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### RESEARCH ARTICLE

#### NOTARY'S ROLE IN LAND PROCUREMENT BETWEEN THE STATE COMPANY PERTAMINA AND THE HOLCIM COMPANY IN CILACAP, INDONESIA

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#### Abstract

Procurement land is deed form of law release connection the original law There is between holder necessary rights and land \_ with gift reward in form of money, facilities or other through discussion For reach an agreement between owner land and those who need it . Procurement the land of Pertamina State Enterprise which is company should belong to the state done with method procurement land , but the State Company Pertamina precisely do purchase land in a manner direct to the Holcim Company so that raises problem law as in case decision Supreme Court Number 3729K/PDT/2019. Objective study This is analyze and Research This aim For analyze role Notary Public to release right in procurement land for development For interest general. This use method juridical normative with specification research used is characteristic prescriptive. Writing using primary data and secondary data. Method Collection Legal Materials with use studies literature with method presentation of the data is presented in form text narrative description. Data analysis analyzed in a manner normative qualitative. Research Results thesis This that Notary Public No authorized in make Deed Engagement Sell Buy Number 23 on December 23, 2016 because in Article 1 of the Regulations Head of the National Land Agency Number 5 of 2012 that implementation procurement land scale big should carried out by the Head of the Regional Office of the National Land Agency . Notary Public authorized or role in procurement land scale small as in article 121 of the Regulations President Number 148 of 2015 got done in a manner direct with method sell buy what is authority from Notary Public in making deed binding sell buy or Official Maker Internal Land Deed making deed sell buy ground . Notary Public can authorized or role in procurement land if happen agreement form change loss form change ground.

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#### Introduction:-

Cases that arise in public that every change losses received by the owner land That limited price sell land them. Mechanism change loss the limited between wide land with mark sell object tax something field ground. It turns out

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base calculation compensation procurement land with refers mark sell object tax only focus on dimensions physique land as object. Whereas dimensions nonphysical land related with termination connection between owner land and land as connection right basic Not yet affordable and integrated. based on from discrepancy to change loss and certainty law for the aggrieved party, then role Notary Public rated capable For fulfil hope for part public in request change loss in accordance with the what do you want. Authority Notary Public arranged in Article 15 paragraph (1) of the Law Number 2 of 2014, Notary authorized Formake deed authentic about every deeds, agreements, and stipulations required by regulations legislation and/ or desired by interested parties description then the parties can as well as immediately make deed authentic about agreement change loss given, those that don't accommodated by the government, therefore That with made deed releaseright on land by a Notary based on agreement of the parties give certainty and guarantee on fulfillment demands from society.

Decision Supreme Court Number 3729 K/ PDT/2019 in Case the claims of the parties among them namely Holcim Indonesia Company. as Applicant Objection, which is next will called the Holcim Company against Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap and the State Company Pertamina as Respondent and Participate The next respondent will called etc Head of the National Land Agency and State Company Pertamina.

Holcim Company, is A company limited open moving in the field business production and sale of cement, which owns field land with Certificate of Right to Build Number 26/ Lomanis located on Jalan Mas Tirtodarmo Haryono, Ward Lomanis, District Central Cilacap, Regency Cilacap, Province Java, which has determined by the Governor Central Java as location procurement land For construction of Refinery Development Master Plan Refinery Unit IV Cilacap as listed in the Decree of the Governor of Central Java Number 590/89 of 2017 concerning Agreement Determination of Land Acquisition Locations for the Development of Refinery Development Master Plan Refinery Unit IV Cilacap dated 10 November 2017.

Head of the National Land Agency, namely Chairman executor Land Procurement based on Constitution Number 2 of 2012 concerning Administration Land Procurement For Development For Interest General, that is for Holcim Indonesia Company Refinery Development Master Plan Refinery Unit IV, in Cilacap regency, Central Java, which is being carry out the buying process Land Sector from Holcim Indonesia Company. For interest Pertamina State Company. Pertamina State Enterprises, is a business entity belonging to the country in need Land plots for necessity construction of Refinery Development Master Refinery Unit IV in the Regency Cilacap, Central Java.

Holcim company, accept letter regarding discussion determination shape change loss from the Agrarian and Spatial Planning Office / District National Land Agency Cilacap. At the Meetings said Holcim Company, submitting Holcim Company, can sell Plot to Head of the National Land Agency however with Holcim Company terms still can use part land wide not enough more than 50,000 m<sup>2</sup> (fifty thousand square meters) (area D in map field certificate) to with the second half of 2017 due to the Holcim Company. Still need it as place disposal dredging results (place buildup results backfill), after do series negotiation between the Holcim Company and the State Company Pertamina, then agreed price final bid of IDR 427,500/m<sup>2</sup> (four hundred twenty seven thousand five hundred Rupiah per square meter), however in a manner suddenly, Pertamina State Enterprises send letter Number 031/K20000/2017-S0 regarding follow Carry on Land Procurement in Cilacap to the Holcim Company (Pertamina State Company Certificate). In Pertamina State Company Letter mentioned, the State Company Pertamina state that procurement land to Land plots owned by Holcim Companies are not can next through mechanism procurement land in a manner direct so that result in cancellation Deed Engagement Sell Buy what has signed. The Holcim company delivers letter Response on follow Carry on Land Acquisition in Cilacap dated January 18, 2018 to Pertamina State Company (Holcim Company Letter). In this Holcim Company Letter, only Holcim Company state that the Holcim Company can understand the request of the State Enterprise Pertamina, however No Once agreed Pertamina State Enterprises request in Pertamina State Company Letter about cancellation Engagement Sell Buy and stay requested that the state-owned company Pertamina No change the Selling Price Buy the s already listed in Deed Engagement Sell Purchase and Pertamina State Enterprises No Once responding to Holcim Company Letter to date Application This submitted which the Holcim Company subsequently received a letter from the Head of the National Land Agency as invitation For attend discussion determination form change loss related with procurement land For interest general To use construction of the Refinery Development Master Refinery Unit IV Cilacap ("Deliberation Determination Shape Replace Loss"), at Deliberation Determination Form Change Make a loss said, the Holcim Company was given 1 (one) sheet document in the form of Data and Change Value Loss for the Development of Refinery Development Master Refinery Unit IV in the Regency Cilacap with Replacement Value Reasonable in the amount

