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Regular Research Article

SOCIAL JUSTICE: THE BASIS FOR IMPLEMENTING COMPENSATION IN LAND ACQUISITION FOR THE NATIONAL STRATEGIC PROJECTS IN INDONESIA

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Abstract**:** *Infrastructure development with the National Strategic Project program must still pay attention to the concept of social justice. The land is the primary indicator needed in this development. Conflicts often occur between landowning communities and the government to acquire land for the National Strategic Projects. The issue of compensation that does not meet the point of agreement is the main problem in land acquisition. This article examines how the concept of social justice is laid as the basis for implementing compensation in land acquisition for National Strategic Projects in Indonesia. This article's writing is supported by the juridical-normative research method with a statutory regulation approach and a conceptual approach. In the concept of social justice, it is permissible to ask for sacrifices in the public interest, but it cannot be justified that these sacrifices are first requested from people who are already disadvantaged in society, so the government must consider several aspects before implementing land acquisition so that it does not harm the community and remain following the concept of social justice.*

Keywords: Social Justice, Land Acquisition, Compensation, the National Strategic Project.

Intisari : Pembangunan infrastruktur melalui Proyek Strategis Nasional harus tetap memperhatikan konsep keadilan sosial. Tanah merupakan indikator utama yang dibutuhkan dalam pembangunan tersebut. Konflik sering terjadi antara masyarakat pemilik tanah dan pemerintah dalam rangka pengadaan tanah untuk kepentingan Proyek Strategis Nasional. Masalah ganti rugi yang tidak menemui titik kesepakatan menjadi masalah utama dalam hal pengadaan tanah. Artikel ini mengulas bagaimana konsep keadilan sosial diletakkan sebagai dasar pelaksanaan ganti kerugian dalam pengadaan tanah untuk Proyek Strategis Nasional di Indonesia. Penulisan artikel ini didukung dengan metode penelitian yuridis-normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konsep. Dalam konsep keadilan sosial memang boleh untuk diminta pengorbanan demi kepentingan umum, namun tidak dapat dibenarkan bahwa pengorbanan ini pertama-tama diminta dari orang-orang yang sudah kurang beruntung dalam masyarakat, sehingga pemerintah harus mempertimbangkan beberapa aspek sebelum pelaksanaan pengadaan tanah sehingga tidak merugikan masyarakat dan tetap sesuai dengan konsep keadilan sosial.

Kata Kunci: Keadilan Sosial, Pengadaan Tanah, Ganti Rugi, Proyek Strategis Nasional.

A. Introduction

The land area of Indonesia reaches 191.09 million hectares making Indonesia one of the countries that have a large land area. This vast land area along with the growing population and the shift of Indonesia to an industrial state has made it more strategic and complicated to manage the agrarian, spatial, and land sector in Indonesia. The total area ofIndonesia is approximately 840 million hectares, comprising 191 million hectares of land and 649 million hectares of sea. Of the land area, around 124.19 million hectares (64.93%) are still in the form of forests such as dense forests, similar forests, and shrubs. The remaining 67.08 million hectares (35.07%) have been cultivated with various activities (Permen ATRBPN/BPN No. 25/2015).

The mainland is an essential asset of the Indonesian state because the state and nation live and develop on land. Indonesian people position the land as a major factor to increase agrarian productivity. The terminology in English is known as land or soil, while in Semitic it is known as adama. In Indonesia, each region has different terms for land. In Java it is known as siti, bhumi, or lemah, in Bali, it is known as palemah, in Sunda it is more commonly referred to as taneuh or leumah, and Dayak refers to it as petak or bumi. Various different mentioning terms about land are not just because of differences in language, furthermore, it is because there are differences in the meaning of land by humans or people who control and use them (Rosmidah, 2013).

The term land which in Indonesian can be used in various meanings, so in its use it needs to be limited, so it is known in what sense the term is used. If viewed from the legal perspective, the land has been given official restrictions. Article 4 of Law Number 5 of 1960 (UUPA) as the basis of the state's right to control, mentions various rights to land. The land can be given to and owned by people who according to the rules are entitled to control it.

Land arrangement is also governed by the constitution of the 1945 Constitution (the 1945 Constitution). There are two essential themes/issues in the body of the 1945 Constitution, namely the establishment of Indonesia as a state base on law (*'negara hukum'*), and that the earth, water and natural resources contained therein is controlled by the state and used for the greatest prosperity of the people (Articles 33 (3) of the Indonesian Constitution, 1945). Natural resources in Indonesia shall not be used only by some people or just a few parties. All people must be able to enjoy Indonesia's natural wealth in accordance with existing regulations (Fathoni, 2013).

