitted directly to the party entitled to compensation. If unable, the party has the right because the law can give power to other parties or heirs. The power of attorney can only receive power from one person who is entitled to compensation , the entitled person includes: a. Holders of land rights; b. holders of management rights; c. nadzir, for waqf land; d. owner of customary land; e. customary law community; f. party who controls state land in good faith; g. holder of land tenure; and / or h. owners of buildings, plants or other objects related to land.

The compensation is based on the assessment results are set out in the discussion and / or decision of judicial action . When giving compensation for the party entitled to receive compensation, it is obligatory to release the rights and submit proof of ownership or ownership of the object of land acquisition . The party entitled to receive compensation for the object of land acquisition which has been handed over to the agency that needs the land is the responsibility of the party entitled to receive the loss.

The award of compensation according to Law Number 2 of 2012 is determined in the event that the entitled party rejects the form and / or amount of compensation based on the results of the deliberation, or the decision of the district / MA court, compensation is deposited in the local district court. Custody of compensation, also carried out on: The party entitled to receive compensation is unknown; or the object of Land Acquisition that will be given compensation: 1. Being the object of the case in court; 2. Still disputed ownership; 3. placed confiscated by the authorized official or 4. Becomes a guarantee in the bank.

At the time of the award of compensation and the release of rights has been carried out, or the award of compensation has been deposited in the district court, ownership or land rights of the entitled party to be deleted and proof of their rights declared invalid and the land becomes land directly controlled by the state . The party entitled to receive compensation or an institution that obtains land in land acquisition for public interest can be given tax incentives. Technically, if there is a rejection of the form and amount of compensation, the rightful party can submit an objection to the local district court within a maximum of 14 working days after the minutes of consultation are signed.

Land Acquisition Reconstruction for Public Interest Based on Justice Value

In all aspects of life , various legal regulations are found , through normalization of human behavior, the law penetrates or explores all aspects of human life. As a result of industrialization or development processes that bad, m or instance of coercion on land acquisition, land conversion and so require intervention from the state in the areas that had previously not dijamahnya.

Land whose function was initially limited to agricultural activities must be rearranged because the development of various sectors always requires land. The symptom of increasing penetration of law in society has changed the entire map of the earth's law in the world dramatically. The presence of law in the community, among others, is intended to integrate or coordinate various interests, thereby suppressing the smallest conflict.

Coordination and integration of various interests can be done by limiting and protecting interests in the community. The law allocates power in a measurable manner so that the law of power is determined by its breadth and depth. The allocation of the rule of law is called a right, it is appropriate that disclosed Mochar Kusuma a tmadja that the law as a means of creating order in society (as a tool of social controls. In other words, the law of nature preserve

and maintain what has become something fixed and accepted in society. In the process, the law also serves as a tool of social engineering of which is accommodated as law as a means of development.

This concept can be applied in developing and developed countries. For developing countries, namely from an agrarian atmosphere to industry, make the law (law) to change the nature of traditional people's thinking into modern thinking.

A view that considers law as a tool of social control based on understanding the law is merely normative. In its development, this view has experienced change. The fact shows that the law cannot be released from social symptoms, such as politics, economics and so on, so it needs an understanding of socio-empirical nature. This latter view gives rise to the understanding that law is also a means of making changes.

In addition to the two legal understandings mentioned above, there is also an understanding that the function of law as a protector to guarantee justice for all parties. The law carries out its basic functions as guardians of order and order so that peaceful relations will be realized. In protecting the interests of citizens, the law gives limits to each other's power so that conflicts do not occur so that the community becomes orderly, orderly and peaceful. The occurrence of social changes, requires that the law is not merely understood as a means of social control but also a means of driving social change. Law, the concrete legislation is the basis of the state to determine its policies.

Talking about law as a mere system of rules, revealing its static nature, in the legal sense is only to solve problems that are confronted concretely in order to regulate social relations. Talking about the function of law only as a means of social control means that the law merely maintains the pattern of relationships and rules that exist in the present. The talks would be different if the legal function conceptualized as a social engineering so that orientation is not as mata-eye aimed at solving a problem, but rather desirous cause changes in the behavior of members of society. Law in modern conception, namely its use as a means of doing social engineering, actually as something normal. Even in its use, law is almost always a means of social engineering that is used consciously to achieve order and the state of society that is aspired.

