CHAPTER I

INTRODUCTION

1.1 Background

Known for its diverse and multicultural islands, Indonesia as a nation is teeming with an abundance of untapped natural resources.[1] With land area of over 1.9 million square km, without a doubt, Indonesia is one of the largest nations in the world.[2] Aside from that, Indonesia's economy is also growing as proven from the increase in more than 5.02 percent of GDP in 2019 from 2017,[3] making it the Member State of ASEAN with the largest economy.[4] That being said, with vast territory comes with huge responsibility, as a democratic country, Indonesia pledges to utilize the land, water, and natural resources within for the greatest prosperity of its citizens pursuant to Article 33 (3) of Indonesian Constitution (UUD 1945).[5]

However, to do so, there are many challenges that Indonesia must face, one of which is the legal issue of the acquisition of disputed land in Indonesia. By definition, land acquisition is the process whereby a person is compelled by a public agency to

[1] Anderson, Jack, and Dale Van Atta. "Indonesia's New Economics Who Gains?", https://www.washingtonpost.com/archive/lifestyle/1990/07/16/indonesias-new-economics-who-gains/8e3edd2b-6e71-4fe3-81e8-ec3b3cdf9b60/, accessed on 22 February 2022
[2] Badan Pusat Statistik. "Hasil Sensus Penduduk 2020", https://www.bps.go.id/website/materi_ind/materiBrsInd-20210121151046.pdf, accessed on 22 February 2022
[3] Badan Pusat Statistik. "Berita Resmi Statistik", https://www.bps.go.id/website/materi_ind/materiBrsInd-20200205114932_.pdf, accessed on 22 February 2022
[4] "World Bank Group, "International Development, Poverty, & Sustainability." https://www.worldbank.org/, accessed on 22 February 2022
[5] Undang-Undang Dasar Negara Republik Indonesia 1945 (UUD 1945)

alienate all or part of the land he or she owns to the ownership and possession of that public agency, for public purpose, in return for a compensation.[6] Further, a reasonable third person, viewing the term "land acquisition", from a legalistic perspective, would define it as "*the activity of providing land by giving appropriate and fair compensation*" pursuant to Article 1 (2) of Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose.[7] Upon reading the definitions provided above, very clearly a reasonable person could infer that land acquisition must: 1) be for public purpose and 2) compensate the rightful owner of the acquired land. On that note, Article 123 of Law No. 11 of 2020 regarding Job Creation even stipulates the premise of land acquisition, that is project construction for public purpose.

As this thesis will not pertain to the compensation issue arising out of land acquisition, it is reasonable to say that compensation will not be a point of contention on that basis. However, public purpose and disputed land aquisition will be the focus of this thesis paper. On that vein, the question that is to be raised now is what falls under the scope of public purpose. Among national laws of numerous countries, an itemized list of land uses is provided for defining what falls under the domain of public purpose. Such list includes: 1) Transportation uses including roads, canals, highways,

[6] Ministry of Economy of the Republic of Armenia, "Armenia Trade Promotion and Quality Infrastructure Project". Report on the Infrastructure Project: Yerevan: Ministry of Economy of the Republic of Armenia, 2014

[7] Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose

railways, bridges, wharves, and airport, 2) Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing; 3) Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs; 4) Public parks, playgrounds, gardens, sports facilities and cemeteries; and 5) Defense purposes.[8]

Be that as it may, some countries have a much more flexible approach to define what public purpose by not offering an exhaustive list of land uses which falls under the domain of public purpose.[9] Fortunately, Indonesia does have a list of land uses falling under the scope of public purpose or public interest. Turning now to Article 123 (2) of Law No. 11 of 2020 regarding Job Creation,[10] 24 items of land use are stipulated therein, indicating that Indonesia takes a restrictive approach when it comes to defining public purpose.

