

NATIONAL STRATEGIC PROJECTS AND COMPENSATION ISSUES IN LAND ACQUISITION IN INDONESIA: A JUSTICE THEORY PERSPECTIVE

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Abstract

The compensation issue is still one of the factors inhibiting development in Indonesia. The government must develop to establish a flourishing society, as required by Pancasila and the Constitution. The government implements National Strategic Projects and initiatives designed to foster growth and equitable development, increase employment opportunities, and enhance community welfare. Limited land control by the government means that the government also needs land owned by the community. When it comes to inland procurement for development, the community whose land rights are impacted by the national strategic project is nearly always unhappy, especially regarding loss compensation. The most complicated and contentious part of taking land for public use is usually the compensation for losses that arise when the government purchases a piece of land. The limited government budget for building infrastructure and restrictions on regulations for using other state finances have caused the government to look for forms and amounts of compensation that can provide a sense of fairness and worth to the community without burdening state

finances. Upholding respect for human rights is acknowledged as a form of protection offered by the state to its citizens in Indonesia, a country that upholds the rule of law. This protection extends to situations where the state takes over community land to be used for development in the public interest. The strategies put out to resolve the land acquisition dispute are grounded in the idea of social justice, which is still relevant and evolving in the Indonesian culture of society.

Keywords: National Strategic Project, Compensation, Land Acquisition, Social Justice.

Introduction

There can be no just order, which is an order that provides happiness to everyone.¹ The requirement for the enforceability of a rule of law, coupled with the content contained in the fundamental values of the law, which ultimately gives birth to a rule in its form as statutory law, is not yet a guarantee of the effectiveness of enacting a regulation as a living law.² According to Hans Kelsen, the happiness that a social order can guarantee can only be happiness in a group sense, namely the fulfillment of specific needs, which the rulers of society, namely lawmakers, consider needs to be met.³ Justice cannot always be obtained easily but must continue to be pursued to be realized.⁴ The law appears to be an implication of an essence that offers a solution to the collectivity of disputes in society. Therefore an ideal law is needed to resolve conflicts and disputes.⁵

The government must plan development to achieve a just and prosperous society founded on Pancasila and the Republic of

¹ Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara (Translation of: General Theory of Law and State, New York: Russel and Russel, 1971)* (Jakarta: Nusamedia, 2010), p. 7.

² Aminuddin Salle, *Hukum Pengadaan Tanah Untuk Kepentingan Umum* (Yogyakarta: Kreasi Total Media 2007), p. 91.

³ Hans Kelsen, *Teori Umum tentang*, p. 7.

⁴ Maria SW Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*, Cetakan V, (Jakarta: Penerbit Buku Kompas, 2007). p. 180.

⁵ HM Agus Santoso, *Hukum, Moral, & Keadilan, Sebuah Kajian Filsafat Hukum* (Jakarta: Penerbit Kencana, 2014). p. 1.

Indonesia's 1945 Constitution. Development for the public interest is one of the initiatives carried out by the government within the scope of national development. Land that is needed for development in the public interest must be acquired by giving national land law and the Republic of Indonesia's 1945 Constitution top priority.

As a logical consequence of the welfare state ideology adopted by Indonesia, national development must be based on the principles of social justice and the welfare of all the people.⁶ According to Mochtar Kusumaatmadja, Development must be understood widely to include all facets of a person's life, not only their financial situation.⁷ Law plays a role in development by ensuring that change happens in an orderly manner; it can do this by using legislation, court rulings, or a combination of both.⁸

In practice, not all laws made by the government are beneficial to society. Since using the law as a tool for reform in a developing society can also be harmful, it must be done carefully. As a result, applying the law must be connected to sociological, anthropological, and cultural concepts; legal experts in developing societies must research positive law using a variety of social and cultural sciences.⁹ In his book *Two Treatises of Government* (1690), John Locke expressed his view that the state exists to guarantee the natural rights of its citizens. The people can stop supporting the government and even rebel when it fails to fulfill that responsibility.¹⁰

Because land is essential to human existence, social conflicts frequently stem from it. People will do whatever it takes, even if it

⁶ Jarot Widya Muliawan, *Cara Mudah Pahami Pengadaan Tanah untuk Pembangunan melalui Konsep 3 in 1 in the Land Acquisition*, Jurnal Hukum Peratun, Vol. 1 No. 2, Agustus 2018, p. 164.

⁷ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional Lembaga Penelitian Hukum dan Kriminologi FH Unpad* (Bandung, 2012 dan Epistema Institute, Jakarta). p. 21.

⁸ Mochtar Kusumaatmadja., *Pembinaan Hukum dalam.*, p.3-4.

⁹ Mochtar Kusumaatmadja, *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional*, (Jakarta: Epistema Institute (ed) dan Lembaga Penelitian Hukum dan Kriminologi FH Unpad, 2012), p. 21.

¹⁰ Fajlurrahman Juhdi, *Teori Negara Hukum*, (Yogyakarta: Setara Press, 2016), p. 111.

means breaking the law to be able to own or control land.¹¹ In fact, According to Nurhasan Ismail, the legal principles that are concocted from a combination of modern and traditional social values are intended so that the regulation of land control and utilization leads to the creation of equitable prosperity for all people and community groups.¹²

Implemented by the government, the National Strategic Project is a program with a strategic focus on growth and equitable development within the framework of employment creation and welfare enhancement. The government realizes that one of the factors in increasing economic growth in Indonesia is providing infrastructure as a driver of the economy. Therefore, the government continues to accelerate the development of infrastructure projects that are considered strategic and have a high urgency to be realized quickly. Given the importance of realizing the development of National Strategic Projects, this certainly requires synergy between the government and the community, especially in land acquisition.

The government sets 41 National Strategic Projects for 2024. When President Joko Widodo's term expires on October 20, 2024, 31 projects are expected to be finished. Three toll road projects, three transportation projects, fourteen dam projects, one energy project, and eleven regional projects make up the National Strategic Project portfolio. By December 2024, the remaining ten projects are expected to be finished. Nine projects related to dams and irrigation comprises the 10 National Strategic Projects, one of which is in the transportation sector. The total investment value of 41 projects targeted for completion this year reaches around Rp500 trillion.¹³

¹¹ Erna Sri Wibawanti dan Murjiyanto, *Hak Atas Tanah Dan Peralihannya* (Yogyakarta: Liberty, 2013), p. 3.

