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Social Function of Land in The Development and Acquisition of Land For Public Interest

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ABSTRACT

This study examines aspects of the social function of land for the public interest in every development carried out by the government. Second, how is the polemic in the compensation process for relinquishing land rights for development. Finally, the polemic of the Constitutional Court's decision no. 50/PUU-X/2012. The research findings show that the conception of the Social Function of Land for the public interest is not always in accordance with the real meaning of the public interest and the process of compensation for land is still far from the spirit of the UUPA Jo Article 33 of the 1945 Constitution. 2/2012, to deconstruct the meaning of "social function of land" in order to conform to the philosophy of Article 33 of the 1945 Constitution and the LoGA. The DPR must immediately complete the Agrarian Structure Reform and Restructuring Bill, the Agrarian Conflict Resolution Bill, and the Natural Resources Management Bill, as mandated by MPR Decree No. IX/2001 Jo Tap MPR No. V/2003. Development for the public interest must be placed in the spirit of the social function of land and agrarian reform in order to achieve the greatest prosperity for the people.

ABSTRAK

Penelitian ini mengkaji mengenai aspek fungsi social tanah untuk kepantingan umum dalam setiap pembangunan yang dilakukan oleh pemerintah. Kedua, bagaimana polemik dalam proses ganti kerugian pelepasan hak atas tanah untuk pembangunan. Terakhir, polemik putusan MK No. 50/PUU-X/2012. Temuan penelitian menunjukkan, bahwa konsepsi Fungsi Sosial Tanah untuk kepentingan umum tidaklah selalu sesuai dengan makna sesungguhnya mengenai kepentingan umum dan proses ganti rugi atas tanah masih jauh dari spirit UUPA Jo Pasal 33 UUD 1945. Pasca putusan MK, perlu legislatif review UU No. 2/2012, untuk mendekonstruksi makna "fungsi sosial tanah" agar sesuai falsafah Pasal 33 UUD 1945 dan UUPA. DPR harus segera menyelesaikan RUU Pembaruan dan Penataan Struktur Agraria, RUU Penyelesaian Konflik Agraria, dan RUU Pengelolaan Sumber daya Alam, sebagai amanat Tap MPR No. IX/2001 Jo Tap MPR No. V/2003. Pembangunan untuk kepentingan umum, harus diletakkan dalam spirit fungsi sosial tanah dan reformasi agraria demi mencapai kemakmuran yang sebesar-besarnya bagi rakyat.

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I. INTRODUCTION

The enactment of Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest turns out to be a fact in society that still creates injustice in agrarian matters. If the construction of the meaning of "social function of land" is guaranteed by Article 6, the Basic Agrarian

Law (UUPA No.5/1960). Philosophically, the concept of social function on land is actually a basic principle in taking action regarding rights or revocation of rights to (Sulaiman). In terms of "State Controlling Rights (HMN)" and the social function of land, the Constitutional Court has begun to try to balance it by emphasizing the meaning of HMN, individual land and communal land in a balanced position. Through the decision of the Constitutional Court No. 50/PUU-X/2012, HMN is no longer seen as a superior right which is the source of all land rights in Indonesia. The Court's considerations emerged at a time when the nuances of national politics were no longer centralized, but decentralized and also thick with the spirit of pluralism. Apart from the pros and cons, the essence of the Constitutional Court Decision No. 50/PUU-X/2012 can still be studied further because, it is still far from the spirit of agrarian reform as mandated by Article 33 of the 1945 Constitution, the 1960 BAL, and the Law on the Ratification of the International Covenant on Economic, Social and Cultural Rights. The UUPA was issued in order to realize the mandate of Article 33 paragraph (3) of the 1945 Constitution, which is a legal reality in explaining the purpose of land as a social asset and capital asset. The provisions of the articles contained in the UUPA are the embodiment of the precepts in Pancasila.

Therefore, the social function of land in the LoGA is one of the 3 (three) internal obligations that are applied to every holder of land rights. The obligations in question include: first, the obligation to carry out the social function of land rights (Article 6). The second is to maintain the land and its benefits properly (Article 52 paragraph (1)). Third, the obligation to actively work on agricultural land (Article 10). If it is reviewed, the meaning of "social function of land rights", apparently has not been found in the legal considerations of the a quo Constitutional Court Decision. More than that, it is the responsibility of the state to realize the greatest prosperity for the people. The Court only reinforces the meaning of “State Controlling Rights (HMN) which shows the superiority of the state to emphasize the social function of land behind state-owned HMN.

