LAND DISPUTE SETTLEMENT POST LAW NO. 2 OF 2012; GLAGAH VILLAGE CASE STUDY RELATED TO NYIA AIRPORT

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Abstract

The location for the New Yogyakarta International Airport (NYIA) construction involved in land disputes during the land acquisition process. The land acquisition will always lead to disputes or conflicts with the affected people. It is even more complicated if, in the development process, the ruling elite intervenes, external forces outside the local community that are not directly related to the development. This article deals with the question of the government's public perceptions of the legal polemic of land dispute settlement based on Law No.2 of 2012, and concentrates to examine a new model of land dispute resolution from the perspective of affected communities against NYIA. This research is normative-empirical based on primary and secondary data, namely a literature study, field study, using purposive sampling with interviews, FGD, observation, and qualitative descriptive analysis. The result showed the failure of formal litigation and non-litigation approaches offered by Law No.2 of 2012 to resolve the disputes fairly. Village discussions based on local wisdom as a new model for equitable land dispute resolution needs a political review of Law No. 2 of 2012. The new paradigm of agrarian reform must be based on customary law and local wisdom values in the 1945 Constitution and the Agrarian Law. Given recent controversies concerning land disputes, a law on reform and structuring the national agrarian structure, Agrarian conflict resolution law, and law of natural resources management for the community are urgently needed.

Keywords: Law No.2 of 2012, Land Dispute, Resolution.

A. Introduction

Conflict is inherent nature in people's lives, this is the reality that cannot be avoided nor escaped and will always continue to happen.¹ Since ancient times, land has always been a source of dispute or conflict and not infrequently caused casualties. As a social phenomenon, agrarian disputes or conflicts are a process of interaction between two or more people or groups who each fight for their interests over the same object, namely land and other objects related to land. The configuration of the conflict or agrarian dispute faced by the community is more or less related to existing agrarian relations, non-agricultural factors, and the policy approach applied at a certain time.²

¹ Soni Akhmad Nulhaqim et al., "Konflik Sosial Di Kampung Nelayan: Studi Kasus Di Pantai Utara Kota Cirebon, Jawa Barat," *Sosio Konsepsia* 6, no. 2 (2017): 76, <https://doi.org/10.33007/ska.v6i2.677>.

² Gunawan Wiradi, "Kebijakan Agraria/Pertanahan Yang Berorientasi Kerakyatan Dan Berkeadilan," in *Seminar Nasional Peranakan*, 1999, 35.

The land acquisition will always lead to disputes or conflicts with the affected people. It is even more complicated if, in the development process, the ruling elite intervenes, external forces outside the local community that are not directly related to the development in question-related to the construction of NYIA Airport.

The location for the New Yogyakarta International Airport (NYIA) construction is in Temon District, Kulon Progo Regency, Yogyakarta Special Region. The central government has planned the selection of this location in the Master Plan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI) 2011-2025 and the Regional Spatial Planning (RTRW) policy for the Kulon Progo Regency for 2012-2032. Temon District has an area of 3,629.09 hectares or only 6.19 per cent of the total area of Kulon Progo Regency. It consists of 15 villages. The villages included in the construction site of the NYIA Airport, namely five villages located in the Temon District area, include Glagah Village, Palihan Village, Sindutan Village, Jangkarana Village, and Kebonrejo Village.³

Based on BPS Kulonprogo 2018 statistical data, of the total 645.63 hectares of land required for airport construction, as many as 603.94 hectares of the land area is the administrative area of Glagah Village. Galaga Village is one of the villages affected by the airport construction, which was involved in land disputes during the land acquisition process, including land with the status of Pakualaman Ground. When the land acquisition process for airport construction began, affected residents were asked to negotiate, especially the promise to open new jobs and the impact of improving welfare for residents in the airport circle if the airport was already operating. Anticipating the possibility of conflict or land disputes, talks between the government, Angkasa Pura I and affected residents are still stalemate. The government always refers to a legal-positivistic approach (Law No.2 of 2012), litigative and formal-structural (top-down). Meanwhile, affected residents prefer a land dispute resolution model using a non-formal and non-litigation approach based on local wisdom values.⁴