By referring to Article 3 of Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose, there are four stages in general for the acquisition of land which comprise: 1) Planning, 2) Preparation, 3) Implementation, and 4) Report.[11] Very briefly, this Thesis will explain the stages. Beginning from Planning Stage, pursuant to Article 4-8 of the

[8] Keith, Simon, Patrick McAuslan, Rachel Knight, and David Palmer, "Compulsory Acquisition of Land and Compensation". Report, Rome: Food and Agriculture Organization of the United Nations, 2008

[9] Lindsay, Jonathan Mills. "Compulsory Acquisition of Land and Compensation in Infrastructure Projects." PPN Insights 1, no. 3, August 2012, p. 1-10

[10] Law No. 11 of 2020 regarding Job Creation

[11] Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose

aforementioned law, each institution needing the land for public purpose should make land acquisition plan. The land acquisition plan must at the very least contain the purpose and aim of the development plan or *rencana pembangunan*, the area of the land, the location of the land, the construction priorities, the duration of the acquisition, the land status, the value of the land, and the duration of the construction. The document of the land acquisition plan then will be proposed to the Government.

Moving now to the Preparation Stage, pursuant to Article 9-52 of the aforementioned law, the Government will form a preparation team which consists of *bupati* or *walikota*, local devices, the institution needing the land, government specializing in land affairs and other institutions if needed. The preparatory team shall carry out notification of the acquisition plan to the public at the location of the development plan. Following that, public consultation will be done with the parties of interest to reach an agreement. Thereafter, the location of construction will be determined and announced to the public.

Now moving to the implementation stage, pursuant to Article 53-114 of the aforementioned law, the acquisition of land will be conducted by the head of the regional office. *Jasa Penilai* will be employed to value the lands for compensations and then a negotiation will take place for it. If the land holder accepts the compensation, the rights for the land then will be relinquished and this will be documented. Lastly, during the Report Stage, pursuant to Article 115-116 of the aforementioned law, the land will be given to the institution along with the *berita acara* and the construction project will begin. The ministries will evaluate the construction for public purpose.

Turning now to the issue of dispute, it is without a doubt that disputes can happen to anyone and anywhere. Disputes can arise between communities and institutions. By definition, disputes are differences in interests between individuals or institutions on the same object which are manifested in the relationships between them.[12] Analyzing who and why they are involved is an important aspect of the study of disputed land tenure systems. For this reason, it is necessary to understand well who the subjects involved in the dispute are.[13] Subjects are defined as actors involved in land tenure system disputes, both influencing and being influenced. It can be individual, community, social group or institution depending on the case.[14] In fact, a number of legal scholars in Indonesia are of the opinion that dispute is a conflicting interest between two parties or more.[15] Having said that, dispute is also defined as " *a disagreement on point of law or fact, a conflict of legal views or interests between two persons* " by the Permanent Court of International Justice (PCIJ) in the Mavrommatis Palestine Concessions case.[16]

From a sociological perspective, a legal expert named A. Mukti Arto, through his scholarly book, defined dispute as a problem that arises due to the difference between *das sollen* and *das sein* or in other words, the difference between what is

[12] Urip Santoso, "*Penyelesaian Sengketa Dalam Pengadaan Tanah Untuk Kepentingan Umum*.", *Perspektif,* Vol. 21, No.3 September 2016, p. 192-195
[13] Eddy Pranjoto, *Antinomi Norma Hukum Pembatalan Pemberian Hak Atas Tanah Oleh Peradilan Tata Usaha Negara Dan Badan Pertahanan Nasional*, (Bandung: Utomo, 2006), p. 12
[14] Rachmadi Usman*, Pilihan Penyelesaian Sengketa di Luar Pengadilan*, (Bandung: Citra Aditya Bakti, 2003), p. 12
[15] *Ibid*
[16] PCIJ, The Mavrommatis Palestine Concessions Case: Judgement (Objection to the Jurisdiction of the Court)

desired and what actually happened. To put it simply, according to A. Mukti Arto, dispute arises due to the law's inability to resolve the existing problems and as such, this problem will result in a dispute between the two parties who cannot find any resolution within the legal system.[17] In light of the above, all of the definitions provided have one thing in common that is a dispute will arise due to a conflict of views or interests between the two parties.

