

CHAPTER I

INTRODUCTION

1.1 Background:

Indonesia in its 60 Years of Independence is always known as being a vast landmass that is rich in resources and fertile plains that made this country one of the richest in potential development. In regard to fertility, it is said that one merely needed to throw a stick into the dirt and plants will spring forth from it. That said this country has a great number of ample land and has been the boon of its economy for many centuries.¹

Regardless of the bountiful resources of the land however the management and efficiency of these lands is another matter in itself. The capital itself became plagued by the issues of inefficient and often conflicting land usage. one of the biggest issues that currently surround the matter of land ownership concerns the matter of squatters as well as that of slums that occupy areas of land that are under private or state property.²

This issue creates questions of enforcement as well as legal certainty pertaining to the handling of this matter. There are overlapping topics such as the usage of UUD 1945 in regard to social justice that would slow down the processes of these removals, yet the issue now persists on their enforcement of these already in disputes.

¹Medrilzam, Mountford, H., Sulaeman, D., Westhoff, T., Haniy, S. U., Hamzah, H., & Hanifah, M. (1970, January 01). Indonesia. Retrieved from <https://www.wri.org/our-work/topics/indonesia>

²Fitriani, R., & Sumarminingsih, E. (2014). *The Dynamic of Spatial Extent of Land Use in the Fringe of Jakarta Metropolitan: A Semivariogram Analysis*. The Dynamic of Spatial Extent of Land Use in the Fringe of Jakarta Metropolitan: A Semivariogram Analysis, APCBEE Procedia, 10, 198-202. doi://doi.org/10.1016/j.apcbee.2014.10.038.

In regard towards providing incentives of compensation the government has enacted a compensation scheme that governs appraisals in determining the worth and price of the land that was deemed for appraisal, This is regulated under BPN Regulation no 5 of year 2012 which regulated the methods regarding the appraisal of land as well as according to article 34(4) of BPN Regulation no 5 of year 2012 regarding the instructions towards the execution of land provisions “under any circumstances the compensation given would be 25% of the estimated appraised price based on the previous years taxed value of the object.

One area of compensation that has not been explored concerns what could be identified as “Intangible Compensation”. This terminology is taken from to words, Intangible and Compensation. According to Jeffrey Lehman Intangible is defined as “Property in which it is a right such as a Patent, Copyright or Trademark or one that is lacking a physical existence. In terms of land ownership intangible would mean values such as emotional, cultural and religious as they cannot be appraised such as the value of the land and any buildings that reside atop it. Compensation in this case could mean “the amount received to make one hole” which could range from financial value to services to certain unorthodox activities.

To advance economic development of Indonesia must be made at the development and acquisition of lands in order to forward infrastructural projects or buildings that are necessary for the national economy. In order to free the land that is required for such development, a method of compensation has been created in order to ensure that when acquiring land for the purposes of public interest, a semblance of social justice is maintained by way of compensation. However, currently the only law that regulates these

compensations which is Law no 2 of year 2012 covers only material compensation which consists of the monetary value of the land and the building that occupies it. Meanwhile provisions regarding intangible value were not covered under these laws and currently the methods employed with handling them are an ad hoc in nature and has no standardization, these could be broken down into factors such as, the social community of the displaced occupant, or the sentimental and/or historical value of the area towards the former inhabitants. The current practices of compensation of Intangible values are problematic since the decisions of compensation do not thoroughly consider the interest of affected parties.

Agrarian law was inherited in Indonesia from the Dutch Burgelijk Wetboek, similarly there are many more supplements that are created in order to expand and introduce or update elements of the law to suit the current trends in land management. For example, law no 2 of 2012 regarding acquisition of land for public purposes specializes upon reacquiring land for the aforementioned purposes whilst still being subordinated to law number 1960 regarding agrarian law in Indonesia.³

To broaden the analysis of the compensation of Intangible value, the comparison of the provisions from other jurisdictions would give insight on how the compensation procedure particularly the process of value appraisal should proceed. The comparison would be the Dutch land and Agrarian law as well as the BW and the Indonesian Agrarian law of 1960 as well as Law No 2 of year 2012 Land acquisition for Public purposes. This is for the purpose of giving a comparison towards how Indonesia should model their

³ Law no 2 of year 2012 on Land acquisition for Public purposes

intangible value compensation law. The reason for this is twofold, firstly is that Dutch Land laws have existed since the 18th century (1700-1800) which means that the modern iterations of said laws would have undergone major changes and evolution that would be a good indication of how mature the laws have become. Secondly the Dutch agrarian laws emerged from the same legal source as Indonesia's.⁴

Indonesia itself is identified as a rule of law country (Recht Staat⁵) which infers that the certainty of law must prevail above all else and that nothing is above the law regardless of position of power or influence. However, in order to ensure that the law is followed and respected the law itself must be instilled with a sense of Just, Social harmony and certainty.

