

LEGAL RECONSTRUCTION OF LAND PROCUREMENT FOR PUBLIC INTEREST DEVELOPMENT BASED ON JUSTICE VALUE

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ABSTRACT

The purpose of this research is to reconstruct the land acquisition law for development for the public interest based on the value of justice. The method used in this research was Paradigm constructivism which was divided into 3 (three) types, namely: symbolic, phenomenological, and hermeneutic interaction. This research used juridical-sociological approach or social legal research. The results of the study found that the reconstruction of land procurement value for the development of the public interest based on the value of justice to realize the compensation of fair, democratic and prosperous welfare benefits/recipients of Profit by reconstructing Article 36 and Article 41 paragraph (3) of Law Number 2 In 2012.

Keywords: Land Procurement, Development, Public Interest.

Background

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia is a constitutional foundation for the formation of political law and the National Land Law which contains a directive to the state so that the earth, water, natural resources contained therein shall be used to realize the maximum prosperity all the people of Indonesia. UUPA as the foundation of positive law in Indonesia has the principles of National Land Law as mentioned in the General Elucidation of UUPA.¹

In accordance with the mandate of the state constitution on the management of land and water on the surface of this earth cannot be separated from the basic policy outlined in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the UUPA. Land as a resource and basic capital of development must be carefully managed to provide the greatest prosperity of the people in justice. The existence of land cannot be separated from all human activities both in the economic, social, political and cultural movements of a person or a community. This is because the land has a position and function that is very important for every human being in carrying out activities and continuing everydaylife. It cannot be denied that since man was born, life to death is closely related to the land.

Since the reform era, land issues have become a central issue in social movements in Indonesia. The occurrence of changes in the field of land both land tenure between the Regional Government, between the Government and the community, as well as between communities itself causes—almost every day in the mass media—many preach about land disputes as a result of changes that take place too quickly. To implement the mandate contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the government issued Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles. In the dictum to V Law Number 5 Year 1960 which is a renewal of agrarian law aims to realize happiness, prosperity, peace and independence in society in terms of Indonesian law is sovereign perfect.²

With the coming into effect of Law Number 5 Year 1960 there has been a fundamental change in Agrarian Law in Indonesia, especially land law, which we call Land Law, which in government circles and commonly known as Agrarian Law³. In the meantime the current prevailing agrarian law, which should be one of the most important tools for building a just and prosperous society, is not the other way around, in many ways it is an obstacle to achieving the above goals.⁴

The movement of community development and to smooth the course of development for the public interest, on the one hand the government requires a large area of land, on the other hand the holder of land rights that will be used his land by the government for development should not be harmed. To regulate, it requires a legal regulation that is acceptable to the public⁵. In the concept of national land law, the land in the territory of the Republic of Indonesia is the mercy of God Almighty which must be

¹ Syarifuddin Kallo, 2006, *Kebijakan Kriminalisasi Dalam Pendaftaran Hak-Hak Atas Tanah Di Indonesia* : Suatu Pemikiran, Universitas Sumatera Utara, Medan page.6.

² Notonagoro, 1984, *Politik Hukum dan Pembangunan Agraria Di Indonesia*, Bina Aksara, Jakarta, page.5.

³ Boedi Harsono, *Op. cit*, page.32

⁴ *Ibid*, page.32.

⁵ Aminuddin Salle, 2007, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Total Media, Jakarta, page.2.

maintained, preserved and utilized with due regard to the elements that rely on the applicable agrarian law. The mutual ownership by respecting individual ownership of the land shows respect for the rights of the individual who is also the nation's right.

