

**THE LEGAL PROBLEMS OF LAND LAW TOWARD INVESTMENT  
ERA IN INDONESIA****Supriadi<sup>1</sup>, Asmadi Weri<sup>2</sup>, Dewi Kemala Sari<sup>3</sup>**

<sup>1</sup>Faculty of Law, Tadulako University  
JL. Soekarno Hatta KM.9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: [supriadi@untad.ac.id](mailto:supriadi@untad.ac.id)

<sup>2</sup>Faculty of Law, Tadulako University  
JL. Soekarno Hatta KM.9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: [asmadiweri@untad.ac.id](mailto:asmadiweri@untad.ac.id)

<sup>3</sup>Faculty of Law, Tadulako University  
JL. Soekarno Hatta KM.9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: [dewikemalasari@untad.ac.id](mailto:dewikemalasari@untad.ac.id)

*Submitted: Dec 07, 2018; Reviewed: Dec 28, 2018; Accepted: Dec 30, 2018*

**Abstract**

*The development of the Indonesian nation needs assistance from abroad, through the mechanism of investment, and in the context of investment in Indonesia providing facilities in the field of import duties, and land use permits. The ease of granting permits to use the land is often an obstacle, because there is a clash between the community and large companies, the government and other agencies. To avoid such conflicts, the road taken is to build awareness of all stakeholders, especially government officials and security forces. The people who own / control their land are only intended to connect their lives. Meanwhile, government officials and security forces and law enforcement officials realized that "humanity is very valuable above all. Thus the method used is three approaches (i) type of research, which are related to the type of normative research; (ii) problem approach, using, namely: (a) conceptual approach; (b) the law approach. This approach will be used as a means to conduct legal analysis of the implementation of the construction of LNG or liquefied natural gas infrastructure in Uso Batui Village, Banggai District.*

*The existence of an LNG development project managed by PT Donggi Senoro LNG, in practice led to conflicts between communities related to the non-implementation of Presidential Regulation No. 36 of 2005 as the basis for implementing compensation payments. By using the research method, the issue of land acquisition for the public interest is taken by means of: (i) the apparatus, both government officials, law enforcement officials, and agencies of the National Land Agency must do the right and fair in making decisions regarding land; (ii) placing the value of justice above the interests of legislation.*

**Keywords:** *Funding; Investment; Land; Problematic Law*

**INTRODUCTION**

Land is a gift from God Almighty created for the benefit of all creatures, in-

cluding humans as a place to live their lives, especially to make a living. In addition, land for humans is a very useful ob-

ject in order to develop its business, and can be used as an investment in capital-valued objects. With the value of capital investment in land, the land becomes an object that is highly valued in the eyes of the community. Increasing the status of the land as a high-value investment, made the community from the past until now make land as capital that has not decreased in value or price, but has increased at any time. Thus, land as a capital for both individuals and institutions, experiences a shift in perception.

Land perception as a very valuable capital, has developed in accordance with the development of society. Land as valuable asset capital has a shift in value, and the value of land as capital, has experienced a shift in perception in its community. In a society that is still primitive, land becomes a production to just fulfill its needs, in the community that starts to develop, then the land becomes capital, as well as being a long-term investment. While in modern society or developed country society, the value of land is not only a capital, but also develops into a commodity that can be developed into a very high economic value, for example, it can be developed into an industrial business investment.

The development of land was worth investment after the entry of the Dutch colonized Indonesia, by bringing legislation in the land sector, which nuanced as land into production and economy. The land had economic value and capital, had existed at the time Indonesia was colonized by the occupiers, namely the Netherlands, Britain and Japan, and when the land was planted spices were exported to Europe. The experience of the colonial state, after Indonesia became independent, the land was changed to be controlled by the State and used for the benefit of the entire community. The assertion, determined in Article 33 paragraph (3) of the 1945 Constitution, states that: "The earth, water and natural resources contained therein are controlled by the state and are required for the maximum possible population".

Referring to the provisions in Article 33 paragraph (3) above, it describes the involvement of the state in managing land, the purpose of which is to ensure the maximum prosperity of the people. One of the means to achieve people's prosperity is to use land as part of the natural wealth contained in Indonesia's earth. The concept of state involvement in land use is further stipulated in Article 2 of the 1960 Agrarian Law stated that: (1) On the basis

of the provisions in Article 33 paragraph (3) of the Constitution and matters referred to in Article 1, the earth water and space, including the natural resources contained therein at a high level controlled by the state, as the highest power of all people. (2) The controlling right of the country referred to in paragraph (1) of this article authorizes: a. regulate and administer the designation, use, supply and maintenance of the earth, water and space; b. determine and regulate legal relations between people and earth, water and space; c. determine and regulate legal relations between people and legal actions concerning the earth, water and space. (3) Authority derived from the control rights of the state in paragraph (2) of this article is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in an independent, just and prosperous society and legal state. (4) The state's right to control above can be handed over to self-reliant regions and customary law communities, only needed and not contradicting national interests, according to government regulations.

