

Harmonization Of Pancasila Values In The Process Of Land Acquisition For National Development

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ABSTRACT

The process of land acquisition for the benefit of national development often causes various problems, both in terms of social, economic and legal aspects. Therefore, as the foundation of the state, Pancasila must be the main guideline in every land acquisition policy, to ensure that the process still reflects the values of justice, humanity, deliberation, and social welfare contained in Pancasila. This research aims to examine the implementation of land acquisition in line with the values of Pancasila, as well as how existing regulations can support these principles in practice. The research method used is normative juridical, with a focus on analyzing applicable laws and regulations, particularly Law No. 2/2012 on Land Acquisition for Development in the Public Interest. The results show that land acquisition in Indonesia, as regulated in Law No. 2/2012, aims to ensure that the acquisition of land needed for development can be carried out effectively. However, to ensure justice and social welfare, land acquisition must be implemented by prioritizing humanitarian, democratic, and fair principles in accordance with the values of Pancasila. Thus, the application of Pancasila principles in every stage of land acquisition is crucial to maintain the balance between national interests and community rights.

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PRELIMINARY

Land is a gift from God that is very essential for life, especially human life, because most social, cultural, economic, and political aspects depend on it. Land not only has a vital function, but also contains deep people's values. Therefore, in policy making, decision making, and implementation of these policies, it must be done with the principle of deliberation to reach consensus, without unilateral decisions or pressure from any party. Decision making involving land must be free from physical violence, threats, physical abuse, destruction of property, or moral pressure and security threats. In its management, land must also reflect the values of social justice that side with the people, ensuring that their interests are protected and respected. These values are the grund norm or basic norms for the Indonesian people to act and behave and to be used as guidelines and foundations for laws and regulations in the land sector. In addition, land has a very important function and position in life because it is a commodity that has a high economic value for the welfare of the people.

Land management and regulation in the national system is based on the values of Pancasila as the state philosophy derived from the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) especially Article 33 Paragraph (3) which stipulates, "the land, water and natural resources contained therein are controlled by the State and used to the greatest extent for the prosperity of the people ¹." This article contains a fundamental constitutional mandate, namely that the use and utilization of land must be able to bring about the greatest prosperity for all Indonesian people. This means that every right to land requires certainty regarding the subject, object, and implementation of the authority of its rights. The regulation in Law Number 5 of 1960 concerning Basic Agrarian Principles (UU Pertanahan) in its explanation states that this regulation also takes into account individual interests. The purpose of implementing UUPA is as the main points to lay the foundations for compiling national agrarian law. The interests of society and individual interests must balance each other, until finally the main goal can be achieved: prosperity, justice and happiness for the people as a whole ².

Although the constitution recognizes that all land is under state control, in fact it cannot be denied that there is personal control of certain lands by citizens whose ownership is recognized and protected by law. The implementation of land acquisition for development in the national interest often causes problems in the process. A number of problems, land acquisition practices followed by the release of land owned by the people always cause disputes that end in violence or at least end in court. In general, the motives and backgrounds for the emergence of various conflicts in land acquisition are the lack of order in past land administration, there are still many lands that have not been certified, the land inheritance process is not determined through a legal mechanism, land controlled by someone is not necessarily owned by the person who occupies it, and there are parties who use the opportunity to seek unreasonable material benefits. In addition, land acquisition for the public interest also causes ambivalence caused by the dominance of government policies as the implementer of development rather than as the protector of the land-owning community and the development of individualistic values and the weakening of collectivistic values.

There are two main points in land acquisition for public development, namely coercion from the parties, both the government which unilaterally sets compensation prices and land owners demanding prices that are considered unreasonable. The limitations of the legal instruments related to guaranteeing the protection of the rights of existing land owners have not been able to accommodate these different interests and have the potential to open gaps or spaces that cause conflict for land owners because it seems as if the rights and interests of the people do not receive legal protection. Pancasila as the basis of the state which was born as a collective ideology and became the root of the ideals of the entire nation. Thus, it is a necessity in realizing Pancasila justice, especially in terms of land acquisition for development in the public interest, especially in the era of industry 4.0 which tends to be devoid of humanity and materialistically oriented (big data, robotics, artificial intelligence), Pancasila values must be the basis for developing a national legal system with a Pancasila paradigm, so that law is not for technology but for humans as a whole (mono-pluralist). ³Based on the description above, the problem to be studied is how land acquisition is in accordance with the values contained in Pancasila.