Having explained the issue of dispute, the next question in mind is what is a land dispute or disputed land? Pursuant to Article 1 (2) of Ministry of Agrarian Affairs and Spatial Planning Regulation No. 21 of 2020 regarding Land Dispute Settlement,[18] land dispute is defined as a conflict of land between individuals, legal entities, or institutions that do not have a broad impact. Interestingly, in Article 1 (3) of the aforementioned regulation, the regulation provides the definition for conflicted land, that is land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad impact. Taking the above into consideration, this begs the question of what differentiates dispute and conflict. According to those two abovementioned Articles, the impact that dispute has is small whilst conflict entails a broad impact, meaning, conflict transpires when dispute has crystallized into a much wider issue. Be that as it may, both conflict and dispute are included as land disputes pursuant to Article 1 (2) and (3) of the Ministry of Agrarian

[17] A. Mukti Arto, *Mencari Keadilan, Kritik, dan Solusi Terhadap Praktik Peradilan Perdata di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2001), p. 28-32
[18] Ministry of Agrarian Affairs and Spatial Planning Regulation No. 21 of 2020 regarding Land Dispute Settlement

Affairs and Spatial Planning Regulation No. 21 of 2020 regarding Land Dispute Settlement as both of them concern about the conflict of land interests between two parties.

Land is a treasure contained on earth which throughout the history of human civilization has constantly given rise to complicated problems. This is logical, considering the fact that the population of humans in the world is ever-growing, in turn more lands will be populated by humans. In Indonesia, where land issues are very complex, the Government has been attempting to reorganize the land area in Indonesia in order to control, use and utilize the land in the form of consolidation of land use through institutional arrangements related to land use as a unified system for the benefit of the community in a fair manner as provided by Article 1 (1) of Governmental Regulation No.16 of 2004 regarding Land Use Planning.[19]

Thus, it is not surprising that, after Indonesia's independence, the first thing that was done by the nation's leaders at that time was the land reform project which was marked by the promulgation of Law No. 5 of 1960 regarding Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA).[20] In other words, land use planning is a series of activities to regulate the designation, use and supply of land in a planned and regular manner so that sustainable, optimal, balanced and harmonious benefits are obtained for the greatest prosperity of the people and the state.[21] Taking all

[19] Governmental Regulation No.16 of 2004 regarding Land Use Planning
[20] Law No. 5 of 1960 regarding Basic Regulations on Agrarian Principles
[21] Sudikno Mertokusumo, *Misteri Pokok Hukum dan Politik Agraria*, (Jakarta: Departemen Pendidikan dan Kebudayaan), p.12

of the above into consideration, land use planning or *tata guna tanah* is simply a general plan devised by the Government in the form of *Rencana Tata Ruang Wilayah* (RTRW) pursuant to Article 3 of Governmental Regulation No. 16 of 2004 regarding Land Use Planning for the purpose provided above.

During the Colonization by Dutch, Indonesia's land was governed under the Dutch Colonial Land Policy, one of the products of its policy is the enactment of *Agrarische Wet* 1870 which was enacted due to the expropriation of *adat* land by the Government. The politicians at that time did not agree with expropriation and desired to foster the economy of the Javanese people by not coercing their lands. As a result, through *Agrarische Wet* 1870, all of the lands owned by the Javanese and indigenous people were recorded by the Dutch. Moreover, the King of Dutch also promulgated "*Agrarische Besluit*" (stb.1870 No.118) which stipulates that all lands proven to not have *eigendom* right or right of ownership will belong to the state. As such, contrary to the present UUPA, back in the Dutch colony, all lands belong to the state if not proven to have *eigendom* rights or right of ownership.[22] In accordance with Article 4 (1) of UUPA, nowadays, the citizens have the right to own a land which is regulated by the state by virtue of the ownership of state. Nonetheless, that is not to say that the land vested land rights cannot be acquired by the Government for public purpose pursuant to Article 5 of Law No. 2 of 2012 regarding Land Acquisition.