Referring to the provisions contained in Article 2 above, it provides an overview of the state's involvement in land regulation in Indonesia, in addition, the provisions in Article 2 of the Basic

Agrarian Law, in which there are 4 (four) things, namely: (i) the state controls over land in the entire territory of the Republic of Indonesia; (ii) the state has the authority to determine, regulate, carry out legal relations between people over the land; (iii) state arrangements for land are used for the greatest benefit of the people, in the sense of nationality, welfare and independence in the community for a rule of law, a sovereign and just, prosperous Indonesian state; and (iv) the state can provide the implementation of land authority to self-supporting regions (local government) and customary law communities merely for land needs, but not in conflict with national interests.

Related to the concept of state authority in regulating land issues in Indonesia, this has implications for the concept of authority that is based on constitutional law, as a law that regulates relations between government and society. Therefore, according to Hanc van Maarseeven, as quoted by Philipus M Hadjon said that<sup>1</sup>: "authority (beveoged) is described as legal power (rechsmacht). So in the concept of public law authority is related to power. Three elements of authority as public legal

<sup>1</sup>Philipus M. Hadjon, About Authority, *Yuridika Magazine*, No. 5 and 6 Year XII, 1997, p.2 (**Philipus M. Hadjon**, *Tentang Wewenang*, *Majalah Yuridika*, No. 5 dan 6 Tahun XII, 1997, h.2) Translated by Author.

concepts, namely: 1. Influence: the use of authority is intended to control the behavior of legal subjects; 2. Legal basis: the authority can always be shown its legal basis; 3. Conformity: implies the existence of authority standards, namely general standards (all types of authority) and special standards (for certain types of authority) ".

Regarding to the concept of authority relating to the concept of constitutional law above, as stated by Philipus M. Hadjon, which quotes the opinion of Hanc van Maarseeven, that authority is described as legal power. The legal power is fully related to three elements, namely: influence, legal basis and confirmation. Thus, the authority related to the function of the Government in regulating land issues depends entirely on the three elements of authority concerned. Therefore, the authority associated with land issues, this also experienced a development and dynamics regarding the condition of the Indonesian people in carrying out development in all lines of people's lives.

Indonesia as a developing country, began to carry out development with a different pattern from one regime to another, but had one purpose, namely to make the people of Indonesia to be safe, peaceful and justly prosperous physically

and mentally. Therefore, to achieve a safe, comfortable and justly prosperous society, one that is able to sustain it is the maximum use of land. However, in factual Indonesia as a developing country, requires funds to carry out development. To get funds in order to carry out the development, one of the methods taken is inviting other countries to invest in Indonesia. Investments that will enter Indonesia, through Investment facilities, the Government issues legislation Number 1 of 1967, and is updated in Law Number 27 of 2007 concerning Investment (State Gazette of the Republic of Indonesia of 2007 Number 67, Supplement to the State Gazette Republic of Indonesia Number 4724). The existence of laws and regulations governing the investment, the government and foreign businessmen began to enter to invest by investing in all fields of utilization of natural resources. Abundant natural resources in Indonesia are a source of investment that is highly sought after by foreign countries and entrepreneurs. In addition, the regulation in the existing investment sector has triggered a shift in the value of land in remote areas, and the most fatal in rural communities has been converted to investment activities, because it has a very high selling value. Therefore, the land has changed from

the value of production to a very high economic value, and this is also what makes the land no longer for the benefit of the people as much as possible, but becomes the land for a few people. According to Soedjarwo Soeromihardjo that: "in the period of transition from the Old Order to the New Order, it began to be felt to deviate from its objectives, when the investment began. The Basic Agrarian Law, no longer for the interests of the people and the state, let alone the small people. However, it is directed at the interests of large capital holders with banking facilities. Agrarian politics which prohibit the existence of a monopoly in the agrarian sector are violated and the people are increasingly distant from participating in enjoying the results of independence. The interests of the people are largely ignored, even abandoned and farther away to reach them. Traditionally, natural resources become the source of their lives which are increasingly disappearing and they are no longer in control. This result occurs because natural resources are the arena for seizure between investors and the people concerned."<sup>2</sup>

---

<sup>2</sup>Soedjarwo Soeromihardjo, criticizing the Agrarian Basic Law, Hacking the Way to Reform the National Agrarian Politics, Cerdas Pustaka Publisher, Jakarta, 2009, h. 43-44 (**Soedjarwo Soeromihardjo**, *Mengkritisi Undang-Undang Pokok Agraria, Meretas Jalan Menuju Penataan Kembali*

Referring to the opinion expressed by Soedjarwo Soeromihardjo above, giving a very true picture, because factually the entry of investors to invest in Indonesia, has brought drastic changes to the social, cultural and economic life of the Indonesian people. Specifically regarding land related to investment activities with investment patterns, the investors provide the government with convenience, so that foreign entrepreneurs are interested in investing their capital in Indonesia in the form of investments. The ease given to investment entrepreneurs, especially foreign capital is very special, this is regulated in Article 21 of Law Number 27 of 2007 concerning Investment stated that: "in addition to the facilities referred to in Article 18, the Government provides easy service and / or licensing to companies capital investment to obtain: a. land rights; b. immigration service facilities; and c. import licensing facility".