Given the important role of legislation in the Indonesian legal system in driving social change to achieve the desired objectives, the LoGA can be used as an example of that function. The LoGA is an example for a law that gives rise to a type of change, while the type of change that the LoGA requires is a structural change. This means that in quality we want to change the structure of relations between people and land in Indonesia. This can be found in the explanation chapter, as follows:

1. Laying down the national basis, namely that the entire territory of Indonesia is the unity of the homeland of all the people of Indonesia, who unite as the nation of Indonesia (Article 1 paragraph (1), and declare everything is God's gift and constitute national wealth;
2. Eliminating the principle of domein which originally applies, which contains the provision that the state is the owner of lands that are not owned by individuals. This principle is replaced by the principle of the state as the governing body;
3. Laying the foundation for the relationship between communal rights and state power;
4. Social function of land rights;
5. Principle, that in principle land can only be owned by Indonesian citizens;
6. The principle, that every Indonesian citizen has the same opportunity to obtain land rights and benefit and results;
7. Laying the foundation for land reform ;
8. Laying the groundwork for land use.

Based on this, it is appropriate for the LoGA to be included in the category of legal provisions as a means of social engineering . The UUPA does not only want structural changes in relations between people and land, but also a structural change that allows other changes to occur, especially changes in social processes. The intended changes are listed in the manifestation of the LoGA, which includes the basis of the preparation of national agrarian law as a tool to bring prosperity, happiness and justice to the state and people, in the context of a just and prosperous society.

During development activities so far, the actualization of the social function of land rights has caused various social and political problems. In fact, many policies for land acquisition development activities more geared provide convenience for butterfly ntingan executor of late development, both the government and private sectors. That is, the

social function of property rights over land has become more functional as a facilitative tool for both the government and the private sector and as a means of control over landowners.

As a consequence, land acquisition policies are more detrimental to the interests of community members and show weaknesses in legal aspects. In practice the compensation component only covers land, buildings and / or plants, which are submitted, with the argument that all rights to land have social functions. The practice of land acquisition tends to justify the holding of different benchmarks regarding the feasibility of compensation for land needed for public purposes and other needs so that the public interest is expected to be willing to sacrifice landowners.

The implementation of land social functions finds various regulations that cannot be implemented, some of which are overlapping between more than one regulation, both vertically and horizontally. Such facts can be shown from the existence of various occupations of community lands that have been relinquished. To overcome this problem in essence it must be desired that the differences between the interests of the community and the interests of development must be harmonized through national land policies. The alignment of these two interests must be implemented nationally through spatial plans and land use plans.

The emergence of differences in two interests, namely the interests of the community and the interests of development do not need to occur, because in essence the development to increase human dignity. In practice there is a paradox of development, on the one hand the development produces various physical projects, but on the other hand uses the land that was originally the main source of life for the community, so that conflicts of interest arise over land use. Conflict between executors of development and the community in general, so that citizens are always on the losing side. As a result, the people were forced to be displaced or forced to release their land by receiving compensation that was often inadequate.

This land use conflict will continue, even on an increasing scale. This is because there are various factors that cause the conflict of interest, namely:

1. Increased population and development activities, resulting in limited amount of land available;
2. There is no land use and spatial planning policy that accommodates the interests of land use which should be carried out consistently;
3. The mechanism of land acquisition and revocation of land rights that do not provide access to community members participate in decision making.

Reality ownership and control of land in Indonesia within the last three decades marred a number of disputes, of the quantity of various disputes can be seen from several records in the days of government pe rn ah applicable in Indonesia. Besides land disputes, it is also found inequality or differentiation regarding land ownership and control. In addition to land disputes, the problem is also marked by the proliferation of functions (conversion) of land from agricultural land to non-agricultural. There are several factors that cause land conversion in Indonesia, some argue, implicitly the LoGA is the cause of land conversion.

As a concept, the social function of land rights is considered to contribute to the ongoing development process that causes land problems in Indonesia. In the context of development, the social function of land rights in its actualization seems to legitimize the state to marginalize people's rights to land in the interests of development or the public interest. Can be called a social function in its actualization experiencing a shift which is identified as the concept of public interest. This concept can be used as a legal basis for the state in issuing large concessions for efforts to procure land for development activities.

The argument put forward to justify this opinion, among others, the interpretation or interpretation of social functions in its actualization can be excessive. Article 6 of the LoGA only limits that all rights to land have social functions. The interpretable formulation creates various interpretations so that it is sustainable in its actualization. With the pretext that all rights to land have a social function, the practice of land acquisition tends to justify the existence of different benchmarks regarding the feasibility of compensation for land needed for the implementation of public interests, so it is expected that willingness to have land to sacrifice. By the authorities, for example, social functions are actualized to succeed in capitalistic-style economic development. The social function of land rights is interpreted in such a way and becomes synonymous with the concept of public interest.

