



Reconstruction of legal use of state's land by people as an embodiment of welfare state based on justice value

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Abstract

Conflict over the use of state land occurs due to illegal use of land, for investment and development needs in the public interest. From this conflict, the community has a weak position and feels injustice. This is then reviewed by the author with the main issue of Why there is an injustice in the use of state land by the people in the country of Indonesia and how the legal reconstruction of the use of state land by the people as an embodiment of a welfare state based on the value of justice. The study was done using the constructivism paradigm and the type of research is a qualitative study with a socio-legal approach. Research shows that the injustice in the use of state land by the people in Indonesia arises from both in terms of substance, structure and culture. To overcome this, it is necessary to reconstruct the legal use of state land by the people as an embodiment of a welfare state based on the value of justice, viewed from: (a) in terms of legal substance: (i) criteria for land value close to market prices; (ii) assessment team / appraiser in the form of rights simplification, i.e. by optimizing the Land-Use Rights (HP) function optimally by removing the Land-Cultivation Rights (HGU) and Building-Use Rights (HGB); (b) in terms of legal structure: (i) a private independent Appraisal Institution was formed and (ii) an ad hoc agrarian justice institution was established; and (c) in terms of legal culture: (i) legal awareness for the government and the people in implementing basic principles in land acquisition that provide protection to the people and (ii) maintaining the principle of agreement and deliberation to reach agreement and abolish institutions consignment.

Keywords: reconstruction, land-use, welfare-state, justice value

Introduction

Land is the most essential resource and is very useful for human life and livelihood. Land has a higher value over time, given the increasing need for land, while the amount is fixed and does not increase.

Fundamentally Speaking, the right to control land belongs to the state, but Indonesian citizens can individually own the land with ownership rights granted by the state. The right to control land in the country originates from the power attached to the state, which is reflected in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The control of land or the right to control land by the state is the basis for the issuance of land rights. Control of the land can occur legally or illegally. It is said to be legal if the possession has permission or permission from the competent authority or there is a reason for the control, and vice versa. For this approval or based on existing rights, the control through certain stages is processed into ownership.

On the basis of the right to control land by the state, the state has the authority to determine the types of land rights. Based on Article 4 paragraph (2) of the Basic Agrarian Law that: "Land rights not only give authority to use a certain portion of the earth's surface in relation, which is called land, but also the body of the earth and water and space on it".

The land rights include, among others: ownership rights (*Hak Milik/HM*), Land-Cultivation rights (*Hak Guna Usaha/HGU*), building-use rights (*Hak Guna*

Bangunan/HGB), Land-Use rights (*Hak Pakai/HP*), lease rights, land opening rights, the right to collect forest products, and other rights not included in the above mentioned rights. will be determined by law, as well as temporary rights.

Land rights granted by the state to the people, gave authority to the people to use the land, earth and water as well as the space above it for interests directly related to the use of the land in accordance with applicable legal provisions, in terms of this is the Basic Agrarian Law.

On the basis of the right to control the country, the state can give land to a person or legal entity with a right according to its designation and needs, such as ownership rights, business use rights, building rights, or usage rights or give it in management to a ruling body (department, department or regional autonomy) to be used for the implementation of their respective duties.

Land is also one of the important aspects in supporting the implementation of investment in the interests of investors, because the survival of investors is very dependent on the certainty of ownership of land rights. Ownership rights to land for individuals and legal entities there are significant differences, even for foreign legal entities can only have the right to use the business and use rights. This condition is one of the causes of inflexible and not conducive investment related to land in Indonesia.

The need for land for investment will obviously be related to land acquisition. Land acquisition is the most crucial issue, both for infrastructure development and for

investment purposes. The biggest obstacle in land acquisition in Indonesia, among others, is uncertainty in paying compensation to the community^[1]. Basically, in terms of land acquisition, compensation must provide more benefits to previous landowners, because they have been willing to sacrifice their land for development. In addition, in factual land acquisition, it still involves a large number of government agencies, thus creating a complicated bureaucracy in land acquisition. Based on these two constraints, it is clear that this will require a very long time in the process of land acquisition, and this implies that investors are not interested in investing their capital.

Basically, the rights granted by the state from the right to control by the state both to individuals and legal entities, remain under the supervision of the state in its use or control. Utilization and control of land by individuals and legal entities still respect the social function of the land, that is, in the use and use of it may not harm the public interest.