¹² Nurhasan Ismail, '*Rah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat* (Political Direction of Land Law and Protection of People's Land Ownership)' (2012) 1 Jurnal Rechtsvinding. p. 37.

¹³ Daniel A Fajri, "Inilah Daftar 14 Proyek Strategis Nasional (PSN) Baru yang Disetujui Presiden Jokowi pada 2024, Tempo.co (19 March 2024)

<https://nasional.tempo.co/read/1846827/inilah-daftar-14-proyek-strategis-nasional-psn-baru-yang-disetujui-presiden-jokowi-pada-2024>

The following 14 new National Strategic Projects have been approved by President Jokowi for 2024:¹⁴ 1. Pantai Indah Kapuk Tropical Concept Development, 2. Development of Wiraraja Industrial Estate Galang Island, 3. North Hub Development Project Offshore East Kalimantan, 4. Neo Energy Parimo Industrial Estate Development Central Sulawesi, 5. Patimban Industrial Estate Subang Industrial Estate, 6. Giga Industrial Park Development in Southeast Sulawesi, 7. Kolaka Resource Development Sulawesi's Southeast, 8. Construction of Southeast Sulawesi's Stargate Astra Industrial Estate, 9. Development of the Coastal Waterfront Area of Surabaya. 10. Neo Energy Morowali Area Development, Central Sulawesi, 11. Bumi Serpong Damai (BSD) Integrated Area Development, 12. Toapaya Industrial Estate Bintan, Riau, 13. Toll Road Construction at North Jakarta's Section Harbour Road II, 14. Construction of the Bandung Inner City Tollway.

The most complicated and contentious parts of compulsory acquisition usually concern "who gets what" regarding compensation for losses incurred when the government purchases land.¹⁵ In any land acquisition for development, there is almost always dissatisfaction, not to mention helplessness, among the people whose land rights are affected by the project.¹⁶ The basic principle guiding valuation under most expropriation laws is the payment of "fair market value" or "just value."¹⁷ Most of the conversations in these studies focus on the possible losses for landowners rather than the advantages of having the government or private sector buy land for industrial use. The benefit is the difference between the land owners' costs and the possible or pseudo-output the land would produce if acquired.¹⁸

The most often reported agrarian conflicts result from land acquisition for infrastructure development; in particular, complaints

¹⁴ Daniel A Fajri.

¹⁵ Jonathan Lindsay, Klaus Deininger, Thea Hilhorst, *Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy?*, p. 127

¹⁶ Maria SW Sumardjono, *Kebijakan Pertanahan Antara Regulasi Dan Implementasi* (Jakarta: Penerbit Buku Kompas 2007), p. 77.

¹⁷ Michael G Kitay, *Land Acquisition in Developing Countries, Policies and Procedures of the Public Sector* (USA: Oelgeschlager ed, Gunn & Hain Publisher Inc, 1985). p. 50.

¹⁸ Sankalp Sharma, Anil Giri, Tajamul Haque, Iuliia Tetteh., *Land Acquisition in India: A Pareto and Kaldor-Hicks Perspective*, p. 3.

center on compensation and the value of compensation, which is assessed without considering the likelihood of ensuring the survival of affected victims or communities whose land is utilized for infrastructure development. The community must surrender rights and provide documentation of ownership or control of the land acquisition object to the Land Institute-required agency upon payment of compensation. The party entitled to the land may initiate a lawsuit with the court if it disagrees with the amount of compensation.

Public interest development carried out by the government should not threaten the existence of community land. It is difficult for people who get compensation for land used for public purposes to purchase land of the same size and fertility as the area impacted by land acquisition, which delays the recovery of their economic situation. Furthermore, it is thought that the processes involved in evaluating and determining compensation are less transparent, and the lengthy process of compensating victims notwithstanding using their land for infrastructure development.¹⁹ On the other hand, the government's limited budget to build infrastructure and restrictions on using other state finances have caused the government to find a form and amount of compensation that can provide a sense of fairness and feasibility for the community while not burdening state finances.

Land cannot be seen as an economic object alone or seen and assessed in terms of rights and law alone, but more than that, it must still be assessed in terms of its cosmic - magical - and religious relationships,²⁰ The greater the need and demand for land, the higher its price. This is the law of economics. Land does not increase, but it needs to increase in line with the growth and development of society.²¹ Even Indonesia, which has a reasonably weak law on the state's power to expropriate, has a quick-taking law.²² One interesting thing in the construction of the Yogyakarta toll road, Sri Sultan Hamengkubuwono

¹⁹ Agus Suntoro, *Penilaian Ganti Kerugian Dalam Pengadaan Tanah Untuk Kepentingan Umum* (2019) Perspektif HAM, BHUMI: Jurnal Agraria dan Pertanahan. p. 16.

²⁰ John Salindeho, *Manusia, Tanah, Hak, Dan Hukum* (Jakarta: Sinar Grafika, 1994). p.34.

²¹ John Salindeho, *Manusia, Tanah, Hak.*, p. 39.

²² Michael G Kitay, *Land Acquisition in.*, p. 55.

X, before approving the construction of toll roads in Yogyakarta, advised five things, namely: First, the toll road route does not interfere with sites that are cultural heritage. Second, the construction of toll roads should not use productive and sustainable agricultural land as much as possible. Third, the existence of the toll road must benefit the people of the Yogyakarta Special Region. Fourth, it should not interfere with economic areas. Finally, do not let the toll road separate communities or divide an area.²³

The idea of utilitarianism seems to be adhered to or fulfilled by the laws and regulations covering everything from the revocation of property rights and land acquisition to land acquisition for the public interest and the methods used in execution. These laws and regulations provisions use the benefits principle instead of the rights principle. People or groups urged to make sacrifices for the public's good are those impacted by the revocation of land rights, land acquisition, and land acquisition for the public interest. The requirements of society must come before individual liberties. It is similar to utilitarianism, which disregards individual rights and defines satisfaction as material fulfillment that can be measured quantitatively, which impacts computations that are not predicated on market values.²⁴

For this reason, in designing land policy, a more appropriate benchmark is to provide justice based on need and not based on ability because, in the map of land tenure and utilization in Indonesia, more attention must be given to those who are more in need, represented by the most significant layer of society.²⁵ However, related to the relationship between the state and citizens in the framework of social justice, Maria SW Sumardjono stated that the various provisions were made to provide a basis for everyone to have the same rights and opportunities to receive a share of the benefits of land both for

²³ Siti Aisyah, *Tuntut 5 Syarat ini! Sultan Hamengkubuwono X izinkan pembangunan tol Jogja Solo*, 29 Mei 2024

<https://www.hops.id/trending/29412789448/tuntut-5-syarat-ini-sultan-hamengkubuwono-x-izinkan-pembangunan-tol-jogja-solo?page=2>

²⁴ Djoni Sumardi Gozali, *Hukum Pengadaan Tanah, Asas Kesepakatan dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum*, (Yogyakarta: UII Press, 2017), p. 129.