As mentioned above, the Indonesian nation is blessed and gained the trust of the Almighty God because of its invaluable natural resources. Therefore, the natural wealth must be preserved and utilized as much as possible by virtuous character, as an act of worship and the embodiment of gratitude to the Almighty God (God Almighty). This is the precious value of Pancasila as the source of all sources of law in Indonesia.⁶

Currently, it has been ratified Law No. 2 of 2012 on Land Procurement for Development for Public Interest which was enacted on January 14, 2012 in the State Gazette of the Republic of Indonesia Number 22 of 2012. Procurement of land is a public legal act then the land procurement activities in principle are intended for public interest, not private interests. Because this is done by basing on the principle of discussion (*musyawarah*) where deliberations are held to agree on and determine the form and amount of compensation for the land acquisition. The researcher argues that this rule is more oriented to protect government authorities in building public facilities and more oriented to business interests, such as building toll roads and ports⁷. Although the law must guarantee the availability of land areas for various purposes related to the implementation of the state, the law must also pay attention to the people's rights must be guaranteed certainty in order not to become victims of arbitrariness in development.

Research Methods

The paradigm that researcher used in this research was constructivism paradigm. Paradigm constructivism is a paradigm in which the truth of a reality is seen as a result of relative social construction. This constructivism paradigm is in an interpretative perspective divided into 3 (three) types, namely: symbolic, phenomenological, and hermeneutic interaction. This research uses juridical-sociological approach or social legal research. The meaning of sociological juridical or social legal research according to Ronny Hanitijo Sumitro is: "The approach that constructs the law as a reflection of the life of the society itself that emphasizes on searches, empirical with consequences other than referring to the written law also made observations of behavior that really happened".⁸

In terms of its nature, this research is analytical descriptive, ie data analysis was done not out of the scope of the problem and based on general theory or concept applied to explain about a set of data or show the comparison or relationship set of data with another set of data⁹. In general, the data of the research was distinguished into two. Data obtained directly from the community and from library materials, the data which from the community is called primary data (or basic data), while the data obtained from library materials are commonly called secondary data¹⁰. There are three parts, namely¹¹: primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques in normative legal research conducted through literature study, observation. Data analysis used was descriptive qualitative.

Research Results and Discussion

1) Public Interest in Indonesia's Land Law System

The public interest aspect must fulfill its purpose and must be perceived its usefulness, in the sense that it can be felt by society as a whole and or directly. Benefits to be received by the community directly concern the public facilities. Article 5 of the Presidential Regulation Number 36 Year 2005 as amended by Presidential Regulation No. 65 of 2006 so that the types of Public Interest include:

- 1) Public roads and toll roads, railroad tracks (above ground, or in basements), drains/water supply, drainage and sanitation;
- 2) Reservoirs, irrigation dams, and other irrigation structures;
- 3) Ports, Airports, Railways and Terminals;
- 4) Waste Disposal Facility;
- 5) Public safety facilities such as flood mitigation levee, lava, and other disasters;
- 6) Nature reserves and cultural heritage;
- 7) Generators, transmission, distribution of electric power.

Areas that include the criteria of public interest in Presidential Regulation No. 65 of 2006 are fewer and narrower than those listed in Presidential Regulation No. 36 of 2005. The number of criteria eliminated from the former rules of the present regulation is due to the orientation or purpose of the built or the holding of these fields is no longer necessarily for the public interest or the welfare of the people but there is an element of profit in it.

⁶Anwar Sodik, Teguh Prasetyo and Sri EndahWahyuningsih, RECONSTRUCTION ON THE LEGAL POLICY FOR HANDELING ERADICATING DEFORESTRATION BASED ON THE DIGNIFIED JUSTICE PERSPECTIVE, *Int. J. Adv. Res.* 5(11), ISSN: 2320-5407, page 278

⁷*Ibid*,page.321.

⁸Ronny Hanitijo Soemitro, 1988, *Metode Penelitian Hukum dan Yurimetri*. Ghalia Indonesia, Jakarta,page. 11.

⁹Bambang Sunggono, 1997, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta,page. 38.

¹⁰ Soerjono Soekanto dan Sri Mamudji, 2011, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, page. 12.

¹¹*Ibid*,page. 13.