Supposedly, the meaning of the state's right to control land is limited by the "social function of the land" and the constitutional mandate to realize the greatest prosperity for the people. HMN must be placed on a philosophical dimension, which does not only provide equal opportunities for each individual to dominate the land. HMN must also ensure that, every individual who is in a disadvantageous position, is treated differently from an individual with a better social and economic position. Cultivators, landless poor people, and customary law communities are some examples, groups of people who need special attention and treatment by the state. The state must guarantee their rights to land and a relatively balanced bargaining position with capital owners and rulers (Wulandari et al., 2021).

The form of interpretation that deviates from the philosophy, spirit and basic principles of the LoGA will have implications for the emergence of agrarian conflicts and disputes, which often involve the state apparatus, the private sector, and the people who own land rights. Agaria conflicts that occur often involve violations of human rights. Take, for example, the case at the end of 2011, for example, the Mesuji case (East Mesuji District, Mesuji Regency, Lampung), the Sodong River case (Mesuji District, Agam Komering Ilir Regency, South Sumatra), and the case of PT Sumber Mineral Nusantara in Sape District, South Sumatra Regency. Bima, West Nusa Tenggara. These cases are an indicator of the complexity of agrarian conflicts and disputes that have occurred so far.

Agrarian reform has become a priority program for the Jokowi government in the first volume (Yanto, 2022). This is read in the 2015-2019 National Medium-Term Development Plan (RPJMN) in conjunction with Presidential Regulation No. 45/2016 concerning the 2017 Government Work Plan (RKP). Finally, the issuance of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. However, empirically, agrarian conflicts and disputes still continue to this day. As a comparison, the Consortium for Agrarian Reform (KPA) noted that in 2018, there were 410 agrarian conflicts spread across all development sectors. Cumulatively, during the four years of Joko Widodo and M Jusuf Kalla's reign, there have been at least 1,769 agrarian conflicts. Specifically for conflicts

in the property sector, due to the incessant development of industrial property and real estate areas that require land on a large scale.

This research is based on the assumption that marginal groups such as farmers, fishermen, laborers, and the urban poor in general have limited access to justice to land and enjoy the results of development. This group is often the victim of development and forced to relinquish their land rights for the benefit of investors through the hands of the authorities. In the name of development for the sake of "public interest", the amount of compensation provided by the state tends to be unilateral. It is enough for the government to leave it to the court if an agreement is not reached with the people who own the land. Every law formation cannot be born in a neutral and closed state. The tug of war and the struggle for political interests will always color the characteristics of each legislative product, including the law related to land acquisition for development in the public interest.

As for the formulation of the problem in this study, first, namely the extent to which the application of the social function of land for the public interest in Law no. 2 of 2012 in every development carried out by the government?. Second, what is the dilemma in any compensation process for relinquishing land rights to the community after the Constitutional Court Decision No. 50/PUU-X/2012 ?.

II. RESEARCH METHOD

This research is analytical descriptive, meaning a research that describes, examines, explains and analyzes the law both in the form of theory and practice implementation of the results of research in the field (Soekanto, 2006). In addition, this research is also a normative legal research (legal research) which is carried out by examining library data, namely legal principles, legal systematics, legal synchronization levels, and legal comparisons. Sources of data obtained from secondary data sourced from library studies. Secondary data is based on the results of literature studies or legal documentation, which can be divided into primary legal materials that are binding, secondary materials to help analyze and provide an explanation of primary legal materials and tertiary legal materials to provide detailed explanations of primary legal materials and secondary legal materials. . Data collection techniques based on document studies or literature studies are research conducted by collecting data based on the results of tracing studies of legal documentation or formal legal sources contained in various products of applicable laws and regulations, books, legal documents, treatises legal papers, academic manuscripts, newspapers, magazines, and data from the internet as well as scientific writings related to the issues raised by the author.

The data analysis technique is descriptive-qualitative, which includes three stages, namely classifying, comparing, and connecting the relevance of the data according to the theoretical basis and the problems studied. To maintain consistency in the structure of the data analysis, the thinking process used in this study is deductive in nature. The deductive method is essentially a thought process that starts from general statements to specific statements using acceptable logic. The accuracy of understanding (subtility itellegendi) and accuracy of translation (subtility explicandi) are very relevant to law.

III. RESULT AND DISCUSSION

Based on Article 1 paragraph (3) of the 1946 Constitution that Indonesia is a state of law, all actions taken must be based on the constitution and the law. In this case, we can analyze that closely related to this problem is the agrarian constitution. This agrarian constitution is a constitution that contains the basis for the relationship between the state and citizens to land and other natural resources (Arizona, 2014). The relationship between agrarian and citizens over land and other resources is the basis for the establishment of a country.

