

THE PHILOSOPHY OF TRI HITA KARANA IN LAND PROCUREMENT

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Abstract

The socio-religious function becomes a value in the concept of land acquisition with the community; the Tri Hita Karana concept answers the most difficult thing for the government to study and solve, namely happiness, which is aimed at the people affected by the liberation and the government. This study aims to find and describe the arrangement and implementation of land acquisition for the implementation of development in the public interest that meets the participatory principle and the principle of social justice with the concept of Tri Hita Karana by using the normative method. The philosophical of the concept of Tri Hita Karana in land acquisition for development for the public interest realizes the welfare of the community, which is the principle of Religious Communalism. Issuance of a Regulation of the Governor of the Province of Bali in the context of the Implementation of a National Strategic Project based on the philosophical of Tri Hita Karana.

Keywords: Tri Hita Karana, Land Procurement

Introduction:

The central role of land in human life causes aspects of people's land ownership to be part of social contract theory (Limbong, 2011). The problem of regulating land acquisition is seen from the material aspect, related to the legal substance, namely the content of the regulations is often incomplete and not clear or clear. The mechanism for developing the public interest is still unclear. The criteria for development for the public interest are also confusing; the system rules and mechanisms for accessing information and community participation in the land acquisition are not clear, the composition of the Land Procurement Committee is only from the government element. Setting the limitation of the deliberation period so that it is inconsistent with the essence of the deliberation The provision of compensation is only for those of a physical nature, but non-physical ones are not regulated, the form and mechanism of compensation for taking customary lands are not regulated, and the appointment of a consignment institution is not appropriate (Kalo, 2005). Bali, as a social society, in its civilization also has the concept of norms that govern its life in civilization since the era of the introduction of culture, which is known as the Tri Hita Karana cosmology concept and is a philosophy of life that has survived to this day even though it is in the concepts of social change which is always dynamic as one of the characteristics of civilization. In implementing the intended Tri Hita Karana concept, it is highly emphasized that the three elements must be applied in a complete and integrated manner.

Cultivating Tri Hita Karana will be able to eliminate views that encourage consumerism, conflict, and turmoil. The concept of Tri Hita Karana, by the Balinese indigenous peoples is formulated and implemented in the form of a concept. The Indonesian nation itself cannot be separated from these various concepts. Pancasila itself shows that the values that will be used as the basis for regulating the life of the nation and state are the values that exist, grow and develop in the people and society of Indonesia, such as deliberation, mutual cooperation, communalism, and religious magic, as well as respecting diversity (pluralism). Tri Hita Karana are three causes of happiness, namely a balanced or harmonious life attitude in the State's efforts. The development of various facilities for the public interest requires a large plot of land. On the other hand, the required lands are

generally already attached with a land right. Land ownership rights, apart from being recognized as human rights, also have a social function.

The principle of compensation used by the government has not been felt maximally, and the initial principle, which is a legal issue of religious, social functions owned by community land, does not become a value in the concept of liberation, which in the end, the thing that is intended in the profit compensation process by the government is experienced. Therefore, conflict with the community the concept of Tri Hita Karana answers the most difficult thing to be studied and solved by the government, namely happiness which is aimed at communities affected by liberation and the government itself; therefore, researchers in the legal issues described above will offer a new concept about the application of The Tri Hita Karana Concept in the Arrangement and Implementation of Land Procurement for Development in the Public Interest. Based on the description of the background of the problem above, the problem can be formulated as follows: Harmonization of the concept of Tri Hita Karana in land acquisition law for development in the public interest.

Literature Review

Theory of Legal Purpose

In achieving this goal, the law is tasked with dividing rights and obligations between individuals in society, dividing authority, regulating how to solve problems, and maintaining legal certainty. The purpose of this law (Algra, 1975) is oriented so that the description of the definition and boundaries of the topic of the problem is easy to understand, namely: The notion of justice is a notion that is not static but continues to change according to changes in society from all directions of changing points of view, so that what used to be felt fair maybe one day it is not fair again and so on. The definition of justice is formulated through observations and deep thoughts on developing the relationship between law and society.

The word justice in English is justice which comes from the Latin *iustitia*. The word justice has three different meanings, namely:

1. attributively means a fair or fair quality (synonym of justness);
2. as a serious act means the act of carrying out the law or actions that exercise rights and rewards or punishments (synonymous judicature), and
3. people, namely public officials, who have the right to determine the requirements before a case is brought to court (synonyms of judge, jurist, magistrate).

