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Legal reconstruction of land procurement regulations for development in public interest based on the values of Pancasila justice

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Abstract
The purpose of this research is to analyze the weaknesses of the regulation of land acquisition for development in favor of the public interest that isn't just yet and how to reconstruct the law in order to realize a law that is able to fulfill the public interest based on the value of Pancasila justice which is analyzed using the constructivism paradigm with sociological juridical approach method to solve research problems by examining secondary data and primary data by finding the legal reality experienced in the field as well as qualitative descriptive methods, namely where the data obtained are then arranged systematically so that a comprehensive picture will be obtained, where later the data will be presented in detail.
The results of the study indicate that the weakness of the regulation on land acquisition for development in the public interest is the legal substance, legal structure, and legal culture. therefore, there needs to be a Reconstruction of land acquisition regulations for development in the public interest based on the value of Pancasila justice, namely in Law No. 2 of 2012 by adding special rules related to the concept of land acquisition and the concept of revocation of land rights as well as the event of revocation of land rights during deliberation to achieve agreement on the construction site and the provision of compensation failed. Then in Government Regulation Number 19 of 2021 Article 69 paragraph (3), Article 70 paragraph (1) - (4), Article 71 paragraph (1), and additional articles in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia No. 17 of 2021 which was placed after the tenth part, namely the Provision of Compensation for the destroyed land, to became the 19th article.

Keywords: legal reconstruction, land procurement, Pancasila, justice value

Introduction
In Indonesia, Land acquisition is an act of the government to acquire land for various development purposes, especially for the public interest. In principle, land acquisition is carried out by means of deliberation between parties who need land, and the holder of land rights needed for development activities. However, in the Government's efforts to acquire land, there are often disputes between the government and the community or with the private sector.
Regarding the large number of land cases that occur in the community, the issue of land acquisition does not only stop until the problem of compensation for destroyed land objects is also a separate problem. Basically, the regulation related to destroyed land is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021 concerning Procedures for Determination of Destroyed Land. Article 2 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021 concerning Procedures for Determination of Destroyed Land states that Management Rights and/or Land Rights are nullified because the land is destroyed. If the land has changed from its original form due to natural events, it can no longer be identified, and cannot be functioned, used, and utilized properly.
Compensation related to land acquisition for development in the public interest for destroyed land also does not have a clear transparency system besides that there is no clear definition of destroyed land so the boundaries of the land that can be said to be destroyed land are also unclear. This can be seen in the problem of determining the destroyed land (Sari, 2022) [7].
Then Article 4 of the Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021 concerning Procedures for Determination of Destroyed Land only regulates the formal requirements in determining the location of destroyed land, while the sociological aspect, namely community involvement in determining destroyed land is not clearly regulated. This has a great chance of causing abuse of authority by the relevant bureaucrats in determining the location of the destroyed land. This situation can have an impact on the issue of compensation for land in land acquisition for development in the public interest (Oktavienty, 2022) [5].

An example of the case can be seen in the case where 65 (sixty five) hectares of land owned by 10 residents in Terboyo Kulon, Terboyo Wetan and Trimulyo Villages, Genuk District, Semarang City was declared as destroyed land by the Committee for Land Procurement for the Construction of the Semarang-Demak Toll Road. As a result, the 65 hectares of land owned by the 10 residents did not receive compensation. Ngatino, one of the affected residents also stated that the location determination did not involve residents because the land declared by the land procurement team (P2T) as destroyed land was still in the form of pond land which was still used as the livelihood of the land owner (JatengNews, 2021) [3].

This issue clearly contradicts Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "*the Indonesian state is a state of law*". Then Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "*everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law*".

Law Number 11 of 2020 concerning Job Creation is a new alternative, the Job Creation Act emphasizes the existence of public consultations and an agreement on the amount of compensation between land owners and the government as land users for development in the public interest. However, it should be clearly understood that the Constitutional Court Decision Number 91/PUU-XVIII/2020. Resulting in Law no. 11 of 2020 not yet being implemented.

