LAND ACQUISITION IN ACCELERATING AND EXPANSION OF INDONESIA’S ECONOMIC DEVELOPMENT PROGRAM: A REVIEW OF LAW, MORAL AND POLITIC RELATIONS

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ABSTRACT

The acceleration of economic development is an important issue that is a priority policy of the governments of countries in the world, not least for the Indonesian Government through Masterplan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI) policies. Land acquisition is an important element in the success of the program, so it is interesting to examine the regulation the perspective of law, moral and politics relations. This study aims to mapping the relationship of law, moral and politics of land acquisition rules to support MP3EI program. This study is qualitative doctrinal research that only used secondary data. The analysis performed by using the theory of legal protection and the general principles procedures from Philip M. Hadjon and economic analysis of law from Richard Posner. The relations of law, moral and politics in land acquisition to support the acceleration and expansion of Indonesia’s economic development can be seen in two moments. First, at the moment of formation, moral and politics configuration as the components that determine the law substance of legislation for land acquisition. Secondly, at the law enforcement moment, moral and politics will can put pressure on textual filed a judicial ruling with the authority of the judiciary, the pressure may also be given to the law context, in this case the state apparatus that directly pertain to the practice of land acquisition and law enforcement officers in the dispute resolution of land acquisition.

Keywords: land acquisition, development, law, moral, politics.

Introduction

The acceleration of economic development is an important issue that is a priority policy of the governments of countries in the world. With good economic development, a country will be able to demonstrate the existence and improve position in bargaining against another country. Vice versa, the unstable economic development and slow would reduce the bargaining position of a country in the world. The dynamics of the world economy in recent years shows the progress of its own for the region. The emergence of China and India as new countries have good economic growth, so that the starting position is calculated as an influential country in the world. China and India have managed to build the acceleration of the economy with appropriate policies related to resource utilization comparative (natural resources) and competitive resources (human resources).

Indonesia as a sovereign country should also be able to overtake China and India in the context of building a significant economic acceleration. As China and India, when compared in Indonesian territorial context also has potential comparative resources is no less extensive and varied, even Indonesia is one of the largest archipelago in the world with the potential for very high sea. Competitive in terms of resources, Indonesia is also one of the most populous countries in the world except China, India and America. Supposedly resources owned by Indonesia that could be used to support the acceleration of economic development.

Utilization of resources owned by Indonesia to support the acceleration of economic development requires the right strategy for the results to be achieved can be achieved and to realize it cannot be removed with the legal aspects. Since the year 2011, the government has set a Presidential Regulation No. 32 Year 2011 on the Masterplan for the Acceleration and Expansion of Indonesian Economic Development 2011-2025 (MP3EI) as the legal basis and the acceleration of economic expansion. MP3EI implementation strategy is done by integrating three main elements, namely (1) to develop the economic potential of the region in six economic corridors (KE) Indonesia, namely TO Sumatra, Java KE, KE Kalimantan, Sulawesi KE, KE Bali-Nusa Tenggara

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and Papua KE-Maluku Islands; (2) strengthen national connectivity locally integrated and globally connected; (3) strengthen the ability of the human resources (HR) and national science and technology to support the development of a major program in every economic corridor.²

Judging from the three main elements MP3EI strategy, particularly with regard to economic development potential in the economic corridors and strengthening integrated national connectivity locally, pertains to the construction of the necessary supporting infrastructure such as roads, bridges, ports, airports and other buildings. The infrastructure development will use the mechanism of land acquisition.

Legal instruments of land acquisition for infrastructure development can be carried out in three ways as follows: (1) The release of land rights stipulated in Law No. 2 Year 2012 on Land Procurement for Development for Public Interest; (2) Revocation of land rights regulated in Law Number 20 Year 1961 About the Revocation of the Right to Land and Property Objects that are therein; and (3) The sale and purchase, exchange or other means agreed upon by both parties.