The main livelihoods of Glagah Village residents are farmers, ranchers, farm labourers, construction workers, fishermen, and other non-formal sectors. Most of the affected residents lack legal knowledge about the model of land dispute resolution due to development. The consignment or land compensation money entrusted unilaterally by the government to the local District Court if an objection seems to impose their will. It is difficult for the affected residents to accept. The community wants the rights that have been violated to be fulfilled properly and fairly but do not have the power and bargaining position to fight for them due to the limited legal regime and lack of legal knowledge of their rights guaranteed in the constitution.⁵

Puro Pakualaman party has at least received compensation for the land with the status of Pakualaman Ground which was also affected, Rp. 727.000.000.000 (seven hundred and twenty-seven billion rupiah). However, compensation for Glagah Village residents, most farmers on Pakualaman Ground, has not been properly accommodated. This includes the option of an economic empowerment program and business reorientation after the existence of the NYIA Airport. Usually, in dealing with cases of agrarian conflict, the owners of power and policy-makers at the regional level have more or less the same character behavior, which tends to win on their own and sacrifice the community's rights.⁶ The cheapest and easiest way to do this is to pressure residents who fight against government policies that are pro-investor and somewhat ignore people's ownership rights to land. This character starts from those who

³ BPS, "Statistical Data," The Central Bureau of Statistics of Kulonprogo Regency, 2020.

⁴ Anang Zakaria, "Para Srikandi Penjaga Bumi," Lokadata, 2016, <https://lokadata.id/artikel/para-srikandi-penjaga-bumi>.

⁵ Yanuar H, "Bagaimana Nasib Penggarap Lahan Bandara Kulon Progo?," Liputan6, 2016, <https://www.liputan6.com/regional/read/2602655/bagaimana-nasib-penggarap-lahan-bandara-kulon-progo>.

⁶ Yerrico Kasworo, "Reforma Agraria Kini Dan Nanti," *RechtsVinding* 7, no. 2 (2018): 1–5.

ignore or delay settlements to those who take an arrogant, repressive approach to power, and oppress people's rights, especially the marginalized groups. As a result, residents lose their land and sources of life, their villages are evicted, their environment is damaged/polluted, and the government supports more than that, horizontal conflicts between communities and capitalists.

Land disputes or conflicts arise when residents, especially farmers, have no connection with the elements of power above them. When the farmer has no alliance anywhere, his position becomes weak. Disputes or conflicts that arise can almost always be muted and prevented by power to not become widespread. Disputes are universal legal phenomena that can occur anywhere and anytime because they are not bound by space and time. As a legal phenomenon, every dispute requires settlement action, and there is no dispute without a resolution.⁷ In the current reform era, phenomena such as the above are still widely practiced by hiding behind several juridical instruments, one of which is the existence of Law Number 2 of 2012 concerning Land Procurement for Public Interest. The government considers the presence of this legal product as an appropriate juridical tool to accelerate the pace of national development in the public interest. The government argues that investors, especially foreign parties, lack interest, to invest in the country because national legal protection is still weak. It has an impact on the bottleneck of national economic growth.⁸

There are still affected residents who continue to reject airport construction and the tendency to approach problem-solving by prioritizing positive law. This indicates that the dispute resolution carried out by the government and Angkasa Pura I has not fully reflected a sense of social justice and benefits for affected residents.⁹ Some experts consider that the use of Law No. 2 of 2012 as the main instrument in land dispute resolution is contrary to the Basic Agrarian Law or *Undang-Undang Pokok Agraria* (UUPA). The mechanism should be through the revocation of rights. Revocation of land rights cannot be carried out easily, while consignment can be carried out through the local district court. The government chooses an easy and short path in the transfer of land rights so that it is very vulnerable to the practice of abuse of power for affected residents.¹⁰

There are three problems studied in this study, namely: first, how is the model of land dispute resolution from the perspective of Law No. 2 of 2012?; second, what is the public's perception regarding the settlement of land disputes used by the government so far; and third, how is the legal policy design related to the new model of land dispute resolution due to development from the perspective of the affected community? The type of research is normative-empirical to prove the effectiveness of applying legal norms in society, using a statutory approach, analytical approach, and case approach.¹¹ Includes library research to identify and analyze secondary data (primary, secondary and tertiary legal materials). Then, primary data retrieval on several sources by purposive sampling, through observation and

⁷ Mochamad Munir, "Penggunaan Pengadilan Negeri Sebagai Lembaga Untuk Menyelesaikan Sengketa Dalam Masyarakat: Kasus Penyelesaian Sengketa Yang Berkaitan Dengan Tanah Dalam Masyarakat Di Kabupaten Bangkalan Madura" (Universitas Airlangga, 1997): 17, <http://etd.repository.ugm.ac.id/penelitian/detail/12968>.