[22] Prof. Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Djambatan, 2007), p. 300-310

A very revolutionary breakthrough was made by the UUPA, namely the abolition of the "*Domain Verklaring*" system. Do*main Verlklaring* is a system that determines that land that cannot be authentically proven will automatically become state property. This is clearly contrary to the legal awareness of the Indonesian people based on *adat*, where authentic evidence is not known beforehand and only relies on the principle of mutual trust.[23] Land is a gift from God Almighty to mankind on earth.

Therefore, it is State's obligation to maintain and regulate its allocation in a fair and sustainable manner for the survival of mankind in the future, especially for the citizens in Indonesia in line with Article 33 (3) of UUD 1945. In light of that, the acquisition of disputed land must be conducted in a careful and prudent manner and not just simply relying on the wide scope of public purpose. For example, in the case of the construction of the New Yogyakarta International Airport (NYIA), the land owners whose lands were planned to be acquired by the Government disagreed on their plan, however, the Land Acquisition committee proceeded to acquire the land regardless of the disagreements from the land owners. With regards to that, the law justifies such conducts by virtue of public purpose in that land acquisition can be carried out so long as the public purpose element is met.[24]

When we look into the issue of the acquisition of disputed land, any reasonable person viewing such issue would ask why must it be further examined? To that, the

[23] *Ibid*
[24] Wahyu Kustiningsih. "Kelompok Rentan Dalam Pembangunan Kawasan Kota Bandara Di Kulon Progo: Studi Kasus New Yogyakarta International Airport", Jurnal Pemikiran Sosiologi, Vol. 4, No. 1, (2017)

importance thereof lies on the extent to which a disputed land can be acquired by the Government for public purpose. As of now, there is no threshold on disputed land acquisition. If any, the procedural requirements to acquire the disputed land are merely divided into four stages as provided above. As for the substantial requirement within the land acquisition regulation, the provisions only mention about the legal subject eligible to acquire the land, namely, state institutions, ministries, non-ministerial government agencies, provincial governments, district/city governments, land bank agencies and state-owned legal entities, state-owned enterprises/regional-owned enterprises that receive special assignments from the Central Government/Regional Government or Business Entities in the context of providing infrastructure for the public interest.[25]

Moreover, Article 107 of Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose merely echoes the process by which acquisition of disputed land is to be carried out. However, no provisions within the land acquisition regulation provide any threshold on public purpose, especially in the context of acquisition of disputed land. Accordingly, institutions can resort to land acquisition without satisfying any threshold as long as the public purpose falls under the list of land uses as provided in Article 123 (2) of Law No. 11 of 2020 regarding Job Creation. In fact, the Court in 14/Pdt.P/2016/PN Kag held that a disputed land may be acquired by the Government for public purpose and

[25] Governmental Regulation No. 19 of 2021 regarding Implementation of Land Acquisition for Development for Public Purpose

did not outline the threshold or limitation for acquiring such disputed land.[26] With that in mind, this thesis will attempt to establish an understanding on the extent to which disputed land may be acquired by the Government for public purpose and the interpretation of public purpose. *Inter Alia*, the legal question that will be tackled is whether the only requirement for the Government to acquire the land is for the acquisition to be hinged on pubic purpose or is there any other consideration that needs to be taken by the Court such that public purpose should not be interpreted too widely. Absent such provisions regarding the threshold on public purpose, this thesis will attempt to allude to numerous court cases regarding disputed land acquisition.