Related to the provision of facilities to companies that invest capital, it is an attraction for foreign companies to invest in Indonesia by providing 95 (ninety-five) years of land rights. The provisions in Article 22 of Law Number 27 of 2007 state that: (1) The ease of service and / or licensing of land rights as referred to in *Politik Agraria Nasional*, Cerdas Pustaka Publisher, Jakarta, 2009, h. 43-44) Translated by Author.

Article 21 letter a can be given and extended in advance at once and can be renewed at the request of the investor, in the form : a. Right to Cultivate can be given in the amount of 95 (ninety five) years by way of being able to be given and extended in advance at the same time 60 (sixty) years and can be renewed 35 (thirty five) years; b. Land use rights can be granted with an age of 80 (eighty) years by way of being able to be given and extended in advance at the same time for 50 (fifty) years and renewed for 30 (thirty) years; and c. The Right to Use can be granted for an amount of 70 (seventy) years by means of being able to be given and extended in advance at the same time for 45 (forty five) years and can be renewed for 25 (twenty five) years. (2) The right to land as referred to in paragraph (1) may be granted and extended in advance as well as for modern planting activities with requirements including: a. investment carried out in the long term and related to changes in the structure of the Indonesian economy that are more competitive; b. investment with the level of investment risk that requires the return of capital in the long run in accordance with the type of investment activities carried out; c. investment that does not do a large area; d. investment by using rights to state land; and e. investment that

does not disturb the sense of justice of the community and does not harm the public interest.

1. Land rights can be renewed after evaluation that the land is still being used and cultivated properly in accordance with the nature of the nature, and the purpose of granting rights.
2. The granting and renewal of rights to land granted at once in advance and which can be renewed as referred to in paragraph (1) and paragraph (2) may be stopped or canceled by the Government if the investment company abandons the land, harms the public interest, uses or utilizes land is not in accordance with the purpose and purpose of granting rights to the land, as well as violating the provisions of legislation in the field of land.

Referring to the provisions in Article 22 of Law Number 27 of 2007 above, it has provided an overview of the services of the ease of granting land rights in the context of investment in Indonesia. Conflicts that occur over conflicts over the land concerned show an increase every year, this is in accordance with complaints received by Government agencies and institutions observing land issues. The Con-

sortium for Agrarian Reform (KPA) notes that<sup>3</sup>: "land conflicts increase from year to year. At least land conflicts occurred in an area of 472,084.44 hectares involving 69,975 households throughout 2011. A number of cases based on the quality of cases were plantations (97 cases), forestry (36 cases), infrastructure (21 cases), mining (8 cases), aquaculture (1 case). Amount to 163 cases of land disputes / conflicts with as many as 22 fatalities spread across 25 provinces. This number increased compared to the previous year which only reached 106 cases of land disputes and killed 3 residents "

Referring to the land conflict above, it becomes a reference that, land issues in Indonesia are a complicated problem, because they are related to the interests of economic development with investors. While on the other hand, the people who depend on their land, their position is very weak because they do not get protection from the state. The position of the people who are weak towards land, every year has experienced a very significant increase. The 2018 Agrarian Reform Con-

<sup>3</sup>Report on the Consortium for Agrarian Reform, in Benhard Limbong, Land Conflict, Pustaka Margaretha, Jakarta, 2012, h. 60 (Laporan Konsorsium Pembaharuan Agraria, dalam **Benhard Limbong**, *Konflik Pertanahan*, Pustaka Margaretha, Jakarta, 2012, h. 60) Translated by Author

sortium (KPA) report reports that<sup>4</sup>: "we witness agrarian conflicts and violence continues to occur. During 2017 there have been 659 conflicts. Up to 50% of the conflict in 2016 was drastic (450 cases). The conflict that occurred, according to Elza Syarief, said<sup>5</sup>: "Usually those who are facing are citizens with entrepreneurs. The reason is that residents' land is taken by entrepreneurs who are expanding. In this case the employer utilizes various transfer facilities over agrarian sources. The country that provided the facility. Residents end up not only dealing with entrepreneurs but also with the state. Because, they consider the country to be the backing of entrepreneurs. "

Related to land conflicts that occur between citizens and employers, the facts show that, almost every conflict or land dispute that occurs, the position of the community is in a weak position. Many land cases that occur in Indonesia, make the state or government side to the businessman, because there is a request for security by the businessman in taking over land or land that has been controlled by

<sup>4</sup>[www.kpa.or.id/news/blog/pemerintah-negara-hentikan-penggu](http://www.kpa.or.id/news/blog/pemerintah-negara-hentikan-penggu), downloaded at 8 May 2018

<sup>5</sup>Elza Syarief, Resolving Land Disputes, Through Special Land Court, KPG (Kepustakaan Populer Gramedia), Jakarta, 2012, p 32 (**Elza Syarief**, *Menuntaskan Sengketa Tanah, Melalui Pengadilan Khusus Pertanahan*, KPG (Kepustakaan Populer Gramedia), Jakarta, 2012, h 32) Translated by Author

the people concerned<sup>6</sup>. Typical land conflicts that occur in Indonesia occur between citizens and the Government, between residents and businessmen (Plantation)<sup>7</sup>, and residents with the Indonesian National Army apparatus.