⁸ David J. White et al., "The Water-Energy-Food Nexus in East Asia: A Tele-Connected Value Chain Analysis Using Inter-Regional Input-Output Analysis," *Applied Energy* 210 (2018): 1, <https://doi.org/10.1016/j.apenergy.2017.05.159>.

⁹ Ristu Hanafi, "Komnas HAM Datangi Rumah Warga Penolak Bandara Kulon Progo," Detik News, 2017, <https://news.detik.com/berita-jawa-tengah/d-3772046/komnas-ham-datangi-rumah-warga-penolak-bandara-kulon-progo>.

¹⁰ Aristya Windiana Pamuncak, "Perbandingan Ganti Rugi Dan Mekanisme Peralihan Hak Menurut Peraturan Presiden Nomor 65 Tahun 2006 Dan Undang-Undang Nomor 2 Tahun 2012," *Jurnal Law and Justice* 1, no. 1 (2016): 1, <https://doi.org/10.23917/laj.v1i1.2699>.

¹¹ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Surabaya: Bayumedia Publishing, 2005): 1-413.

interviews. Finally, descriptive-qualitative data analysis.¹² Some data and facts that have been collected will be identified, systematized, display data, then draw conclusions and recommendations. To maintain consistency in the data analysis structure, the thinking process used is deductive to inductive. The accuracy of understanding (*subtily itellegendi*) and translation accuracy (*subtily explicandi*) are very relevant to law.¹³

B. Discussion

1. Formal Non-Litigation and Litigation Models and Formalities

Agrarian reform is a policy of restructuring the structure of control, ownership, use, and utilization of land that is more equitable through asset management and structuring access for the prosperity of the people.¹⁴ Agrarian reform starts in the 2015-2019 RPJMN *Juncto* Presidential Decree No. 45 of 2016 on RKP 2017.¹⁵ Finally, the issuance of Presidential Decree No. 86 of 2018 concerning Agrarian Reform. Empirically, agrarian conflicts and disputes continue to this day. According to the Presidential Regulation on Agrarian Reform (No. 86 of 2018) agrarian conflict, is a form of accumulation of agrarian disputes between individuals, groups, organizations, legal entities, or institutions that have a tendency or have had a wide impact socially, politically, economically, defense, and cultural.¹⁶ The land dispute experienced by residents affected by the construction of the NYIA-Kulonprogo Airport is included in the category of agrarian conflict because it does not only involve the economic value of the land. Still, it extends to include social, economic and cultural aspects and even religion-supernatural.

Various agrarian (land) disputes or conflicts that occur can be understood as a process of accumulation of production factors, which in this case can be seen as follows:¹⁷

- a. Disputes or conflicts occur in the context of the struggle for agrarian resources. In this agrarian dispute or conflict, what is happening is not a problem of scarcity of land resources but the struggle for agricultural resources in the form of massive expansion by investors to control agrarian resources previously controlled by the people.
- b. Disputes or conflicts occur in the context of coercion on certain commodities. The coercion to plant certain commodities has resulted in land conflicts. Land conflicts arise in the agricultural sector, especially the plantation sub-sector, due to the determination of commodities intended to encourage export needs.
- c. Disputes or conflicts occur in the context of a floating mass.

The terms dispute and conflict are often used as synonyms and are considered to have the same meaning. However, the two terms have different characteristics. Not all conflicts lead to disputes. On the contrary, every dispute is a conflict. Kovach said conflict comes from the Latin *con* (together) and *fligere* (to strike).¹⁸ Black states that a dispute is a conflict or

¹² Jujun S. Suriasumantri, *Ilmu Dalam Perspektif Moral, Sosial, Dan Politik. Sebuah Dialog Tentang Dunia Keilmuan Dewasa Ini* (Jakarta: Gramedia, 1986): 61-62.

¹³ Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2004): 164; Soerjono Soekanto explained explicitly that the descriptive-qualitative technique is a form of data analysis that has been successfully obtained or collected based on the literature study, which will then be elaborated and analyzed carefully, systematically while still paying attention to data authentication and the significance of correlation with the problems being studied. Read; Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 1986).