According to the KBBI law in Indonesia is designed in order to instill social order based on norms and values of the people the law governs over. Therefore, it must be designed in a way that would allow its subjects to be able to follow it without fearing any form of repercussions. Which comes from the assurance of legal certainty, if it is assured that a specific form of violation would be met with a specific form of sanction then the people would follow the rules as they fear the consequences and thus would avoid conducting such crimes.

Secondly as following with the Indonesian concepts of Social justice that has been instilled in its citizens an effort must be made to include those ideal of social justice when it comes towards respecting the personal beliefs, ideals and rights of the individual

⁴ Peter Mahmud Marzuki, (2011). "An Introduction to Indonesian Law."

⁵ Likadja, Jeffery Alexander. *Memaknai Hukum Negara (Law through State) Dalam Bingkai Negara Hukum*, 6 Mar. 2015. Page 76

citizenry especially in regards towards their property the following documents are the Legal basis that will be utilised in this investigation and will be used to refer to the source of Indonesian Law's

1. Law no 2 of the year 2012 Regarding Acquisition of Land for public purposes
2. Law Number 5 Year 1960 Indonesian agrarian law
3. The Indonesian National Constitution of 1945
4. Netherlands Agrarian and Spatial planning law of 1851

1.2 Formulation of Problem: (Research Problems)

Issue of legality was broken down into several sub-issues that affected the main issues concerned. In this essence when talking about enforcement another aspect is legal certainty which in its status currently would impede the matter of enforcement as without a lack of legal certainty as well as the lack of an amendment regarding the removal of squatters would impede the legal certainty.

The main legal issues could be surmised with two research questions, the issues that will be discussed in these two research questions would primarily consist of the existence of non-tangible compensation laws as well as the viability of a legal transplant internationally. Based on the description of the issue on the introduction, this thesis focuses to address the following research questions:

1. How is the compensation of the intangible goods undertaken based on the Indonesian laws and regulations?
2. How is the other jurisdiction regulating the compensation of immaterial goods?

1.3 Purpose of the study

Extent of the study: The primary object of investigation is concern about the investigation regarding primary practices of instances of intangible value compensation in Indonesia, similarly a comparison is made to foreign intangible value compensation laws.

The primary investigation was conducted to the existing law, regulations and cases related to the compensation of the intangible goods during the acquisition of land. The study of the cases is done to present the working law on the actual case. This reflects on how the Court implement the law and how the law itself may contribute to the court decision,

A secondary question that was conducted would be a comparative study of the other jurisdiction such as Dutch law on the intangible value compensation laws, the reasoning for this is that the Dutch compensation laws could be used as a comparative study to compare with current Indonesian provisions regarding similar topics as well as the result of the study in regards to conflict mediation and resolution decisions that could be extrapolated from the two case studies that would be studied and analyzed.

Therefore, the main form of research would be the analysis of both Indonesian and foreign legal documents concerning the intangible value compensation or compensation of intangible assets.

1.4 Intent and Purpose

1.4.1 Practical Application:

The practical purpose of this paper is that it may identify the current issues regarding compensation of land liberation specifically the issues that concern intangible value compensation of land acquisition.

1.4.2 Theoretical Application:

The theoretical application of this paper is that it could help raise awareness regarding the issue of ad-hoc settling of disputes regarding its intangible value as well as outlining the importance of codified laws and standardization of practices.

For the reader: To be used as a guideline regarding matters pertaining towards the same issue or field of law

For the Writer: to practice and test out methods and knowledge that are gained in university as well as a form of practice in analyzing problems.

1.5 Writing systematics

1. Chapter 1 Introduction: The chapter serves to act as an introduction to the topic, explains the background of the issue, the scope and formulation of the issues as well as the systematics of the thesis.
2. Chapter 2 Literature review: The chapter addresses the different theories and concepts in relation to Intangible compensation and the Indonesian land law.
3. Chapter 3 Methodology: This chapter discusses the different methods of how research is conducted in regard to data collection, data required and the form of approach towards how the research into the provisions of intangible compensation is conducted in Indonesia.
4. Chapter 4 Research findings: This chapter discusses the results of the research and will be divided into two sections regarding the two research questions. How is the compensation of the intangible goods undertaken based on the Indonesian laws and regulations? and. How is the other jurisdiction regulating the compensation of immaterial goods?

5. Chapter 5 Conclusion and recommendations: This chapter will answer the findings of chapter 4 as well as giving recommendations on how to best address the problems that are discovered in answering the two research questions