of IDR 55,061,100,000.- ( fifty five billion six twenty One million one hundred thousand Rupiah) (“ Replacement Data and Value loss ”). Data and Change Value Worth loss \_ only Rp. 199,985.8/m<sup>2</sup> ( one hundred nine twenty nine thousand nine hundred eighttenty- five Rupiah eight cents per square meter ) is a very long way off under mark sell object tax (which is also set by the Government ) in 2018 , namely Rp. 802,000,- /m<sup>2</sup> ( eight hundred and two thousand Rupiah per square meter ).

Inside First Instance Court won by Holcim Company, granted object petitioner and provide change loss on applicant that is Set magnitude change loss on Land Sector to Holcim Company in the amount of IDR 117,701,437,500.00 (one hundred seven billion seven hundred and one million four hundred and three twenty seven thousand five hundred Rupiah) as listed in Deed Engagement Sell Buy Number 83 dated December 23, 2016 made by notary initial DRP. Punish Head of the National Land Agency and State Enterprise Pertamina For carry out gift Change Loss to the Holcim Company accordingly with magnitude change specified loss.

While on the level cassation that is Head of the National Land Agency as applicant cassation previously the respondent objection and the state company Pertamina participate applicant cassation previously participate the respondent objected , and the Holcim Company as the respondent cassation previously applicant object won by the Head of the National Land Agency as applicant cassation previously the respondent objection and the state company Pertamina participate applicant cassation previously participate the respondent object. Because according to the judge, the Holcim Company's lawsuit was misdirected because in positive the lawsuit related with change loss of PT Holcim no authority Head of the National Land Agency for determine mark change loss , but the authority of the Office of Public Appraisal Services in determine mark change loss , Head of Agrarian and Spatial Planning Office / Regency National Land Agency Cilacap as facilitator only accept results mark change loss from the next Office of Public Appraisal Services delivered on time discussion form change loss dated August 20 , 2018. Claim by Holcim Company is lacking parties ( plurium litis consortium) with No withdrawal of Public Appraisal Service Office as litigants remember related Holcim Company lawsuits with magnitude change loss so that The Supreme Court ruled For cancel Decision Cilacap District Court Number 50/ Pdt.G /2018/ PN.Clp and adjudicate himself , stated Deed Engagement Sell Buy done previously between Applicant Cassation / Pertamina State Company and the Respondent Cassation / The Holcim Company is null and void , stating the procurement process land For RDMP project must done with mechanism in Invite Invite Number 2 of 2012, stated results assessment of Public Appraiser Service Office Amin Nirwan Alfiantori and Partners in the amount of IDR 55,061,100,000.00 ( fifty five billion six twenty One million one hundred thousand rupiah) for Respondent Cassation / Holcim Company is valid and has been fulfil rule regulation applicable laws. As described above as well as based on strength That law remains, though through authority Notary Public can make deed authentic about deed law certain but in release right on land Constitution determine other. because That writer interested For discuss role Notary Public to release right in procurement land for development For interest general .

Based on Holcim Indonesia's Corporate Objection Letter. Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap send letter Number 14943/12-33.500/VIII/2018 dated 30 August 2018 to the Office of Public Appraiser Services Amin, Nirwan, Alfiantori & Rekan (Letter from the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap to office service evaluator public asked to be held repairs / changes as soon as possible with something event report. As for the Response Letter Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap and Letter from the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap to office service evaluator public are 2 (two) contradictory things , where the Holcim Indonesia Company. requested submit lawsuit by the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap However Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap on the other hand requested that the Public Appraisal Service Office do sore repairs / changes price ASAP . That, with inclusion Application this on September 6, 2018 related with the objection of the Holcim Indonesia Company. over the procurement process land held by the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap and Pertamina State Enterprises , then Application This has registered before filing expiration object .

Deliberation results determination change losses in article 37 described that Head Agrarian and Spatial Planning / District National Land Agency Cilacap do discussion with the Holcim Indonesia Company in maximum time of 30 ( three twenty ) days work since results evaluation from Evaluator be delivered to the Land Agency For set shape and/ or magnitude Change Loss based on results evaluation Change Losses , should be the result of the deal in discussion as referred to in paragraph (1) becomes base gift Change Loss to Authorized Parties loaded in agreement minutes.

Because of that writer interested for discuss processes and mechanisms change inside loss clause deed thecan deed drawn up by a notary excluded by law Number 2 of 2012.