¹⁴ Fatimah, "Reforma Agraria Dalam Konteks Peningkatan Akses Kaum Tani Miskin Terhadap Penguasaan Tanah Di Indonesia," *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 191–203.

¹⁵ Presidential Regulation Number 45 of 2016 Concerning Government Work Plans (RKP) (2016).

¹⁶ Presidential Regulation No. 86 of 2018 Concerning Agrarian Reform (2018).

¹⁷ Endang Suhendar and Yohana Budi Winarni, *Petani Dan Konflik Agraria* (Bandung: Akatiga, 1997): 178.

¹⁸ Abu Rohman, *Paradigma Resolusi Konflik Agraria* (Semarang: Walisongo Press, 2008): 57.

controversy, a conflict regarding a claim/right, a statement about a right, a claim on the one hand versus another party, matters relating to the law. So conflict is as an encounter with arms, a fight, a battle, a prolonged struggle. This definition explains that conflict is a human struggle involving differences in opposing principles, statements and arguments.¹⁹

There are two models of land dispute resolution regulated in Law No. 2 of 2012, namely through the courts or commonly called the litigation route and the out-of-court or non-litigation path.²⁰ These two models are run rigidly and seem a mere formality. This happens because the emphasis on land dispute resolution offered in this law can be seen from the main choice of the litigation flow in question: purely civil and administrative aspects. The *quo* law only regulates land compensation schemes, while the settlement model in a criminal dispute is not regulated. The *quo* Law should also regulate normative clauses related to land dispute settlement schemes if in the practice of compensation there are elements of extortion, abuse of authority by officials and even other coercive acts involving state officials.

In the provisions of Article 1 paragraph (10) of Law No. 2 of 2002, compensation is a proper and fair compensation to the rightful party in the land acquisition process involving the land agency, and the Appraisal team is regulated in the law. The Land Agency determines the Appraiser following the provisions of the legislation. The Land Agency announces the Appraiser who has been appointed as referred to in paragraph (1) to assess the Land Procurement Object. The amount of the compensation value determined by the Appraisal Team is carried out in parcels per plot of land, which includes: (1) Land; (2) above ground and underground space; (3) Buildings; (4) Plants; (5) Objects related to land; and/or (6) other forms of loss that can be assessed objectively.²¹

In determining the amount of compensation, the affected people are still involved even though they are not members of the Assessment Team. The consensus deliberation process remains open, but the deadline is very limited. The provisions of Article 37 paragraph (1) of Law No. 2 of 2002 confirm that the land agency shall conduct deliberation with the Entitled party within a maximum period of 30 working days after the appraisal results from the Appraiser are submitted to the Land Agency. Clause 38 of the *quo* law confirms that the litigation process or court process is an "*ultimum remedium*" if an agreement is not reached between the affected residents and the government represented by the land appraisal team with the following procedure:

1. Suppose there is no agreement regarding the form and/or amount of compensation. In that case, the Entitled Party may file an objection to the local district court within a maximum of 14 working days after the deliberation on the determination of compensation.
2. The district court decides the form and/or amount of compensation within a maximum period of 30 working days from receiving the objection.
3. Parties who object to the district court's decision as referred to in paragraph (2) within a maximum period of 14 working days may file an appeal to the Supreme Court.
4. The Supreme Court is obliged to give a decision within 30 working days from the receipt of the cassation request.
5. The district court/Supreme Court decision that has obtained legal force remains the basis for payment of compensation to the party who filed an objection.

¹⁹ Muhammad Galang Asmara, Mr. Arba, and Yanis Maladi, "Penyelesaian Konflik Pertanahan Berbasis Nilai-Nilai Kearifan Lokal Di Nusa Tenggara Barat," *Mimbar Hukum* 22, no. 1 (2012): 1–17, <https://doi.org/10.22146/jmh.16215>.

²⁰ Muhamad Rasyad, "Pembuatan Akta Perdamaian Dalam Penyelesaian Sengketa Tanah Ulayat Melalui Notaris Dikabupaten Agam," *Soumatara Law Review* 2, no. 1 (2019): 136, <https://doi.org/10.22216/soumlaw.v2i1.3569>.