Article 6 of the Agrarian Law states that all land rights have a social function, meaning that the land is used according to the condition of the land and the nature of its rights and cannot be justified in the use of land which is detrimental and contrary to the interests of the community.

Utilization of land in the Unitary State of the Republic of Indonesia can be said to still not be able to realize the welfare of the people and provide justice for the people. The use of land by investors tends to harm the interests of the people, as if the law that has been made is only to protect the interests of certain parties or those who have large capital, by ignoring the interests of the people. The interests of the people and the interests of individuals or capital owners must be able to balance each other, so that the main objectives, namely prosperity, justice and happiness for all people, can be achieved.

Based on the background provided above, the author conduct a research in which the author formulate several problems discussed in this article as follows :

1. Why is there injustice in the use of the state land by people in the country of Indonesia?
2. How is the legal reconstruction of the use of state land by the people as an embodiment of a welfare state based on the value of justice?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge^[2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of

Socio-Legal^[3], which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data^[4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Reason Why There is Injustice in the Use of State Land by The People in the State of Indonesia

Relations between the Indonesian people and the earth, water, air and natural resources contained therein, are stipulated in the provisions of Article 1 of the Agrarian Law. Article 1 paragraph (1) of the Agrarian Law states that: "The entire territory of Indonesia is the unity of the homeland of all Indonesian people who have united as the nation of Indonesia", furthermore in Article 1 paragraph (2) of the Agrarian Law it is stated that: "All earth, water and space including natural wealth contained in it within the territory of the Republic of Indonesia as a gift from God Almighty is the earth, water, and air of the Indonesian people and is a national treasure."

The state's right to control land originates from the power inherent in the state, which is reflected in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that: "Earth and water and natural resources contained in it controlled by the state and used for the greatest prosperity of the people ". Furthermore, in the elucidation of this Article it is stated that "the earth and water, and the natural resources contained in the earth are the main points of people's prosperity, because they must be controlled by the state and used for the greatest prosperity of the people".

Article 2 paragraph (2) of the Agrarian Law states that: "The controlling right of the state authorizes the state to regulate and administer the designation, use, supply and maintenance of the earth, water and air; to determine and regulate legal relations between people and the earth, water and space; determine and regulate legal relations between people with actions concerning the earth, water and space ". The legal basis for obtaining land rights in the Agrarian Law can be found in Article 4 paragraph (1) and paragraph (2), Article 9

¹ Widayati, Nurti & Suryawan, Ian Nurpatia & Riorini, Sri. (2017). Regulations on the ownership of land and buildings in Indonesia. *Jurnal Bisnis dan Akuntansi*. 19. 136-141. 10.34208/jba.v19i1.72.

² Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

³ Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

⁴ L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

paragraph (2), and Article 16 paragraph (1).

All land rights, directly or indirectly, originate from the rights of the nation. The rights that originate directly from the nation's rights are called primary land rights, namely: ownership rights (Hak Milik/HM), Land-Cultivation rights (Hak Guna Usaha/HGU), building-use rights (Hak Guna Bangunan/HGB), and Land-Use rights (Hak Pakai/HP). Whereas the land rights granted by those who own land with primary rights are called secondary land rights: for example the lease rights, land opening rights, the right to collect forest products, and other rights not included in the above mentioned rights. Buildings not provided by the state.

The use and utilization of state land aims to realize the instructions in Article 2 paragraph (3) of the Agrarian Law, which is to "achieve the greatest prosperity of the people...". That is, the use and utilization of state land that does not result in the achievement of "the greatest prosperity of the people".

According to the Agrarian Law rights to land can be given to people, both alone and together with other people and legal entities. The granting of these land rights gives the authority to use the land in question, including the body of the earth and water and the space above it, only needed for interests directly related to the use of the land.

The legal basis for granting state land, especially ownership rights, is as follows:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles;
- c. Government Regulation Number 24 of 1997 concerning Land Registration;
- d. Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1999 updated with the issuance of Regulation Number 1 of 2011 concerning the Delegation of Authority for Granting and Cancellation of Decisions on Granting of State Land Rights;
- e. Agrarian State Government Regulation / Head of National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights;
- f. Code of Civil law;
- g. Presidential Decree Number 26 of 1988 concerning the National Land Agency;
- h. Decree of the Head of the National Land Agency Number 1 of 1989 concerning the Organization and Work Procedure of Regional Offices of the National Land Agency in Provinces and Land Offices in Regencies / Cities;
- i. Other laws and regulations as well as regional regulations that state land regulations.