The practice of land acquisition mainly by using the mechanism of land revocation and relinquishment of rights to land often lead to various problems. The problem that arises with respect to compensation for the tenants/owners of land whose location is used for infrastructure development. Often the process of land acquisition compensation detrimental to the tenants/owners of the land, which will eventually marginalizing them. From this will be seen the relationship between law, morality and politics in the process of land acquisition to support the acceleration and expansion of economic development.

Formation of the land acquisition law as guidance in the process of land acquisition will not be separated from moral and political aspects. Both aspects may participate in determining the content and form of the land acquisition law. Similarly, at the stage of enforcement, moral and political aspects will participate in determining the land acquisition practices for the acceleration and expansion of economic development.

Based on what has been described previously, motivation of this study is to mapping and discuss the relation of law, moral and politics and the position of that three element to support the acceleration and expansion of Indonesia's economic development. The problems will be described further in this study are: How is the relationship legal, moral and political in land acquisition to support the acceleration and expansion of Indonesia's economic development? The next part of this paper will explain research method that used in this study, the concepts of law, moral and political relation in the context of Supporting the Acceleration and Expansion of Indonesian Economic Development Program. After analyzed and discuss about the problem, this paper will closed by the conclusion section.

A. Research Method

This research is a doctrinal research, model of legal research is a comprehensive and analytical study that only used secondary data. The secondary data splitting to the primary legal materials (rules of land acquisition), secondary legal materials (books, journal, reports, results of previous research) and tertiary legal materials (magazines, newspaper and dictionary). Approach the problem using the statutory approach and the conceptual approach.³

Data were analyzed qualitatively by describing the data generated in the form of an explanation of the study systematically so as to obtain a clear picture of the problem under study. Analysis of the legal materials will done in two phases. The results of the data analysis inferred deductively.

B. Result and Discussion

1. Law, Moral and Politics

Law in its form as legislation is well aligned with both the moral and political aspects of the creation and enforcement aspects. Legal establishment will inserting moral values therein are simultaneously side by side with the insertion of political interests, as well as in the aspect of enforcement, law enforcement will be highly dependent on the moral law enforcement apparatus and the political interests of the parties concerned.

The relationship between the moral law, especially in relation to the law as the crystallization of moral values gradually formalized into law, as if seen from their material source of law is the crystallization or the formalization of rules or norms in the society which then has its own properties, coercive and can be enforced by law enforcement powers, whereas the relationship between law and politics can be divided into three models of relationships. First, as das sollen, the law on political determinant for any political agenda should be subject to the rules of law. Secondly, as das sein, political

³ Peter Mahmud, Penelitian Hukum, Kencana Prenada, Jakarta, 2005, hlm xx.
⁴ Moral comes from the Latin mos, mores plural which means customs. Etymologically, the word the same as the word moral ethics, both mean customs. The difference is only in his native language, ethics comes from the Greek, while the moral of the Latin language. Abdulkadir Muhammad, Etika Profesi Hukum, Citra Aditya Bakti, Bandung, 2006, hlm 17.
⁵ Mahfud MD, Hukum, Moral dan Politik, Makalah disampaikan pada Studium Generale Matrikulasi PDIH Undip, 23 Agustus 2008, hlm 1.
determinant of the law because of the fact that the law is a political product. Third, political and legal related inter determinant because politics without law will unjust law without escort while politics will be paralyzed. 6

In fact law as legislation is influenced by both the moral and political aspects of the establishment and enforcement. However, the moral influence 7 will essentially be determining the direction and quality of the law in the process of formation and enforcement as moral values issued a good deed emerging from yourself, not because of orders from others.

2. Relation of Law, Moral and Politics In the Land Acquisition to Support Acceleration and Expansion of Indonesian Economic Development

Acceleration and expansion of economic development requires a legal institution in its implementation. Legal institutions is the basis of departure for economic development. According to Satjipto Rahardjo 8 many positive roles that can be played by the law, namely a) The creation of a new legal institutions are launched and encourage development; b) Securing results that take by labor and business; c) the development of justice for development; d) granting legitimacy to these changes; e) use for the overhaul-overhaul law; f) settlement of disputes; g) setting power of government. The role of the law are in all stages of development ranging from the planning, implementation of the legislative, decision making in the executive and administration, drafting arrangements and the settlement of disputes of civil nature.