²¹ Law of the Republic of Indonesia No. 2 of 2020 Concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or In Facing Threats That Endanger the National Economy (2020).

Suppose a citizen does not agree or reject the form and/or amount of compensation but does not file an objection within the time referred in Article 38 paragraph (1) of the *quo* law. In that case, the Entitled party is deemed to have accepted the form and amount of compensation. Losses as referred to in Article 37 paragraph (1). Custody of Compensation is also intended to be carried out against: First, the party entitled to receive compensation is unknown. Second, about the object of land acquisition that will be given compensation in the status of (1) being the object of a court case; (2) ownership is still disputed; (3) be confiscated by the competent authority. Or it could be an object in the form of land status, which is a guarantee at the bank. Suppose an Entitled Party refuses the form and/or amount of compensation based on the results of the said deliberation, or the decision of the district court/Supreme Court. The amount of compensation is sufficient to be deposited in the local District Court. At the time of implementing the provision of Compensation and Waiver of Rights, it has been implemented. Or, the process of granting compensation has been deposited in the district court, and then the ownership of Land Rights of the Entitled Party will be nullified. Not only that, the evidence of his rights is declared invalid, and the land automatically becomes land that is directly controlled by the state.

In principle, all types of agrarian conflicts arise due to incompatibility or gaps related to agrarian resources, in control, allocation, perception and conception, and conflicting laws and policies. Understanding agrarian conflicts must be aware that the land is a vital natural resource, which underlies almost all aspects of human life. The land is an asset and the basis for the attainment of economic, social, and political power. Manipulative and exploitative conditions in the historical context of the existence of the Indonesian nation have surfaced since the Old Order regime came to power.²²

2. Perception of Affected Communities

a. Discriminatory and Harmful to Citizens

Dispute or conflict is a situation in which two or more people are openly involved in the conflict. Theoretically, it can be divided into two, namely, conflict of interest and claims of rights. Merrills tends to use the term dispute to mean “a specific dispute related to legal facts or policies in which two parties face each other between the claimant and the objector”.²³ In the perspective of Human Rights, to minimize agrarian conflicts, land acquisition for development in the public interest follows the principles.²⁴ Meanwhile, the results of Sulastriono's research conclude, there are several dispute resolution options, including land disputes, namely:²⁵

1. Lumping it, i.e. just ignoring the dispute and assuming it doesn't need to be extended.
2. Avoidance, namely the party who feels aggrieved chooses not to be in contact with the adverse party anymore
3. Coercion, namely, one party imposes a solution on the other party.
4. Negotiation, namely, the two parties facing each other are the decision-makers.
5. Mediation, namely, there is a third party who helps the two disputing parties to find a compromise.

²² Gunawan Wiradi, *Reforma Agraria : Perjalanan Yang Belum Berakhir*, ed. Noer Fauzi (Bandung: KPA, SAINS dan Akatiga, 2009): 172.

²³ Asmara, Arba, and Maladi, “Penyelesaian Konflik Pertanahan Berbasis Nilai-Nilai Kearifan Lokal Di Nusa Tenggara Barat.”

²⁴ Hamdi, “Penyelesaian Sengketa Penetapan Ganti Rugi Dalam Pengadaan Tanah Untuk Pembangunan Kepentingan Umum (Kajian Terhadap Undang-Undang Nomor 2 Tahun 2012),” *IUS Kajian Hukum Dan Keadilan* 2, no. 4 (2014): 78–104.

²⁵ Sulastriono, “Sengketa Penguasaan Tanah Timbul Dan Proses Penyelesaiannya” (Universitas Indonesia, 1997): 47-49.

6. Arbitration, in which both parties ask a third party, namely the Arbitrator, to resolve the dispute, and from the beginning, they agreed to accept any decision from the arbitrator.
7. Judiciary (adjudication) is a third party who has the authority to interfere in matters (convictions and executions) regardless of the parties' wishes.