On January 14, 2012 through Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, the arrangement of land acquisition for development for public interest has a strong legal basis as regulated in the Law. In consideration of the consideration of Law No. 2 of 2012 mentioned three reasons for the government to issue this law, namely: first, in order to create a just society, prosperous based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia. Secondly, to ensure the implementation of development for the public interest, it is necessary for land to be procured by promoting humanitarian, democratic and fair principles. Thirdly, since the law on land acquisition for development for public interest has not been able to guarantee the acquisition land for the implementation of development.

Pancasila as the basic philosophy of the state as well as the philosophy of life of the Indonesian nation basically also contain systematic value. Pancasila is taken from the noble values of the Indonesian nation on the essence of religion, humanity, unity, democracy and justice. In addition, Pancasila is characterized by the principle of kinship and cooperation and the recognition of individual rights.¹²

The difference from the previous land acquisition regulation, it turns out in Law No. 2 of 2012 states the purpose of land procurement for the public interest. In Article 3 of Law No. 2 of 2012 stated that the procurement of land for public purposes aims "to provide land for the implementation of development in order to improve prosperity while maintaining the legal interests of the parties who are entitled".

Land acquisition for public purposes is conducted in accordance with: 1). Spatial Plan, 2). National/Regional Development Plan, 3). Strategic Plan, and 4). Work Plan of every agency that needs land. If land procurement is conducted for oil, gas and geothermal infrastructure (including exploration, exploitation, transmission and/or distribution), the procurement shall be organized based on the strategic plan and work plan of the agency requiring the land. In the case of land acquisition for public interest, it is conducted through planning by involving all stakeholders and stakeholders (Article 7 of Law Number 2 Year 2012).

Subsequently, public consultations of development plans are undertaken to obtain agreement on the location of the development plan from the rightful party. Public consultation is conducted with the involvement of eligible parties and affected communities and implemented in the place of development plans of public interest or at an agreed place. In the event that an entitled party is unable to attend, it can be done through a representative by power of attorney and by the party entitled to the location of the development plan (Article 19 paragraph (3) of Law Number 2 Year 2012). On the basis of the agreement, the agency requiring the land shall apply for the determination of the location to the governor. Then the governor shall determine the location within a period of 14 (fourteen) working days from the receipt of the application for determination by the agency requiring the land (Article 19 paragraph (6) of Law No. 2 of 2012). The period of public consultation on the development plan as for a period of no more than 60 (sixty) working days. In the case of a period of 60 (sixty) working days of the public consultation of the development plan, there will be a party who objected to the development site plan, re-consultation with the party with the objection within 30 (thirty) working days (Article 20 Law Number 2 Year 2012).

In the case of a re-consultation, there are still parties who object to the design of the development site, the agency requiring the land to report the objection to the governor. On the report the governor established a team to review the objection of the proposed development site plan (Article 21 paragraph (1) and (2) Law No. 2 of 2012).

At the time of execution of the compensation and disposal of the land has been exercised or the remedy has been deposited in the district court (consignment), the ownership or right of the land of the entitled party to be abolished and the proof of rights is not valid and the land becomes directly controlled by state (Article 43 of Law Number 2 Year 2012). In Article 31 of Law no. 2 of 2012 states that the Land Affairs Agency point out an Appraiser in accordance with the provisions of legislation. Then the Land Agency announces the Appraiser that has been established to carry out the assessment of Land Procurement Objects. The assigned assessor shall be responsible for the appraisal that has been implemented. Violation of the appraiser obligation to the appraisal that has been executed may be subject to administrative and/or criminal sanctions.

Assessment of the value of the Indemnification by the appraiser shall be made in the plane per plot of land including: land, underground and underground spaces, buildings, plants, objects related to the land, and/or other assessable losses.

Other disadvantages that can be assessed is non-physical losses that can be equalized with the value of money, for example loss due to loss of business or employment, the cost of transfer of premises, the cost of transfer of profession and the value of the residual property. Value of Loss assessed by the Appraiser is the value at the time of announcement establishment of development sites for the Public Interest. The amount of Indemnification value based on the appraisal result of the Appraiser shall be submitted to the Land Institution with the minutes of the event. Value of Indemnification based on the appraisal of the Appraiser shall be the basis for deliberation. Compensation may be granted in the form of¹³: money, substitute land, resettlement, stock ownership; or any other form approved by both parties.