1.2 Formulation of Issue

In order to examine the threshold of public purpose and how disputed land can be acquired by virtue thereof, it is natural for us to evaluate the threshold of public purpose and how it can be used as a justifiable ground for acquiring disputed land. Therefore, this paper will refer to the following two problems, namely:

1. How should public purpose be interpreted?
2. To what extent can a disputed land be acquired by the Government for public purpose?

[26] Putusan Pengadilan Negeri Kayu Agung Nomor Putusan: 14/Pdt.P/2016/PN Kag, p. 19

1.3 Research Purposes

In conducting a research, without a doubt, there are purposes to be strived for. Research can be defined as careful consideration of study regarding a particular concern or problem using scientific methods or in the words of American Sociologist Earl Robert Babbie, research is "*a systematic inquiry to describe, explain, predict, and control the observed phenomenon*." In light of that, a research is conducted to explain a social phenomenon that has been observed with the purpose of identifying the solution for it. Research purpose can be both subjective and objective. The purposes of the research to be achieved by the Author are as follows:

1.3.1 Objective Purpose

1. To examine how the Legal Term "public purpose" is interpreted.
2. To identify and evaluate the extent to which a disputed land can be acquired by the Government by virtue of public purpose.

1.3.2 Subjective Purpose

1. To expand, hone, and sharpen the Author's legal knowledge on land acquisitions in Indonesia and to better equip the Author with the knowledge on the legal framework of land acquisition such that the Author can be more prepared to work as a Real Estate Lawyer specializing on land acquisition cases.
2. To obtain data and information as the main material in compiling legal writing to meet the requirements required in obtaining a bachelor's degree (S.H) in the field of Law in the Faculty of Law, Universitas Pelita Harapan Karawaci.

3. As the Author has had an experience with disputed land, it is hoped that, through the writing of this thesis, the Author will be more aware of the Legal Basis on Land Disputes.

1.4 Research Benefit

The Author expects that this thesis can benefit people or communities that are struggling with land acquisitions matters. For that reason, the research benefits that may be obtained are as follows:

1.4.1 Theoretical Benefit

1. The result of this research is expected to increase the legal literatures on the acquisition of disputed lands and contribute in developing legal knowledge on the threshold that the Government uses to determine whether the public purpose element has been met for acquiring disputed land.
2. The result of this research is expected to provide benefits for the enrichment of the world of literature as regards to land acquisition in Indonesia.
3. The result of this research can be used as a reference for similar research at the next stage.

1.4.2 Practical Benefit

1. To provide a reference to anyone who plans on studying the acquisition of disputed land for public purpose in Indonesia.
2. To provide a data or information about the threshold of public purpose in Indonesia and how should it be interpreted such that the acquisition of disputed

land can be carried out in a planned and regular manner so that sustainable, optimal, balanced and harmonious benefits are obtained for the greatest prosperity of the people and the state.

1.5 Framework of Writing

To facilitate the understanding of the discussion and provide an overview of the systematic research of law in accordance with the rules in legal research, the Author describes it in the form of systematic legal research consisting of 5 (five) chapters. The Author compiles the systematic of legal research as follows

Chapter 1: Introduction

In this Chapter, the background of issues, formulation of issues, research purposes, research benefit, and framework of writing are covered.

Chapter 2: Literature Review

In this Chapter, the legal theories and terminologies used will be further elucidated for the sake of clarity. The Author aims to offer a strong backbone on the definitions used for each of the legal theories or terminologies.

Chapter 3: Research Methods

In this Chapter, the legal research method will be elaborated, in that, the qualitative and quantitative research methods will be explained one by one in order to provide an understanding on how the Author conducts his research on acquisition of disputed land in Indonesia for public purpose.

Chapter 4: Analysis and Discussion

In this Chapter, an analysis and discussion of the acquisition of disputed land for public purpose will be provided.

Chapter 5: Conclusion and Recommendations

In this Chapter, conclusions are drawn and implicated from the evaluation and discussion provided in the preceding Chapter. From the personal standpoint, the Author will also provide recommendations on the legal issue being discussed in the previous chapter.