## Research Methods

### Type of Research

The research used in this research is related to legal science, namely normative legal research. The specificity of normative legal research is related to the search for "truth coherence", that is, a truth expressed in conformity between what is examined and the rules applied. Peter Mahmud Marzuki said that, legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand. This is in accordance with the character perspective of *sui generis* law.

### Approach to the Problem

This study will present several approaches to addressing the problems found in research, including:

1. Approach to the concept (conceptual approach). This approach originated with the existence of thoughts and doctrines that developed in law. The exist-

ence of this approach will be used as an effort and determination to find ideas to know ideas, which will produce a concept and legal argument relating to the occurrence of land cases in Indonesia, especially in Tanjung Sari Luwuk. The concept as *pata meter* that will be used includes the concept of governance related to several land cases in Indonesia, which will later be linked to the principle of principle related to agrarian law and the principles contained in other regulations.

2. Legislation approach. This approach seeks to analyze all laws and regulations relating to the problems in this study, within the scope of agrarian / land law, investment law, and local government law, as well as spatial law.
3. Approach the case (case approach). This approach will explore the *ratio decidendi*, namely the legal reasons used to tackle the reasons why land cases often lead to clashes at the time of execution. *Ratio decidendi*, being the most decisive argument in the disclosure of the background of frequent clashes in the settlement of land cases of PT Donggi Senoro LNG in Uso Village, Batui District, Banggai District

<sup>6</sup>.com/read/20150823/78/464834/konflik-tanah-pol, downloaded at 8 May 2018

<sup>7</sup>.*ibid*

## Legal Material

Legal studies with a distinctive type, legal assessment (*rechtsbeoefening*) type of research move from the study of positive law whose studies cover three layers of legal science, namely philosophy of law, legal theory and dogmatic law. This study will systematize primary legal material and legal material secondary. Peter Mahmud Marzuki<sup>8</sup> said that, the primary legal material is authoritative legal material which means that it has authority. Primary legal materials consist of: the 1945 Constitution of the Republic of Indonesia, statutory regulations (UU), official records of minutes of legislative regulations and judges' decisions. While the secondary legal material is in the form of all publications on the law, which are not official documents. Publications about the law, covering textbooks, legal dictionaries, legal journals, and judicial decision comments.

## Legal Material Processing and Analysis

All sources of legal material collected in this study, in the form of primary and secondary legal materials, will be processed with an analytical approach in accordance with the nature and character

of normative legal research. The primary source of legal material is carried out by carrying out a positive legal inventory, both in the form of legislation and all other regulations that have to do with this research. On the other hand, secondary legal sources are carried out by exploring the legal materials of literature (literature studies) which have to do with this research.

The processing of primary legal materials and secondary legal materials in research also, will use legal reasoning<sup>9</sup> by using deductive-inductive methods, and by using interpretation (interpretation) to be able to find answers to legal issues or legal issues raised in this study, using legal doctrine, laws and regulations, principles or legal principles contained in the laws and opinions of scholars.

Interpretation is an integral part of reasoning, because speaking of positive law, it will be related to words, and positive law is a string of words into sentences. In legal terminology, several interpre-

<sup>8</sup>Peter Machmud Marzuki, *Legal Research*, Prenada Group, Jakarta, 2013, p. 181 (**Peter Machmud Marzuki**, *Penelitian Hukum*, Prenada Group, Jakarta, 2013, h. 181) Translated by Author

<sup>9</sup>Legal reasoning recognizes two methods, both the deduction method and the induction method. Both methods will be used in analyzing legal materials in this study. Use deductive method to explain or analyze and evaluate legal issues in this study by relying on all the rules that are linked to in law, and other rules related to the legal facts. On the other hand, inductive methods are used to explain or solve legal issues by relying on legal facts first, then to be linked to the legal rules stated in the law and other regulations, see Peter Mahmud Marzuki, *ibid*,

tations are known, namely: grammatical interpretation, systematic interpretation, historical interpretation, exegetical interpretation, antispaisi interpretation and teleological interpretation. Philipus M. Hadjon gives the following meanings<sup>10</sup>:

1. Grammatical interpretation: defines a legal term or part of a sentence that is according to everyday language or legal language.
2. Systematic interpretation: with the starting point of the system of rules interpreting the provisions of a law.
3. "wets-ewchtshistorische" tracing the purpose of the enactment of law is a "wetshistorische interpretative" in terms of efforts to find answers to a legal issue by tracing the development of law (rules) called "rechtshistorische interpretatie".
4. Interpretation of legal comparisons: strive to resolve a legal issue by basing on an outcome by comparing legal systems.
5. Interpretation of anticipation: answer a legal issue based on a rule that is not yet valid.