Article 40 of Law No.2 Year 2012 states that the compensation for the object of land procurement is given directly to the party entitled. Although in principle the provision of indemnification shall be delivered directly to the party entitled to compensation.

¹² Andhika Yuli Rimbawan, Gunarto, Jawade Hafidz and Anis Mashdurohatun., RECONSTRUCTION OF PATIENT'S LAW PROTECTION ON X-RAY USE FOR HEALTH BASED ON VALUE OF JUSTICE, *Int. J. Adv. Res.* 5(9), XX-XX, ISSN: 2320-5407 *Int. J.*, page 2

¹³Article 36 of Law no. 2 years 2012

However, in the event of absence, the Party entitled by law may authorize the other party or heir. The proxy may only accept the power of one person entitled to compensation. Those entitled to compensation include:

- a. holders of land rights;
- b. holder of management rights;
- c. nadzir, for wakaf land;
- d. former owner of customary land;
- e. customary law communities;
- f. the party who controls the state land in good faith;
- g. the basic holder of land and / or control
- h. owners of buildings, plants or other objects related to the land.

Replacement of damages shall be granted to the entitled parties based on the results of the assessments set out in the deliberations and/or decisions of the district court/Supreme Court¹⁴. At the time of indemnification the party entitled to compensation shall:

- a. disposal of rights; and
- b. submit proof of ownership or ownership of land procurement object to the agency requiring land through the Land Agency.

The purpose of land acquisition for the public interest is to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state, society while maintaining the legal interests of the parties entitled. Increasing number of development implementation for public interest in essence land acquisition for public interest is important, which require big plot of land. However, its implementation needs to be done quickly and transparently by paying attention to the principle of respect for the legitimate rights to the land¹⁵. Law Number 20 Year 1961 is the implementation of Article 18 of the UUPA which regulates the revocation of land rights and objects which are thereon. This law does not provide a clear understanding of the revocation of land rights. But Boedi Harsono explained that: "The revocation of rights under the UUPA is the forcible acquisition of a state land by a state which causes the right to the land to be abolished without the person committing an offense or negligent in fulfilling its legal obligations".¹⁶

Procurement of land implementation should pay attention to the principle as stipulated in the legislation and related provisions. The principle of land acquisition for public interest based on the explanation of Article 2 of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest: "Land Procurement for public interest is carried out based on the principles of humanity, justice, benefit, certainty, openness, agreement, welfare, sustainability, and harmony".

2) Comparison of Land Procurement for Public Interest in Several Countries

In Indonesia the notion of the public interest has several times changed the concept. In the beginning, these public interests included projects which were built by the private sector. At the time of the New Order government was busy the private sector to engage with the government to obtain public land at low prices for reasons for the construction of projects they do for the public interest. Because of the frequent protests from people, it is affected by land acquisition. Due to the frequent protests from the public, the government made a policy change by reforming legislation relating to land acquisition for development and public interest.

In Malaysia, APT 1961 did not provide an understanding of the public interest. APT only provides general guidance. The definition of purpose of public interest is to see whether the intent and purpose of providing public interest to the community or vice versa. Just as in Indonesia, in Malaysia the concept of public interest is changing. With the scanning of stages 3 (b) APT 1960 12 September 1991 there has been a change in the concept of land procurement, if formerly the land was taken for lay purposes which benefits the public, but now it should not be taken to give individuals or corporations economy for a person's personal ends or for the purpose of an agency or company. Directly one's own land may be taken for granted to others, a rich body or company with a reason for the development of the state. Section 3 (b) APT justifies that PBN takes the land for any objective requiring the opinion of PBN to be useful for the economic development of the state or layman or a common people share whether the intention of the perpetrator is exercised or exercised by everyone (including the individual) or by the matching is not an issue, useful for economic development, state or layman whether anything that intention will give or be a benefit in regard to it depends on the opinion of PBN.