METHOD

This research is a normative legal research, a legal research that examines the law conceptualized as norms or rules that apply in society, and become a reference for

¹Undang-Undang Dasar 1945

²Gunanegara. 2006. *"Pengadaan Tanah oleh Negara untuk Kepentingan Umum"*. Disertasi. Surabaya: Program Pascasarjana Fakultas Hukum Universitas Airlangga.

³ Atmoredjo, Sudjito. 2019. Pancasila sebagai Paradigma Pembangunan Sistem Hukum Nasional Indonesia. Makalah Seminar Nasional, *"Pembangunan Hukum Berkarakter Pancasila dalam Rangka Globalisasi Ekonomi Menyongsong Era Industri 4.0"*. Surakarta, 31 Agustus 2019: Prodi Magister Ilmu Hukum UNS.

everyone's behavior. ⁴This research uses secondary data in the form of primary legal materials, namely laws and regulations and secondary legal materials, namely books, legal journals and other written works. The results of this study were analyzed qualitatively using a statutory regulatory approach.

This research is intended to examine the acquisition of land for development in the public interest based on Pancasila, where to examine these problems the law is used as a building of a normative system that includes legal principles, norms, rules of laws and regulations, and doctrines (teachings). Such research is a special characteristic of normative research.

RESULT AND DISCUSSION

Pancasila as the Foundation of the State and Development Paradigm

Pancasila is a value system derived from the noble values of the Indonesian culture itself. Pancasila as the foundation of the state and the philosophy of life of the Indonesian nation, is essentially a basic value that is fundamental, systematic, and holistic. The principles that are composed are a whole, complete, and hierarchical unity, so that it can be interpreted as a philosophical system. Based on the philosophical thinking contained in each principle, Pancasila as the philosophy of the nation and state has meaning in every aspect of national, social, and state life based on the values of Divinity, Humanity, Unity, Democracy, and Justice. Pancasila is a foundation and ideology of the state, a noble agreement of the Indonesian nation that cannot be replaced. Such a position requires the formation of positive law aimed at achieving the ideas in Pancasila, and can be used in testing the positive law, the determination of Pancasila as the norm underlying *the Staatsfundamentalnorm*, so the formation of law, its implementation and application cannot be separated from the values of Pancasila.

The consequences of Pancasila are the basis and ideology of the state as the basis for positive law, legal processes and legal institutions, citizens and government bureaucracy. In addition, it is also a tool for testing positive law, legal processes and legal institutions. Pancasila is a guiding value in conducting evaluations and factors that influence the implementation of law. While the values of Pancasila in the state include the state must be based on the one and only God, the state based on just and civilized humanity, the state based on unity, the state based on democracy and the state must be based on social justice.

The state in carrying out its duties and functions must have the Pancasila paradigm in formulating what is its responsibility in prospering and providing justice to the community. The state in making policies to answer existing problems must have the Pancasila paradigm in taking a point of view in order to exercise its authority. Pancasila as a paradigm is described in development so that the process and results of development are in accordance with Pancasila, such as: Development must not be pragmatic, namely development does not only prioritize real actions and ignore ethical considerations. Development must not be ideological, namely absolutely serving a certain ideology and ignoring real people. Development must respect human rights, namely development must not sacrifice real people but respect the dignity and honor of the nation. Development is carried out democratically, meaning involving the community as the goal of development in decision-making concerning their needs. Development is prioritized in achieving a minimum level of social justice, namely prioritizing the weakest to eliminate structural poverty. Structural poverty is poverty that arises not because of the laziness of individuals or citizens, but because of unfair social structures.⁵

⁴Wiwik, Widiarty. 2024. *Buku Ajar Metode Penelitian Hukum*. Yogyakarta : Publika Global Media, hlm. 24.

⁵ Tim ICCE UIN Jakarta. 2003. *Demokrasi, Hak Asasi Manusia dan Masyarakat Madani*. Jakarta: Prenada Media.

Understanding and implementation of Pancasila in the paradigm of political development is the application and implementation of social justice including political, cultural, religious, and economic justice in everyday life. Prioritizing the interests of the people in decision making. Implementing social justice and determining people's priorities based on the concept of maintaining unity. In achieving it, the goal of justice uses a just and civilized humanitarian approach. The values of social justice, democracy, unity, and humanity (civilized justice) are based on the value of the Almighty God.⁶

Pancasila as a paradigm for economic development must refer to the fourth principle of Pancasila, while economic development in the Indonesian economic system is the development of a people's economy or the development of economic democracy or the Pancasila economic system in which the economy is for the greatest prosperity of the people with justice for Indonesian citizens providing opportunities, support, and development of the people's economy. In a people's economy, the state plays a role in protecting citizens⁷.