The above provisions give a right to the state which is known as the Right to Control ('*Hak Menguasai Negara*'). This Right to Control is the only material right explicitly granted by the Constitution to the Indonesian state. The material rights in question are the material rights in the land sector. Land is one of the agrarian resources that have a significant role in human life and life, such as to fulfill economic needs, as well as having social, cultural, and other functions. Everyone needs land to fulfill their basic needs, including to build shelter, manage land for income, and so on (Djanggih & Salle, 2018). In other words, the land is a basic need for humans who live in this world.

The current national development creates problems. The problems faced by the government in the implementation of development include the issue of land acquisition for development (Suntoro, 2019) including the role of infrastructure development which was need the land. The implication was the land procurement for the public interest that have an impact on the improvement of agrarian conflicts, especially influenced by the damages assessed factors not yet viable and fair. This research was conducted to describe (1. State land which is directly controlled by the state is limited or can be said to be virtually non-existent. According to Soedharyo Soimin, the only way that can be taken is to land owned by the people, both controlled by customary law, and other rights attached to it (Kristian et al., 2014).

At present, it is becoming a government practice to carry out development in various regions. This is done through enactment of Presidential Regulation Number 3 of 2016 (Perpres No. 3/2016) concerning the Acceleration of the Implementation of National Strategic Projects as amended in 2017 and 2018 with Presidential Regulation Number 58 of 2017 (Perpres No. 58/2017) and Presidential Regulation Number 56 of 2018 (Perpres No. 56/2018). And most recently, there is also a third change, namely Presidential Regulation Number 109 of 2020 (Perpres No. 109/2020). These regulations intensively support the implementation of development in several national strategic projects.

National Strategic Projects are Indonesia's infrastructure projects under President Joko Widodo's administration, which are considered strategic in promoting economic growth, equitable development, community welfare, and development in the regions. This program is carried out in order to increase economic growth through infrastructure development in Indonesia, the Government is making efforts to accelerate projects that are considered strategic and have a high urgency to be realized in a short period of time. In this effort, the Government through the Coordinating Ministry for Economic Affairs creates an acceleration mechanism through the issuance of relevant regulations as a legal basis governing it.

Infrastructure development through the National Strategic Project program such as development in general also creates problems. It has become common knowledge in the community that every physical development always creates problems, both material and non-material problems. Not surprisingly, the physical development carried out by the central and regional governments is faced with long problems that need serious treatment to solve them.

Problems that arise regarding the process of land acquisition aims to create legal certainty regarding the location and area of land needed, the type of land rights that exist on the land object of land acquisition, as well as the amount of compensation money. According to Article 1 Law Number 2 of 2012 concerning Land Acquisition, compensation must be done with proper and fair compensation to the parties entitled to the land acquisition process. The party entitled is the party that controls or owns the object of land acquisition. Problems that occur disrupt the implementation of land acquisition so that it should not be allowed to take place without any settlement. It is necessary to find a solution to create a land acquisition concept to conform with social justice, which aspires all the people of Indonesia according to the Five Principles (Pancasila).

Based on the background described above, this article focuses on how the concept of social justice is used as the basis of compensation in land acquisition for the National Strategic Project in Indonesia. Subsequently, this article analyses the concept of social justice, the implementation of land acquisition in Indonesia, compensation mechanisms in land acquisition, National Strategic Projects in Indonesia, and problems occurring in practice of land acquisition.

The objective of this article is to enrich legal knowledge, especially in the field of agrarian law. This article is also expected to be used as a material for policy makers to make various policies or regulations, especially in the case of land acquisition in the public interest, in this case, the National Strategic Project and the implementation of compensation for activities based on the concept of social justice as stated in the Five Principles or the Pancasila.

B. Methods

This article is a normative (juridical-normative) legal research that examined various legal materials (legislation and scholarly writings) concerning the concept of social justice in land acquisition. This writing is based on the method of statutory analysis, particularly examines national, regional, and international legal instruments governing the issue of land acquisition and National Strategic Projects.

Statutory analysis can be interpreted as "an effort to find out the actual situation of the existing statutory conditions in order to provide an assessment to find out whether the purpose of its formation has been achieved, as well as to know the benefits and impacts of implementing the norms. This paper emphasizes the use of legal materials in the form of laws and regulations as a basic reference in conducting research. This approach is important to look at the shortcomings in the legislation, either at the technical level or in its implementation in the field.