According to Malaysian Minister of Work Datuk Hj. Fadillah bin Hj Yusuf, he said that the Government of Malaysia has a clear regulation on land acquisition rules. In the regulation governing the community cannot deny the land acquisition including the price set by the Malaysian government he may disagree but he must court.

Basically, each country has authority to take land for Development purposes. The speed of economic growth in the new emerging market is independent of the process of land acquisition for infrastructure and urban areas. Countries such as China, South Korea and Singapore make massive land clearance for the benefit of transportation, offices, energy facilities and other infrastructure.

¹⁴Article 41 paragraph 1 of Law Number 2 Year 2012.

¹⁵ Benhard Limbong, 2011, *Pengadaan Tanah Untuk Pembangunan Regulasi Kompensasi Penegakan Hukum*, Margaretha Pustaka, Jakarta page.130.

¹⁶ Boedi Harsono, 1999, *Hukum Agraria Indonesia*, Edisi Revisi, Djambatan, Jakarta, page.222.

Land Acquisition by the Government (Azuela, 2007) is not only a downward trend but also increasingly difficult to do, this is because there are several factors that cause the increasing difficulty of land acquisition by the government that is the widespread dissatisfaction of society to the practices of land acquisition done by government. The increased independence of the judiciary, the strengthening of pressure from the mass media and the effect of the implementation of international treaties is also the factor of this issue.

3) Ideal Reconstruction of Land Procurement for Development for Public Interest Based on the Value of Justice.
a. Reconstruction of Values

Land acquisition, especially for development and public interest, is less likely to provide justice for holders of land rights, especially those related to compensation. Although the compensation as regulated in Presidential Decree No. 55 of 1993, Presidential Decree Number 36 Year 2005 and Presidential Decree Number 65 Year 2006, has been widely accommodate the interests of the holder of land rights including also the Land Acquisition Law.

As stated, that in the Law on Land Acquisition has been described the components that are considered to include: land, space above ground and underground, buildings, plants, objects related to soil; and/or other acceptable losses. The forms of compensation that are accommodated in the Land Acquisition Law are: money, replacement land, resettlement, share ownership; or other form approved by the parties concerned. The Land Acquisition Law is also mentioned on physical and non-physical compensation. Although physical compensation has been described, however, non-physical compensation forms are not elaborated in detail. In fact, the calculation of non-physical compensation is also very determine the principle of justice and welfare for the holder of land rights, as mandated in the philosophy of Pancasila and Article 33 of the 1945 Constitution of the Republic of Indonesia.

In determining the value of physical damages, in the context of development for the fair public interest, the government uses a fixed procedure namely Article 9 paragraph (2) of Law No. 2 of 2012 on Land Procurement for Development for Public Interest¹⁷. Furthermore, the determination of the value of the compensation shall be made by the Chairman of the Land Acquisition Official (KPPT) based on the assessment result of the appraisal or the public appraiser.¹⁸ Subsequently, upon determination by KPPT, the compensation value shall be the basis for deliberation of the indemnification with the land tenant which is recovered by the state. The result of the agreement in the deliberation becomes the basis for the provision of compensation to the party entitled.

Through the agreement, there is an engagement or legal relationship that creates rights and obligations to each contracting party¹⁹. In other words, the parties are bound to abide by the agreement they have made. In this case the function of the agreement is the same as the law. By law, the treaty may be enforced through the Court. The law provides sanctions against perpetrators of breach of agreement or broken promise (default).²⁰

Where there is no agreement on the form and/or magnitude of the indemnity, the rightful party may file an objection to the local district court within a maximum of 14 (fourteen) days after the indemnification agreement. The district court decides on the form and/or amount of the indemnity within 30 (thirty) working days from the receipt of the appeal. Then the landowner is required to relinquish the land at the time of the procurement of the land after indemnification or on the basis of a court decision that has obtained permanent legal force.²¹