The placement of Pancasila as the source of all sources of state law is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia, paragraph four, namely Belief in the One Almighty God, Just and civilized humanity, the unity of Indonesia, democracy guided by the wisdom of deliberation/representation, and social justice for all Indonesian people. Placing Pancasila as the basis and ideology of the state as well as the philosophical basis of the state so that every material contained in laws and regulations must not conflict with the values contained in Pancasila. In relation to Pancasila as a paradigm for legal development, both written and unwritten laws must not conflict with the principles of Pancasila. Thus, the substance of the law that is developed is the embodiment or elaboration of the principles contained in Pancasila. By providing a national foundation for Indonesian law in order to prioritize the interests of national unity over the narrow primordial loyalty of a particular group or group. The substance of a legal product is the character of a legal product that is responsive to the interests of the people and is part of the realization of the people's aspirations, because it can be understood that the essence of legal development is none other than justice.

Land Acquisition for Development in the Interest of the Community Based on Pancasila Values

The term Land Acquisition means to hold or provide land. Before Presidential Decree No. 55 of 1993 was enacted, there was no clear definition of land acquisition for standard public interest. Simply put, it can be interpreted that public interest can be said to be for the needs, requirements or interests of many people or broad purposes. However, this formulation is too general and has no limits⁸.

Public interest according to John Salindeho is⁹: "Encompassing the interests of the nation and state as well as the common interests of the people, by considering social, political, psychological, and national defense and security aspects based on the principles of national development by respecting national resilience and the archipelago perspective." The interest in the broad sense is interpreted as "public benefit" while in the narrow sense it is interpreted as "public access", or if public access is not possible, then it is sufficient "if

⁶ Abdul Aziz. 2019. *Perencanaan Dan Pengalokasian Dana Desa Berdasarkan Nilai-Nilai Pancasila Yang Menjadi Dasar Pemerataan Pembangunan Nasional*. Journal Of Law. Vol. 2 Issue 2. Hlm. 78.

⁷ Gunadi, Tom. 1995. *Ekonomi dan Sistem Ekonomi menurut Pancasila dan UUD NRI Tahun 1945*. Bandung: Angkasa, Hlm. 76.

⁸ Mulyadi. 2017. *Asas dan Prinsip Pengadaan Tanah menurut Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah untuk Pembangunan Kepentingan Umum*. Varia Hukum. Edisi Nomor XXXVIII Tahun XXIX September 2017.

⁹ Maria S. W. Sumardjono. (2008). *Tanah: Dalam Perspektif Hak Ekonomi Sosial dan Budaya*. Jakarta: Kompas, hlm. 280.

the entire public could use the product of the facility" ¹⁰. Based on Article 1 number 6 of Law No. 2 of 2012, it means that: "Public interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people". From the definition of the provisions above, it can be concluded that land acquisition for public interest is an activity to provide land for the interests of the nation, state and the wider community by providing fair and equitable compensation to the entitled party in order to realize the prosperity of the people. Furthermore, based on Article 2 of Law No. 2 of 2012, it is regulated that land acquisition for public interest is carried out based on the principles of: a. humanity; b. justice; c. benefit; d. certainty; e. openness; f. agreement; g. participation; h. welfare; i. sustainability; and j. harmony. Furthermore, based on Article 3 of Law No. 2 of 2012 it is stipulated that: "Land Acquisition for Public Interest aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and society while still guaranteeing the legal interests of the Entitled Party." Meanwhile, based on Article 4 paragraph (1) of Law No. 2 of 2012 it is stipulated that "The Government and/or Regional Government guarantees the availability of land for the Public Interest". Furthermore, based on Article 10 of Law No. 2 of 2012 it is stipulated that Land for Public Interest as referred to in Article 4 paragraph (1) is used for the development of: a. national defense and security; b. public roads, toll roads, tunnels, railway lines, c. railway stations, and railway operating facilities; d. reservoirs, dams, weirs, irrigation, drinking water channels, water and sanitation drainage channels, and other irrigation structures; e. ports, airports, and terminals; f. oil, gas, and geothermal infrastructure; g. power generation, transmission, substations, networks, and distribution; h. government telecommunications and informatics networks; i. waste disposal and processing sites; j. Government/Regional Government hospitals; k. public safety facilities; l. Government/Regional Government public cemeteries; m. social facilities, public facilities, and public green open spaces; n. nature reserves and cultural reserves; o. Government/Regional Government/Village offices; p. urban slum settlement arrangement and/or land consolidation, as well as housing for low-income communities with rental status; q. Government/Regional Government education or school infrastructure; r. Government/ Regional Government sports infrastructure; s. Public markets and public parking lots.