²⁵ Maria SW Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi*, (Jakarta: Penerbit Buku Kompas, 2007), p.19.

themselves and their families so that they could obtain a decent life.²⁶ So, this article aims to try to provide a solution to the problem of compensation in land acquisition for public purposes, especially in the development of national strategic projects. The discussion will be analyzed using relevant theories of justice linked to regulations regarding land acquisition in Indonesia, as well as implementation and cases that occur. This analysis will find a formulation for a better regulatory system in the future.

Research Methods

This research is doctrinal research using a conceptual approach and a statutory approach.

Theory of Justice Relevant to Compensation in Land Acquisition in Indonesia

Justice is the last joint as the purpose of law.²⁷ As a social phenomenon and a byproduct of society, every value system, particularly a moral system and its core concept of justice, alters depending on the society in which it was born. It does not undermine the subjective and relative nature of these value judgments that particular values are widely accepted in a given community.²⁸ Legal justice refers to a trait that has to do with how a positive legal order is applied, not with its content.²⁹ Justice entails maintaining a positive legal order by applying the law to uphold its spirit.³⁰ The law must be formulated under morality, meaning that law, as part of morality, has a moral character.³¹

It can hardly be denied that what is called state power exercised by a government over the population in the territory of the state is not just power that is possessed by some individuals over other individuals in the form of the authority of the first individual to require the second group of individuals to behave as desired by the first group of

²⁶ Maria SW. *Kebijakan Pertanahan*, p.15.

²⁷ Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Jakarta: Kanisius, 1986). p. 190.

²⁸ Hans Kelsen, *Teori Umum tentang*, p. 9.

²⁹ Hans Kelsen, *Teori Umum tentang*, p. 17.

³⁰ Hans Kelsen, *Teori Umum tentang*, p. 17.

³¹ Hans Kelsen, *Pengantar Teori Hukum* (Yogyakarta: Nusamedia, 2009). p. 48.

individuals.³² In his book *Politicós*, Plato presents the concept that a state is managed and run based on the law (rule of game) for the sake of the citizens concerned. In Plato's third book, *Nómoi*, Plato emphasizes the concept that state administrators should always be regulated and limited in their authority by law so that they do not act at will.³³ When acquiring land for public use, there is frequently a significant discrepancy between the collective and general will; the latter only considers the common interest, while the former considers private interests and is simply the total of individual wills. However, when these individual wills' positive and negative aspects are removed; the general will is still the sum of the differences.³⁴

Justice must be envisioned as a distinct and higher part of positive law.³⁵ The broader the problems regulated by the legal order, the broader its field of material validity; the broader the competence of the state, the more limited the personal freedom of its subjects³⁶

1. John Stuart Mill's Theory of Justice

An examination of Mill's day's moral sensibility and common sense forms the basis of his approach to justice. Mill looked at what was considered unjust in his society and then built a universal framework to analyze it. Mill recognized the power of people's feelings about justice and their feelings of disappointment when injustice occurs. These strong feelings make it difficult for people to see justice as part of expediency,³⁷ for Mill, no theory of justice is not entwined with expediency.³⁸ The word "justice" refers to laws defending positions vital to a community's health, such as claims for equal

³² Hans Kelsen, *Teori Hukum Murni, Dasar-Dasar Ilmu Hukum Normatif*, (Diterjemahkan Dari: *Pure Theory of Law*, Berkeley (USA: University California Press 2007). p. 319.

³³ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 20.

³⁴ J.-J. ROUSSEAU, *The Social Contract and Discourses*, edited by G.D.H. Cole, J.M. Dent and Sons, London/Toronto, 1923, p. 172

³⁵ Hans Kelsen, *Pengantar Teori Hukum*. p. 49.

³⁶ Hans Kelsen, *Teori Umum tentang*, p. 343.

³⁷ John Stuart Mill, *Utilitarianism*, (New York: Bobbs-Merril, 1957). p. 53.

³⁸ Karen Lebacqz, *Teori-Teori Keadilan, Diterjemahkan Dari Six Theories of Justice* (Jakarta: Nusa Media, 2011). p. 23.

treatment, promise-keeping, etc. According to Mill, justice may demand that laws be made that are judged to be in the best interests of society in order to uphold stringent commitments and safeguard individual rights. Mill concludes that justice is not a separate principle that arises independently but is part of expediency itself.³⁹ The fact that justice is based only on social expediency means that it is not *sui generis*. As a result, social expediency's needs constitute the basis for all justice standards, including equality.⁴⁰

Although society is not built based on a contract and although a good cause is not affected by inventing a contract for social obligations to be derived from it, everyone who enjoys the protection of society should reciprocate that favor, and the fact that living in society causes everyone to follow a particular course of behavior towards others. First, this behavior consists of the act of not harming each other's interests, or rather; specific interests should be regarded as rights that are either by express legal declaration or by unspoken understanding. Second, it consists of each person's undertaking (which must be determined by a principle of justice) to bear the hardships and sacrifices incurred in defending the community or its members against harassment and persecution.⁴¹

2. John Rawls' Theory of Justice

In discussing the social rules that guide communal life, Rawls emphasizes attempts to develop rules that dictate how rights and responsibilities are divided among all community members. The focus on rights and obligations, which is grounded in the idea of justice for social cooperation, demonstrates that Rawls' theory of justice is concerned with how to fairly distribute rights and obligations in society so that each person has an equal chance to gain from them and bear the same burdens. Fair agreements between all members of society are therefore crucial to ensuring the equitable distribution of

³⁹ Karen Lebacqz, *Teori-teori*, p. 18.

⁴⁰ Karen Lebacqz, *Teori-teori*, p. 24.