Efforts to realize justice in the law is a dynamic process that takes much time. This effort is often also dominated by forces that fight within the general framework of the political order to actualize it. Aristotle's view of justice that justice must be understood in terms of equality which is distinguished between numerical equality and proportional equality. Numerical equality equates everyone as a unit, or everyone is equal before the law. Proportional equality gives everyone what is their right according to their abilities, achievements, and so on (Tanya, 2013). Aristotle's work is quite famous in *Nicomachean Ethics*, *Politics*, and *Rhetoric*. Especially in the book *Nicomachean Ethics* wholly devoted to justice to understand its complexity, because it observes how people give different meanings to the idea. In principle, according to Aristotle, what is fair is in the middle because very fair and unfair situations are always extreme (Aristotle, 2013).

Aristotle divides justice into two forms, namely distributive justice and corrective justice. It is a very large contribution to thinking about law and justice until now (Friedman & Rahardjo, 1980). Distributive justice is justice determined by legislators, the distribution of which includes services, rights, and good for community members according to the principle of equal proportionality. Corrective justice is that which guarantees, monitors, and maintains this distribution against the attacks of illegal opponents. The corrective function of justice is, in principle, regulated by the judge and re-stabilizes the status quo by returning the property

of the person concerned by compensating for his lost property. In other words, it is identical with justice based on proportional equality, namely giving everyone what is their right, while commutative justice is the treatment of someone regardless of the services they have provided (Ghofar, 2006). In his book *General Theory of Law and State*, Hans Kelsen argues that law as a social order can be declared fair if it can regulate human actions satisfactorily so that they can find happiness in it. Justice is legality, meaning that a general rule is fair if it is actually applied to all cases where according to its contents, this regulation must be applied. It is said to be unfair if the general rule is applied to one case and is not applied to another case of the same and without regard to the value of the general rule itself.

Hans Kelsen's view is positivism, where justice is based on law, meaning that maintaining a positive legal order through its application is truly following the spirit of the positive legal order (Kelsen, 1995). Individual justice values can be identified by legal rules that accommodate general values, but fulfilling a sense of justice and happiness is for each individual. This concept of justice and legality is applied in the national law of the Indonesian nation, which means that national legal regulations can be used as a legal umbrella for other national legal regulations according to their level and degree and that these legal regulations have binding power to materials. Contained in the legal regulations.

Another theory of justice that is considered the most comprehensive, which animates intensive discussions among philosophers, political scholars, jurists, and economists, is that which was coined by Rawls (1971). In his book *A Theory of Justice*, it is explained that community members, namely, will unanimously approve 2 (two) principles of justice:

1. Everyone should have an equal right to the broadest comprehensive system of basic liberties.
2. Social and economic differences should be arranged so that:
 - a. Provide the greatest benefit to those in the least advantaged position.
 - b. Relates to positions and positions which are open to all based on proper equality of opportunity.

John Rawls admits that there are socioeconomic inequalities, because, in essence, there are inequalities between people with one another, but these inequalities must provide great benefits for those in the most disadvantaged positions. According to the theory of justice from John Rawls, the task of social and political institutions is to maintain and increase the freedom of individual welfare. The principle of freedom will be guaranteed by preparing a constitution, while the implementation of the principle of difference can be achieved through legislation.

Legal Aims To Achieve Benefits

A good law is a law that can bring the greatest happiness to society (Morawet, 1960). "In classical Benthamite utilitarianism, the goal of morality is to maximize pleasure and minimize pain. Thus, pleasure and pain are taken to be the common denominators of all morally relevant experiences, for other utilitarians influenced by Bentham maximizing happiness ("the greatest happiness for the greatest number").

The purpose of the law is also to provide the greatest benefit and happiness to as many people as possible. Therefore, the concept is to put benefit as the main goal of the law. The assessment of good or bad, fair or unfair of a law is very dependent on whether the law can give happiness to humans or not. The benefit is defined the same as happiness (happiness). Happiness is defined "as the freedom to express oneself in defense of human rights itself" (Pound, 1982).