So it is also clear that the issue of transparency regarding the determination of destroyed land in the implementation of compensation for land acquisition for development for the public interest that has been carried out so far can also violate the First, Second, Fourth, and Fifth Precepts of Pancasila.

Based on the above background, the authors are interested in conducting research titled "*Legal Reconstruction Of Land Procurement Regulations For Development In Public Interest Based On The Values Of Pancasila Justice*" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses of land acquisition regulations for development in the public interest that is it not fair yet?
2. How is the reconstruction of land acquisition regulations for development in the public interest based on the value of Pancasila justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [8].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [2]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses of Land Acquisition Regulations for Development in the Public Interest That is it Not Fair Yet

In the implementation of land acquisition for the public interest, it turns out that in reality it still cannot be carried out as expected, the government/ruler tends to carry out land acquisition by carrying out an act of a public nature which sometimes ignores the civil rights of the community (Widodo, 2018) [9].

The revocation of land rights has been regulated in article 18 of the UUPA, and further regulated in Law number 20 of 1961 concerning the revocation of rights to land and objects on it. The provisions in Article 18 of the UUPA have outlined that for the interests of the nation and the state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation.

Justice in land acquisition should be interpreted as distributive justice which is related to corrective justice, distributive justice concerns the understanding of equal distribution among equality, while corrective justice seeks to restore equality which is disturbed by the assumption that the situation fulfills distributive justice (Prawesthi, 2022) [6].

In relation to the determination of various factors that can affect land prices, these factors will be perceived as relatively fair, although this is applied to various subjects, in this case, land rights holders, where the end result does not need to be the same, given the differences in situations and conditions. each object as in reality, land acquisition often causes land disputes due to land acquisition for the public interest. The right holder factor considers that the compensation provided by the government is considered unfair and inappropriate because the rights holder wants a high price (Wiryani, 2021) [10].

In relation to the determination of compensation for the object of land acquisition for development in the public interest, if the holder of land rights does not receive the type and amount of compensation determined, the holder of land rights can file an objection to the local district court for a maximum of 14 (fourteen) days. work since the issuance of the determination of compensation, if the holder of land rights does not file an objection during the grace period, the compensation is considered to have received the type and amount of compensation. If the holder of land rights does not receive a decision from the district court regarding the type and amount of compensation, then during the grace period of 14 (fourteen) working days, the holder of land rights can file an appeal to the Supreme Court of the Republic of Indonesia.

Efforts made by the holder of land rights to the stipulation of compensation given to replace the object that was released for the development of the public interest is one of the proofs that the holder of land rights has not provided a sense of justice and worthiness that can guarantee a better economic life. The existence of rights granted to holders of land rights as stated in Law Number 2 of 2012 is a form or form of legal protection provided in land acquisition for the public interest.

At the time of the implementation of the provision of compensation or entrusted to the district court, the ownership or land rights of the entitled party are nullified and the evidence of their rights is declared invalid and the land is land that is directly controlled by the State. This deposit of compensation is clearly a form of forcing the community to relinquish their rights, the soul of this law is closely related to the revocation of land rights and only the revocation procedure is different (Cahyono, 2021) [1].

Thus, the dispute resolution applied in determining compensation for land acquisition for development in the public interest is to use two settlement patterns, namely litigation and non-litigation, namely:

First, non-litigation settlements in land acquisition for the public interest in Law Number 2 of 2012 include: conducting deliberation in determining the location of development and deliberation on determining compensation, conducting objections submitted to the land acquisition committee and agencies requiring land.

Second, the pattern of dispute resolution in land acquisition for development in the public interest is by means of a litigation pattern or route/through a court institution, in this case including the objections made by land rights holders to the determination of development locations in the public interest to the State Administrative Court, submitting objections to the District Court by the holder of land rights for refusing the type and means of compensation determined by the land acquisition committee.