C. A Brief Review of Social Justice

To trace the origin of the word, 'keadilan' or justice comes from the word "*adil*" from the Arabic language, al-adl, which means straight in the soul, not defeated by lust, punished with the truth, not wrongdoing, balanced, equal and so on. Whereas in English, the term justice can be interpreted in several words, such as justice, fairness, equality, and impartiality. In Indonesian, justice can be defined as impartial, taking side with the right, upholding the truth, rightly and not arbitrary. Etymologically, justice is a condition of morally ideal truth about something, whether it concerns objects or people (Hermawan, 2012).

The notion of justice has a long history of thinking. In the legal discourse, the nature of justice has two meanings, namely in the formal sense which requires that the law generally applies, and in the substantial sense, which demands that each law must be in accordance with ideals of community justice (Suseno, 1991). However, when viewed in a broader context, the notion of justice develops with a different approach, because discussions of justice are contained in much of the literature. So that the discussion about justice is not possible without involving moral themes, politics and legal theory. Explaining justice singly is almost difficult to do.

John Rawls (1921-2002) was a thinker who had enormous influence in the fields of political philosophy and moral philosophy. Through the ideas set forth in A Theory of Justice (1971), Rawls made himself the main foothold for the debate of political philosophy and contemporary moral philosophy. Justice as 'fairness', Rawls argues that the volunteerism of all members of the community to accept and comply with existing social provisions is only possible if the community is well-organized in which justice as fairness is the basis for the principles of regulating the institutions in it.

Rawls believes that all parties will act rationally and as rational persons, all parties will prefer to choose the principle of justice it offers over the principle of benefits (utilitarianism). The principle is: all social values, freedom and opportunity, income and wealth, and a base of self-esteem must be distributed equally. An unequal distribution of social values is only permissible if it benefits the most disadvantaged people. Starting from the general principle above, Rawls formulates the two principles of justice as follows: (1) everyone must have the same rights to the broadest basic freedoms, as wide as the same freedoms for all people; (2) Socioeconomic inequalities must be regulated in such a way that, (a) is expected to benefit the most disadvantaged people, and (b) all positions and positions are open to everyone (Hasanuddin, 2018).

The State of Indonesia according to Article 1 paragraph (3) of the 1945 Constitution is a state based on law (Indonesia, 1945). The embodiment of social justice in the rule of law is the main, fundamental, and at the same time the most complex, broad, structural and abstract element. This condition is due to the concept of social justice contained in the meaning of the protection of rights, equality and position before the law, general welfare, and the principle of proportionality between individual interests, social interests and the state. Social justice cannot always be born of rationality, but is also determined by the social atmosphere that is influenced by other values and norms in society.

In any condition, according to Gustav Radburg, the presence of law in society must be able to realize three basic values, namely the values of justice, certainty, and utility. To apply in synergy the three

values are certainly not easy, but nevertheless an ideal form in every preparation of legal products or law enforcement, the presence of the three must get a balanced proportion (Mertokusumo, 1993).

Implementation of the three basic values of justice, certainty and utility, there is often a conflict/ antinomy, between one element to another. Satjipto Rahardjo, said that the contradiction occurred, because these three legal elements actually contained potential conflicts between their ideal values (das sollen) and their actual values(das sein). Law and justice have very close friendships, according to him every discussion about law (both clearly and vaguely) is always a talk about justice. Talking about the law is not enough just to form as a formal building, but it is also necessary to see it as an expression of the ideals of community justice (Rahardjo, 2000).

Ideally, certain laws should also be fair, and fair laws should also provide certainty. This is where the two values experience an antinomic situation, because according to a certain degree, the values of certainty and justice, must be able to provide certainty of the rights of each person equally. For that reason, in making and implementing laws, it must really consider that the making of laws is for happiness and prosperity, not just relying on the rationale for mere rational-formal human behavior. If that happens, then the legal objective of realizing justice will be eliminated and what emerges is the power of authority from the holder of power.

In the structure of the Republic of Indonesia itself there are values that become the reference, and even become a personal manifestation, the personality of the Indonesian nation. Values that can be found from the true meaning of *Merah Putih* (as its soul), *Pancasila* (as a person) and *Bhineka Tunggal Ika* (as its character) are true as "*Trisakti Pilar Bangsa*". Humans who already understand the concept above will be aware of the origin of its creator and its existence in the universe. He understands and will be fair, behave in a full manner, which in the historical context of the preparation of the Principles of Pancasila has placed God higher than himself (in the first precept).

Indonesian people who already know who they are and know God as the Creator with all the attributes of the Godhead only exist or have a desire for unity that causes unity. As for what is united is *rahsa* (its deepest sense) as a human in each of its individual human beings (third precepts). The variety or the number of people who are united requires order (deliberation and representation). The fourth precept is order as a consequence of unity. The order formed on the basis of Indonesian human consciousness based on the first, second and third precepts will lead to social justice (fifth precepts) as a logical necessity (Sujadi, 2018).