Another follower of Utilitarianism is John Stuart Mill (2005), who further links the relationship between the element of expediency and the element of justice in law. According to Mill, the standard of justice should be "based on the element of expediency, but the origin

or source of the awareness of justice lies not in expediency but in two things, namely stimulation to defend oneself and feelings of sympathy, because justice stems from the human instinct to refuse and discuss the damage suffered. Both by ourselves and by anyone who gets sympathy from us, so that the essence of justice includes all the essential moral requirements for human welfare" (Friedman & Rahardjo, 1980). Mill agrees with Bentham (1823) that an action should lead to the attainment of happiness; otherwise, an action is wrong if it produces something that is the opposite of happiness. The difference is that John Stuart Mill connects justice with public utility in contrast to Bentham, who prioritizes individual interests. According to Jhering, the purpose of the law is "the maximum welfare of the people, and legal evaluation is carried out based on the consequences resulting from the process of applying the law, based on this orientation, legal issues are provisions regarding the regulation of the creation of state welfare (Prasetyo & Ali, 1997).

The purpose of the law is to create legal certainty.

According to Roscoe Pound (1982), as quoted in a book entitled Introduction to Legal Science by Peter Mahmud Marzuki, it is explained that there are two notions of legal certainty, namely:

1. The existence of general rules makes individuals know what actions can and cannot be done.
2. In the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the State may charge or do to individuals. Legal certainty is in the form of articles in the law and consistency in the judge's decision between one decision and another judge's decision for similar cases that have been decided (Maruki, 2008).

Another opinion from Gustav Radbruch (1961), explaining legal certainty, is "Scherkeit des Rechts Selbst" (legal certainty about the law itself). There are 4 (four) things related to the meaning of legal certainty, including that:

- a. Law is positive, meaning that it is legislation (gesetzliches Recht).
- b. This law is based on facts (Taatsachen), not a formulation of judgments that will later be made by the judge, such as "goodwill", "decency".
- c. The facts must be formulated clearly to avoid mistakes in meaning and be easy to implement.
- d. The positive law should not be changed frequently.

According to Lon Fuller (1971) where the law can fulfill the values of certainty if it contains of any principles (Indroharto, 1993), which can be described as follows:

1. a failure to achieve rules all, so that every issue must be decided on an ad hoc basis;
2. a failure to publicize, or at least to make available to the affected party, the rules he is expected to observe;
3. the abuse of retroactive legislation, which not only cannot itself guide action, but undercuts the integrity of rules prospective effect, since it puts them under the threat of retrospective change;
4. the enactment of contradictory rules;
5. rules that require conduct beyond the powers of the affected party;
6. introductions such frequent changes in the rules that the subject cannot orient his action by them;
7. failure of congruence between the rules as announced and their actual administration.

Lon Fuller's opinion above can be said that there must be certainty between regulations and their implementation, thus entering into everything related to action, behavior, and the factors that influence the implementation of positive law. Regarding legal certainty in the 1945 Constitution of the Republic of Indonesia, it is regulated in Article 28 D

paragraph (1), which reads: "everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law". Certainty is an inseparable feature of the law, especially for written legal norms. Law without the value of certainty will lose its meaning because it can no longer be used as a behavioral guide for everyone. Although some opinions mention certainty only as a means, some include certainty as one of the objectives of the law. The essence of legal certainty in order. Regularity causes people to live with certainty to be free to carry out activities needed in social life.

Norm Level Theory

The law is published as a product of legitimate exploitation, which is often known as national law, which is a source of certain political power. The Stufen Theory of Hans Kelsen (1995) was chosen as the main theory (Suhariningsih, 2009)

1. The Constitution: The Constitution represents the highest level of the positive law, taking "Constitution" in the substantive sense of the word, and the essential function of the Constitution consists in governing the organ and the process of general law creation, that is of legislation.
2. General norms created in the legislative process: The next level of the hierarchical structure, one step removed from the Constitution, is that of general norms created in the legislative process.
3. Administrative Regulations: Administration manifests itself as individualization and concretization of statutes, namely as an administrative regulation.

This theory is used as a basis for analysis to find harmony between the law and the philosophical concept of Tri Hita Karana, which is the concept of community life in Bali in the harmonization of life, state, homeland, which creates and creates harmony in people's lives in Bali. in response to conflicts over land acquisition for the public interest where harmony between the government and the community is very necessary and must be guaranteed by regional regulations that have recognition of the customary rights of indigenous peoples which have been regulated in Law of the Republic of Indonesia Number. 5 of 1960 concerning Basic Agrarian Regulations.