To provide legal certainty regarding land rights, these land rights must be registered as stated in the provisions of Article 19 paragraph (1) of the Agrarian Law that: "To guarantee legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia. according to the provisions regulated by Government Regulation ".

However, it should be noted that the provisions of Article 6 of the Agrarian Law, which states that all land rights have a social function. The General Explanation of the Agrarian Law mentions that the provisions of Article 6 of the Agrarian Law as the fourth basis in the Agrarian Law,

explaining this means that any land rights held by a person cannot be justified, that the land will be used (or not used) solely for the purposes of personal interests, especially if it causes harm to society.

Indeed the existence of land in human life has an important meaning, land which is part of the surface of the earth is a place of human life with all its activities. Therefore, land in human life is considered to have a meaning that also has a dual function, namely as social assets and capital assets. As a social asset, land is a means of binding social unity among people to live and live, while capital assets, land is a capital factor in development and grows as a very important economic object as well as a business material and a speculation object.

To realize the objectives referred to in Article 6 of the Agrarian Law, Article 18 of the Agrarian Law states that in the public interest including the interests of the nation and state as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation and in a regulated manner by law.

In order to carry out the mandate of Article 18 of the Agrarian Law, on September 26, 1961 Law Number 20 of 1961 was stipulated, and the latest was amended by Law Number 2 of 2012. Arrangements regarding land acquisition are contained in Law Number 2 of 2012, and to implement the provisions of Law Number 2 of 2012 stipulated Perpres Number 71 of 2012, which was later amended by Perpres Number 40 of 2014, Perpres Number 99 of 2014, Perpres Number 30 Year 2015 and Presidential Regulation Number 148 Year 2015.

Thus, sometimes the government needs land that is used for development in the public interest. Here the people's willingness to "sacrifice" their land is used for development ^[5].

Related to the acquisition of land for development in the public interest, the basis of Law Number 2 of 2012, which is based on one of the principles, namely the principle of agreement. According to the provisions of this Law, what is meant by the principle of agreement is that the land acquisition process is carried out by consultation of the parties without coercion to obtain mutual agreement.

In land acquisition must be carefully examined so as not to quickly conclude that the agreement in land acquisition is the same as the agreement in the treaty law, only merely see there are parties or legal subjects and there are agreed objects. Then one party receives an amount of money as compensation and the other party receives the desired land. Moreover, in practice there is often disagreement regarding the amount of compensation.

In the life of the nation and state, what is often done by the authorities is obliging every citizen to always succumb for the welfare of the people. It is not uncommon for land rights to be released in the public interest without compensation as compensation or compensation, whether in the form of money or something of material value. This is what makes it easy for people to voluntarily relinquish their land rights, it will be a different story if they get proper compensation and fulfill a sense of justice. However, in reality it is not in accordance with justice, causing a lot of conflicts in the land

⁵ Budiarta, N.P. (2018). Restriction and incentives of investment in Indonesia: Considering the provisions of basic agrarian law and capital market law. *European Research Studies Journal*. 21. 178-188.

sector.

Exemption of land rights in the public interest for the construction of public facilities is more interpreted by the community as something contractual because it considers the liberation of their land rights concretely more beneficial to the private sector (large financiers) even though in the viewpoint of the government the liberation is seen as an interest nationally so often the implementation of land acquisition is done by force. In short, the release of *publiekrechtelijk* of citizens land rights sometimes overrides the civil rights of citizens ^[6].

Thus, it can be concluded that the legal arrangements for the use of land controlled by the state by the people in the Indonesian state have not provided legal certainty for the parties involved in it, but in practice it has not provided justice, especially for the affected small communities. The limited area of land is meant to result in the emergence of various forms of conflict of interest, both between sectors, between regions, and between community members in the utilization of land resources. In view of such conditions, land issues including the provision of land for various development activities have become increasingly strategic, directly proportional to the weight of the problem which is increasingly heavy and complex. The quality of problems in general is cross-sectoral and has many aspects and dimensions, including the legal, economic, socio-cultural, political and defense dimensions of security, so that in the development of agrarian law today, attention must be paid to national and global dimensions.

Some parties often accuse that land policy that creates large-scale land tenure by private companies and investors engaged in other fields, is one of the causes of economic and social vulnerability in Indonesia.