### **Materials and Methods:-**

Study This will arranged with use type study juridical normative, that is focused research \_ For study application rules or norms in law positive. Method approach used in study This that is Statute Approach, Analytical Approach, and Conceptual Approach. Required data For worn in study This is with using secondary data , materials Primary laws include the Civil Code, DecisionCourtCountryCilacap Number50/ Pdt.G /2018/PN CLP, MA Decision Number 3729K/PDT/2019, Law Number 5 of 1960 concerning Fundamental Basic Rules Agrarian, ActInvite Number 2 of 2012 concerning Land Procurement for Development for Interest General , Act Number 11 of 2020 concerning Create Work, RegulationGovernment Number 71 of 2012 concerning Administration Shared Land Procurement development For Interest general. Then material law Secondary including Libraries in the field knowledge law, outcome research in the field laws and articles scientific studies, journals and the internet. The library data collection method is a method carried out by researchers by collecting a number of books, documents, regulations legislation, works scientific and literature other. Material obtained law will analyzed in a manner qualitative.

### **Results and Discussion:-**

#### **Role of Notary to mechanism procurement land based on case decision Supreme Court no 3729/K/ Pdt /2019**

Beginning \_ happening case that State Company Pertamina in matter This as participate the respondent objection / applicant next cassation I will called State Company Pertamina, need land For construction of Refinery Development Master Refinery Unit Iv as listed in Governor's Decree Central Java Number 590/89 of 2017 concerning Agreement Determination of Land Acquisition Locations for construction of Refinery Development Master Refinery Unit IV Cilacap dated 10 November 2017 then Holcim Indonesia Company, in matter This as Applicant objection / respondent next appeal will referred to as the Holcim Corporation owner field land with Building Use Right Certificate Number 26/ Lomanis dated January 18, 2000 , which stood on Management Right Number 1/ Lomanis ( Certificate ) which is next called field ground , with Number Parent Area 11.28.73.01.00015, covering an area of 275.325 m2 or equivalent with 27.5235 Ha, has accept letter from the State CorporationPertamina ie letter number 13315/12-33.500/VIII/2018 concerning discussion Determination Change Losses , at the meeting , the Holcim Company can sell field land to State Companies Pertamina with Holcim Company terms still can use part land wide not enough more than 50,000 m2 ( fifty thousand square meters ) (area D in map field certificate ) to with semester II of 2017 because Holcim Company Still need it as place disposal dredging results ( place buildup results backfill ). Initially Holcim applied price to State Companies Pertamina Rp . 490,000 ,- /m2 later after do series negotiation finally State Corporation Pertamina submit the final price to the Holcim Company is 427,500,-/m2 and stated in Minutes of Negotiations in letter Number 334/K20100/2016-S0 regarding Confirmation Plan Purchase Land in Cilacap called " Confirmation Letter ". On mail confirmation this is a State Company Pertamina has ensure purchase Land Sector and agree to the Final Offer Price or with total price of IDR 117,701,437. 500,- ( one hundred seven mercy billion seven hundred and one million four hundred and three twenty seven thousand five hundred Rupiah) ( " Selling Price Buy " ). In the Confirmation Letter this also, the Holcim Company and the State Company Pertaminaalso agreed that Holcim Indonesia Company. Given right For still use part land wide more less than 50,000 m2 (fifty thousand square meters) to with end of semester II of 2017. Refer on the Confirmation Letter, the Holcim Company and the State CompanyPertamina agreed For sign Deed Engagement Sell Buy furthermore called engagement sell buy, as meant in Deed Engagement Sell Buy Number 23 December 23 2016 made before the DRP Notary and officials maker deed land in Cilacap, deep engagement sell buy has agreed procedure payment purchase Land Sector to Holcim Company, as stated in Article 3 Deed engagement sell buy. As for inside engagement sell buy No listed The same very governing clause about cancellation nor waiver enforceability Article 1266 and/ or Article 1267 Civil Code (Clause Cancellation and Waiver).

Then in a manner suddenly on January 17 2017, Pertamina State Enterprisessend letter Number 031/K20000/2017-S0 regarding follow Carry on Land Procurement in Cilacap to the Holcim Company. Inside the State CorporationPertamina mentioned , State Enterprises Pertamina state that procurement land to Holcim Land plots are not can next through mechanism procurement land in a manner direct so that result in cancellation Deed engagement sell buy what has signed . In response to the State Enterprise Letter Pertamina, Holcim Company sent letter Number 046/LCA-DIR/I/2017 concerning Response on follow Carry on Land Procurement in Cilacap dated January 18, 2018 to the State EnterprisesPertamina. In this Holcim Company Letter, only Holcim Company state that the

Holcim Company can understand the request of the State Company Pertamina, however No Once agreed the request of the State Company Pertamina in State Enterprises Pertamina about cancellation engagement sell buy and stay requested that the State Corporation Pertamina No change the Selling Price Buy already listed in Deed engagement sell buy. Then in a manner suddenly on 13 August 2018 Holcim Company received letter from Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap as chairman executor Land Procurement for construction of Refinery Development Master Refinery Unit IV or Respondent Objection / Petitioner Subsequent cassation II called Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap as invitation For attend discussion determination form change loss related with procurement land For interest general To use construction of refinery development master refinery unit IV. At Deliberation Determination Form Change Make a loss the Change Value Loss for the construction of refinery development master refinery unit IV in the Regency Cilacap with Replacement Value Reasonable ( according to evaluation office service evaluator public Amin, Nirwan , Alfiantori and Partners in the amount of IDR 55,061,100,000.- ( fifty five billion six twenty One million one hundred thousand Rupiah), Data and Change Value Worth loss only IDR 199,985.8/m<sup>2</sup> ( one hundred nine twenty nine thousand nine hundred eight twenty- five Rupiah eight cents per square meter ) is a very long way off under mark sell object tax (which is also set by the Government ) for 2018 , namely IDR 802,000/m<sup>2</sup> ( eight hundred and two thousand Rupiah per square meter ). refers to Law Number 2/2012, it should be Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap No direct do determination of Data and Change Value loss at the time discussion Determination Form Change Loss, because there are other processes that precede .