⁴¹ John Stuart Mill, *On Liberty*, Translated by Yayasan Obor Indonesia (1996), p. 110-111.

rights and obligations, as highlighted by Rawls. Social collaboration can only be promoted by just agreements.⁴²

Therefore, fair agreement is the key to comprehending Rawls' conception of justice. How to get to a just accord is the issue. According to Rawls, an unbiased process is the only way to reach a just agreement. The concepts of justice can only be deemed fair through an unbiased procedure. Justice as fairness is, therefore, "pure procedural justice" in Rawls' view. In this instance, all that individuals involved in creating the concept of justice require is a fair process to guarantee a fair result.⁴³

In the book *A Theory of Justice*, Rawls puts forward 2 (two) principles of justice as follows: first, each person has an equal right to the most extensive scheme of equal fundamental liberties compatible with a similar scheme of liberties for others, and second, social and economic disparities must be set up in a way that makes them (a) linked to positions and offices that are accessible to everyone, and (b) reasonably expected to work to everyone's advantage.⁴⁴

For Rawls, restrictions on rights and freedoms are only permissible to the extent that they protect and secure the exercise of freedom itself.⁴⁵ Rawls' conception of justice shows strong support and recognition of human rights and duties, both in the political and economic spheres. In particular, the conception of justice demands equal participation rights for all citizens in every political and economic decision-making process. Thus, it is expected that the entire basic social structure will genuinely be able to guarantee the interests of all parties.⁴⁶

Rawls states that the principle of justice should be based on the principle of rights, not benefits. If the principle of benefits is the basis, then it will ignore fair procedures.⁴⁷ Rawls says that procedures must

⁴² Iqbal Hasanuddin, *Keadilan Sosial: Telaah Atas Filsafat Politik John Rawls* (2018) 17 Jurnal Refleksi, p. 195.

⁴³ Iqbal Hasanuddin, *Keadilan Sosial*, p. 195.

⁴⁴ John Rawls, *A Theory of Justice (Revised Editions)*, (The Belknap Press of Harvard University Press, 1971), p. 53.

⁴⁵ Iqbal Hasanuddin, *Keadilan Sosial*, p.198.

⁴⁶ Iqbal Hasanuddin, *Keadilan Sosial*, p. 199.

⁴⁷ Muhammad Taufik, 'Filsafat John Rawls Tentang Teori Keadilan' (2013) 19 Jurnal Studi Islam Mukaddimah. p.58.

be made based on the original position that is presupposed to exist by impartial people who are in a veil of ignorance.⁴⁸

Rawls emphasizes social justice, which is related to the conflict between the interests of individuals and the state at that time. Rawls sees the paramount importance of justice as ensuring the stability of human life and the balance between private and public life.⁴⁹ The principles of justice developed by John Rawls are mainly applied to the fundamental structure of society, regulating the transfer of rights and obligations and regulating the distribution of economic benefits. John Rawls is famous for his theory of justice as fairness.⁵⁰

From John Rawls' view, it appears that the value of justice is non-negotiable and must be realized in society without having to sacrifice the interests of other people, even if it is necessary to avoid greater injustice.⁵¹ The principle of justice, according to John Rawls, is "the fulfillment of equal rights to fundamental liberties (equal liberties). Economic and social differences must be regulated so that favorable conditions will occur, namely the creation of maximum reasonable benefits for everyone, including for the weak (*maximum-minimum*), thus creating what is called justice for everyone."⁵²

There are 3 (three) conceptions of justice according to Rawls, namely: "First, maximization of liberty. Freedom is only subject to restrictions that are intended to protect freedom itself. Fundamental rights, including the freedom of expression and association, the right to run for and win public office, the right to possess private property, the right to vote, and the freedom from unjustified arrest or detention, are all recognized within the definition of liberty. These rights should not be given up for the good of the state or society. Equality for all is the second. The only restriction on social freedom and the allocation of resources is that inequality is acceptable if it maximizes the benefits to the most disadvantaged members of society. Third, equality of

⁴⁸ Muhammad Taufik, *Filsafat John Rawls*, p. 58.

⁴⁹ Muhammad Taufik, *Filsafat John Rawls*, p. 58.

⁵⁰ In Indonesia, the term "fairness" is translated by Budiono Kusumohamidjojo as "justice as appropriateness" in his book *Teori Hukum, Dilema antara Hukum dan Kekuasaan*, Bandung: Yrama Widya, 2016, p. 294

⁵¹ Zainal Arifin Mochtar dan Eddy O.S. Hiariej, *Dasar-Dasar Ilmu Hukum, Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Jakarta: Red & White Publishing), p.337.

⁵² Zainal Arifin Muchtar, *Dasar-dasar Ilmu*, p. 337.

opportunity should be achieved, and disparities in opportunity should be addressed based on birth and wealth.⁵³

The eight principles of justice for a free and democratic society are as follows, according to John Rawls in his other book, "The Law of People": (1) People are free and independent, and others respect this; (2) They abide by and implement treaties; (3) They are equal and parties to agreements that bind them; (4) They comply with an obligation of non-intervention; (5) They have the right to self-defense but not the right to wage war for purposes other than self-defense; (6) They respect human rights; (7) They must adhere to certain special restrictions in war; (8) They have a duty to assist other human beings living in unfavorable conditions that prohibit them from having politically and socially appropriate conditions.⁵⁴

3. Robert Nozick's Theory of Justice

The emphasis of Nozick's thinking is on individual freedom. According to Nozick, every individual has certain natural rights, and no action is allowed to interfere with these fundamental human rights.⁵⁵ Nozick's perspective gives rise to the concept of justice, which essentially means that no one should be victimized by anyone, including the state, in achieving something without the individual's consent. The main idea Nozick presents is the free will, consent of the parties, and mutual respect for the interests of one party to another. Respecting these rights is a necessary aspect of honoring one's claim to be treated as an end in itself and not as a means to another.⁵⁶ This perspective emphasizes respect for the personal rights of citizens as one of the elements of state formation while still paying attention to the public interest as something that cannot be ruled out in improving the quality and welfare of society.

⁵³ Zainal Arifin Muchtar, *Dasar-dasar Ilmu*, p. 340.

⁵⁴ Zainal Arifin Muchtar, *Dasar-dasar Ilmu*, p. 341.hlm. 341

⁵⁵ Karen Lebacqz, *Teori-teori*, p. 90.

⁵⁶ Yesaya Sandang dan Eko Wijayanto, 'Konstruksi Konsep Hak Robert Nozick Dan John Rawls (Sebuah Komparasi Pemikiran)' (2017) IV Jurnal Humaniora Yayasan Bina Darma. p. 11.