Mapping of the relationship between law and development cannot be separated from the legal aspects, economic and institutional. Trubek and Santos 9 argued that in legal doctrine and ideally the construction of the law can be an instrument which gives the idea of development and at the same level into an instrument for building structures established. Associated with the acceleration and expansion of economic development which requires land to build the infrastructure, the process of land acquisition must be passed to achieve the acceleration of the development.

Legal regulation of land acquisition will be more fully understood when to stick to the conception of the national land laws. The conception of the national land laws drawn from customary law, which is a conception that: "religious communalistic allows individual control of land, with rights over land that is personal, but it also contains elements of togetherness". 10 The conception of the national land law was then further concretized in the principles of procurement law of the land. 11

Land acquisition for infrastructure development in the acceleration and expansion of economic development will follow the outline of the mechanisms stipulated in Law No. 20 of 1961 concerning Revocation of the Right to Land and Property Objects that are therein; and 1/ or Act No. 2 of 2012 on Land Procurement for Development for Public Interest. Selection procedures in land acquisition can be done by the government will outline regarding the two arenas, namely: land revocation arena or arena waiver of land, each of which has different characteristics.

By using the theory of legal protection, 12 the general principles procedures 13 and the economic analysis of law, 14 as a knife analysis found that: the arena revocation of the right to land, when viewed from the aspect of land acquisition procedures,
the character of the state in the form of legal recognition of community rights and democratic character shaped openness, gets a smaller portion compared to the instrumental character in the form of efficiency and effectiveness are gaining a larger portion. On revocation of land rights, transactional costs in the form of payment of compensation can be reduced as small as possible so that the social cost in the form of resistance-resistance deterioration of society and socio-economic conditions landowners post land acquisition has the potential to expand. The point of departure revocation of land rights is more likely in the aspect of legal certainty to justify the reduction of the rights of people who are entitled, by simply providing a repressive form of legal protection, so that the degree of legal protection tend to be weak. 15

On the release of land rights, when viewed from the aspect of land acquisition procedures, instrumental character in the form of efficiency and effectiveness gets smaller portion compared to the character of the state of law in the form of recognition of the rights of society and the democratic form of openness, which gets servings greater than. On the release of land rights, social cost in the form of resistance-resistance deterioration of society and socio-economic conditions of post acquisition of land can be suppressed as small as possible, but the transactional costs in the form of payment of compensation tends to be enlarged. The starting point of the release of land rights are more likely to aspects of legal justice for the respect and fulfillment of the rights of people who are entitled, by providing legal protection form of preventive and repressive so that the degree of legal protection tend to be stronger. 16 Of some aspects of comparing mapping land acquisition by way of deprivation and the release of such rights, can be attributed to the relationship between the land acquisition law with the moral and political aspects.

Basically, the moral and political correlates with the law (legislation on land acquisition) either at the moment of its creation and at the moment of enforcement. As for the relationship at the moment I’m trying to describe the formation in the picture one.

Picture 1. Relation of Law, Moral and Politics in The Land Acquisition at The Formation Moment

Explanation of picture one is, political and moral configured17 as components that determine the substance of laws and regulations on land acquisition, or in other words the laws and regulations on land acquisition is the result of a political formulations are intertwined with moral. The political aspects are obviously a wide range of interests of the legislators, while in addition there is a moral aspect of the personal law makers may also be a cornerstone of the establishment of laws


16 Ibid.

17 The term of this configuration is adopted from the definition of legal politics according to Mahfuad MD. He states as a legal political wisdom law (legal Policy) which will or have been implemented nationally by the government include: First , the core -making legal development and renewal of the material law in order to fit the needs ; secondly , the implementation of the existing legal provisions , including the assertion function and the formation of institutions of law enforcement also includes an understanding of how politics affects the law by looking at the configuration of the power that is behind the making and enforcement of the law. From the above understanding legal politics include law-making process in the future (ius constitendum) and the implementation of existing law (ius constitutum). M. Mahfuad. MD, Politik Hukum di Indonesia, Jakarta, LP3ES, 1998, hlm 9. Configuration means according to KBBI is: 1 form;existence; 2 Geo horizontal and vertikal earth form; 3 Kim position of atom to another atom in the molecue. Tim Penyusun, Kamus Besar Bahasa Indonesia, Soft Version, http://ebsoft.web.id.
and regulations that are based on certain aspects. The cornerstone of the establishment of legislation is usually based on the philosophical aspect, sociological, and juridical.\textsuperscript{18}