According to Soerjono Soekarno role is aspect dynamic position (status), if a do their rights and obligations in accordance with position , then somebody do their rights and obligations in accordance with position , then He operate something role . [1] According Hartono, the role (role) is expected behavior from someone who has a state. Various roles that are incorporated and related to this status named device role (role set).[2] Role is aspect dynamic position (status). Role is something dynamic aspect form action or behavior carried out by the person or institution that occupies it or lap something position in situation [3] According to Sarwono's role is perspective in sociology and psychology socially considers \_ part big activity daily become cast in category social . Every role social is set rights, obligations, expectations, norms and behavior a For confront and fulfill.[4]

Based on description said , Deed Agreement Engagement Sell Buy Number 23 of December 23 2016 made before the DRP, SH, M.Kn , Notary and officials maker deed land in Cilacap is Deed made based on agreement between State Companies Pertamina with Holcim Corporation, meanwhile it's a State Company Pertamina which is a State Owned Enterprise should in accordance with Regulation Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 Concerning Implementation Technical Instructions Land Procurement article 1 paragraph 1 namely Implementation procurement land , carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement .

Procurement land in framework provision land For project construction of the Refinery Development Master Refinery Unit IV carried out by a State Company Pertamina as listed in Governor's Decree Central Java Number 590/89 of 2017 Concerning Agreement Determination of Land Acquisition Locations for the Development of Refinery Development Master Plan Refinery Unit IV Cilacap dated 10 November 2017 in the district Cilacap No including in Land Procurement for Development for Interest General scale small Because wide land more of 5 (five) hectares as arranged in Presidential Decree Number 148 of 2015 article 121 paragraph 1, object Deed Agreement Engagement Sell Buy Number 23 of December 23 2016 made before the notary initial DRP, Notary and officials maker deed land in Cilacap between the Pertamina Company and the Holcim Company with wide field land the is area of 27.5235 hectares .

Implementation Refinery Development Master Refinery Unit IV project set up Constitution Number 12 of 2012 concerning Procurement land in Article 6 ie Land Procurement for Interest General organized by the Government and article 10 letter e which reads Land for Interest General as meant in Article 4 paragraph (1) is used For development (e) infrastructure oil , gas and heat earth .

According to Soerjono Soekarno role is aspect dynamic position (status), if a do their rights and obligations in accordance with position , then somebody do their rights and obligations in accordance with position , then He operate something role . [5] Role is aspect dynamic position (status). Role is something dynamic aspect form action or behavior carried out by the person or institution that occupies it or lap something position in situation social [6] Based on description the position Notary Public in make deed Engagement Sell Buy Number 23 on December 23,

2016 is not appropriate Because provision Regulation Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 Concerning Implementation Technical Instructions Land Procurement article 1 paragraph 1 namely Implementation procurement land, carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement . because Notary Public No in position make deed Engagement Sell Buy in procurement land For interest general, then Notary Public No entitled and obligated in operate position so that Notary Public No have role in case implementation Refinery Development Master Refinery Unit IV project .

Procurement land in implementation arranged in article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012 concerning Implementation Technical Instructions Land Procurement is implementation procurement land carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement, In implementation procurement land, the Head of the Regional Office of the National Land Agency can mobilize employees within their work unit, Head of the Regional Office of the National Land Agency, can assign Head of the Land Office as Chairman executor Land Procurement. On the other hand, authority Notary Public in accordance Article 15 paragraph 1 of the Law Number 30 of 2004 concerning Regulation Position Notary Public that is Notary Public authorized make deed authentic about all deeds, agreements, and provisions required by regulations legislation and/ or as desired by interested parties For stated in deed, guarantee certainty date making deed, save deed, give grosse, copies and excerpts deed, everything That throughout making deeds That not assigned either or excluded to other officials or other people determined by law . Based on matter the so can concluded that Notary Public No have authority in do procurement land Because based on article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012 implementation procurement land carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement . Should Notary Public reject making Deed Agreement Engagement Sell Buy Number 23 of December 23 2016 made before the DRP, Notaries and Officials Maker Land Deed in Cilacap according to Article 16 letter d of the Law Number 30 of 2004 concerning Regulation Position Notary Public that is Notary Public must give service in accordance with provision in Constitution This except There is reason For refuse it , the notary DRP, can reject making deed those that are related with procurement land Because Notary Public No have authority in procurement land scale big in case Procurement of Rifenery Land Development Master Plan Refinery Unit IV.

Implementation procurement land for development For procurement Small Scale land , procurement land This can done in a manner direct without through stages maintenance procurement the land contained in the Regulations President Number 148 of 2015 with method sell buy , exchange or other way based agreement by both split party . Stages maintenance procurement the land in question the is inside Article 13 Law Number 2/2012 in conjunction with Article 2 of Presidential Decree Number 71/2012 namely: Planning ; Preparation ; Implementation and Submission result . In practice, notary have role in procurement land for development For interest general . Notary Public have authority For make Agreement Engagement Sell Buy, Exchange Swap or another way based on agreement of the parties , such as in case of Refinery Development Master Refinery Unit IV exists Deed Agreement Engagement Sell Buy Number 23 of December 23 2016 made \_ before the DRP, Notaries and Officials Maker Land Deed in Cilacap , if procurement land Refinery Development Master Refinery Unit IV entered in category Small Scale Land Acquisition .