6. Theological interpretation: every interpretation is basically theological.

Referring to the six interpretations that are common in law, and when associated with this study, the interpretation used in examining and revealing the legal problems that occur in Indonesia, especially in the village of Uso Batui, namely: (i) grammatical interpretation; (ii) systematic interpretation, and (iii) theological interpretation. The use of grammatical interpretation (language) is used to resolve conflicts or conflicts between norms that occur between laws and regulations, systematic interpretation is used to look at systematization of legislation regulations, while theological guidance, is used to see land cases as cases related to humanity, and humanity relates to the provisions relating to divinity, and the divine values listed in the scriptures as rules governing human life.

### Research Objectives

A study has a goal to be achieved which will be achieved in the research concerned. Therefore, the objectives to be achieved in this study are: (i) to be a reference in solving future land law problems in Indonesia; (ii) to be a reference in the development of a land law curriculum in law faculties in Indonesia. While the target will be achieved in this study, which is

<sup>10</sup>Philipus M. Hadjon, Study of Dogmatic Law (Normative), Yuridika, FH UNAIR Magazine, No. 6 Year IX November-Desember 1994, p.6 (**Philipus M. Hadjon**, *Pengkajian Ilmu Hukum Dogmatik* (Normatif), Yuridika, Majalah FH UNAIR, No. 6 Tahun IX Nopember-Desember 1994, h.6) Translated by Author

to become a reference or guideline for the Government and the National Land Agency in solving future land law problems.

## DISCUSSION

The Construction Project for LNG or liquefied natural gas refineries is one of the high-tech industrial activities, so that it requires adequate facilities and infrastructure and sufficiently extensive land. The construction of this infrastructure becomes the need of a country, including Indonesia. Therefore, industrial activities are development activities that are designed as a step towards an industrial country, including Indonesia, if they want to shift from an agrarian country to an industrialized country. According to Mustafa and Suratman<sup>11</sup> that: "industrialization is a logical consequence of development. It is an important part of every third world development process. Industrialization in Indonesia is also a strategy that cannot be negotiated anymore to accelerate social transformation and the achievement of development goals themselves. Since the beginning of the existence of industrialization can not be separated from the con-

cept of development, as an alternative to the welfare of society".

The Donggi Senoro LNG development project is an investment project between Japanese businessmen and Indonesian businessmen, which was built in 2005, the project concerned experienced legal issues in the land sector. Regarding the application letter submitted by PT Donggi Senoro and the Banggai Regent Letter, the letter has not been completed with a description of the location associated with the boundaries, so PT Donggi Senoro returned a Location permit for the construction of an approximately 350 Ha LNG Plant. The Banggai Regent permits by issuing a Location Permit to PT Donggi Senoro LNG with Number: 593/411 / Bag. Tapem, on January 25, 2008, location, area and boundary of location: Use Village, Batui District, Area of approximately 35 Ha, Boundaries: North of: Land of Community Plantation; South by: sea, west by: Land of Community Plantation, and east by: Mosolang River.

### E. Legal Analysis Related to the LNG Development Project

The issue of land conflicts related to infrastructure development projects began to skyrocket around 2005 to date, therefore, there was no occurrence of concession planning related to land procurement

<sup>11</sup>Mustafa and Suratman, Use of Land Rights for Industry, Sinar Grafika, Jakarta, 2013, h. 16 (**Mustafa dan Suratman**, *Penggunaan Hak Atas Tanah Untuk Industri*, Sinar Grafika, Jakarta, 2013, h. 16) Translated by Author

in the community, especially the PT. Donggi Senoro in Uso Village. The existence of natural gas (LNG) liquefield regulation is regulated by Law Number 22 of 2001 concerning Oil and Gas (State Gazette of the Republic of Indonesia of 2001 Number 136, Supplement to the State Gazette of the Republic of Indonesia Number 4152). The provisions in Article 34 of Law Number 22 Year 2001 state that: (1) In the event that a Business Entity or Permanent Business Entity will use the fields of land rights or State land in its Working Area, the relevant Business Entity or Permanent Business Entity shall first settlement with rights holders or users of land on State land, in accordance with the provisions of the applicable legislation. (2) Settlement as referred to in paragraph (1) shall be carried out by deliberation and consensus by means of buying and selling, exchanging, adequate compensation, recognition or other forms of compensation to the rights holders or users of land on State land. While in Article 8 paragraph (1) of Presidential Regulation No. 36 of 2005 states that: (1) Land Procurement for the implementation of development for public interest is carried out through deliberation to obtain agreement on: a. implementation of general development at the site; b. the form and amount

of compensation. The provisions stated in Article 8 of Presidential Regulation No. 36 of 2005 above, illustrate that, before an infrastructure development project is implemented, it is agreed upon that the most essential is the "form and magnitude of the loss".