The concept of social justice is also one of the precepts that exists in Pancasila, the foundation of our country's law (grundnorm). The concept of social justice has become one of President Soekarno's philosophical thoughts, "Social justice is a society or the nature of a just and prosperous society, happy for everyone, no humiliation, no oppression, no exploitation". These philosophical thoughts contain an understanding that Sukarno strongly prioritized the value of justice and upheld the value of human rights in the concept of national and state life. This thought proves that Sukarno wanted to declare social justice as a legacy and ethics of the Indonesian people that must be achieved. We want to establish an "*all for all*" country. Not for one person, not for one group, both the noble class, or the wealthy group, but "*all for all*" (Herawati, 2014).

Realizing social justice is not only a matter of constitutional mandate, but also the obligations of the people, nation and state of Indonesia. Finally, reflective questions arise, if someone claims to be a citizen of Indonesian society who has the Pancasila personality, that there is an awareness of good guidelines for someone, namely how to uphold social justice in themselves? Is the fifth precept of Pancasila already reflected in the 1945 Constitution as a good operational guideline? Has the organizer of the Unitary State of the Republic of Indonesia in developing the national economy and social welfare been consistent with the 1945 constitution in particular Article 33 and 34 consequently? If not what? Has the government

actually committed serious violations of the 1945 Constitution by failing to properly implement Article 33 and Article 34 of the fifth principle of the Pancasila?

The fifth precept of Pancasila clearly contains the meaning of equality of human rights and the obligation to create social justice for all people. Everyone has the same dignity as God's creatures. The final goal of the fifth precepts is to realize the level of proper conditions, where there is no suffering, misery or poverty, and so on and allows individuals to live as whole human beings. This principle also aims to limit the propensity of individuals to exploit others to be wasteful and wasteful in the use of natural resources, thus harming the common good.

In the context of implementing land acquisition in Indonesia, as a country based on the Five Principles (Pancasila), it should be based on the principle of social justice. Land acquisition as regulated in Law No. 2 of 2012 describes the procedures for implementing land acquisition for the public interest. Policy stakeholders, developers and the community need to understand land acquisition procedures so that they are not disadvantaged in the implementation of land acquisition in the future.

D. Implementation of Land Acquisition in Indonesia

Development, both development for public and private interests, needs land. The current situation is that development continues while the land is limited. To carry out development, especially development in the public interest, often uses land that comes from the community. The land held by the community can be used for development purposes through the process of land acquisition for the public interest (Pamuncak, 2016).

The need for land will certainly continue to increase along with the increase in development activities. This results in more expensive or higher land values and increasing competition for land (Prasetya & Sunaryo, 2013). As a consequence, there is a need for legal protection and legal certainty in the land sector. With legal protection and legal certainty, every Indonesian citizen can control land safely and steadily. Every human being would want the protection and guarantee of legal certainty. The land ownership is no exception. Land ownership is a human right that is protected by national and international law (Djanggih & Salle, 2018).

International law regulates the protection of property rights in the General Declaration of Human Rights Article 17 paragraph (1-2), Article 25 and Article 30. While in national law, it is regulated in the 1945 Constitution Article 28H paragraph (4) and Law Number 39 of 1999 Human Rights. The land policy in Indonesia has long been formulated in the Basic Agrarian Law (UUPA) which relies on Article 33 paragraph (3) of the 1945 Constitution. The agrarian scope of the UUPA includes earth, water, space and natural resources contained therein. The scope of the earth includes the surface of the earth, below the earth (the earth's body), and the space that is below the surface of the water. Thus, land is a small part of agraria. In this context, the state is given the authority to make arrangements, and carry out the designation, use and maintenance of natural resources with the aim of providing welfare to the community (Daeng Kunu, 2015).

Article 33 of the 1945 Constitution as a basic provision "the State's rights to control ('*hak menguasai negara*' or HMN)" regulates the basic economic system and economic activities desired in the Indonesian state, but Article 33 is not something that stands alone, it is related to welfare and social justice. Based on these ideas, understanding Article 33 of the 1945 Constitution is inseparable from the rationale for welfare and social justice for all people. On that basis, the purpose of state control over natural resources, especially land, is social justice and the greatest prosperity of the people (Said & Suratman, 2015). Land as the main factor of production in Indonesian society must be placed under state authority. Land should not be an instrument of state power. Land should not be an instrument of individual power to oppress and exploit the lives of others (Shohibuddin, 2019)namely a conceptual approach for understanding this

phenomenon and its implication on policy formulation. The first contribution includes a synthesis of some literature on various aspects of agrarian inequality. In addition, two types of agrarian inequality are distinguished according to its locus of existence, i.e. inequality of distribution which refers to unequal land tenure among different classes within smallholding agricultural sector, and inequality of allocation which refers to unequal allocation of land and other natural resources between small (family.