According to Regulation President Number 148 of 2015 (hereinafter called with Presidential Decree Number 148/2015) about Change Fourth Top Rules President Number 71 of 2012 (hereinafter called with Presidential Decree Number 71/2012) about Administration Land Procurement for Development for Interest General mention that is meant with procurement land scale big that is procurement land with wide object procurement land more of 5 (five) hectares. Land Procurement scale big in implementation arranged in article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012 concerning Implementation Technical Instructions Land Procurement is implementation procurement land carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement Article 31 paragraph (3) of the Law Number 2 of 2012 concerning Land Procurement is Head of the Regional Office of the National Land Agency as referred to in paragraph (1), can assign Head of the Land Office as Chairman executor Land Procurement , based on Article 31 paragraph (1) of the Law Number 2 of 2012 concerning Land Procurement , namely the Land Agency set Evaluator in accordance with provision regulation legislation so The Head of the Regional Office of the National Land Agency appoints and determines the Office of Public Appraiser Services as evaluator in procurement land scale big . Form change loss in procurement land can done in 5 ways that is money first , second land replacement , third settlement back , fourth ownership shares and fifth another form agreed upon by the two split party . In matter change loss with

method land replacement can done with sell buy that of course become authority Notary Public or Official Maker Land Deed.

In case decision Number 50/ Pdt.G /2018.PN.Clp and decision Number 3729/K/ Pdt /2019 between Holcim Company as Applicant Objection / Respondent cassation with Head of ATR of the National Land Agency as Respondent Objection / Petitioner Cassation and State Enterprises Pertamina as Come on Respondent / Participant Applicant cassation Refinery Development Master Refinery Unit IV Project , Notary No authorized in make deed Engagement Sell Buy Number 23 on December 23, 2016 because in Article 1 of the Regulations Head of the National Land Agency Number 5 of 2012 that implementation procurement land scale big should carried out by the Head of the Regional Office of the National Land Agency . Notary Public authorized or role in procurement land scale small as in article 121 of the Regulations President Number 148 of 2015 got done in a manner direct with method sell buy what is authority from Notary Public in making deed binding sell buy or Official Maker Internal Land Deed making deed sell buy ground . Notary Public can authorized or role in procurement land if happen agreement form change loss form change ground.

Notary Public in operate its powers and obligations must per Notary Public in operate authority must notice regulation legislation. In case procurement Refinery Development Master Refinery Unit IV land held in a manner No direct nor scale big is authority from Head of the Regional Office of the National Land Agency as it turns out in article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012, so that Notary Public No authorized in make deed Agreement Engagement Sell Buy Number 23 of December 23 in 2016 because authority Already given to other officials accordingly with Article 15 paragraph (1) of the Law Number 30 of 2004. Related with Notary who is not authorized For make deed Engagement Sell Buy in procurement land in a manner No direct so based on Article 16 Act Invite Position Notary, Notary can reject give service If contrary with regulation legislation .

#### **Mechanism determination magnitude change loss in procurement land for development For interest general**

Procurement land explained in Regulation President Number 19 of 2021 namely activity provide land with method give change decent and fair loss. Release process right on top person ownership land and/ or the things that are on it are done in a manner volunteer For interest general. [7] Procurement land for development For interest general arranged in Constitution Number 2 of 2012 concerning Land Procurement, in Constitution This regulated in article 1 number 2 namely Land Procurement is activity provide land with method give change decent and fair damages to entitled party , Understanding loss according to R. Setiawan, is loss really happened Because default . As for the magnitude loss determined by comparison circumstances riches after default with circumstances If No happen default. [8] Definition more losses wide proposed by Mr. JH Nieuwenhuis, understanding loss is decrease treasure riches the one party , which is caused by actions ( doing or let ) which violates norm by the other party . What is meant with violation norm by Nieuwenhui s here is form default and action oppose law.[9] Change make a loss in law procurement land No given with relation happen default or deed oppose law. Change make a loss in law procurement land is something compensation on loss holder right on lost land right on the land Because released For interest general. [10] then in article 1 number 10 is explained about change loss is reasonable and fair reimbursement to entitled party in the procurement process ground . Administration procurement land For interest general arranged in Article 9 paragraph (1) is Administration Land Procurement for Interest General notice balance between interest development and interests community and in paragraph (2) it reads Land Procurement for Interest General held with gift Change Decent and fair damages , Execution procurement land in article 27 paragraph (2) must covers inventory and identification mastery , ownership , use , and utilization land ; evaluation Change loss ; discussion determination Change loss ; gift Change loss ; and release land Agency . Evaluation change loss in procurement land determined by the Appraiser appointed by the Land Agency, in article 34 paragraph (3) it is explained that Change Value Loss based on results evaluation Evaluator as referred to in paragraph (2) becomes base discussion determination Change Losses, in article 34 paragraph (1) Change Value Losses assessed by Appraisers as meant in Article 33 is value at the time announcement determination location development For Interest general. Deliberation results determination change losses in article 37 described that the Land Agency do discussion with Eligible Parties in maximum time of 30 (three twenty) days Work since results evaluation from Evaluator be delivered to the Land Agency For set shape and/ or magnitude Change Loss based on results evaluation Change Losses, Result of the deal in discussion as referred to in paragraph (1) becomes base gift Change Loss to Authorized Parties loaded in agreement minutes. Object from party entitled to the procurement land This can followed up in accordance with Article 38 paragraph (1) that In matter No happen agreement about shape and/ or magnitude Change Loss, Entitled Party can submit object to local district court in a maximum of 14 ( four twelve ) days Work after discussion determination Change Losses .