In this case, it can be said that by assessing the settlement of disputes in land acquisition due to the non-acceptance of the determination of the construction site and the provision of compensation, the non-litigation pattern used is more of a negotiated settlement because it does not involve a third party as a mediator. In negotiating compensation for the object of land acquisition, the position of the holder of land rights is weak because it can be forced to relinquish land rights, but there should be a neutral third party as mediation in determining the location of development and in determining compensation. Negotiation in the form of deliberation is one of the strategies to resolve disputes so that negotiations can run and it is easy to get an agreement, the communication skills and insight of the parties are very decisive, especially in conveying their interests and desires of themselves or other parties. Settlement of disputes in land acquisition should be carried out to the maximum extent possible through non-litigation or out-of-court settlements because national land law is also based on customary law. In principle, customary law is different from modern society, dispute resolution in customary law communities is based on the view of life adopted by the community itself. The view of life of indigenous peoples rests on the philosophy of existence, namely the philosophy of humans which teaches to live in harmony and together. So, at least the effort to force the relinquishment of rights in land acquisition must be avoided by continuing to prioritize togetherness and prevent land conflicts between the government and land rights holders.

If studied in depth Law No. 2 of 2012 there are several weaknesses. According to Maria SW. Sumardjono (2008) [4] several weaknesses of Law Number 2 of 2012 include:

a. Law No. 2 of 2012 violates the law as a system. If in the laws and regulations prior to Law No. 2 of 2012 (Keppres No. 55 of 1993, Perpres No. 36 of 2005 in conjunction with Perpres No. 65 of 2006), distinguish between the concept of land acquisition and the concept of revocation of land rights, but Law No. 2 of 2012 abandons this conception by not mentioning at all the event of revocation of land rights when the deliberation to reach an agreement on the location of development and the provision of compensation failed while the location could not be moved. All objections/rejections of land rights holders are resolved through the judiciary by completely denying the event of revocation of land rights.
b. Law No. 2 of 2012 bumps into Law No. 26 of 2007 on Spatial Planning. Article 7 paragraph (2) states; "In the event that land acquisition is carried out for oil, gas and geothermal infrastructure, the procurement is carried out based on the Strategic Plan and Work Plan of the Agency that requires land as referred to in paragraph (1) letters a and d. There are two things that can be noted in relation to the formulation of Article 7 and its impact, first, Article 7 paragraph (2) excludes land acquisition for oil and gas and geothermal

infrastructure from the requirement to comply with the regional spatial plan and national/regional development plans. This exception can actually be interpreted as violating the provisions of Law Number 26 of 2007 because there is an obligation to comply with the spatial plan, and even violation of this obligation can lead to criminal sanctions; secondly, if the characteristics of oil and gas and geothermal activities are considered to have specificity, then the solution is not to damage the spatial planning system by formulating exceptions in Article 7 paragraph (2) but can be attempted by using the instrument for reviewing the spatial plan which is possible through Article 16. Law Number 26 of 2007 and which has been further regulated in Government Regulation Number 15 of 2010 concerning the Implementation of Spatial Planning.

Based on the description above, there are two things that need to be considered related to the existence of Law Number 2 of 2012, first, the Law needs to be revised again, meaning that it returns to the existing system of acquiring land rights, namely if an agreement is reached, then the mechanism is through land acquisition, but if an agreement is not reached then through the revocation of land rights, if not, then Article 18 of the UUPA and Law Number 20 of 1961 concerning the revocation of rights to land and objects on it must be revoked; second, the consignment institution is intended for certain cases only, namely if the holder of land rights is not known, the object of land acquisition is being disputed in court, is placed for security confiscation, and is being secured with mortgage.

Furthermore, in the practice of land acquisition for the public interest is felt to cause various kinds of weaknesses, especially for the community/land rights holders, in addition to that the implementation of compensation carried out by the land acquisition committee is not always in accordance with what is expected, resulting in various obstacles both from the community or from the land acquisition committee itself.