If you pay attention to the normative provisions related to the process of compensation for land and related to the land conflict at the Yogyakarta NYIA Airport experienced by the residents of Glagah-Kulonprogo Village, then at least it is illustrated in the summary of the perceptions of the affected residents as follows:²⁶

- a. The assessment of the object of land acquisition does not involve the affected community as the holder of the land rights. The government only monopolizes the competence of the appraisal process for the object of land acquisition through the national land agency by forming an Assessment Team consisting of elements from the relevant government agencies. Although the law does not explicitly regulate it, citizens still want their representation to fight for their rights in a just manner.
- b. Residents are of the view that the compensation process in the form of revocation of land rights which are used as objects of development by the government, is also very unfair and ignores the principles of land acquisition for the public interest as stipulated in Law No. 2 of 2012 includes the principle of humanity²⁷, principle²⁸, certainty²⁹, justice³⁰, and consensus.³¹
- c. In the view of the residents, although there is an open mechanism for deliberation for consensus with the landowners (community) between the governments represented by the land agency or *Badan Pertanahan Nasional* (BPN). However, the period given to carry out deliberation is very limited, which is only a maximum of 30 working days since the assessment results from the Appraisal Team are submitted to the Land Agency to determine the form and/or amount of compensation. Moreover, the time interval related to the mechanism for filing cases is very short. Even if the deliberation process fails, the community (landowner) can file an objection to the local District Court within a maximum of 14 working days. If they are not satisfied, they can still appeal to the Supreme Court of the Republic of Indonesia within the same period. But there is no guarantee for the people who own land rights to get proper and fair compensation.
- d. Regarding the option of settlement through the courts or litigation as regulated by the *quo* Law, the affected residents still argue that they do not provide a sense of justice. The government argues that this step is solely "for the sake of the law," as stated in Article 39 above.

²⁶ A total of ten respondents or participants who have affected residents in Glagah Village, Temon-Kulonprogo District, DIY who are also victims or involved in land disputes related to the construction of the NYIA Airport generally have relatively the same views and answers as described above. July 2020.

²⁷ Law of the Republic of Indonesia Number 2 of 2012 Concerning Land Procurement for Development in the Public Interest. Article 2 letter states that what is meant by "humanitarian principles" is that Land Procurement must provide proportional protection and respect for human rights, dignity and worth of every citizen and resident of Indonesia.

²⁸ Article 2 Letter c states that what is meant by the "principle of benefit" is that the results of Land Procurement can provide broad benefits for the interests of the community, nation and state

²⁹ Letter b says that what is meant by "principle of justice" is to provide a guarantee of proper compensation to the Entitled Party in the Land Procurement process so that they get the opportunity to be able to live a better life.

³⁰ Letter d says that what is meant by "principle of certainty" is to provide legal certainty of the availability of land in the Land Procurement process for development and to provide guarantees to the Entitled Party to obtain appropriate compensation

³¹ Letter f says that what is meant by the "principle of agreement" is that the Land Procurement process is carried out by deliberation of the parties without the element of coercion to obtain a mutual agreement.

- e. In reality, the people (landowners) who refuse the form and/or amount of compensation do not object to the legal remedies. Then they are automatically deemed to have accepted the form and amount of compensation determined by the government.
- f. For the community (landowner) who refuses the form and/or amount of compensation based on the results of deliberation or the decision of the District Court/Supreme Court. The government simply entrusts the value of the compensation unilaterally determined to the local District Court without considering whether the amount of the compensation has been following the wishes or agreements of the community members (landowners).³²

Affected residents are increasingly losing confidence in the effectiveness of land dispute resolution, which only relies on the compensation scheme version of Law No. 2 of 2012. The offer for the land dispute settlement process in this law only benefits developers or investors. The aggregation of interests of victims of the construction of the NYIA Airport is not accommodated in the *quo* law. Such a perception is quite legally reasonable. The analysis results show that the government is increasingly ignoring the principles of land acquisition for the public interest as enshrined in Law No. 2 of 2012 by confirming the compensation deposit mechanism. Article 42 above is also carried out against: First, the whereabouts of the party entitled to receive compensation is unknown. Second, the object of land acquisition that will be given compensation in the form of; (a) being the object of a court case; (b) ownership is still disputed; (c) be confiscated by the competent authority, or (d) become collateral in the bank.