Based on what researcher suggests above, it appears that the regulation of compensation for land for the construction of the public interest has not provided a true and complete value of justice. The government only focuses on physical losses without considering nonphysical losses. Whereas the nonphysical losses also have a tremendous adverse impact on the landowners, it soon happens and lasts longer. Landowners who do not have the desire to sell their land will feel the nonphysical loss when they have to sell their land just to fulfill the government's desire for the development of the public interest. Therefore, the government in determining compensation for land to be used for the construction of public interest must take into account these nonphysical losses. Thus justice which has been solely oriented toward physical loss must be reconstructed into complete and comprehensive justice by incorporating two types of physical and nonphysical losses.

b. Reconstruction of the Law

The overlapping of regulation in the field of land is recognized by the Chief Justice of the Constitutional Court. According to the Deputy Chief Justice of the Constitutional Court, Achmad Sodiki, the rules concerning land made by the Ministry of Forestry, BPN and the Ministry of Energy and Mineral Resources are not synchronized, so it needs to be synchronized land regulations to create legal certainty. The legislation is based on the idea that the State of Indonesia is a state of

¹⁷Article 34 Paragraph (1) Law no 2 Year 2012

¹⁸Article 63 of Presidential Regulation no. 71 of 2012 on Implementation of Land Procurement for Development for Public Interest.

¹⁹ Anis Mashdurohatun1, Zaenal Arifin2 and Gunarto, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research ISSN : 0972-7302, Serials Publications Pvt. Ltd. Volume 15 • Number 20 • 2017, page 268

²⁰Burhanudin Ali & Nathaniela, *60 Contoh Perjanjian (Kontrak)*, Hi-Fest Publishing, Jakarta, 2009, h. 9.

²¹Article 5 UU Nomor 2 year 2012

law. As a legal state, all aspects of life in the field of society, nationality, and state including government must be based on law in accordance with the national legal system.²²

Improving and updating the laws and regulations is part of the reconstruction by making changes to the Articles contained in Law No. 2 of 2012 on Land Procurement for Development for the Public Interest.

Based on the description above, the proposal concluded from the research result is what is meant by the reconstruction in this research is the renewal of system or form. It is related to the reconstruction of both Article 36 and Article 41 paragraph (3) of Law No.2 Year 2012.

In relation to the above statement, the researcher recommends the need for a Compensation Act, in addition to the Land Acquisition Law currently being revised by the government and the People's Legislative Assembly. If the Law on Land Procurement is oriented to the government that needs the land, then the Law on Compensation prioritizes the holder of land rights.

Legal products related to the compensation aspect must be in the form of law as it relates to the rights of individual holders of land rights, such as the right to life, property rights, the right to obtain a better life and the right to obtain employment. This is in line with the fundamental values. As a welfare state and the concept of a state of law (*rechtstaats*), Indonesia should make the ideology of Pancasila and the 1945 Constitution of the Republic of Indonesia as the foundation of basic legal concepts and policies for the legal protection strategy of the holder of the land for development in the public interest. The purpose of the Indonesian state is welfare state and welfare can be enjoyed if justice has been obtained. In legal philosophy, law aims to obtain justice that leads to prosperity. Social justice and prosperity for all people are placed in a substantial central position. That is why the doctrine of economic democracy of Article 33 of the 1945 Constitution of the Republic of Indonesia is in Chapter XIV entitled SOCIAL WELFARE (in the sense of societal welfare, not just social welfare).

The theory of justice according to Aristotle is to give to everyone a right (*unicuique suum tribuere*) and not harm others (*neminem laedere*). Kant formulated justice with *honeste vivere, neminem laedere, suum quique tribuere/tribuendi* (live honestly, do not harm others, give to others what is rightfully).

In his book A Theory of Justice, Jhon Rawls argued that there needs to be balance, and harmony between personal interests and the public interests, including the state. While Aristotle in his book Ethics, classify justice into two kinds, namely distributive justice and corrective justice.