The basis for administering land administration according to the UUPA is based on the provisions of Article 2, specifically paragraph (2), namely the State rights to control (HMN) which is exercised by the government as an embodiment of the state in a state of movement (staats in beweging) including:

(a) To regulate and administer the designation, use, supply and maintenance of earth, water and space;
(b) Determine and regulate the legal relations between people and the earth, water and space;
(c) Determine and regulate the legal relationship between people and legal actions concerning earth, water and space.

Land acquisition can be categorized as one of the efforts to carry out land administration, in which the state as the highest organ of power that controls land is the party with the most important position. The term "Land Acquisition" became famous after the issuance of Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development in the Public Interest. The term Land Acquisition is also used in Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006, as well as in Law No. 2 of 2012. The term land acquisition substitutes the term "land release", which is used in the Regulation of the Minister of Home Affairs received a negative response by the community and land law activists (agrarian law) in connection with the many problems that arise in its implementation, as well as intending to accommodate the aspirations of various groups in the community having concern on the negative effects of land release (Sumardjono, 2001).

Breakthroughs taken in Law No. 2 of 2012 raises a question mark associated with the basic concept of acquiring land rights for public interest. In accordance with the conception of national land law, in principle the acquisition of land must be by way of deliberation. This means that people release their land voluntarily by obtaining compensation. If in the public interest all efforts to reach deliberation fail, while the construction site cannot be moved elsewhere, then the revocation of land rights will be taken. This step is in accordance with Law No. 20 of 1961 concerning Revocation of Land Rights and the objects on it, which are based on the provisions of Article 18 of the UUPA (Dotulong, 2016).

E. Compensation Procedure for Land Acquisition

Has been discussed in the previous discussion, that people who release their land voluntarily will get compensation. The following is an outline of the implementation of Land Acquisition according to Law No. 2/2012 concerning Land Acquisition:

(a) Inventory and identification of land tenure, land ownership, land use;
Conducted with a maximum period of 30 days, while the activities include, first, measurement and mapping of plots per parcel; and second, data collection of entitled parties and objects of land acquisition.

(b) Compensation assessment;
The results of the announcement and/or verification and improvement of the results of the inventory and identification of land tenure, land ownership, and land use are determined by the Chairperson of the Land Acquisition Officer and subsequently becomes the basis for determining the party entitled to provide compensation. Determination of the value of compensation by the chairman of the executor of the land acquisition based on the results of the appraisal or appraisal

services appraisers who are appointed and determined by the chairman of the land acquisition whose appraisal is carried out no later than 30 working days.

(c) Deliberation to determine compensation;
The executor of the land acquisition conducts a deliberation with the entitled party within a maximum of 30 working days from the results of the appraisal submitted to the chairman of the land acquisition to determine the form and/or amount of compensation based on the results of the compensation assessment. The results of the agreement in the deliberations are the basis for the compensation to the entitled party/their attorney contained in the minutes of the agreement. In the event that an agreement is not reached regarding the form and/or amount of compensation, the rightful party can submit an objection to the local District Court within a maximum period of 14 working days after the deliberations on determining the compensation. The District Court decides the form and/or amount of compensation within 30 working days from the receipt of the submission of objection. Parties who object to the decision of the District Court, within a maximum of 14 working days may submit an appeal to the Supreme Court. The Supreme Court must give a decision in the maximum time of 30 working days since the request for class is received. Decisions of the District Court/Supreme Court which have obtained legal force remain the basis for payment of compensation to the party who filed an objection.

(d) Payment of compensation;
The compensation can be made in the form of: (a) money; (b) replacement land; (c) resettlement; (d) share ownership; (e) other forms agreed by both parties. The land acquisition implementer makes a determination regarding the form of compensation based on the minutes of the agreement and/or the decision of the District Court/Supreme Court. The compensation is made in the official report of the compensation, attached with a list of parties entitled to receive compensation, the form and amount of compensation that has been given, a list and proof of payment, and minutes of the release of land rights and submission of evidence of ownership of the object of acquisition land to agencies that need land through implementing land acquisition. In a case of the party entitled to reject the form and/or amount of compensation based on the results of deliberations or decisions of the district court/Supreme Court, compensation is deposited at the local District Court. Custody of compensation is also carried out for either the party entitled to receive compensation is not known to exist, or the object of land acquisition that will be given compensation is being the object of the case or a guarantee at the bank.
When the implementation of compensation and waiver has been carried out or the compensation has been deposited in the District Court, ownership or land rights of the party entitled to be abolished and evidence of rights are declared invalid and the land becomes the land which is directly controlled by the state.