Weaknesses stemming from the views of the community/land rights holders on land acquisition for the public interest include:

a. The Lack of awareness of community members to participate in the development as well as lack of understanding of the meaning of public interest in relation to the social function of land rights, due to lack of understanding of Land Procurement for the public which had previously been explained and educated/socialized by the Land Procurement Committee/Team.
b. There are still holders of land rights who still think conservatively that their land is absolutely their property and power, moreover the land is a livelihood for the holder of land rights because the land is used as a pond area that can provide daily income, so the land still be maintained as vigorously as possible regardless of the land's social and basic functions, plans or development goals to be implemented.
c. On the other hand, there are still various opinions and different desires in determining the form and amount of compensation between one right holder and another right holder, because individual interests are still concerned with the economic value of the land. This can slow down the work of the committee in the implementation of compensation because it is difficult to reach an agreement in protracted deliberation.

Besides that, there are also the obstacles that come from the community members who own or hold land rights, there are also weaknesses that come from the land acquisition committee/ team itself, including:

a. The Lack of awareness of the Land Procurement Committee in carrying out their duties, which results in a decrease in responsibility so that sometimes errors occur in carrying out work such as being less careful in measuring, collecting data, filling in data, and providing compensation.
b. Limited personnel/ implementing officers for compensation which results in delays in providing compensation services.
c. There are still many people in the field who always play with the value of compensation received by the community by giving bribes to the organizing committee and the land appraisal team so that the value of compensation received by the community is decreasing and not in accordance with what was promised by the committee.

2. Reconstruction of Regulation on Determination of Tax Object Sales Value (NJOP) to Increase Regional Original Income Based on Justice Value.

Good law can make and implement the rule of law in accordance with human dignity. By obeying good laws, a person's freedom is not lost, and therefore his dignity as a human being is not lowered, even by obeying good laws, he actually manifests his nobility of dignity because he realizes and understands what he obeys. In that obedience, he is free to choose to obey the law for the sake of actualizing his dignity as a human being in social interactions with other people.

The abolition of land ownership rights according to Law Number 5 of 1960 concerning Basic Agrarian Regulations and other laws and regulations such as Government Regulation of the Republic of Indonesia No. 19 of 2021 concerning the implementation of Land Procurement for Development in the Public Interest and Regulation of the Minister of Agrarian and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia No. 19 of 2021 concerning Procedures for Determination of Destroyed Land, which applies shows that land acquisition for development for the public interest requires a legal basis in order to provide legal certainty, justice, and benefit to the community.

The implementation of land acquisition for development in the public interest certainly requires efforts of deliberation and public consultation with all interested parties so that it can proceed according to the plan and all parties are treated fairly through the provision of appropriate and appropriate compensation.
Therefore, the author will carry out an idea in the form of Reconstruction of Regulations on Land Procurement for Development in the Public Interest in Government Regulation of the Republic of Indonesia No. 19 of 2021, namely in:

a. Article 69 paragraph (3) Government Regulation of the Republic of Indonesia No. 19 of 2021: "*The amount of Compensation value based on the results of the Appraiser's assessment as referred to in paragraph (2) is final and binding*". changed to: "*The amount of Compensation value based on the results of the Appraiser's assessment as referred to in paragraph (2) is final and binding if there is an In-force decision*". The phrase "*final and binding*" must be added with the word "*if there is an In-force decision*" in the verse, considering that only the phrase "*final and binding*" is appropriate to be included in the decision of the judiciary.
b. Article 70 paragraphs (1) – (4) Government Regulation of the Republic of Indonesia No. 19 of 2021: *"(1) In the event that there is a residual plot of land affected by the Land Procurement, which can no longer be functioned according to its designation and use, the Entitled Party may request a replacement for the parcel of land. (2) In the event that the remaining land area is not more than 100 m2 (one hundred square meters) and cannot be used as referred to in paragraph (1), Compensation may be granted. (3) In the event that the remaining land parcel is more than 100 m2 (one hundred square meters) Compensation may be granted after receiving a study from the Land Procurement operator together with the Land Requirement Agency and the related technical team. (4) The study as referred to in paragraph (3) shall be stated in the form of an official report on the results of the residual land study*". According to the author's view, it needs one additional paragraph regarding destroyed land after paragraph 1 so that in the formulation of Article 70 paragraph (1)-(4) Government Regulation of the Republic of Indonesia No. 19 of 2021 changes to: *"(1) In the event that there is a residual plot of land affected by the Land Procurement, which can no longer be functioned according to its designation and use, the Entitled Party may request a replacement for the parcel of land. (2) In the event that there is a residual land parcel as referred to in paragraph (1), namely the status of destroyed land affected by the Land Procurement, which can no longer be functioned according to its designation and use, the Entitled Party may request a replacement for the parcel of land. (3) In the event that the remaining land area is not more than 100 m2 (one hundred square meters) and cannot be used as referred to in paragraph (1), Compensation may be granted. (4) In the event that the remaining land parcel is more than 100 m2 (one hundred square meters) Compensation may be granted after receiving a study from the Land Procurement operator together with the Land Requirement Agency and the related technical team. (5) The study as referred to in paragraph (4) shall be stated in the form of an official report on the results of the residual land study*". This is necessary in order to clarify the status of the remaining land and land destroyed from Article 70 paragraph (1)-(4) of Government Regulation of the Republic of Indonesia No. 19 of the year 2021.
c. Article 71 paragraph (1) Government Regulation of the Republic of Indonesia No. 19 of 2021: *"(1) Land Procurement Implementers carry out deliberation accompanied by Appraisers or Public Appraisers and Agencies Requiring Land with Entitled Parties within a maximum period of 30 (thirty) Days since the results of the appraisal from the Appraiser are received by the head of the Land Procurement executive*". According to the author's view that in order not to give rise to various interpretations, the phrase "*Entitled Parties*" should be added to the editor "*along with the holders of land rights*", so that in the formulation of Article 71 paragraph (1) Government Regulation of the Republic of Indonesia No. 19 of 2021 changed to: *"(1) Land Procurement Implementers carry out deliberation accompanied by Appraisers or Public Appraisers and Agencies Requiring Land with Entitled Parties, along with Land Rights holders within a maximum period of 30 (thirty) Days from the results of the appraisal from the Appraiser. accepted by the chief executive of Land Procurement*". This is necessary in order to clarify the meaning or interpretation of Article 71 paragraph (1) Government Regulation of the Republic of Indonesia No. 19 of 2021, so as not to cause multiple legal interpretations.

Then, related to the Reconstruction of Regulations on Procedures for Determination of Destroyed Land in the Regulation of the Minister of Agararian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia No. 17 of 2021, it is necessary to add an article to the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia No. 17 of 2021 concerning the destroyed land which was placed after the tenth part, namely the Provision of Compensation for the destroyed land, to become the 19th article.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The weaknesses in legal policies related to the implementation of Land Procurement for Development in the Public Interest so that they cannot prevent and cope with land destruction are the Weaknesses in legal substance which is Article 69 paragraph (3) Government Regulation of the Republic of Indonesia No. 19 of 2021, Article 70 paragraphs (1) – (4) Government Regulation of the Republic of Indonesia No. 19 of 2021, and Article 71 paragraph (1) Government Regulation of the Republic of Indonesia No. 19 of the year 2021,

Weaknesses in legal structure especially the land procurement team's authority, and Weaknesses in the legal culture which is the society's lack of understanding on the meaning of public interest.

2. The need for Reconstruction of land acquisition regulations for development in the public interest based on the value of Pancasila justice, namely in Law No. 2 of 2012 by adding special rules related to the concept of land acquisition and the concept of revocation of land rights as well as the event of revocation of land rights during deliberation to achieve agreement on the construction site and the provision of compensation failed. Then in Government Regulation Number 19 of 2021 Article 69 paragraph (3), Article 70 paragraph (1) - (4), Article 71 paragraph (1), and additional articles in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia No. 17 of 2021 which was placed after the tenth part, namely the Provision of Compensation for the destroyed land, became the 19th article.

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