Analysis of the Theory of Justice towards the Implementation of Compensation in Land Acquisition in Indonesia

Initially, the views of John Stuart Mill, John Rawls, and Robert Nozick were born from criticism of utilitarianism, which is considered to sacrifice individual interests for the benefit of the majority. There is a contradiction between justice and expediency, hence the need to find a synthesis of the two.⁵⁷ Although they have different approaches and perspectives, these three figures have the same starting point in seeing justice: justice must provide benefits and protection of each individual's rights. Each individual is seen as having the natural right to live freely and own property. A slight difference in the views of the three theorists can be seen in the perspective of individual rights against the public interest.

Mill says that there will be conflicts between individual and public interests and that the two should be separated, but Mill takes a more public-interest approach.⁵⁸ Rawls believes that the priority of rights guarantees the existence of the weak in society. Ensuring the rights of all parties in society is a sign of solidarity and social responsibility in that society.⁵⁹ Nozick stems from his formulation that individuals have rights and no one can violate them. Furthermore, Nozick believes that the best way to achieve this is to realize that individuals have inherent free will. When these individuals realize this, it is expected that, in the end, each individual can treat other individuals with the same awareness. Concerning the state, according to Nozick, only a state that is limited to its minimal functions can be justified and accepted to protect each individual.⁶⁰

The characteristics of agreements in land acquisition that will be used for public purposes that apply in Indonesia are limited, namely that the implementation time is limited, as stated in land acquisition regulations, which are based on deliberation to reach an agreement. Meanwhile, if you look at the Indonesian Civil Code, legal agreements do not have a limited time; even if one party does not agree, he can be

⁵⁷ HM Agus Santoso, *Hukum, Moral, & Keadilan*, p.59.

⁵⁸ Zainal Arifin Mochtar, *Dasar-dasar*, p. 284.

⁵⁹ Yesaya Sandang, *Konstruksi Konsep*, p. 22.

⁶⁰ Yesaya Sandang, *Konstruksi Konsep*, p. 21.

free and no longer bound by the material to be agreed.⁶¹ In the implementation of land acquisition, land rights holders also have limited freedom in determining an agreement regarding the amount of loss because the amount is only assessed one-sidedly by an assessment team whose assessment results are final and binding.

In Indonesia, the Agrarian Reform Consortium (KPA) noted that 2022 will affect at least 212 conflicts in the area, which will increase drastically by 100% compared to 2021. In 2023, there will be 241 conflicts. The area of conflict in 2021 is 50,062 hectares and will increase to 1,035 hectares in 2022. Meanwhile, in 2023, the area of conflict will decrease to 638,188 hectares. The 346,402 affected families also inhabit this area.⁶² The five provinces that contribute to the highest agrarian conflicts in Indonesia are: West Java (25 conflicts), North Sumatra (22 conflicts), East Java (13 conflicts), West Kalimantan (13 conflicts), and South Sulawesi (12 conflicts).⁶³ Meanwhile, the provinces with the most significant areas of conflict are North Sumatra (215,404 hectares), West Kalimantan (161,262 hectares), East Kalimantan (128,249 hectares), Central Sulawesi (108,125 hectares), and Jambi (79,334 hectares).⁶⁴

Table: Conflict Data and the Area of Agrarian Conflict in Indonesia

| No | Agrarian Conflict | 2021 | 2022 | 2023 |
|----|---------------------|-----------------|--------------------|------------------|
| 1. | Number of Conflicts | 207 cases | 212 cases | 241 cases |
| 2. | Conflict Area | 50,062 hectares | 1,035,613 hectares | 638,188 hectares |

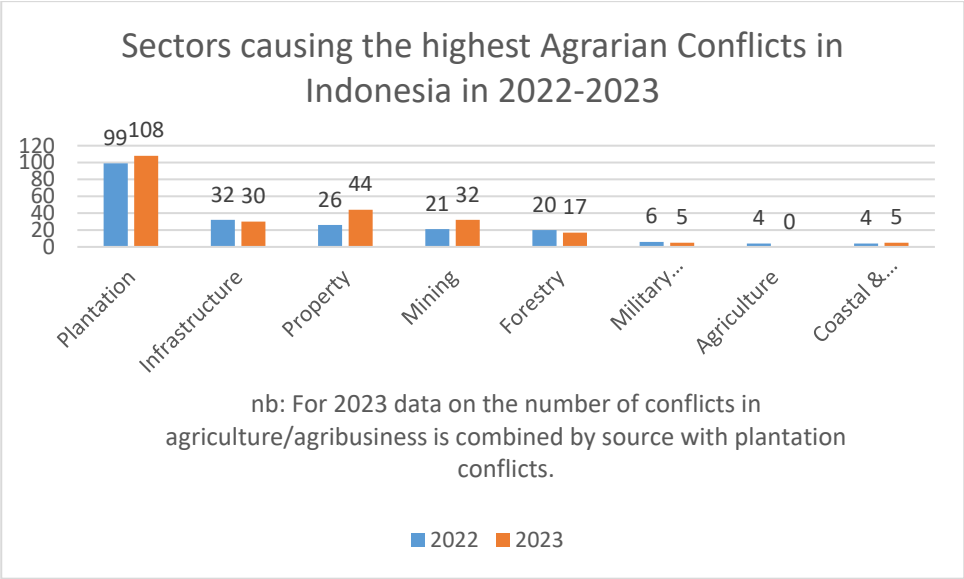
Source: Year End Notes 2021, 2022, and 2023 of the Consortium for Agrarian Reform (KPA).

⁶¹ Djoni Sumardi Gozali, *Hukum Pengadaan Tanah*, p. 177.