F. National Strategic Projects (PSN) in Indonesia

In the context of increasing economic growth through infrastructure development in Indonesia, the Government is making efforts to accelerate projects that are considered strategic and have a high urgency to be realized in a short period of time. In this effort, the Government through the Coordinating Ministry for Economic Affairs initiated the creation of an acceleration mechanism for the provision of infrastructure and the issuance of relevant regulations as a legal basis governing it. Using this mechanism, the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) selected a list of projects that were considered strategic and had a high urgency and provided facilities to project implementation. By providing these facilities, it is hoped that strategic projects can be realized more quickly.

In mid 2016 to the beginning of 2017, an evaluation and selection of strategic projects and the mechanism for accelerating its development have been carried out. The results of the evaluation and

selection are contained in Presidential Regulation No. 58 of 2017 concerning amendments to Presidential Regulation No. 3 of 2016 on the Acceleration of the Implementation of National Strategic Projects. The evaluation and selection of National Strategic Projects by KPPIP began in August 2016 and was completed at the KPPIP Ministerial Meeting on February 10, 2017. The results of this process were reported to the President in April 2017. Based on Presidential Regulation No. 58 of 2017 concerning amendments to Presidential Regulation No. 3 of 2016 concerning the Acceleration of the Implementation of the National Strategic Project, it was decided as many as 245 National Strategic Projects (PSN) plus two programs, namely the electricity program and the aircraft industry program.

The issuance of land acquisition regulation in the context of developing a national strategic project is inevitable. That is because there is already Law No. 2 of 2012 which is the legal basis in the acquisition of land for the development of public interests. This can be seen from the Presidential Regulation No. 56 of 2017, in an effort to accelerate the acquisition of land held by the community and minimize the social impact arising from the community as a result of the release of community land intended for the development of the National Strategic Project.

In terms of national development planning, the National Strategic Project is an implementation of the 2015-2019 National Medium-Term Development Plan as the third stage of the 2005-2025 National Long-Term Development Plan that has been established through Law No. 17 of 2007 (Sujadi, 2018). In order to accelerate the implementation of strategic projects to meet basic needs and improve the welfare of the community, the government deems it necessary to accelerate the implementation of the National Strategic Project. Regarding the policy, President Joko Widodo on January 8, 2016 has signed Presidential Regulation No. 3 of 2016 (Perpres No. 3 of 2016) concerning the Acceleration of the Implementation of National Strategic Projects. There have been two changes to Perpres No. 3 of 2016 namely Presidential Decree No. 58 of 2017 and Presidential Regulation No. 56 of 2018.

In this Presidential Regulation it is stated, National Strategic Projects are projects implemented by the Government, Local Governments, and/or business entities that have strategic characteristics to increase growth and equitable development in order to improve community welfare and regional development. Ministers/heads of institutions, governors, and regents/mayors provide permits and non-licensing requirements for the implementation of the National Strategic Project in accordance with their authority based on Article 3 of Presidential Regulation No. 3 of 2016. The minister or head of the institution as the person in charge of the National Strategic Project proposes the completion of permits and non-licensing needed to start the implementation of the National Strategic Project since the enactment of the Presidential Regulation.

In the course of carrying out the construction of the National Strategic Projects there were indeed three obstacles, namely: (1) obstacles to land acquisition, (2) conformity with regional spatial plans, and (3) funding for the project that reached four thousand trillion more rupiah. Problems arising from various land acquisitions carried out in the context of developing national strategic projects are also unavoidable. Bearing in mind that Law No. 2 of 2012 which became the legal basis in the acquisition of land for the development of public interests. This can be seen from the regulation issued by the president on May 31, 2017 (Perpres No. 56 of 2017 concerning Handling of Social Social Impacts in the context of Provision of Land for National Strategic Projects), in an effort to accelerate the acquisition of land held by the community and minimize the social impacts that arise on community as a result of the release of community land intended for the construction of the National Strategic Project.