Based on description the evaluation change loss at the time announcement determination location development For Interest General , on 13 August 2018 the Holcim Company received a letter from the Head of the National Land Agency as invitation For attend discussion determination form change loss related with procurement land For interest general To use construction of the Refinery Development Master Refinery Unit IV Cilacap ( Deliberation Determination Form Change Loss ), at Deliberation Determination Form Change Make a loss said , the Holcim Company was given 1 ( one ) sheet document in the form of Data and Change Value Loss for the Development of Refinery Development Master Refinery Unit IV in the Regency Cilacap with Replacement Value Reasonable according to assessment of the Office of Public Appraisal Services Amin, Nirwan , Alfiantori and Partners in the amount of IDR 55,061,100,000.- ( fifty five billion six twenty One million one hundred thousand Rupiah) (“ Replacement Data and Value loss ”). Data and Change Value Worth loss only Rp. 199,985.8/m<sup>2</sup> ( one hundred nine twenty nine thousand nine hundred eight twenty five Rupiah eight cents per square meter ) will but inside case Party The Holcim company doesn't Once accept information about mark change loss at the time Location Determination , the process carried out after issued Location Determination is Inventory and Identification Mastery, Ownership, Use as well as Land Utilization as arranged in Part Four Implementation Land Acquisition Paragraph 2 of Law 2/2012 ( Inventory and Identification ).

Based on Article 28 of the Law Number 2 of 2012 activities Inventory and Identification must held for a maximum of 30 ( three twenty days ) work , includes activity as following :

- a. Measurement and mapping field by field land
- b. Collection of Entitled Party and Object data Land Procurement.

the Inventory and Identification process ( Inventory and Identification Results ) are mandatory announced at the office village / ward, office district , and location Land Procurement is a maximum of 14 ( four twelve ) days work , accordingly with provision Article 29 paragraph (1) Law Number 2/2012. entitled party No accept results Inventory and Identification such, then in accordance Article 29 paragraph (4) of Law Number 2/2012, the entitled party can submit object to the Land Agency in a maximum of 14 ( four twelve ) days Work since announced. That, next in accordance with provision Article 33 of the Law Number 2 of 2012, in do appraisal, the Appraiser appointed by the Head of the National Land Agency is obligatory do assessment of which covers other possible losses rated. Another possible loss rated in matter This is that the previous Holcim Company has own plan For establish mortar and fabrication plant part from Field of Land as place disposal dredging results (place buildup results backfill). this The same very No calculated by a proven Appraiser from No filled it column Non- Physical Losses in Data and Change Value Losses . In accordance provision Article 38 Law Number 2/2012, in matter No happen agreement about shape and/ or magnitude mark change loss , then the Holcim Company has time 14 ( four twelve ) days Work after discussion determination change loss For submit object to Local District Court . The Head of the National Land Agency informs the Data and Change Value loss at the time to the Holcim Company attending discussion Determination Form Change Loss on the day Monday August 20, 2018 based on the Letter of the Head of the National Land Agency , with thereby refers to Article 38 paragraph (1) of the Law Number 2 of 2012 above , then period time submission object to The local District Court by the Holcim Company will end or expired on September 10, 2018. The Holcim company has also send letter Number 335/HIL/LCA-Dir/VIII/2018 to Head of the National Land Agency regarding Objection Letters on the Results of the Assessment and Application For Revaluation of the assets of PT Holcim Indonesia in Cilacap dated 29 August 2018 ( Objection Letter Holcim Indonesia Company ). Against Holcim's Corporate Objection Letter , then The head of the National Land Agency responded with send letter Number 14942/12- 33.500/VIII/2018 dated 30 August 2018 to the Holcim Company, which in essence welcome the Holcim Company to submit Application to Cilacap District Court ( Response Letter Head of Agrarian and Spatial Planning Office / District National Land Agency Cilacap ). That , in the Response Letter The Head of the National Land Agency , the Head of the National Land Agency also stated that the assessment process was carried out by the agency appraiser /appraisal has submitted to Head of the National Land Agency since July 12 2018, but the Holcim Company did not Once accept the letter referred to by the Head of the National Land Agency to date Application This submitted . Temporary then , based on the Holcim Company Objection Letter , the Head of the National Land Agency sent letter Number 14943/12-33.500/VIII/2018 dated 30 August 2018 to the PUBLIC Appraiser Service Office Amin, Nirwan , Alfiantori &Partners (Letter from the Head of the Agrarian and Spatial Planning Office / Regency National Land Agency Cilacap to the Public Appraisal Services Office requesting that it be held repairs / changes as soon as possible with something minutes . As for the Response Letter Head of the National Land Agency and State Enterprise Pertamina to the Office of Public Appraisal Services are 2 (two) conflicting matters , which the Holcim Company requested submit lawsuit by the Head of the National Land Agency however The Head of the National Land Agency, on the other hand , requested that the Public Appraisal Services Office do so repairs / changes price ASAP . That , besides That determination of Data and Change Value Loss

without implementation of Inventory and Identification processes , as well as evaluation change loss is also far from objective procurement land For interest general as mandated in Article 3 of Law Number 2/2012 especially Because No ensure interest and certainty law for the Holcim Indonesia Company., and raises very big loss for Holcim Indonesia Company.