Methodology

This research was conducted by tracking, collecting, and systematizing legal materials obtained from the private and public literature. This data is a source of information regarding the use of plantation land without a permit. Legislation material reflects the provisions taken by the authorities and officials to resolve the problem of land use without permission. Meanwhile, library materials that discuss the issue of land use without the permission in the form of books are used as a complement to provide a real picture and interpretation of the legal provisions regarding land use without permission.

This type of normative legal research can be aligned with what Soetandyo put forward as a positive legal inventory research. The next step is to explore the laws regarding land use without permits issued during the Dutch East Indies period until 1980. Each period will reveal different conditions, causing different ways of solving land-use problems. Second, this is related to the disclosure of the external dynamics of the law, meaning that the law is operationalized in the community, especially those that are empowered to resolve cases of using plantation land without permits. There are three important components in this study, namely data, interpretation procedures, and research reports.

Result and Discussion

Correlation Between Humans, Natural Resources, and Welfare

Land can be valued as a property with a permanent nature and can be reserved for future life. The land is an important factor in people's lives, especially in Indonesian society,

where most of the population depends on land for their livelihood (Harsono, 2007). "Land is part of the honor" because the land is not only seen in economic terms as a factor of production, but more than that, land has an emotional relationship with the community (Mahendra, 2010). Understanding of Natural Resources will be clearer if viewed by type. Natural Resources can be divided into four classifications based on their physical form, namely Land Resources, Forest Resources, Water Resources, and Mineral Resources. Meanwhile, based on the recovery process, Natural Resources have divided into 3 (three) classifications (Solihin & Sudirja, 2007), namely:

- a. Inexhaustible natural resources, such as air, solar energy, and rainwater.
- b. Natural resources that can be replaced or renewed and maintained (renewable resources), such as water in lakes/rivers, soil quality, forests, and wildlife
- c. Natural resources that cannot be renewed (non-renewable resources/ irreplaceable or stock natural resources), such as coal, petroleum, and metals.

There is a very close relationship between agrarian and natural resources, aiming to achieve mutual prosperity, justice, prosperity, and sustainability. In practice, the term agrarian often refers to the control and use of land, while natural resources are synonymous with something contained in the land and the pattern of its management.

Human Correlation With Land and Natural Resources

From a religious perspective, land has a fundamental relationship with humans. Thus, the relationship between land and humans is eternal (Sembiring, 2011). Hindu dogma also teaches the relationship between humans and nature (land and natural resources) in Hinduism. Hindu dogma teaches that Vishnu is present in everything surrounding us and because everything has a Divine nature. The law of karma governs the evolution of the soul through successive reincarnations. Therefore, nature must be respected, as the component that embodies Divine manifestations and spirits in various stages of spiritual evolution. God everywhere. Sacred cows as provided for nurturing humans (Krishna, one of Vishnu's avatars, is represented as a herd of cows). Trees, symbols of abundance, and rivers (especially the Ganges) are also worshiped (Arsene, 2003). The views of some of the theological dogmas mentioned above clearly show that agrarian law is religious communalistic in nature and the central point of land and natural resource management lies in the issue of human piety.

Land and Natural Resources for Human Welfare

In essence, land does have philosophical values that are very beneficial for the livelihood of many people if it is managed properly, fairly, and equitably, which individuals cannot control natural resources. This affirmation is important to provide legal certainty and stimulation to investors. The implementation is in the form of affirmation of the form of ownership rights (ownership) and utilization rights (use). The utilization rights only relate to the use or utilization of certain natural resources because there are differences in the characteristics of natural resources that do not allow the concept of "property rights", such as property rights to land. Certain natural resources must be considered as the common heritage of humankind, such as water, sea, air, and forest. As a norm of authority (bevoegdheidsnorm).

The Concept of Sustainable Development (Sustainable Development)

As a concept, sustainable development, which implies development that "pays attention to" and "considers" environmental concepts in its implementation, has become a topic of discussion at the Stockholm conference. Sustainable development is a translation of "sustainable development," which is very popularly used in Western countries.

The process of developing a nation, in general, will go through several stages, namely:

1. At this stage, a nation is faced with the problem of national integration from several existing national powers.
2. At this stage, the industrialization stage seeks to apply the concept of industrialization to pursue the pace of development.