The implementation of land acquisition is more in favor of the interests of large capital owners and the government. Social functions seemed to facilitate the interests of capital owners and the interests of the government. Moreover, there are several factors outside the law, namely regarding more dominant money, where it will affect many landowners in dealing with parties who need their land.

Weak social and economic position, lack or lack of knowledge regarding legal standing and legal protection given to him, the courage in expressing interests to authorized officials is a factor that will improve the operation of the available law. Land is a principal object in relation to the life of living things. In big cities, fluctuations in the price of land is very fast turns and changes in these prices tend to rise and never m enurun.

Seeing this, people desperately m e m defend their land rights if the land is disturbed others. Most m asyarakat considers land rights are inalienable, meaning it can not be contested, whereas the right to land, according to the provisions m engandung social function. This means that the land can be used by anyone as long as the legal procedures have dite m puh, especially if the prospective user is state land which in this case is the government and used for public purposes. The truth is based on state-owned rights, in the public interest the state has the right to force someone or a legal entity to give up rights to the land, but this country's rights must not abandon the principles of individual ownership.

Land acquisition in the public interest is basically not as simple and easy. Land acquisition led to the interests of citizens soil becomes subordinate named as parties should always be subject to interest that would use the land. Social function as defined in Article 6 BAL contains logic that the social or public interest should take precedence over private interests of the land owner. In land acquisition, social functions are problematic, because every land acquisition for the activities of building activities is always initiated by a ruler who always takes refuge in state power, in this case the government.

As a result, the logic of public interest is often used as an excuse to disregard the interests of landowners , with the pretext that all rights to land have a social function, so that land acquisition for public interests is used as an excuse to free people's land. As a result there is a tendency that justifies the benchmarks of differences in determining compensation for land needed. Generally in big cities, the issue of land acquisition for public interests arises because there is no estimated price adjustment , so that deliberation does not reach consensus and development becomes hampered because the solution becomes protracted and prolonged.

The implementation of land acquisition for the public interest is always experiencing obstacles and challenges, in fact where the problem lies, whether the procedure or culture. In the current procedure there are not many problems, but the principal difficulties in culture, namely that there is still the assumption that the community ownership rights over land are absolute ownership rights, consequently the landowners are free to determine compensation. To change the culture of the society in releasing the rights to the land needs to be done on Disabled rian community cultural equality as the owner of land rights with the government as the one who will use the land. The difference in culture between the community and the government lies in the way of land acquisition that has been carried out by the government.

The way that the government puts forward in land acquisition is compensation, but there is always no similarity in the value of compensation between the community as the land owner and the government. The public wants the highest compensation value from the market price or at least according to the market price, and even the community determines the value of compensation based on the price of the future or after procurement and or has become public facilities. On the other hand, the government in determining the value of compensation is only based on the selling value of the tax object , the amount of which is determined by the Land and Building Tax Office. Based on reality, market prices in society are far higher than the selling value of tax objects . This difference is a problem in determining the value of compensation for land acquisition.

To end conflicts / differences of views in determining the amount of compensation, the government through legislation applies another method, namely the way of buying and selling land between land owners and agencies that need land. The way to buy and sell will certainly be different by way of compensation. On the sale and purchase of the parties' position is balanced, the landowner can set the selling price and the buyer can make a price quote.

The way that must be done in the procurement of land for public interest is actually clearly regulated by the LoGA. UUPA regulates the legal relationship between legal subjects and land. The LoGA also regulates legal actions between legal entities and land. The LoGA clearly stipulates that if legal subjects need land rights but are prohibited from having rights to the land, then legal actions that can be carried out are through the release of rights and revocation of rights. The legal consequence of the legal act of releasing rights and revocation of rights is the abolition of the rights to the land and the land falling to the state.

Based on the description, the method that should be carried out by government agencies when requiring land for development for public interest is not by buying and selling but by releasing rights or revoking rights along with compensation based on the sale price rather than based on the tax object. This was stated to avoid the socio-economic setback of landowners, the amount of compensation provided should accommodate the principles of buying and selling land in general.

The benefits obtained in this way include the value of the compensation amount based on the purchase price, an agreement on the amount of compensation based on the purchase price will certainly minimize land conflicts. Determination of the value of fair compensation based on the sale and purchase price, can also be seen as legal recognition and legal protection of land rights owners while still maintaining the social function of land and protection of individual ownership.

Closing

The ideal concept of land development for public interest is not by buying and selling but by releasing rights or revoking rights accompanied by compensation based on the sale price rather than based on the selling value of the tax object. Determination of the value of fair compensation can also be seen as legal recognition and legal protection of land rights holders while taking into account the social functions of land. The reconstruction is done against Article 6 BAL, namely All rights over land has a function so s ial, with the protection of individual ownership.

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