Regarding the existence of land in human life, it has a meaning and at the same time has a dual function, namely as a social asset and a capital asset. As a social asset, land is a means of binding

social unity among the community to live and live. Land as a capital asset places the function of land as a capital factor in development and has grown as a very important economic object or commodity as well as a commercial material and object of speculation (Arba, 2021). Land and other natural resources are elements of the existence of a country itself. Agrarian regulations were formed with the aim of realizing agrarian justice for citizens based on the constitution. This agrarian constitution will provide a legal basis for parties who want to fight for and claim their rights as a constitutional right. Therefore, if there are citizens who feel that their land rights have been taken away, then their struggle becomes a constitutional struggle for citizenship. As is the case in this case where the petitioners fight for the rights of the community in land rights based on the constitution, but in this case the Judge of the Constitutional Court decided to reject the petition of the petitioner in its entirety.

The Constitutional Court must have carefully examined the petitions from the petitioners and examined all evidence, oral statements and written statements from witnesses and/or experts from the petitioners and examined written statements, oral statements from witnesses and/or experts from the Government, and according to the government. the arguments presented by the Petitioners have no legal basis. According to the Constitutional Court Judge, although the state has provided opportunities for the private sector to fulfill the public interest, the state itself can still determine policies related to the public interest.

Development for the public interest is a good thing for a country because it is evidence that the country is growing and trying to advance the civilization of its country (Rosidin, 2021). But on the other hand, development in addition to having a positive impact can also have a negative impact either directly or indirectly. The most obvious impact is that the community has the potential to lose assets in the form of land and/or buildings as a result of providing land for the public interest. This has been stated in Article 5 of Law number 2 of 2012 concerning Land Procurement for Public Interest (Law 12/2012 which states that "The entitled party is obliged to relinquish his land during the implementation of Land Procurement for Public Interest after the provision of compensation or based on a court decision. which has obtained permanent legal force." The mandatory phrase in the Law on Land Procurement for Public Interest emphasizes that the land owner has no bargaining value even though he needs the land or does not want to sell the land.

The implementation of Article 5 of Law 12/2012 can certainly trigger problems, especially if the land taken over for development is productive land that is used by the community as a source of their livelihood and will result in the loss of community livelihoods. As a result, it is very natural for some communities to reject the application of the a quo Law and not want to relinquish their land even though they have been promised a compensation value. However, the Law a quo has stipulated the phrase "mandatory" in this law so that no matter how strong the public's rejection of this policy, in the end they must still accept it in the public interest.

Presumably, according to the author's opinion, Constitutional Court Judges only look at the juridical aspect without looking at the philosophical and sociological aspects, which in addition to the juridical dimension, lawmakers must pay attention to the philosophical and sociological aspects as well as the applicable formal material principles. The philosophical foundation must take into account the view of life, awareness, and legal ideals which include the spiritual atmosphere and the philosophy of the Indonesian nation which is sourced from Pancasila and the Preamble to the 1945 Constitution. The sociological basis requires that the presence of the Act is in accordance with the needs of the community and does not cause socio-humanitarian turmoil (Al Atok, 2015). The material of the law must have a function to provide protection in order to create public peace. Conformity between the type of hierarchy, and the content of the payload, is also important. The formation of a law must pay attention to the content of the right material with the type of legislation.

In addition, the law must be enforceable. Must take into account the effectiveness of the enactment of the Act in society, both philosophically, juridically and sociologically. The principle of humanity requires the importance of proportional protection and respect for human rights, the dignity and worth of every citizen and resident of Indonesia. Meanwhile, the principle of kinship, the

material of the law must reflect deliberation to reach consensus in every decision making (Arba, 2021). While in this case the Court does not touch this matter to the level of understanding the philosophy of the public interest of government action, in the end, in practice, many people are forced to accept that again they have to lose their land or land because of the public interest in every reason. Government action.

The public interest in Roscoe Pound's perspective must be interpreted as the interest of the state as a legal entity and the interest of the state as the guardian of the public interest (Zakie, 2011). Therefore, it needs to be mapped into three types, namely: individual (private) interests, public interests and social interests. Individual interests come from the point of personal, domestic, and property rights. While the public interest with a special purpose for the interest of the state as a legal institution and as a guardian of social interests (Aartje Tehupeiory, 2017). Michael G. Kitay, distinguishes the interpretation of "public interest", into two principles. First, the principles of General guidelines, namely by providing general provisions for public interests such as social interests, public interests, collective or common interests. These general guidelines are given by the legislature, then in its implementation, it is the executive who determines what forms of public interest are referred to, such as hospitals. Second, what is called List provisions, namely, explicit determination of public interest. However, in practice, most of the two models are related to land acquisition legal instruments. Apart from making a general statement of public interest, it has also been lowered into the list of activities in a limited manner (Arba, 2021).