The stage of social welfare, namely at this time the goal of state development, is expected to have been achieved, namely to create a people's welfare. Therefore, the main target of agrarian reform is the creation of social justice, which is marked by the existence of agrarian justice, increasing productivity, and increasing people's welfare. Agrarian justice means that there is no longer any inequality in the land tenure structure; in fact, it provides opportunities for the creation of the spread and strengthening of people's economic activities based in rural areas and then becomes the basis for active (and productive) participation for the majority of the population who in fact depend on agricultural activities to be involved. Thus, in national development activities, both socially, economically, and politically.

Harmonization of Human Life with God

The universe with all its contents is a gift created by God and can be used by humans for life. Humans not only take advantage of all of God's creations, but humans are obliged to maintain and protect all-natural resources in order to avoid damage. In a society in Indonesia, harmonization of human life with God There is local wisdom, in the realm of human relations with God it appears in various teachings (piwulang), advice (pitutur), prohibitions (wewaler) that exist in religious and moral norms (Sulastriyono, 2009) Harmonization of the relationship between humans and God is the ideal basis and moral teachings in the use of space with all-natural resources in it should be based on the belief that, Happiness in life can be achieved if it is based on harmony, harmony, good balance in human life as a person, between humans and humans, between humans and nature, and between humans and God Almighty.

Harmonization of Human Life with Humans

Harmonization of human life with humans as local wisdom in the realm of human relations impacts ideas/ideas/norms of human life in society, both through experience and observation, to solve various community problems. Noble values that live in the community are local wisdom. In general, the meaning of local wisdom can be understood as a local idea, has a wise character, as something good, and is followed and obeyed by the community. Developers of relevant and contextual local wisdom have an important meaning for the development of a nation, especially when viewed from the point of view of cultural resilience and having an important meaning for the identity of the region itself. Without local government and views and containing the government is just an "anecdote". So it will take some time before local knowledge systems, and participatory approaches can really be accepted and recognized. Nevertheless, it seems that both systems should be the main guideline in resource and environmental management.

Harmonization of human life with the environment

Local wisdom in the realm of human relations with nature can be seen in various types of human activities in social life, such as cultural rituals, mutual cooperation, and deliberation. Likewise, local wisdom has a relationship with the environment. Environmental philosophy is not just a scientific study. Not just an ecology, the science of the environment. as a philosophy, environmental philosophy includes two sides that are closely related to each other, which Arne Naess formulated as ecosophy. By ecosophy, It is interpreted that the philosophy of the environment is nothing but wisdom about the environment, about the whole ecosystem.

On the one hand, there is a meaning of study in the form of questions and continuous searches, but on the other hand, there is the meaning of truth or wisdom about the whole ecosystem. The wisdom that comes from the truth of rice, in turn, functions to guide certain behavior patterns in line with the truth in maintaining and caring for the universe, where all living things live. So ecosophy is an environmental philosophy that contains the notion of wisdom to understand nature as a home and wisdom in guiding naturally how to arrange a house to be livable and be a supporter while enabling life to develop in it. Thus, the environment is not just a science but wisdom at the same time.

Conclusion

The philosophical of the Tri Hita Karana concept in land acquisition for development for the public interest to realize the welfare of the community and greatly affect the relationship between land and humans have an inseparable relationship, namely social relations, emotional relationships, and spiritual relationships which are reflected in the Religious Communalistic principles contained in Law Number 5 of 1960 concerning Basic Agrarian Provisions. The close relationship between land and natural resources with humans can be seen from the religious perspective, the view of customary law, and the environmental law approach (egocentric, anthropocentric, and ecocentric). Human access to land and natural resources needs to be guaranteed through legal instruments that refer to and are based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the meaning, nature, and philosophy contained in Pancasila must be reflected in these laws and regulations and can synergize in the derivation of government regulations, both central and regional, which are based on and have a hierarchy of local wisdom that is synergistic in the context of harmonization of the community and its welfare in the land acquisition principles contained in the legislation.

The issuance of the Governor of Bali Province Regulation on the Law of the Republic of Indonesia, Number 2 of 2012 concerning Land Procurement for Development in the Public Interest in the context of the Implementation of National Strategic Projects, can be welcomed by the regions, especially the Bali region to issue derivative regulations in the form of Governor Regulations which are based on and have the philosophical of Tri Hita Karana in Land Procurement for Development in the Public Interest in the framework of the Implementation of National Strategic Projects as the foundation and footing for the people of Indonesia and the State to manage natural resources or agrarian resources to realize people's welfare.

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