Large-scale land tenure for investors will create a very large gap, between a handful of very wealthy people (investors) and the large number of people who should access land for life and livelihoods, which generally have a degree of lack of prosperity or in poor category. According to Ida Bagus Rahmadi Supancana ^[7], the large number of poor people will eventually also lead to various forms of social problems that lead to political instability and security. The implication is the decline in interest in subsequent investments.

It is a fact that on one hand it is relatively not easy for most people to obtain a piece of land, while on the other hand there are ex-plantation land, forestry, etc. which in the past were not used in accordance with the objectives and the nature of its rights (neglected). This situation caused a result of people's cultivation of the abandoned area. In general, de facto, the people have worked on it hereditary and not infrequently this happens to the knowledge or with the permission of the right holder or his attorney, but de jure the situation is not followed up, because the people in general are not aware of the importance of evidence of that right ^[8].

Land disputes between the people and the government or the people and companies, which end up losing on the part of

the people often occur. Not infrequently the government and law enforcement officers with the existing power and entrepreneurs who have a large capital power do arbitrarily and not infrequently in making legal decisions that result in the community's interests are often harmed. In other words, government officials or law enforcers always side with investors with commercial interests, the people are always defeated or harmed.

Not a few cases of land conflicts which are a systematic effort by the government, security forces, and large-scale business entities to stem the struggle of the people who try to get their rights to land and other natural resources through repressive means. Whereas the people's struggle is not a criminal act that violates the law, but a legitimate direct effort to be carried out when the people do not get the attention of the authorities in fulfilling their basic needs to fulfill their daily needs, namely land.

The occurrence of injustice in the use of land in Indonesia, can not be separated from the components of the legal system. The inconsistency in each component of the legal system makes law unable to be implemented properly.

Thus, if one component of the legal system is problematic, it will affect the other components, because these components are one entity. As is the case with the use of land controlled by the state by the people, apparently it cannot be implemented properly and tends to show injustice because there are problems in the components of the legal system, namely :

a. Law Substance

So far, Indonesian agrarian policies and natural resource management have remained unchanged from past policies. Based on a review of existing policies, a number of characters were found that the laws and regulations were dredged (use-oriented); more in favor of large investors; having a centralistic character which is characterized by granting great authority to the state; does not provide proportional arrangements for the recognition and protection of human rights and is sectoral in character by not seeing natural resources as an integrated ecological system.

In some jurisdictions, market-based land valuation provisions are often not accommodated in the law. Existing regulations are also not guaranteed a long-term benefits for affected land users and mechanisms that are not transparent so that it does not allow communities and social associations to participate in the land acquisition process. As a result, affected land users do not always receive adequate compensation for resettlement or alternative support, livelihoods, accommodation and employment ^[9].

The authorities who regulate and decide compensation issues in the context of land acquisition are not always the interested parties. Instead, they are often involved in the commercial aspects of land and property relations, which reflect their ability to control land and resource management. Some problems in terms of substance related to the acquisition of land for public use are related to Law Number 2 of 2012. Although Law Number 2 of 2012 adheres to the principle of agreement and deliberation, but in its application there is an oversight of the principle of the

⁶ Sihombing, B.F. (2018). Implementation and implications of agrarian reform in Indonesia. *International Journal of Mechanical Engineering and Technology*. 9. 1022-1029.

⁷ Ida Bagus Rahmadi Supancana, (2006), *Kerangka Hukum dan Investasi Langsung Di Indonesia*, Ghalia Indonesia, Ciawi Bogor.

⁸ Warren, Carrol & Lucas, Anthony. (2003). *The State, the People and their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia*. Indonesia. 76.

⁹ Andreas, Ricco & Adi, Luthfi & Sulastuti, Sri. (2019). The Effect of Colonialism on Implementation of Agrarian Reform in Indonesia. *FIAT JUSTISIA*. 13. 101. 10.25041/fiatjustisia.v13no2.1565.

agreement itself. The provisions of Article 66 paragraph (4) of Presidential Regulation Number 71 of 2012 which determines deliberation to reach an agreement only for the form of compensation, contrary to the provisions of Article 37 paragraph (1) and paragraph (2) which determines deliberation is carried out to establish the form and / or the amount of compensation.

Provisions of Article 42 of Law Number 2 of 2012 which determines the reasons for consignment or safekeeping of damages in a district court if the right to refuse the form and / or amount of compensation, is contrary to the principle of agreement because it is done without the basis of agreement from the parties, parties, and contrary to the essence of deliberation that requires an agreement.