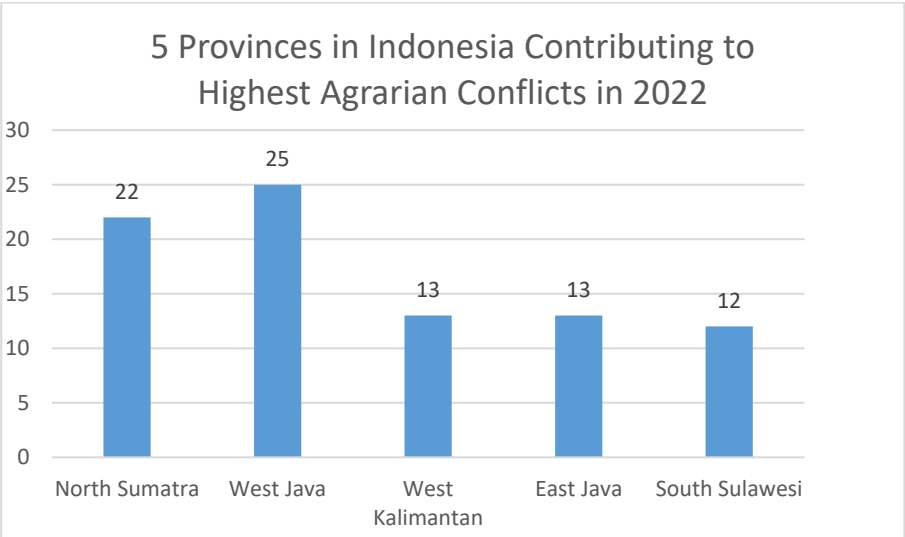
⁶² Catatan Akhir Tahun 2022 Konsorsium Pembaruan Agraria, *Bara Konflik Agraria: PTPN Tak Tersentuh, Kriminalisasi Rakyat Meningkat*, hlm. 16.

⁶³ Catatan Akhir Tahun 2022 Konsorsium Pembaruan Agraria, *Bara Konflik Agraria: PTPN Tak Tersentuh, Kriminalisasi Rakyat Meningkat*, hlm. 30-32.

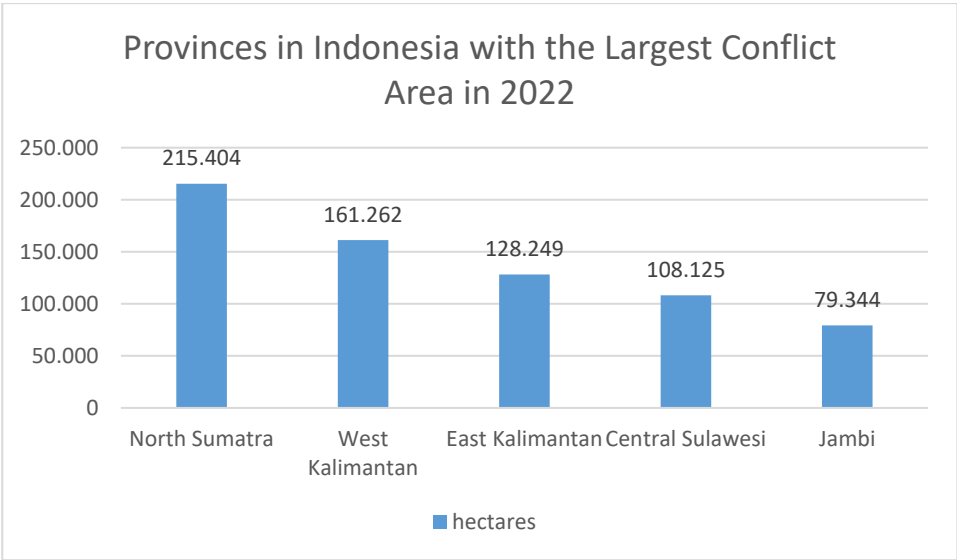
⁶⁴ Catatan Akhir Tahun 2022 Konsorsium Pembaruan Agraria, *Bara Konflik Agraria: PTPN Tak Tersentuh, Kriminalisasi Rakyat Meningkat*, hlm. 32.



Source: Year End Notes 2022 and 2023 of the Consortium for Agrarian Reform (KPA).



Source: Year End Notes 2022 of the Consortium for Agrarian Reform (KPA).



Source: Year End Notes 2022 of the Consortium for Agrarian Reform (KPA). (KPA).

From the conflict data above, we can see the magnitude of the number of agrarian conflicts that occur between the government and the community. In every development carried out, there is a tendency for conflict of interest between the government and the community. It must be understood that every individual's rights, no matter how small, must be protected. No rights should be abandoned or ignored for agrarian interests or national strategic projects, especially if followed by intimidation or threats to obtain individual land rights. The above theory has emphasized how valuable individual rights are, especially to land, considering that land is an investment for the future. The growing number of people and the limited amount of land will give the land a high economic value in the future. For this reason, the community has the right to get a high bid value for the land they own if the government needs it. Public interests that provide benefits to many people cannot be used as an excuse to "pressure" people to surrender their land to the government. On the other hand, it must be recognized that the government also has limitations in using the budget in developing various national strategic projects.

Social Justice and the Idea of Compensation in Land Acquisition in Indonesia

For justice to be achieved following the justice that exists in society, the laws that are created must be based on morals.⁶⁵ The state paradigm used by Indonesia's founding fathers is based on both the indigenous customs of the Indonesian people and the Western legal heritage.⁶⁶ Five state concepts were integrated into the notion of Pancasila to construct the state paradigm: Godhead (theism), humanity (humanism), nationality (nationalism), populism (democracy), and social justice (socialist).⁶⁷ Hamid S. Attamimi said that concerning the law applicable to the nation and state of Indonesia, Pancasila has been declared its position as the Idea of Law (*rechtsidee*), which controls the fundamental law of the state, both written and unwritten basic law.⁶⁸

Indonesian philosophy in the concept of the relationship between man and land places the individual and society as an inseparable unity (*dwitunggal*) 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 individualistic, but rather collective while still giving place and respect to individual rights.⁶⁹

In the rule of law, there is the principle of *Similia similibus* (principle of equality), where the government must not privilege certain people (must be non-discriminatory). The rule of law must apply equally to everyone, so it must be formulated in a general and abstract manner. The 4 (four) important things contained in this principle are;⁷⁰ 1. Authorized actions are regulated by law in a material sense; 2. There is a separation of powers; 3. Equality before the law and government; 4. Demands for equal treatment for all citizens. According to Rosseau, associations such as governments are founded on the agreement of all individuals, so governments do not have or cannot have interests that

⁶⁵ Theo Huijbers, *Filsafat Hukum*, p. 190.

⁶⁶ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 72.

⁶⁷ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 72.

⁶⁸ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 73.

⁶⁹ Maria SW Sumardjono (n 4), p. 181.