Referring to the two articles above that are not fulfilled, a conflict arises between PT. Donggi Senoro LNG, with the community facilitated by the Banggai Regional Government. However, the Banggai Regional Government was unable to resolve it, so the community submitted a request to the Banggai Regional House of Representatives. The Banggai Regional Representative Council responded to public complaints by forming a Special Committee Number: 13 / KPTS / DPRD / 2010 concerning Establishment of the Banggai Regional Representative Council's Questionnaire on Land Problems by PT Donggi Senoro LNG in Uso Village, Batui District, Banggai District. The Banggai Regional House of Representatives Special Committee, in its report found 5 issues, namely: 1. The process of granting licenses is not in accordance with the Minister of Agrarian Regulation / Head of BPN Number; 2 of 1999 concerning Location Permits. 2. There is no deliberation between PT. Donggi Senoro LNG,

with the community. 3. Measurements do not involve the land owner. 4. There is an indication of gratification. 5. There is a price increase that makes people feel cheated<sup>12</sup>.

Referring to the description of the issue of compensation for land acquisition in Uso Village, the legal analysis will refer to the theories relating to the administration of the State, namely: the General Principles of Good Governance (AAUPB), which are specific, namely the principle of legal certainty and principles of careful action. The use of this theory is related to the government's actions and regional governments that are inconsistent in making policies that lead to conflict in the community, even though the legal basis is clear, namely: Presidential Regulation No. 36 of 2005 concerning Land Procurement for Implementation of Development for Public Interest.

The compensation for land affected by the LNG development project in accordance with the stipulated by the steering committee (SC) is an arbitrary act carried out by PT. Donggi Senoro LNG towards the community and the local gov-

ernment. Indiscriminate actions are indicated starting from not socializing the existence of the project, no socialization to determine the amount of compensation, no consensus meeting ". Thus, the existence of Presidential Regulation number 36 of 2005, by Lieke Lianadevi Tukgali, that<sup>13</sup>: "The Republic of Indonesia Presidential Regulation Number 36 Year 2005 and Presidential Regulation Number 65 Year 2006 are classified as general (besluiten Van algemene strekking), because they fulfill the elements general, concrete, and continuous. In terms of its functions, Presidential Regulation No. 36/2005 in conjunction with Presidential Regulation No. 65/2006 in terms of its material functions serves to regulate in general in the context of general management, in terms of its material content, this Presidential Regulation is classified as content material that is attributive. From this matter, it can be assumed that the Presidential Regulation Number 36 Year 2005 in conjunction with Presidential Regulation Number 65 Year 2006 is a regulation that contains guidelines for the implementation of land ac-

<sup>12</sup>Report of the Banggai Regional House of Representatives Special Committee Team on 20 November 2010 in front of members of the Banggai Regional Representative Council, attended by the Uso Village community, especially the people who took their land. H. 1

<sup>13</sup>Lieke Lianadevi Tukgali, Social Function of Land Rights in the Procurement of Land for Public Interest, Kertasputih Communication, Jakarta, 2010, h. 165 (Lieke Lindiadevi Tuggali, *Fungsi Sosial Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum*, Kertasputih Communication, Jakarta, 2010, h. 165) Translated by Author

quisition for the public interest. This regulation does not have the binding capacity to the outside, but precisely to the inside, so that those who are obliged to obey it are the implementers of land acquisition, which is referred to as the Land Procurement Committee, while the people whose land will be released for the construction of projects for the public interest are not bound by these provisions".

Referring to this, it simply illustrates that, Presidential Regulation Number 36 Year 2005 jo Presidential Regulation Number 65 of 2006 has the binding capacity inside, not outside, namely the community. However, this problem is often not understood by state administrators, so that they are trapped in the decisions they make. Therefore, the Presidential Regulation Number 36 Year 2005 and Presidential Regulation Number 65 Year 2006, need to really be an important guideline for State administrators, in relation to the procurement of land for the benefit of the community. The link between land acquisition stipulated in Presidential Regulation Number 36 of 2005 and Presidential Regulation Number 65 of 2006, with Good Governance General Principles (AAUPB), especially the principle of legal certainty and principle acts meticulously, becomes the protector of State administrators from

actions that harm society and the government itself. By Hotma P. Sibuea said that<sup>14</sup>: "the principle of legal certainty has two aspects, namely: material aspects and formal aspects. Material aspects are related to the principle of trust, while the formal aspect is related to how to formulate the contents of a decision ". While the basic aspects act meticulously requiring that the State administration body or officials always act carefully so as not to cause harm to the community<sup>15</sup>. According to Philipus M. Hadjon that<sup>16</sup>: good governance is concerned with the implementation of three tasks, namely: (1) To guarantee the security of all persons and society it self. (2) To manage the effective framework for the public sector, the private sector and civil society. (3) To promote economic, social and other aims in