The dynamics continued when the President adopted Perpres No. 58 of 2017 concerning Amendments to Perpres No. 3 of 2016. The amendment to Perpres No. 58 of 2017 is related to several important aspects, among others, first, aspects of financing PSN development can also be done through non-government budget. Based on the provisions of Article 2 paragraph (4) of Presidential Regulation Number 58 Year

2017 the National Strategic Project originating from non-Government budget as referred to in paragraph (1) is coordinated by the Minister of National Development Planning (PPN)/Head of the National Development Planning Agency (Bappenas). Second, related to the RTRW, on the location of National Strategic Projects which are not in accordance with the district/city spatial plan or national strategic area spatial plan, in accordance with Article 19 paragraph (3), the Minister of Agrarian Affairs and Spatial Planning (ATRBPN)/Head of National Land Agency (BPN) can provide recommendations on the suitability of spatial layout over the location PSN. Third, the land aspect in terms of determining the land of PSN location based on the provisions of Article 21 Paragraph (4) is done by the Governor. Implications of determining the location, then the land that has been determined by the location cannot be transferred by the owner of the right to another party than to the BPN in accordance with Article 21 paragraph (5) of the Perpres (Sujadi, 2018).

G. Social Justice in Land Acquisition

At present, the central and regional governments are intensively conducting development to increase economic growth. However, the government must pay attention to the impact of development. In relation to the process of land appropriation, the International Covenant of Economic, Social and Cultural provides general guidance, particularly Article 4 concerning the right to adequate housing and Article 7 regarding the right to adequate housing. The Covenant regulates that in any forced eviction, compensation money must be given in accordance with the value of the land or house and according to human rights principles. This is because the issue of compensation is not only a matter of physical compensation, but there are many things that must be considered in compensation following an eviction.

There are at least seven guidelines in providing compensation to eviction victims, namely the guarantee of legality of ownership, availability of various services, affordability, livability, accessibility, location, and also cultural feasibility. We know that the government, both central and regional, wants to move quickly in the process of infrastructure development, but the community should also be invited to get involved in the development process. Community involvement in the development process actually have a positive impact, for example reduce government costs for compensation.

Problems arising from a community's refusal in the process of land assessment by the National Land Agency (the BPN) as the development implementation team, can be solved if compensation based on the appraisal team's assessment entrusted to the District Court or referred to as the Consignment Process. The consignment comes from the word "consignatie" which means the safekeeping by the debtor at the District Court Office because the creditor does not want to accept the debtor's payment. According to Article 42 of Law No. 2 of 2012 concerning Land Acquisition, that safekeeping of compensation to the district court occurs because it is due to the party entitled to receive compensation rejecting the form and/or amount of compensation based on the results of deliberation or based on a court decision of Supreme Court, the party entitled to receive compensation is not their existence is known, the object of land acquisition that will be given compensation is being the object of a case in court, ownership is still being disputed, or has been confiscated by an authorized official or as collateral in a bank.

The above provisions explicitly state that safekeeping of compensation money to a district court can be carried out if the party entitled to the land does not agree on the form and/or amount of compensation given to him, even though as it is known that land acquisition can only be carried out on the basis of the approval of the right holder on land, both regarding the shape and amount of compensation given to the land. The agreement must be obtained through deliberation to reach an agreement, both regarding the handover of the land concerned and the granting of compensation. Because basically the land acquisition contains the principle of agreement. The principle of agreement means that all land acquisition activities are carried out based on an agreement between the parties and compensation has

been submitted. Safekeeping of compensation to the court is basically contrary to the general principle of land acquisition, as disclosed by Prof. Boedi Harsono that with this consignment as if for the people concerned there is only one choice, namely taking the compensation money to court, or will lose his land without compensation.

Law No. 2 of 2012 contravened the UUPA because the procedure that should have been through revocation of rights. Revocation of land rights cannot be done easily, while consignment can be done through the local district court. The government chose the easy and short way in the transfer of land rights so that it is very vulnerable to abuse of power. Although the consignment has legal force because it is mentioned in the Law so it is legal to do, but it needs to be studied further whether the consignment process carried out in the field has fulfilled the values of justice also contains the value of benefits for the community, especially affected communities.

Social justice is the behavior to give to others what is their right for the realization of a prosperous society. Welfare is the main goal of social justice. We agree that development must lead to the welfare of the whole society, it is also called social justice. The State of Indonesia based on Article 1 paragraph (3) of the 1945 Constitution is a state of law. The embodiment of social justice in the rule of law is the main, fundamental, and at the same time the most complex, broad, structural and abstract element. This condition is due to the concept of social justice contained in the meaning of the protection of rights, equality and position before the law, general welfare, and the principle of proportionality between individual interests, social interests and the state. Social justice cannot always be born of rationality, but is also determined by the social atmosphere that is influenced by other values and norms in society.

The fifth precept of Pancasila clearly contains the meaning of equality of human rights and the obligation to create social justice for all people. Everyone has the same dignity as God's creatures. The final goal of the fifth precepts is to realize the level of proper conditions, where there is no suffering, misery or poverty, and so on and allows individuals to live as whole human beings. This principle also aims to limit the propensity of individuals to exploit others to be wasteful and wasteful in the use of natural resources, thus harming the common good.