In case position the above , result discussion determination change losses in article 37 described that the Land Agency do discussion with Eligible Parties in maximum time of 30 ( three twenty ) days Work since results evaluation from Evaluator be delivered to the Land Agency For set shape and/ or magnitude Change Loss based on results evaluation Change Losses, Result of the deal in discussion become base gift Change Loss to Authorized Parties loaded in agreement minutes. Then forwarded by the Head of the National Land Agency based on data from 1.7 authors interpret that the Holcim Corporate Objection Letter , the Head of the National Land Agency sent letter Number 14943/12-33.500/VIII/2018 dated 30 August 2018 to the Office of Public Appraiser Services Amin, Nirwan , Alfiantori & Partners (Letter from the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap to the Office of Public Appraisal Services) request that it be held repairs / changes as soon as possible with something minutes , however PUBLIC APPRAISAL SERVICES OFFICE Amin, Nirwan , Alfiantori & Partners ( Letter from the Head of the Agrarian and Spatial Planning Office / District National Land Agency Cilacap not to the Public Appraisal Services Office give response on letter the so that according to Article 37 of the Law Number 2 of 2012 concerning Land Procurement that the Land Agency do discussion with Eligible Parties in maximum time of 30 ( three twenty ) days Work since results evaluation from Evaluator be delivered to the Land Agency For set shape and/ or magnitude Change Loss based on results evaluation Change Losses , Result of the deal in discussion become base gift Change Loss to Authorized Parties loaded in agreement minutes so according to writer Public Appraiser Service Office Amin, Nirwan, Alfiantori & Partners violate mechanism change loss in procurement land for development For interest general Refinery Development Master Refinery Unit IV project .

Plato mentions there are two theories justice , namely (1) Moral justice , namely something deed can said fair morally and when has capable give balanced ( harmonized ) treatment between rights and obligations ; (2) Justice procedural , is something deed said fair in a manner procedural If somebody has capable carry out deed fair based on the procedure set .[11] In case this is the Office of Public Appraisal Services which is not respond letter objection by the Holcim Company no fulfil elements justice in a manner procedural that is in accordance with Article 37 of the Law Number 2 of 2012 concerning Land Procurement .

According to Regulation President Number 148 of 2015 (hereinafter called with Presidential Decree Number 148/2015) about Change Fourth Top Rules President Number 71 of 2012 (hereinafter called with Presidential Decree Number 71/2012) about Administration Land Procurement for Development for Interest General mention that is meant with procurement land in a manner No direct (scale large) is procurement land with wide object procurement land more of 5 (five) hectares. Land Procurement by No direct ( scale large ) in implementation arranged in article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012 concerning Implementation Technical Instructions Land Procurement is implementation procurement land carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Procurement , in Article 31 paragraph (3) of the Law Number 2 of 2012 concerning Land Procurement is Head of the Regional Office of the National Land Agency as referred to in paragraph (1), can assign Head of the Land Office as Chairman executor Land Procurement , based on Article 31 paragraph (1) of the Law Number 2 of 2012 concerning Land Procurement , namely the Land Agency set Evaluator in accordance with provision regulation legislation so The Head of the Regional Office of the National Land Agency appoints and determines the Office of Public Appraiser Services as evaluator in procurement land scale big .

Policy about gift change make a loss Actually no limited to replacement mark land , buildings and planting - plants , but also should covers evaluation loss in nature immaterial and losses that arise , such as activity effort , result displacement place another , amount customers and reduced profits . [12 ] Deliberation form change loss arranged in Article 37 paragraph 1 of the Law Number 2 of 2012 concerning Land Procurement that the Land Agency do discussion with Eligible Parties in maximum time of 30 ( three twenty ) days Work since results evaluation from Evaluator be delivered to the Land Agency For set shape and/ or magnitude change loss based on results evaluation Change Losses . Evaluator are individuals who do evaluation in a manner independent and professional who has get permission practice evaluation from the Minister of Finance and has get licence from the Land Agency For count value / price object procurement ground . In case position , before held procurement land for development For interest general has happen agreement on a business-to-business basis between the Holcim Company and the State

Company Pertamina poured in deed Engagement Sell Buy Number 23 on 23 December 2016, p it is also included in the Holcim Company's position on Minutes of Negotiations, the State Company Pertamina has send letter Number 334/K20100/2016-S0 dated 20 December 2016 regarding Confirmation Plan Purchase Land in Cilacap ( Confirmation Letter ). On mail Confirmation this is Pertamina State Company has ensure purchase Land Sector and agree to the Final Offer Price or with total price of IDR 117,701,437. 500,- ( one hundred seven mercy billion seven hundred and one million four hundred and three twenty seven thousand five hundred Rupiah) ( " Selling Price Buy " ). Mechanism procurement land scale big must done in accordance with Constitution Number 2 of 2012 concerning Land Procurement with notice Regulation President Number 148 of 2015 concerning Administration Land Procurement for Development for Interest General and Regulations Head of the National Land Agency Number 5 of 2012 concerning Implementation Technical Instructions Land Procurement .