In addition, the principle weakness in the regulation on land acquisition for the development of public interest in Indonesia is a form of compensation that does not take into account non-physical losses suffered by landowners, such as the impact of job loss and socio-cultural consequences in the local environment. Existing regulations relating to land acquisition for public use are only regulate compensation for land, buildings and plants on it. Regarding sociological, philosophical, and other losses not mentioned. There is no provision that shows that giving compensation guarantees the lives of people who have lost their land rights to be better.

In addition, the laws and regulations in the land sector overlap, so that they conflict with one another. The laws and regulations regarding land are still scattered with many reforms, so the regulations in the field of land should be made as one. The Agrarian Law as the basis for regulating land rights only regulates matters that are essential, so that several implementing provisions are ordered to be regulated by organic legislation, both in the form of laws, government regulations and ministerial regulations. Of the many regulations that the Agrarian Law ordered to make implementing regulations, only some of them can be realized, there are still many implementing regulations that should have been made yet to be realized.

b. Law Structure;

Various land disputes are caused by inconsistencies in the conduct of the laws and regulations. In practice, the public interest is often justified as a justification for taking, or more accurately, the seizure of community land by certain large businessmen. In addition, factual land acquisition still involves a large number of government agencies, thus creating a complicated bureaucracy in land acquisition.

Land disputes also arise because of the many parties involved, bearing in mind that this land is very valuable economically, irresponsible parties make use of this. This problem generally arises because of the issuance of illegal land rights.

Another problem, namely in Law Number 2 of 2012 does not regulate the basis for compensation calculations. The amount of compensation is determined by the appraisal established by the Land Agency (National Land Agency). Land Agency announces appraisers that have been determined to carry out valuations of land acquisition objects. The concept of deliberation to determine the amount of compensation is also ineffective in bringing together interests between holders of land rights and governments who need land.

c. Law Culture

In handling land conflicts, the government often uses violence in its handling. Repression is the response of the government-businessman to stem the people who are struggling to defend their rights to land and other natural resources. In fact, their struggle is not a criminal act that violates the law.

People are less able to participate or their legal awareness is still lacking in participating to determine the amount of compensation carried out by deliberation, because the determinant of compensation value has been carried out by an Appraiser formed by the Land Agency, so that the deliberation does not function.

The state can give up all its potential to oppress or defeat the interests and rights of its own people. The position of the people is weak while the position of the state and capital owners is very strong.

2. Legal Reconstruction of the Use of State Land by the People as an Embodiment of Welfare State Based on Justice Value

Indonesia's philosophy in the concept of the relationship between humans and land places individuals and communities as an inseparable unit (dual), that the fulfillment of one's needs for land is placed within the framework of the needs of the whole community so that the relationship is not merely individualistic, but rather is collective in nature while still providing place and respect for individual rights. This is an embodiment of the Indonesian state as a welfare state. As stipulated in Article 2 paragraph (3) of the Agrarian Law, state authority derived from the right to control natural resources by the state is used for the greatest prosperity of the people.

Thus, individual rights to land are not absolute, but there are always limits, namely, the interests of others, the community or the state. The concept of this relationship is translated in Article 6 of the Agrarian Law which states that all land rights have a social function.

Economic considerations must not conflict with the principle of freedom and equal rights for all people. In other words, social decisions that have consequences for all members of the community must be made on the basis of rights (right based weight) rather than on the basis of benefits (good based weight) ^[10].

Justice is not by maximizing the usefulness or benefits for as many people as possible (parties who enjoy land acquisition for public purposes) at the expense of the holders of land rights. But instead, justice lies precisely in the proportional "alignments" of those who are "unlucky". This alignment is done not only by providing physical compensation, but by giving compensation for the willingness of the land rights holders to give up their rights so that they can live properly and fairly.

For Indonesia, according to the Pancasila philosophy, it is most appropriate to apply the principle of social justice. Justice itself is universal, deep in everyone's heart, there is agreement on something that is seen as fair and unjust.

Existing provisions that are used as guidelines to determine the amount and form of compensation, are very helpful. However, the decision whether that is given is fair or not,

¹⁰ Bakker, Laurens. (2018). Agrarian Justice and Indonesian Law. SHS Web of Conferences. 54. 03020. 10.1051/shsconf/20185403020.

should be seen in the comparison of welfare between before the takeover and after. In other words, the legal or formal basis should be used to achieve substantial justice.