Awareness of the importance of the law for compensation has been in existence since the issuance of the UUPA of 1960. In Article 18 of the UUPA, it is said that, "for the common good including the interests of the nation and the state, and the common interest of the people, the rights to land can be revoked, compensation is appropriate and in a manner regulated by law". Compensation in the procurement of land for public purposes is substantial, with such an opinion that researcher divided the four forms of compensation deemed to conform to the general compensation policy with reference to the opinions of Vincent Roquet and Carine Durocher:

First is monetary compensation for lost assets and loss of access to resources. This compensation is paid in accordance with the market value for lost assets and/or loss of access to resources. Second is community development. This type of compensation is related to resettlement. This compensation includes: provision of new housing, access to basic services (education, health care and social services), access to financial services (such as interest-free loans or microcredit), water supply for households, roads and public transport, rural electrification, public and religious meeting places, and access to public resources (forests, grazing areas, etc.). Third is community development. This type of compensation is related to resettlement. This compensation includes: provision of new housing, access to basic services (education, health care and social services), access to financial services (such as interest-free loans and micro-credit), water supply for households, roads and public transport, rural electrification, public and religious meeting places, and access to public resources (forests, grazing areas, etc.). Fourth is development of water catchment area. This type of compensation includes: watershed resource management, reforestation and fruit tree planting and enhancement of environmental resources.

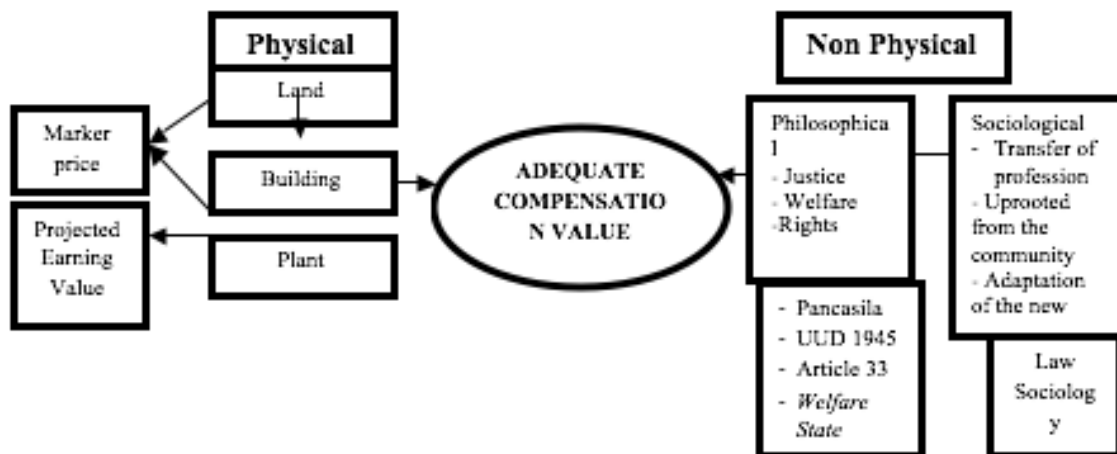
Based on the above description and viewing some jurisdictions, the researcher agreed with the compensation policy issued in the Hanoi Declaration that compensation should include the value of the purpose (market value) of the acquisition of ownership. The depreciation of the value of fixed property (loss of affection or severance), and other damages (eg loss of profits) and costs (eg professional fees) would undermine the owner's or entrepreneur's financial situation. Therefore, if the government agrees with the importance of the existence of the Law on Indemnification, the ideal compensation calculation in the Act shall follow the following formula:

$$TC = (V + S + D) = C$$

²²Farid, Gunarto, and Wahyu Widodo, THE USE OF THE ABSOLUTE POWER TRANSFER OF LAND RIGHTS BASED ON THE VALUE OF JUSTICE, *Int. J. Adv. Res.* 5(8), ISSN: 2320-5407, page 323

With TC = total compensation, V = compensation for compensation for the expropriated property, S = compensation for damage due to loss of affection or enjoyment in the old place (compensation for due damage to injurious affection or severance), D = compensation for other damages, and C = compensation for costs/additional payments.