In connection with the problems of the development of the National Strategic Project. The values of justice need to be upheld. In line with the concept of justice in the five precepts of the Pancasila, according to the sequence, to achieve justice one of the ways is in the concept of the fourth precept of Pancasila, which is passed through a deliberation procedure. The government's action by using the concession route is a path that seems to surrender to the deliberation effort with residents who occupy lands that will be used for the National Strategic Project. This is in line with the opinion of Prof. Boedi Harsono who stated that the consignment seemed to have only one option, namely to take the compensation money to court or would lose his land without compensation.

When looking at the provisions of Law No. 2 of 2012 concerning Land Acquisition, compensation deliberation are conducted between the land acquisition implementer and the party entitled within a maximum of 30 working days from the assessment results submitted to the appraisal chairman of the land procurement executive to determine the form and/or amount of compensation based on the results of the compensation assessment loss. The results of the agreement in the deliberations are the basis for the compensation to the entitled party/their attorney contained in the minutes of the agreement. The concept of deliberation in this provision is in line with the concept of social justice which can only be achieved by involving several elements to conduct deliberations.

Further, when viewed from the Justice Theory that was carried by Rawls, that it is indeed permissible to ask for sacrifice in the public interest, but it cannot be justified that this sacrifice was first requested from people who were disadvantaged in society. According to Rawls, situations of inequality must be given rules in such a way that most benefit the weakest classes of society. Therefore, to obtain an ideal

compensation (worthy) an independent and competent expert assessment team needs to calculate in detail and clear, both physical and non-physical aspects with standard calculation standards. Therefore, to be able to carry out land acquisition for the benefit of the National Strategic Project development, the government must consider several aspects that can be done in the following ways (Permata Sari & Suteki, 2019):

(a) Prioritizing deliberation, in the process of land acquisition, deliberation in the context of determining the form and/or amount of compensation is carried out between the land agency and the rightful party where the deliberation takes place no later than 30 working days from the results of the appraisal submitted to the land agency. According to Perpres No. 36 of 2005, deliberation is an activity that contains a process of hearing, giving and receiving opinions and wishes to reach agreement on the form and amount of compensation and other issues related to land acquisition activities on the basis of volunteerism and equality between parties who own land, buildings, plants and other objects related to the land with those who need land. In the case of land acquisition, the position of the land owner and the party who needs the land should be in an equal position or in other words, the intended discussion is a process of negotiation (bargaining).

(b) Determine appropriate compensation, the basic principle of compensation is to provide fair and appropriate compensation to those who are entitled to the land acquisition process. The basic principle of compensation is to provide compensation for losses suffered by the previous owner in an economic (financial) position that is at least the same as before the construction project was held. In applying the valuation of compensation or physical value compensation, the appraisal conducts an appraisal based on market value. Here, the assessor has several alternative approaches in calculating it. Among them the market approach, income approach, the cost approach. Apart from evaluating physical losses, it is also necessary to assess non-physical losses. Appraisers are required to make an assessment of the loss of financial resources individually. For example, land parcels used for business also get a replacement. The appraiser calculates the loss in the form of a loss of an ongoing business. To get a valuation, the appraiser calculates the average income from the business that lasted for the past year. The compensation value given to business owners is six months of average monthly income.

H. Conclusions

Article 1 paragraph (3) of the 1945 Constitution mentions that Indonesia is a state of law. The embodiment of social justice in the rule of law is the main, fundamental, and at the same time the most complex, broad, structural and abstract element. The need of land for development is challenged with limited land availability. Development for public interest often uses land that belongs to the community. Law No. 2 of 2012 raises a question of acquiring land for public interest. In accordance with the national land law, the acquisition of land must be carried our through deliberation. This means that people release their land voluntarily by obtaining compensation. Broadly speaking, the implementation of land acquisition includes: (a) inventory and identification of land tenure, land ownership, land use; (b) compensation assessment; (c) deliberation to determine compensation; and (d) payment of compensation.

In the context of increasing economic growth through infrastructure development in Indonesia, the government accelerates projects that are considered strategic and have a high urgency in a short period of time. This is called the National Strategic Project. The issue of land acquisition arises in this project is unavoidable.

Rawls' theory of justice permits individual sacrifice for public interest, but it is not justified sacrifice from people who are already disadvantaged in the society. So to be able to carry out land acquisition for

the benefit of the National Strategic Project development, the government must consider several aspects, such as prioritizing consensus and determine compensation in accordance with the losses suffered by the rightful parties.

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