⁷⁰ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 30.

conflict with their interests. Consequently, government power must accommodate and ensure that no individual is harmed.⁷¹

As is commonly known in socio-political studies, the term social justice is widely used.⁷² German economist Heinrich Pesch (1854-1926) argued that social justice is nothing but a general term for general justice and distributive justice.⁷³ The term social justice is increasingly used because it emphasizes: "(1) the obligation of the parts of society to the larger whole and each other, and (2) the obligation of citizens to conform to social development".⁷⁴ Social justice expresses new facets and functions of general justice and distributive justice.⁷⁵ The business of social justice is what is required of citizens for the general welfare and what citizens are entitled to from that general welfare and are obligated to society and the state.⁷⁶ Social justice aims to establish a stable, balanced society where everyone has the chance to lead a respectable life, and those in need of help are taken care of. In order to ensure fair welfare, the government, as the head of state, has the authority and responsibility to require that its citizens make contributions by their ability.⁷⁷ Social justice also demands that citizens pay attention to the social function of property rights.⁷⁸ Social justice can only be realized if there is general justice in society, that is, a situation in which everyone gets what he is entitled to and gets an equal share of our commonwealth.⁷⁹ A policy that gives more significant concessions to a small part of society can be justified if it is balanced by a similar policy aimed at another more extensive group.⁸⁰ It is common for standard compulsory acquisition laws and procedures to be ill-suited to "catching" all pertinent interests in a parcel of land. Without considering the variety of other possible rights and practices that may be involved, specific regulations may specifically target landowners and

⁷¹ Fajlurrahman Juhdi, *Teori Negara Hukum*, p. 149.

⁷² Kaelan, *Negara Kebangsaan Pancasila; Kultural, Historis, Filosofis, Yuridis, Dan Aktualisasinya* (Yogyakarta: Paradigma, 2013), p. 397.

⁷³ Kaelan, *Negara Kebangsaan*, p. 397.

⁷⁴ Kaelan, *Negara Kebangsaan*, p. 404.

⁷⁵ Kaelan, *Negara Kebangsaan*, p. 403.

⁷⁶ Kaelan, *Negara Kebangsaan*, p. 403.

⁷⁷ Kaelan, *Negara Kebangsaan*, p. 405.

⁷⁸ Kaelan, *Negara Kebangsaan*, p. 408.

⁷⁹ Agnes Widanti, *Hukum Berkeadilan Jender* (Penerbit Buku Kompas 2005). P.6.

⁸⁰ Maria SW Sumardjono, (n 4), p. 19.

several legally recognized financial or commercial rights. The procedures set up for identifying, informing, and compensating interest holders are frequently not well-designed to find the existence of such rights or to include the holders of those rights in the discussion of compensation, even in cases where the legal framework recognizes customary, subsidiary, or secondary rights.⁸¹

Land acquisition techniques are range from consultation procedures that entail stakeholder negotiations to coercive acquisition procedures that involve taking land from landowners under duress and offering them a preset compensation package.⁸² In the relationship between the state and citizens, social justice implies that citizens should contribute to the state to realize general welfare. The state is obliged to share welfare with its citizens by their respective services or abilities (proportionally).⁸³ In reality, everyone is different in terms of their abilities or services and needs compared to others. In a situation where more people need something (especially for things that are basic human needs) but the ability to obtain it is less than the same treatment, it will cause injustice.⁸⁴ The goal of agrarian reform policy is to, among other things, resolve resource-related conflicts that have already arisen and foresee future conflicts so that law enforcement can be put in place. It also aims to strengthen institutions and authorities so that they can implement agrarian reform and resolve resource-related conflicts that arise.⁸⁵

Market value is the standard by which most compulsory acquisition laws measure compensation for acquired assets; however, it can be challenging to ascertain in real-world situations. More broadly, laws and constitutions may also refer to concepts like "just" or "fair" compensation. These concepts often include damages for disruption losses, relocation and transfer expenses, company damage, etc.

⁸¹ Jonathan Lindsay, Klaus Deininger, Thea Hilhorst, *Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy*, p. 133-134

⁸² Aswin Mahalingam & Aditi Vyas, *Comparative Evaluation of Land Acquisition and Compensation Processes across the World*, Economic and Political Weekly, Vol. 46 No. 32, 2011, p. 96.

⁸³ Maria SW Sumardjono, *Kebijakan Pertanahan*, p. 15.

⁸⁴ Maria SW Sumardjono, *Kebijakan Pertanahan*, p. 179-180.

⁸⁵ Erna Sri Wibawanti dan Murjiyanto, *Hak Atas Tanah Dan Peralihannya* (Yogyakarta: Liberty, 2013), p.8.

"Replacement cost" is the suitable benchmark for asset valuation according to international norms, including those supported by the World Bank, International Finance Corporation, and others.⁸⁶

The Indonesian Society of Professional Appraisers (MAPPI) has issued an exceptional appraisal standard, namely Indonesian Appraisal Standard 204 (SPI 204) on Appraisal of Land Acquisition for Development for the Public Interest as a guideline in appraisal practice so that it is expected to produce a Fair Replacement Value that is feasible and fair and acceptable to landowners. The land assessment team uses this law as a guide to estimate the cost of land, buildings, plants, and other value-able losses, as well as above-ground and subsurface space. The amount of compensation value determined by the appraiser's assessment is final and binding, according to Law No. 11 of 2020 on Job Creation and Article 69 paragraph (3) of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest.

The technical rules used as the basis for appraisers in determining the value of compensation are SPI 204/2018 and PPI 04/2018, made by MAPPI (Indonesian Professional Appraisal Society). Based on these technical rules, the valuation for compensation purposes includes;⁸⁷ 1. Physical (material) compensation, such as land, buildings, plants, or other objects related to land; and 2. Non-physical (immaterial) compensation is compensation for losses from landowner relinquishing rights. Non-physical losses include: 1. Economic loss (Premium): loss of job, business loss, and change of profession. 2. Emotional loss (*solatium*): intangible losses related to the expropriation of land used as the owner's residence. 3. Transaction costs: moving, vacating, licensing, including taxes/duties on acquisition of land and building rights, as well as notary fees for later buying property in a new location. 4. Other losses, such as a. residual land losses b. other physical losses, and 5. Waiting period expenses: calculated due to the grace period or time lag between the date of assessment/ location determination and the date of payment of compensation. The compensation value consists of physical and non-physical components, where the physical calculation is calculated based on equality with the market value and then added with non-physical

⁸⁶ Jonathan Lindsay, *Compulsory Land Acquisition*, p. 136-137

⁸⁷ <https://penilaian.id/2020/11/10/komponen-nilai-ganti-kerugian/>,

components.⁸⁸ Landowners think about whether or not the money they get for their land will be enough to buy replacement land elsewhere, and they worry about moving to an unfamiliar place and starting a new life. They do not want to move like a tree uprooted from its roots but want to be replanted in another place with its roots intact.⁸⁹ On the other hand, the assessment results from the land appraiser are final and binding. If the community does not agree with the amount of compensation that has been assessed, then the community can file a lawsuit with the court. A notion that may give both the government and the community; specifically, a sense of justice must be formulated appropriately to strike a balance between the community's expectations and the government's obligation to carry out public interest development.