According to Syaukani and Thohari, when the law was built on a foundation that is not in accordance with the spiritual structure of society, we can be sure the people's resistance to that law will be very strong.\textsuperscript{19} In line with this concept, the broader scope Hart suggests the existence of a system of law is a social phenomenon which always presents two aspects. These aspects include the attitudes and behaviors that tangible recognition of the regulations and also the attitude and behavior of a simpler form than compliance or silent acceptance.\textsuperscript{20} By doing so, the basis of the formation of legislation is the one form of moral values taken from the view of life and community life as elements that also contribute to determine the substance of legislation for land acquisition.

The reality of this relation can be seen in the establishment of Law No. 20 of 1961 concerning Revocation Rights to Land and museum that is on it. Pattern configuration on the establishment of the law is more likely to be dominated by political rather than a moral element, because the substance of the law tend to be repressive and deny the rights of the community. While the pattern configuration on the establishment of Law No. 2 of 2012 on Land Procurement for Development for Public Interest tends to balance between moral and political elements, because the substance of the law tend to be more responsive and respect the rights of the community.\textsuperscript{21} At the moment of formation, moral and political configurations that determine the substance of the law of the land acquisition is subjective according to the constituent individual atmosphere and will cause effects and extensive holding capacity in accordance with the legal form in the form of legislation. At the moment of enforcement, the relationship between the legal, moral and political Let me describe the picture two.

Picture 2. Relation Law, Moral and Politics in the Land Acquisition at the Enforcement Moment

Explanation of picture two is, the relation of law, morality and politics in the procurement of land at the moment of enforcement are also subjective because it deals with individuals who are directly related to land acquisition practices. Both moral and political pressures will give the law. The pressure exerted on the pressure can be either textual filed a judicial ruling by the judicial authorities under the absolute competence and level of its legislation. In addition, the pressure may also be given to the legal context, in this case the state apparatus that directly pertain to the process of land acquisition and law enforcement agencies in the procurement of land dispute resolution. The pressure exerted by the moral and political to the law in the procurement of land, more or less will provide a change to the law both in the textual and contextual.

From the discussions that have been presented, it is known that the land acquisition law in relation to the acceleration and expansion of Indonesia's economic development is correlated with the political and moral aspects that give a certain influence both in the establishment and enforcement.

C. Conclusions

The relationships of law, moral and politics in land acquisition to support the acceleration and expansion of Indonesia's economic development can be seen in two moments. First, at the moment of formation of law, moral and political configured as the components that determine the legal substance of legislation for land acquisition. Secondly, at the moment of law enforcement, moral and political will can put pressure on textual filed a judicial ruling with the authority of the judiciary, the pressure may also be given to the legal context, in this case the state apparatus that directly pertain to the practice of land acquisition and law enforcement officers in the procurement of land dispute resolution. Either at the moment of the establishment and enforcement, moral and political will coloring the law. Land acquisition law can provide good support to the acceleration and expansion of Indonesia’s economic development if the moral and political configuration of council member and law enforcer only oriented on spirit to build and serve the public interest, otherwise the rules of the land acquisition would be difficult to support the acceleration of Indonesia economic development.

As a suggestion, in order for the law to reflect the sense of justice in the process of land acquisition, legal establishment should be avoided as far as possible from political elements were negative. So also at the stage of enforcement, government officials and law enforcement pertaining directly to the practice of land acquisition should strengthen the integrity and hone his sense of justice in the practice of land acquisition for the acceleration of Indonesia’s economic development.

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