<sup>14</sup>Hotma P. Sibuea, *Country Law Principle, Policy Regulations, & Good Governance General Principles*, Erlangga Publishers, Jakarta, 2010, h. 159 (**Hotma P. Sibuea**, *Asas Negara Hukum, Peraturan Kebijakan, & Asas-asas Umum Pemerintahan Yang Baik*, Penerbit Erlangga, Jakarta, 2010, h. 159) Translated by Author

<sup>15</sup>SF. Marbun, *Judicial State Administration and Administrative Efforts in Indonesia*, UII, Yogyakarta, 1997, h. 360 (**SF. Marbun**, *Peradilan Administrasi Negara dan Upaya Administratif di Indonesia*, UII, Yogyakarta, 1997, h. 360) Translated by Author

<sup>16</sup>Philipus M. Hadjon, et al, *Administrative Law and Good Governance*, Trisakti University Publishers, Jakarta, 2010, h. 9-10 (**Philipus M. Hadjon**, dkk, *Hukum Administrasi Dan Good Governance*, Penerbit Universitas Trisakti, Jakarta, 2010, h. 9-10) Translated by Author

accordance with the wishes of the population.

Referring to the opinion of Philipus M. Hadjon, it is associated with the occurrence of land conflicts in Indonesia, particularly in the case of infrastructure development projects in Uso Village, Batui District, namely the construction of LNG or liquefied natural gas, and the case of the Jakarta-Surabaya toll road infrastructure development, namely in Kendal, Central Java, the two infrastructure development projects have violated the principle of good governance. Because, one of the tasks of the government in the administration of the State or government, must guarantee the security of every person and society, in managing effective structures of the public, the private sector and society, and advancing economic, social and other fields with the will of the people. With the need for land for development interests in all fields of life on the one hand, and on the other hand the need for land for some people for the benefit of their livelihoods is an inevitable conflict. This is related to a shift in the politics of land that is more in favor of the company (big businessmen), and Nurhasan Ismail pointed out that<sup>17</sup>: "recently there was a

political shift in land, where the ruler and land use were only obtained by a small group of people, namely big entrepreneurs" .

In line with the government's duty to carry out the interests of the community, it seems that the Uso and Kendal cases are miniature issues of land law related to infrastructure development projects in Indonesia from 2005 to 2018, there has been a partiality of the government to small communities (people who control capital / authorities) in Indonesia. This problem occurs because the government itself has escaped from the initial commitment of the oath of responsibility when it was appointed as the highest government authority. In addition, the government sided with capital owners, both foreign and domestic, because of its inability to understand that, land issues, not only the issue of civil law, but also related to the State administrative law, even criminal law.

The government in carrying out its duties, for the welfare of the community as its main task, then the law used is the administrative law or the State administrative law. Because, almost all of its activi-

<sup>17</sup>Nurhasan Ismail, Political Direction for Land Law and Protection of Community Land Ownership, Rechts Vinding Journal, National Law De-

velopment Media, Vol 1. No 1, April 2012 (**Nurhasan Ismail**, *Arah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat*, Jurnal Rechts Vinding, Media Pembinaan Hukum Nasional, Vol 1. No 1, April 2012)Translated by Author

ties are related to policy making, decisions, and its foundation remains in the State administrative law. According to Philipus M. Hadjon that<sup>18</sup>, the study of administrative tasks relating to functions and approaches in administrative law, clearly shows that administrative law functions to protect human rights with regard to the use of governing power and with regard to the behavior of officials in carrying out services to the community".

Related to the view of Philipus M. Hadjon, illustrates that, the important task of the government in carrying out its duties is based on administrative law, which is essentially protecting human rights with regard to the use of government power and with regard to the conduct of the apparatus. The emphasis put forward by Philipus M. Hadjon, is a conclusion of almost all activities of the government apparatus in procuring land for development purposes in the public interest, has violated the human rights or the people against forced land acquisition, without proper compensation.

In line with the views expressed by Philipus. M. Hadjon above, relating to the use of government power and the behavior of the apparatus in the administration of government, then Article 28H paragraph

(4) of the Constitution states that: "Every person has the right to have personal property rights and such ownership rights should not be taken arbitrarily by anyone". The provisions in Article 28H paragraph (4) of this Constitution, become mandatory guidelines for government officials in the context of the procurement of land for development purposes in the public interest. However, what happened in the provisions of the 1945 Constitution, which is the highest basic law, has become a mere display, because almost all laws and regulations made, especially those related to the public interest, have never been ignored. Because, the public interest is according to the apparatus of the land acquisition team, a public interest for the holder or project owner.

The provisions of Article 28U Paragraph (4) of the 1945 Constitution, actually must be the main consideration for the land acquisition team, both central and regional, but that is the problem that has become a land conflict in the current investment era. In addition to Article 28H paragraph (4) of the 1945 Constitution, the provisions in Article 28G of the 1945 Constitution state that: (1) Everyone has the right to personal, family, honor, dignity and property under his control and has the right to security and protection from

---

<sup>18</sup>*Ibid*, h. 10

the threat of fear of doing or not doing something that is a human right. (2) Every person has the right to be free from torture or treatment which undermines human dignity and has the right to obtain political asylum from other countries.