The state is increasingly undemocratic by saying that, at the time of the implementation of the provision of compensation and relinquishment of land rights as referred to in Article 41 paragraph (2) letter a has been implemented or the provision of compensation has been deposited in the district court as referred to in Article 42 paragraph (1), ownership of land rights of the party entitled to be nullified and the evidence of the right is declared invalid and the land becomes land that is directly controlled by the state.³³

It is undeniable that economically, the NYIA Kulonprogo Airport construction project, as part of efforts to improve the quality of life and welfare of the affected communities, is the main output. However, further, it is undeniable that there have been deviations and disorientation from the original goal. The economic goals and interests of development actors to obtain the maximum profit have become the real goal by exploiting the weaknesses of several government regulations and policies. In this context, the most disadvantaged positions are the affected people and the marginalized groups.

Affected residents, who should be able to enjoy the results of the construction of NYIA Airport properly, are simply taken away by the oligarchic practice of land tenure as described above. In this perspective, the paradigm that must be used in revising Law No. 2 of 2012 is the abolition of the practice of inequality in the structure of control and management, the use of land by the government against the people who tend to be sacrificed with the slogan of development for the sake of the public interest. It is time for the legal politics of national

³² Based on the results of interviews with the former Glagah Village Head and several participants, it was found that, as of Friday, July 20 2018, the process of bolting or land acquisition for the construction of NYIA Airport (New Yogyakarta International Airport) located in Temon Kulon Progo District was declared complete. However, there are still some residents who persist and still refuse the airport construction because they are not satisfied with the proper compensation process, according to the affected residents. However, the government continues to pre-prepare for the construction of the NYIA Airport. The residents, especially in Glagah Village and other affected villages who refuse, are welcome to take the compensation money that has been deposited at the Wates District Court (on consignment). Also, pay attention to the provisions of Article 42 and its explanation in Law no. 2 the Year 2012.

³³ Pay attention to Article 43 and its explanation in the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

agrarian reform to be in accordance with the spirit of Article 33 of the 1945 Constitution and the UUPA for the use of land with social justice for all Indonesian citizens.

b. Repressive Natured Law

Actually, the Constitutional Court through Decision No. 50/PUU-X/2012, defines State Controlling Rights (HMN) as the state's authority in managing natural resources to make policies (*beleid*), and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for the greatest prosperity of the people. This concept is also found in several previous court decisions.³⁴ What needs to be emphasized is that the right to control (*beheerrecht*) is not a kind of civil right, but a social obligation for people (*corpus*) to maintain and manage, which in the context of the state is called a public obligation (public *verplichting* or public responsibility).³⁵

Control by the state is not in the sense of possessing (*eigensdaad*) because if the right of state control is defined as *eigensdaad*, then there will be no guarantee for the achievement of the goal of the right of control, namely the greatest prosperity of the people. Philosophically, the UUPA still requires that any process of relinquishing or revoking land rights for development activities, especially on the pretext of "in the public interest", must not forget the nature of "social functions attached to each land". Thus, the concept of "State Controlling Rights" is significantly correlated with the "social function of land" in the UUPA. Control by the state, which is called the "State Controlling Right or *Hak Menguasai Negara* (HMN)", is a legal relationship between the state as the subject and the Agrarian Resources or *Sumber Daya Alam* (SDA)" as the object. This legal relationship gives birth to the 'right' to control natural resources, and at the same time, it is an 'obligation' for the state to ensure that it is used for the greatest prosperity of the people. Thus, HMN is an instrument, while its use for the welfare or prosperity of the people is the main objective.³⁶

In the normative clauses, especially those related to the compensation or revocation of land rights as regulated in Law No. 2 of 2012, it can be interpreted that the content is full of repressive elements from the authorities. Law No. 2 of 2012 is used as a juridical legitimacy tool for the government to accommodate government interests in land acquisition for development reasons and public interest. This law confirms that if the community as the property rights holder refuses the compensation offered by the government but does not file an objection to the District Court within 14 days, it automatically accepted the compensation determined by the government.³⁷

For affected residents, the presence of Law No. 2 of 2012 provides a massive opportunity for the private sector, together with the government, to purchase the release or revocation of land rights. Ironically, in addition to houses where residents live, most of the land affected is

³⁴ To be clearer, read the conception of the State's Right to Control (HMN) in several decisions of the Constitutional Court, namely: Constitutional Court, "Decision on Case Number 058-059-060-063/PUU-II/2004 Concerning Judicial Review of Law Number 7 the Year 2004 Concerning Water Resources." (2004); Constitutional Court, "Decision No. 36/PUU-X/2012 on Judicial Review of Law No. 22/2001 on Oil and Gas" (2012); Constitutional Court, "Decision on Case No. 001-021-022/PUU-I/2003 Regarding the Testing of Law Number 20 of 2002 Concerning Electricity and Court Decision Number 42/PUU-XII/ 2014" (2014).