Based on data 1.2.5 that No can continuing the engagement process Sell Buy or procurement land in a manner direct because wide object field land exceeding 5 hectares so in accordance with Regulation President Number 148 of 2015 ( hereinafter called with Presidential Decree Number 148/2015) about Change Fourth Top Rules President Number 71 of 2012 ( hereinafter called with Presidential Decree Number 71/2012) about Administration Land Procurement for Development for Interest General mention that is meant with procurement land scale big that is procurement land with wide object procurement land more than 5 (five) hectares, then Land Procurement for Development for Interest General Refinery Development Master Refinery Unit IV project in Cilacap in the manner implementation must in accordance with Regulation Head of the National Land Agency Number 5 of 2012 concerning Implementation Technical Instructions Land Procurement.

Refinery Development Master Refinery Unit IV Cilacap project should held with mechanism procurement land in a manner No direct ( scale big ) however fact there is agreement between State Companies Pertamina with the Holcim Company as poured in deed Engagement Sell Buy Number 23 on December 23, 2016. Author argue that deed Engagement Sell Buy Number 23 on December 23, 2016 made by a notary, made with No heed Luquitor's Res Ipsa theory. Luquitor's Res Ipsa Theory in language English means "the things speak for itself" [13], which if interpreted in Indonesian, namely object that will talk. Only relevant so that only apply to cases deed oppose law in form negligence. So no apply to deed oppose law in the form of " intentional " or " responsibility " . absolute ". Based on matter it's Res Ipsa Luquitor apply to case deed law in form negligence like case in Deed Engagement Sell Buy Number 23 on December 23, 2016 made by Notary DRP, there is negligence so that fulfil element Res Ipsa Luquitor, then Engagement Sell Purchase made by DRP Notaries, Notaries and Officials Maker Land Deed in Cilacap in accordance with data number 2 ( posita ) based on agreement between the Holcim Company and the State Company Pertamina No in accordance with applicable mechanism.

Mechanism procurement land in a manner No direct ( scale big ) should done in accordance with Regulation President Number 148 of 2015 concerning Administration Land Procurement for Development for Interest General mention that is meant with procurement land in a manner No direct ( scale large ) ie procurement land with wide object procurement land more of 5 (five) hectares. Land Procurement by No direct ( scale large ) is set in article 1 paragraph (1) Regulations Head of the National Land Agency that implementation procurement land carried out by the Head of the Regional Office of the National Land Agency as Chairman executor Land Acquisition, but Holcim Company and State Company Pertamina precisely do agreement outside mechanism procurement contained land in Deed Engagement Sell Buy Number 23 on December 23, 2016 made by Notary initial DRP so that No in accordance with applicable mechanism. discussion determination change loss Article 37 paragraph 1 of the Law Number 2 of 2012 concerning Procurement land namely the Land Agency do discussion with Eligible Parties For set shape and/ or magnitude Change Loss based on results evaluation Change Losses. discussion between the Holcim Company and the Head of the National Land Agency stated in form Holcim Corporate Objection Letter, Head of National Land Agency sends letter Number 14943/12-33.500/VIII/2018 dated 30 August 2018 to the Public Appraisal Services Office requesting that a repairs / changes as soon as possible with something minutes, however The Public Appraisal Service Office does not give response on letter the so that The Public Appraisal Service Office violated mechanism change loss in procurement land for development For interest general Refinery Development Master Refinery Unit IV project.

Mechanism procurement land must socialized to party related so that No raises losses to the affected parties impact from procurement land for development For interest general. In case there is problem related with mechanism procurement implemented land No through supposed steps, the seen in agreement price between the Holcim

Company and the State Company Pertamina as poured in deed engagement sell buy Number 23 on December 23, 2016 made by Notary DRP, which is not in accordance with mechanism procurement land in a manner No direct .

### Conclusions:-

In case decision Number 50/ Pdt.G /2018.PN.Clp and decision Number 3729/K/ Pdt /2019 between Holcim Company as Applicant Objection / Respondent cassation with Head Agrarian and Spatial Planning / National Land Agency as Respondent Objection / Petitioner Cassation and State Enterprises Pertamina as Come on Respondent / Participant Applicant cassation Refinery Development Master Refinery Unit IV Project , Notary No authorized in make Deed Engagement Sell Buy Number 23 on December 23, 2016 because in Article 1 of the Regulations Head of the National Land Agency Number 5 of 2012 that implementation procurement land scale big should carried out by the Head of the Regional Office of the National Land Agency . Notary Public authorized or role in procurement land scale small as in article 121 of the Regulations President Number 148 of 2015 got done in a manner direct with method sell buy what is authority from Notary Public in making deed binding sell buy or Official Maker Internal Land Deed making deed sell buy ground . Notary Public can authorized or role in procurement land if happen agreement form change loss form change ground .

### Recommendations:-

Notary Public in operate authority must notice regulation legislation . In case procurement Refinery Development Master Refinery Unit IV land held in a manner No direct nor scale big is authority from Head of the Regional Office of the National Land Agency as it turns out in article 1 paragraph (1) Regulations Head of the National Land Agency Number 5 of 2012, so that Notary Public No authorized in make deed Agreement Engagement Sell Buy Number 23 of December 23 in 2016 because authority Already given to other officials accordingly with Article 15 paragraph (1) of the Law Number 30 of 2004. Related with Notary who is not authorized For make deed Engagement Sell Buy in procurement land in a manner No direct so based on Article 16 Act Invite Position Notary , Notary can reject give service If contrary with regulation legislation .

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