Proposed Concept of Compensation in Land Acquisition for Public Interest that takes into account the Social Justice of the Community

Back in 2015, Member States of the United Nations (UN) unanimously adopted the 2030 Sustainable Development Agenda (2030 Agenda) and 17 global Sustainable Development Goals (SDGs). The new agenda emphasizes the importance of Leave No One Behind (LNOB) and reaching the furthest behind first and recognizes the need to fight poverty and inequality. The 2030 Agenda and the promise of LNOB are fundamentally rooted in Member States' long-term commitment to human rights and the principles of equality and non-discrimination.

In Indonesia, the government is committed to creating a better and more sustainable life for all inhabitants of the earth, which is the mission of the Sustainable Development Goals (SDGs). The program is based on 17 goals and 169 targets that summarize the development plan to achieve global prosperity as an international agreement in the development field. The SDGs promote a journey towards sustainable

⁸⁸ <https://penilaian.id/2020/11/10/komponen-nilai-ganti-kerugian/>

⁸⁹ John Salindeho, *Manusia, Tanah, Hak, Dan Hukum* (Jakarta: Sinar Grafika, 1994), p. 42.

development, covering economic, social, and environmental aspects. Land acquisition for the public interest is still one of the government's obligations to improve people's lives and welfare. In land acquisition, the government will take over community lands for compensation. In this case, of course, there will be some dissatisfaction from the people whose land will be used. For this reason, the government needs to find effective ways to highlight various vulnerable groups in several dimensions of development, show who the disadvantaged groups are and the reasons, and make various efforts to overcome them.

All methods of acquiring land have their drawbacks and the potential for inaccurate or insufficient land evaluation.⁹⁰ In principle, no single concept of compensation for land acquisition for development in the public interest can satisfy all communities whose land is taken over. Indonesian law stipulates agreement as one of the principles in land acquisition for the public interest, namely that a deliberative process between the parties carries out every land acquisition process without coercion to obtain mutual agreement. In order to reach a consensus on the type and quantity of compensation as well as other matters about land acquisition activities based on voluntariness and equality between parties who own land, buildings, plants, and other land-related objects and parties who need land, parties must engage in the process or activity of deliberation, which involves listening to one another, exchanging opinions, and seeking consensus.

Based on the concept of social justice, if applied in the provision of compensation in land acquisition for the public interest, the concept is proposed that a different amount of assessment is determined based on community groups with specific criteria. One of the purposes of applying this system is to provide relief to the state that has limited funds to be paid to compensate the community. People who are classified as having many parcels of land are given less compensation. The remainder of the difference in compensation money that should have been received by the owner of the many parcels of land is added to the community that only has the parcel of land whose land is used or used for public interest development. So, in this case, there is a kind of cross-subsidy given by the community whose land is equally affected in

⁹⁰ Aswin Mahalingam & Aditi Vyas, *Comparative Evaluation of Land Acquisition*, p. 96-97.

the procurement of land for development in the public interest, from the community that has many plots of land to the community that has a little or the only plot of land to ease the financial burden on the state. It shows and reflects the community's concern for other communities and the government.

At first glance, this concept differentiates the parties whose land is affected by land acquisition for development in the public interest. However, this concept also considers the limited financial capacity of the state, which cannot provide significant compensation to all landowners. Landowners who experience a tremendous loss of land are given better compensation than landowners who experience a slight loss of land. Landowners who experience the most significant loss of their land will have to look for new land elsewhere, which may also have an impact on their social life. In contrast, landowners who only use a small part of their land can still utilize most of the remaining land without the need to move and can continue their social life in the same place. Thus, it is hoped that a balance will be achieved in compensation for land acquisition between people who have large plots of land but only use a small part of it and people who have small plots of land (not significant) but use the entire plot of land. In addition, material and immaterial losses of both types of landowners must also be considered.

It is realized that this concept will undoubtedly get opposition from the community, which, of course, wants typically equal treatment of the amount of compensation received for the release of land and buildings, but a persuasive approach from the government is expected to be able to provide explanations to the community about the development that will be carried out. In principle, from several studies conducted, the community is willing to surrender land for public interests, that have a positive impact on many people; there are even people who are willing to give their land for free to the government because they consider what is given to the state is a form of compliance and obedience to the government and the voluntary surrender will be something that will provide charity or rewards that will continue to be received in the afterlife. However, once again, the government must, of course, take a persuasive and open approach regarding the plan and implementation of the development project. This persuasive approach is mainly by building an appropriate and negotiating communication

system with the community. A persuasive approach from the government will raise the community's awareness and willingness to surrender their land and voluntarily participate in development programs organized by the government.

Conclusion

To establish a fair and thriving community grounded in Pancasila and the Republic of Indonesia's 1945 Constitution, the state must plan for development. The government's national development framework includes initiatives like development for the public interest through several national strategic programs. The people whose land rights are affected by the project almost invariably feel helpless and dissatisfied with the land purchase for development. This is why it is imperative to devise a plan that ensures equal prosperity for all individuals and community groups through the management and use of property. Justice cannot always be obtained quickly, but it must continue to be pursued to realize it.

The value of justice is non-negotiable and must be realized in society without having to sacrifice the interests of other communities. No matter how important the National Strategic Project is in the government's judgment, the community's rights that have been regulated in the applicable laws and regulations must not be violated. In addition, additional rules must also be formulated so that an ideal condition will occur, namely the creation of maximum benefits for everyone, including for the weak, thus creating justice for everyone. Social justice aims to establish a stable, balanced society where everyone has the chance to lead a respectable life, and those in need of help are given special consideration. Social justice can only be realized if there is general justice in society, namely, a situation where everyone gets what they are entitled to and gets the same share from the state. From the view of social justice, the concept is proposed that for the provision of compensation, different amounts of assessment are determined based on community groups with specific criteria. One of the purposes of applying this system is to provide relief to the state, which has limited funds to pay compensation to the community. People who are classified as having many parcels of land are given less compensation. The

remainder of the difference in compensation money that should have been received by the owner of the many parcels of land is added to the community with only one parcel of land whose land is used or used for public interest development.

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