Referring to the provisions in Article 28G of the 1945 Constitution, it is increasingly clear that, the protection of personal, family, honor, dignity and property under his authority, has the right to safe treatment, and protection from fear of his property in question. If it is related to the land conflict that occurred in Uso Village, the treatment of the community concerned, has shown that the land acquisition team has lost its sense of humanity. Because, the people took their property without proper compensation, were expelled from their land, even the building was torn down, and did not provide compensation for the plants and buildings on it. While Muchsan said that: "law is the main means to guarantee public interest, as well as individual interests, with the aim that justice can be carried out. Criteria for determining non-explicit general interests that are substantially easy lead to freedom to interpret them in accordance with the interests of the moment"<sup>19</sup>. Thus,

<sup>19</sup>Muchsan, Acquisition of Land Rights Through the Institution of Rights Liberation, Law Dissertation, Gadjah Mada University, Yogyakarta, 1992,

to the Government or anyone who often takes community land, without rights or persecution, the Prophet Muhammad warned in his Hadith: Said bin Zaid ra: "Tells that the Messenger of Allah said" Who takes a little of the land of others in a persecution, then the land will be carried on it, by Allah on the Day of Judgment (HR Muslim).

## CONCLUSIONS

The LNG Development Project in Uso Village, Batui District, which is managed by PT. Donggi Senoro who took people's land by violating Presidential Regulation No. 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest. This is in accordance with the 2010 Banggai Regional Council Special Committee report, which in its report stated that there were 5 (five) violations, namely: 1. The process of granting licenses was not in accordance with the Minister of Agrarian Regulation / Head of National Land Agency Number 2 of 1999 concerning Granting Location Permits. 2. There is no deliberation to determine the amount of compensation. 3. The measurement pro-

h. 240 (Muchsan, *Perolehan Hak Atas Tanah Melalui Lembaga Pembebasan Hak*, Disertasi Ilmu Hukum Universitas Gadjah Mada, Yogyakarta, 1992, h. 240) Translated By Author

cess does not involve the land owner. 4. There is an indication of gratification and 5. There is a price increase that is unknown to the community, so that people feel cheated.

The government in implementing infrastructure development related to land acquisition must comply with all provisions stipulated in Presidential Regulation No. 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest.

## BIBLIOGRAPHY

- Elza Syarief, *Menuntaskan Sengketa Tanah, Melalui Pengadilan Khusus Pertanahan*, KPG (Kepustakaan Populer Gramedia), Jakarta, 2012, h 32
- Hotma P. Sibuae, *Asas Negara Hukum, Peraturan Kebijakan & Asas-asas Pemerintahan Yang Baik*, Penerbit Erlangga, Jakarta, 2010
- Lieke Lindiadevi Tuggali, *Fungsi Sosial Hak Atas tanah Dalam Pengadaan Tanah Tanah Untuk Kepentingan Umum*, Kertasputih Communication, Jakarta 2010
- Muhsan, *Perolehan Hak Atas Tanah Melalui Lembaga Pembebasan Hak*, Disertasi Ilmu Hukum UGM, Yogyakarta, 1992
- Mustapa dan Suratman, *Penggunaan Hak Atas Tanah Untuk Industri*, Sinar Grafika, Jakarta, 2013
- SF. Marbun, *Peradilan Administrasi dan Upaya Administratif di Indonesia*, FH, UII, Yogyakarta, 2010
- Soedjdarwo Soeromihardjo, *Mengkritisasi Perundang-undangan Pokok Agraria, Jalan Menuju Penataan Kembali Politik Agraria Nasional*, Cerdas Pustaka Publishir, Jakarta, 2009
- Philipus M. Hadjon, dkk, *Hukum Administrasi Dan Good Governance*, Penerbit Universitas Trisakti, Jakarta, 2010
- Peter Machmud Marzuki, *Penelitian Hukum*, Prenada Group, Jakarta, 2013
- Philipus M. Hadjon, Tentang Wewenang, *Majalah Yuridika*, No. 5 dan 6 Tahun XII, 1997
- , Pengkajian Ilmu Hukum Dogmatik (Normatif) Yuridika, *Majalah Fakultas Hukum Unair*, No. 6 Tahun IX November-Desember 1994
- Nurhasan Ismail, *Arah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat*, *Jurnal Rects Vinding*, Media Pembinaan Hukum Nasional, Vol. 1, No. 1, April 2012

Report of the Questionnaire Committee of the People's Representative Council of Banggai Region Number; 13 / KPTS / DPRD / 2010 concerning Land Issues of PT Donggi Senoro Uso Village, Batui District, Banggai Regency

Law Number 5 of 1960 concerning Basic Agrarian Principles

Presidential Regulation No. 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest

[www.kpa.or.id/news/blog/pemerintah-negara-hentikan-penggu](http://www.kpa.or.id/news/blog/pemerintah-negara-hentikan-penggu), Downloaded at 8 May 2018

The 1945 Constitution

\*\*\*