One of the crucial points in Law no. 2/2012 is the definition of “public interest”. The ambivalent meaning is also found in the Constitutional Court's decision no. 50/PUU-X/ 2012. In fact, the Court stated that it did not find any disregard for the rights and interests of the public, including the rights of the community or people who own land to be used for the public interest as argued by the applicant against the norms of Article 9 paragraph (1) of Law 2 /2012. The correlation of development activities and alignments with the public interest often leaves complex issues. The social function of land as mandated by the LoGA is no longer a major consideration. Many projects are purely oriented to private interests and investment, but in the name of the public interest.

When compared, the meaning of “public interest” in Presidential Decree No. 55/1993, closer to the meaning of “social function of land”, rather than Law no. 2/2012. The Presidential Decree defines the meaning of public interest as "development activities carried out and subsequently owned by the government and not used for profit". In legal deconstruction, the phrase "not used to seek profit", shows more partiality to the wider community, especially the victims of development, rather than the business interests of investors or developers.

The state as a representative of the people's sovereignty has the authority to control land or all agrarian resources (SDA), as long as the designation does not harm and sacrifice the interests of the people (Budianta, 2012). The philosophy of Article 33 paragraph 3 of the 1945 Constitution affirms that the state as a power organization obtains the authority from the Indonesian people to control the earth (including land), water, and the natural resources contained therein. The right to control the State is used with the aim of achieving the greatest prosperity of the people. UU no. 2 of 2012, providing broad authority for the government and businessmen to revoke people's ownership rights to land in the name of development in the public interest. This rule, it is clear that the rights of the small people to land, including ulayat land, have been guaranteed by the constitution. This issue has the potential to trigger agrarian conflicts and disputes such as massive forced evictions against people who refuse to give the land.

Rosiana & Supriadin (2020), defines that the state does have the power to take over land rights in the public interest, but technically the state must be carried out in accordance with the principles of land acquisition, including:

1. Respect for People's Rights (Article 3 of Presidential Decree 36/2006, Article 36 of Law 39/1999 on Human Rights).

2. Provision of appropriate compensation, namely the provision of commensurate and even better compensation (a better life) to former owners in the form of: compensation for land, buildings, plants, and other objects related to land and having economic value. (Article 3 of Presidential Decree 36 of Law 39/1999 on Human Rights).
3. Implementation of deliberation, for the process of listening to, giving and receiving opinions as well as the desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition on a voluntary basis and equality between parties who own land, buildings, plants, and objects. 1195 Varia Hukum Edition No. XXXVIII of XXIX SEPTEMBER 2017 relating to land with parties who need land (Article 3 of Presidential Decree 36/2006, Article 36 of Law 39/1999 on Human Rights).
4. Conformity with the RTRW: that development for the public interest must be in accordance with the zones within the cultivation area as well as the protected area, and uphold the values of land capability (Article 3 of Perpres36/2006, Article 36 of Law 39/1999 on Human Rights).

The above provisions should be able to mediate between the wishes of the community (especially land owners) and development implementers who are representatives of the government itself. This mechanism must be implemented in a dialogue and interactive manner so that an agreement on the compensation mechanism can be implemented and is well received by the community.
Then talk about compensation. Theoretically, the compensation policy is actually not limited to replacing the value of land, buildings and plants, but should also include an assessment of immaterial losses and losses that arise, such as business activities, due to displacement to other places, the amount of customers and reduced profits (Sihombing, 2004). UU no. 2/2012 defines the compensation process as a form of appropriate and fair compensation to the entitled parties in the land acquisition process. The land agency has the authority to determine an assessment team without involving representatives from community elements who are victims or groups affected by development. The main task of the Assessment Team is to carry out an assessment of the object of land acquisition as well as to determine the amount of compensation for the community affected by land acquisition or affected by development activities.

Compensation as an effort to realize respect for the rights and interests of individuals who have been sacrificed for the public interest, can be called fair, if it does not make a person richer, or vice versa becomes poorer than the original situation (Maria, 2001). Spirit of Law no. 2/2012 is still far from the essence of the social function of land and the responsibility of the state to prioritize justice in land redistribution for the welfare of the people. The competence of the appraisal process for the object of land acquisition is only monopolized by the government through the national land agency by forming an Assessment Team consisting of elements from the relevant government agencies. The formation of a land acquisition committee does not involve community representatives. Supposedly, community and customary leaders or representatives of development-affected groups were involved from the beginning of development planning.