Chart 1
Compensation Value Compensation Eligible Values



Based on the above description, Reconstruction of land acquisition value for the development of public interest based on justice value aims to realize fair/democratic compensation benefits and prosperous beneficiaries. The basis of the formation of Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest with the consideration as set forth in the preamble weighing in letter (a) which states that in order to ensure the implementation of development for the sake of the General, it is necessary that the procurement of land be carried out by promoting humanitarian, democratic and fair principles. Meanwhile, in letter (b) states that the laws and regulations in the field of land procurement for development for the public interest have not been able to guarantee the acquisition of land for the implementation of development. Law No. 2 of 2012 on Land Procurement for Development Interest for Public Interest was formed with the consideration that the Government as the organizer development is able to provide land to carry out development. The systematic framework of this dissertation research is as follows:

THE FRAMEWORK OF THINKING I
Reconstruction of Land Acquisition
Development for Public purposes

No	Before Reconstruction	Weaknesses	After Reconstruction
	Article 36 of Law Number 2 Year 2012 on Land Procurement for Development in the Public Interest is stated that the Provision of Indemnification may be granted in the form of: a. Money; b. Replacement Land; c. Resettlement; d. Share Ownership; and e. Another form agreed by both parties	1. Stock Ownership It is difficult to realize. 2. No Potential Job Training in the new location. 3. No available funds guarantee survival to achieve welfare for those who receive compensation.	Article 36 of Law Number 2 Year 2012 on Land Procurement for Development for the Public Interest is stated that the Provision of Indemnification may be granted in the form of: a. Money; b. Replacement Land; c. Resettlement; d. Giving Capital. e. Potential Skills Training in a new place; f. Provision of Jobs; g. Another form agreed by both parties

No	Before Reconstruction	Weaknesses	After Reconstruction
2	Article 41 paragraph (3) which originally reads: The evidence as referred to in paragraph (2) letter b shall be the only legal evidence which can not be contested in the future	<ul style="list-style-type: none"> - Legal Landowner is difficult to obtain justice and will be disadvantaged although there is a decision from the court he inkrah won the case for land procurement compensation. - Number of land mafia because if it has received compensation can not be contested 	Article 41 paragraph (3) reads: The evidence referred to in paragraph (2) letter b shall be the only legal evidence according to the law.

With the above changes, the government's desire to realize a just, prosperous and prosperous society based on Pancasila and 1945 Constitution, especially in the framework of land procurement for development for public interest can be implemented by promoting humanitarian, democratic and fair principles.

Conclusion

So far, the Government has focused only on physical losses without considering nonphysical losses. Whereas the nonphysical losses also have a tremendous adverse impact on the landowners, it soon happens and lasts longer. Landowners who do not have the desire to sell their land will feel the nonphysical loss when they have to sell their land just to fulfill the government's desire for the development of the public interest. Therefore, the government in determining compensation for land to be used for the construction of public interest must take into account these nonphysical losses.

Reconstruction of the value of land acquisition for the development of a justice-based public interest aims to realize fair, democratic and welfare compensation for beneficiaries. The basis of the formation of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest to ensure the implementation of development for the sake public interest. It is necessary to land the procurement implemented by promoting the principles of humanity, democratic and fair. The systematic framework of this dissertation research, as follows:

- Article 36 of Law No. 2 of 2012 on Land Procurement for Development for the Public Interest stated that the Provision of Indemnification may be granted in the form of:
 - a. Money;
 - b. Replacement Land;
 - c. Resettlement;
 - d. Provision of Capital;
 - e. Potential Skills Training in a new place;

- f. Provision of Jobs;
- g. Another form agreed by both parties
- Article 41 paragraph (3) The evidence as referred to in paragraph (2) letter b is the only legal evidence according to the law.

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