Since its independence, the Indonesian nation has agreed to implement all the values contained in the Pancasila principles as a guideline for the life of the Indonesian nation in all aspects of national and state life in order to achieve the goals of the state. National development is none other than the goal of the state as stated in the Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. This provides an understanding that in the implementation of all aspects of development activities must be carried out based on the mandates of the Pancasila and the 1945 Constitution of the Republic of Indonesia. Including aspects of activities in it regarding land acquisition. Land acquisition for development, especially in order to build public interests, must essentially be carried out based on the principles based on Article 2 of Law No. 2 of 2012 and as explained above. Among all the principles mandated by the Law in the implementation of land acquisition, the principles of humanity and justice are the main principles as the basis for the criteria that the implementation of land acquisition carried out is in accordance with the values of Pancasila. However, this does not mean that other principles can be ignored. All of them must be jointly upheld and realized. The principles of humanity and justice are the embodiment of the values of Pancasila, especially the 2nd principle, which reads "Just and civilized humanity".

The meaning of humanity contained in the 2nd principle of Pancasila is a mandate to develop an attitude of loving each other on the basis of humanity. With this role, of course,

¹⁰John Salindeho. (1988). Masalah Tanah dalam Pembangunan. Jakarta: Sinar Grafika, hlm. 40.

human actions will be given limits that can minimize criminal acts. Furthermore, justice is also a mandate to implement a just and civilized life. This has an important meaning, considering that existing development must be evenly distributed and carried out by continuing to consider the population, region and so on.

Humanitarian land acquisition means that in its implementation or process it is not based on coercion or certain inhumane actions. As mandated by the Law, it must begin with a meeting and deliberation between the parties. The methods used and/or offered must show a sense of compassion between the government and the community as interested parties. This sense of compassion is what then becomes a fortress to not hurt or harm each other. Then, justice.

It is indeed difficult when we talk about justice. It seems that a separate study is needed regarding this matter. But in this context, the justice in question is the realization of the interests of the development actors (those who carry out land acquisition; the government) which are fulfilled for the sake of the formation of development for the public interest without ignoring the rights of the community holding land rights, namely by providing fair compensation, which is by what is the basis for calculation in the Law and or not arbitrary as is often the case in Indonesia.

According to Maria SW Sumardjono, 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 someone richer, or conversely, poorer than the original state. Furthermore, land acquisition based on Pancasila must also be based on the principles of democracy. Land acquisition policies that are based on the principles of democracy and uphold human rights need to pay attention to the following ¹¹: *First* , land acquisition is a legal act that results in the loss of a person's physical and non-physical rights, and the loss of property temporarily or permanently, without distinguishing that those who are evicted remain in their original place or move to another location.

Second, the compensation provided must take into account: 1. loss of rights to land, buildings, plants, and other objects related to the land; 2. loss of income and other sources of livelihood; 3. assistance to move to another location, by providing an alternative new location equipped with adequate facilities and services; 4. assistance to restore income to achieve a condition equivalent to the condition before the takeover. The amount of compensation for land and buildings should be based on the actual replacement cost. If necessary, an independent appraiser can be requested to estimate the compensation.

Third , those who are evicted due to land acquisition and must be taken into account in the provision of compensation must be expanded, including: 1. land rights holders with certificates; 2. those who control land without certificates and other proof of ownership; 3. building tenants; 4. tenants/farmers who will lose their rental rights or crops from their efforts on the land in question; 5. farm laborers or the homeless who will lose their jobs; 6. land users without rights who will lose their jobs or income; and 7. customary law communities/traditional communities who will lose their land and sources of livelihood. *Fourth* , to obtain accurate data on those affected by eviction and the amount of compensation, it is absolutely necessary to carry out a baseline survey and a socio-economic survey.