The compensation process in the form of revocation of land rights which are used as objects of development by the government also ignores the principles or principles in land acquisition for the public interest. The principle referred to as stated in Article 2 of Law no. 2/2012 which includes the principle of humanity, the principle of certainty, the principle of justice and the principle of agreement. Communities affected or become victims of development, must accept unconditionally, the amount of compensation that has been determined through a procurement committee formed by the government. Although the mechanism for deliberation is open for consensus with the land owners (community), the period is only 30 (thirty) working days after the results of the assessment from the Assessment Team are submitted to the Land Agency to determine the form and/or amount of compensation. If the deliberation process fails, the community (land owner) may file an objection to the local District Court within a maximum period of 14 (fourteen) working days. If they are not satisfied, they can still take cassation to the Supreme Court within the same period of time.

There is no guarantee for people who own land rights to get proper and fair compensation. The community (land owner) who refuses the form and/or amount of compensation, if they do not file an objection to seek legal remedies, will automatically be deemed to have accepted the form and amount of compensation determined by the government. The government argues that this step is solely "for the sake of the law" as stated in Article 39 of Law no. 2/20121. For people who reject the amount of compensation based on the results of deliberations or decisions of the District Court or the Supreme Court, the compensation money is enough to be deposited unilaterally with the local District Court without the consent of the land owner.

In this case, it appears that the government is increasingly ignoring the principles of land acquisition for the public interest by asserting that the compensation deposit mechanism in Article 42 of Law No. 2/2012, also applies to, first, the party entitled to receive compensation is unknown. . Second, the object of land acquisition that will be given compensation in the form of;

a. Being the object of a case in court;
b. Ownership is still in dispute;
c. Placed confiscation by the competent authority; or
d. Be a guarantee in the bank.

If the compensation and relinquishment of land rights have been carried out or the amount of the compensation value has been deposited with the court, the ownership or property rights to land affected by the development are automatically deemed to have been erased and the evidence of rights declared invalid. The right of ownership to the land becomes land that is controlled directly by the state without conditions. The process of releasing land and compensation for such land clearly violates the principles of humanity, and the principle of justice in Law No. 2/2012 itself. Such practice does not reflect the nature of the “social function of land” and the conception of State Controlling Rights as mandated by the LoGA and can trigger agrarian conflicts and disputes. Moreover, in the process of compensation for land, it involved elements of thuggery who were shielded by the Swakarsa Security Unit (Pam Swakarsa) or used accomplices of state apparatus in a repressive manner and violated human rights, such as the agrarian conflict in Mesuji Lampung on the year 2011 ago.

IV. CONCLUSION

The basis for the consideration of the Constitutional Court Judge in rejecting the petition of the Petitioners in the Constitutional Court's decision no. 50 PUU-X/2012 is because the Panel of Judges feels that the applicant's arguments have no concrete legal reasons. In the end, the rights to land owned by citizens will be inferior to the rights to the public interest according to the state. The state does have the power to take over land rights in the public interest, but technically the state must do so in accordance with the principles of land acquisition. However, in addition to the principles, if there are citizens who reject the taking of land rights in the public interest, the state also needs to consider another legal basis, namely the UUPA. The UUPA has indicated that in fact the Indonesian people have the highest sovereignty as land owners, because they inherit property rights that are the strongest and cannot be contested. Meanwhile, the State only has the authority to control or has the right to regulate, which in the perspective of agararia law politics is called the State having the authority or authority to act. The fundamental paradigm error of Law no. 2/2012 is the absence of realignment of control, use, utilization and maintenance of agrarian resources as part of the overall agrarian reform agenda. The procedural aspects of the formation of Law no. 2/2012, does not yet reflect the rules for the formation of applicable laws and regulations. Likewise, the concept of the meaning of the public interest and the process of compensation for land is still far from the spirit of the UUPA Jo Article 33 of the 1945 Constitution. Land acquisition policies that ignore "the social function of land will only lead to agrarian conflicts and a crisis of justice in land ownership by marginalized people and victims. development. After the Court's decision no. 50/PUU-X/2012, it is necessary to conduct a legislative review of Law no. 2/2012, to deconstruct and clarify, the meaning of HMN and the principle of the social function of land to be in line with the philosophy of Article 33

of the 1945 Constitution and the mandate of the LoGA. This is important, so that the meaning of public interest is more in favor of the interests of the community, as victims of development activities, rather than investors who are more profit-oriented.

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