Of all the weaknesses in the components of the legal system, namely the legal substance, legal structure, and legal culture as mentioned, then efforts can be sought to resolve each problem in the component that causes injustice, namely :

a. Law Substance;

Land value criteria must be close to market prices; the assessment / evaluation team must calculate accurately and in detail the physical and non-physical losses suffered by the land rights holders; revision of laws and regulations relating to land, develop and enact basic laws that cover all other sectoral laws, synchronize all laws and regulations related to land, revision of all laws and regulations that are not appropriate with the principles contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; and the simplification of right needs to be simplified, namely by optimally functioning of the cellphone by removing the HGU and HGB. This is intended so that the use of rights will be facilitated in understanding, managing and utilizing the rights themselves.

b. Law Structure;

Formed an independent private Appraisal Institution and the establishment of an Agrarian ad hoc institution.

c. Law Culture.

Legal awareness for the government and the people in implementing the basic principles in land acquisition that provide protection to the people; and maintain the principle of agreement and deliberation to reach agreement because it is in accordance with the personality of the Indonesian nation. On the other hand the consignment institution or the court of compensation in court must be removed, because it is contrary to the principle of agreement and the essence of the deliberation itself.

Based on the description above, the reconstruction of the value of the use of land controlled by the state by the people as a manifestation of a welfare state based on the value of justice are:

- a. Harmony and synchronization of laws and regulations in the use of land controlled by the state from the Agrarian Law to its implementing regulations which further emphasizes the interests of the people and the principle of justice;
- b. Clarity in the use of the principle of consensus in the determination of compensation, both physical and non-physical in the use of land for public purposes;
- c. Independence and professionalism of the appraisal agency as a guide in determining the value of land for compensation.

Conclusion

1. Injustice in the use of state land by the people in the country of Indonesia, can be seen from several aspects, namely: (a) in terms of legal substance: (i) policies in the use of dredging-oriented land, favoring large investors, having a centralistic pattern, not providing proportional regulation towards recognition and protection of human rights and sectoral style; (ii) there is no definition of compensation in Law 2/2012; (iii) compensation is only physical in nature, does not mention non-physical loss; (iv) inconsistency and unsynchronization of laws and regulations; (v) the provisions of market-based land

valuation are not accommodated in the law; (vi) the provisions of Article 66 paragraph (4) of Perpres 71/2012 which determines deliberations to achieve agreement only for the form of compensation, contrary to the provisions of Article 37 paragraph (1) and paragraph (2) which specify the deliberations carried out to establish the form and / or amount of compensation; (vii) the provisions of Article Law 2/2012 which determines the reasons for consignment or safekeeping of damages in the PN are contrary to the essence of deliberation that requires an agreement (viii) regulations per law in the overlapping land sector; (ix) regulations that are mandated by the Agrarian Law, only a part of them can be realized; (b) in terms of legal structure: (i) the position of the people is weak compared to the position of the state and capital owners; (ii) the authorities that regulate and decide compensation issues in the context of land acquisition are not always the parties concerned; (iii) inconsistencies in the conduct of the legislators; (iv) appraisers are formed by the Land Agency, so they tend to favor the government; and (c) in terms of legal culture: (i) in handling land conflicts, the government often uses repressive / violent measures in its handling; and (ii) the malfunction of deliberations in determining the value of compensation because it has been determined by the Appraiser;

2. Legal reconstruction of the use of state land by the people as an embodiment of a welfare state based on the value of justice, viewed from: (a) in terms of legal substance: (i) criteria for land value close to market prices; (ii) compensation assessment appraisers / teams accurately and accurately calculate physical and non-physical losses; (iii) revision of land laws, develop and enact basic laws that cover all other sectoral laws, synchronize all laws and regulations related to land, revision of all laws and regulations that do not comply with land the principles contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia; and (iv) the simplification of rights needs to be simplified, i.e. optimizing the Land-Use Rights (HP) function optimally by removing the Land-Cultivation Rights (HGU) and Building-Use Rights (HGB); (b) in terms of legal structure: (i) a private independent Appraisal Institution was formed and (ii) an ad hoc agrarian justice institution was established; and (c) in terms of legal culture: (i) legal awareness for the government and the people in implementing basic principles in land acquisition that provide protection to the people and (ii) maintaining the principle of agreement and deliberation to reach agreement and abolish institutions consignment.

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