Fifth , it is necessary to determine the agency responsible for the implementation of land acquisition and resettlement, with the note that community participation in the planning, implementation and evaluation of activities is truly guaranteed. Sixth, the method of deliberation to reach an agreement must be developed in the event of resettlement,

¹¹Maria S. W. Sumardjono. (2009). Kebijakan Pertanahan: Antara Regulasi dan Implementasi. Jakarta: Kompas, hlm. 89-91.

integration with the local community needs to be prepared from the start to avoid things that are not expected by both parties. Seventh, there needs to be a means to accommodate complaints and resolve disputes that arise in the process of land acquisition and resettlement, along with the procedures for conveying them.

The right to control the state is an instrument of the state's rights, while the greatest prosperity of the people is the objective goal of the control. So that it gives consequences to the obligations of the state, namely first, All forms of utilization of the earth, water and space and the natural resources contained therein in real terms, must be able to increase the welfare and prosperity of the people. Second, Protect and guarantee the continuity of the rights of the people that are related to the earth, water, space and the natural resources contained therein, which are managed directly, managed and produced directly or indirectly by the people. Third, Prevent actions by any party, whether private, foreign, or the government itself that cause the people to lose access or not have the opportunity to utilize the earth, water and space contained therein. These three points must always be a reference in regulating and determining everything that is related to the earth, water, space contained therein.

The scope of understanding public interest is one of the central things in land acquisition. Presidential Decree No. 55 of 1993 provides a clear outline of public interest. Public interest is the interest of all levels of society. Article 5 Paragraph (1) development can be said to be in the public interest if it meets the criteria, (1) the development is carried out by the government; (2) is then owned by the government; and (3) is not used to seek profit. Regulations on public interest are reaffirmed in Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Article 1 number 6 regulates, "Public interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people."

Several projects included in the public interest category based on Article 10 of Law No. 2 of 2012, include: Transportation infrastructure (roads, bridges, airports, ports, railways), Defense and security facilities (TNI/Polri headquarters, military bases), Energy and telecommunications development (power plants, telecommunications networks), Education and health facilities (schools, hospitals), Irrigation and water resources (reservoirs, dams), Public cemeteries and other social facilities.

UUPA regulates public interest related to land that has a social function as explained in Article 6 which regulates, All land rights have a social function, this means that any land rights that a person has, cannot be justified, that his land will be used (or not used) for his personal interests alone, especially if this causes harm to the community. The use of land must be adjusted to its condition and the nature of its rights, so that it is beneficial for the welfare and happiness of the owner as well as beneficial to the community and the state. However, this provision does not mean that individual interests will be completely suppressed by public interests (society). UUPA also pays attention to individual interests. The interests of society, individual interests must balance each other, until finally the main goal is achieved: prosperity, justice and happiness for all people (Article 2 paragraph (3). Public interest is also explicitly mentioned in UUPA Article 7 which regulates, "In order not to harm the public interest, ownership and control of land that exceeds the limit is not permitted."

Sudikno Mertokusumo argues, the breadth of understanding contained in public interest is implied by several criteria, namely, helping society in achieving prosperity, social in nature and not seeking profit or gain. Public interest also concerns the interests of the state and nation, the interests of the people or development and public services in the wider community.

CLOSING

The consequences of Pancasila are the basis and ideology of the state as the basis for positive law, legal processes and legal institutions, citizens and government bureaucracy. In addition, it is also a tool for testing positive law, legal processes and legal institutions. Pancasila is a guiding value in conducting evaluations and factors that influence the implementation of law. The provisions of the 1945 Constitution of the Republic of Indonesia Article 33 and Article 18 of the UUPA underlie regulations on land acquisition in Indonesia which are specifically regulated in Law No. 2 of 2012 concerning Procurement for Development in the Public Interest.

In terms of considering the regulation aims related to land acquisition for development for public interest that can guarantee land acquisition for development implementation, so that land acquisition is needed that is implemented by prioritizing the principles of humanity, democracy, and justice based on Pancasila. In Malaysia, the basis for land acquisition is regulated in Article 13 of the Federal Constitution which stipulates, "(1) No one may be deprived of their property except based on law; (2) no law may make rules to take or use property by force without adequate compensation." This has similarities with what is regulated in Indonesia, namely that no property or land can be taken over except based on applicable legal regulations and based on the provision of adequate or adequate compensation. Public Interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people.

Regulations related to land acquisition need to be reviewed periodically to ensure that their implementation remains in line with the values of Pancasila, especially in terms of people's welfare and environmental sustainability. There needs to be stricter supervision of the implementation of land acquisition so that there is no abuse of authority that could conflict with the moral and ethical values in Pancasila.

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