³⁵ The concept of HMN is different from the domain principle in the conception of Colonial Land Law (Dutch), which is regulated in Article 1 AB 1870. The emphasis of the domain principle is that the state is an organization of public power and a civil legal entity that can be seen in the model of land ownership by the state, namely land, country domain. The Dutch colonial government controlled the land and managed forests and mines in the Dutch East Indies based on the domain principle.

³⁶ Iman Soetikinjo, *Politik Agraria Nasional, Hubungan Manusia Dengan Tanah Berdasarkan Pancasila* (Yogyakarta: Gadjah Mada University Press, 1990): 52-53.

³⁷ Read Article 39 and its explanation in the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

productive agricultural land or rice fields as the main livelihood and has been cultivated by farmers in Glagah Village for hundreds of years. This action contradicts the government's food security independence policy which strictly prohibits the conversion of agricultural food land for any development purposes. This is regulated in Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land and the UUPA.³⁸

The affected residents, who are primarily farmers, can only resign themselves to following the government's advice because it has been designated as the location for the construction of the NYIA Airport under the pretext of being in the public interest. Investors arrange the construction of airports, urban slum houses, public roads, toll roads, railways, reservoirs, dams, ports, and infrastructure that fall into the category of public interest. In items of public interest, it will lead to a tendency for repressive actions by state apparatus if the people do not want to give up their property rights as a reaction to demonstrations

The experienced empirical facts in Glagah Village were initially promised several non-formal sector jobs if the NYIA Airport was operational. Likewise, capital assistance for the small business sector has been worked on so far, including the promise to provide easy access, facilities, affairs, and opportunities for the Glagah Village community, significantly affected residents, to obtain SME stalls in the official airport area. It is the market mechanism that occurs. All processes to get employment and airport SME facilities are required to follow market logic with the principle of open and public competition. They are starting from recruiting workers categorized as low-skill, such as security (security guards), cleaning services, especially the opportunity to get a kiosk or SME outlet in the NYIA Airport area.³⁹

The affected people, mostly farmers and labourers, are required to follow an open recruitment system with several formal requirements that are difficult to meet by the affected residents, the majority of farmers and labourers. Most workers are categorized as low-skill dominated by people outside Glagah Village brought in by entrepreneurs who won the tender or the auction process. Affected residents have to be willing to be relocated to new settlements that have been provided by the government even though the feasibility of the facilities and land area along with new housing, according to affected residents, is still far from what was expected.⁴⁰

In this context, it can be said that the government imposes a unilateral will by violating the rules or principles related to procurement for the public interest itself, as stipulated in Article 2 of Law No. 2 of 2012. Suppose the holder of property rights to land refuses compensation in the compensation mechanism. The government simply entrusts the compensation value to the local District Court even though there is no agreement from the owner or holder of the land rights.

The formation of the land acquisition committee did not involve elements or components from community groups (community leaders and or representatives of affected community groups/victims). As a comparison, in past practice, although not mentioning the police or even the military as the land acquisition committee, these institutions often become government bulldozers in the land acquisition process, especially for the interests of investors in running

³⁸ Productive as agricultural land before. Facts on the ground show that there has been no comprehensive study of the risk of conversion of productive agricultural land owned by residents for the benefit of airport development. This includes the absence of productive agricultural land as new replacement land for the relocated residents. The provisions of Article 44 paragraph (3) of Law 41 of 2009 emphasize that a strategic feasibility study must first be carried out to convert an agricultural land. Moreover, a land conversion plan is prepared, the rights are freed from the owner, and replacement land is provided at least the same size. Read the provisions of Law Number 41 of 2009 concerning the Protection of Agricultural Land for Sustainable Food and the UUPA.

³⁹ It is processed from interviews with several participants as residents affected by the construction of the NYIA Kulonprogo Airport in July 2020.

⁴⁰ Interviews with several participants.

their business. Thus, it can potentially reduce people's opportunities to control and own land so that people cannot carry out production to improve their welfare.

c. Village Consultation Ideal Model for Land Dispute Resolution

Settlement of disputes or conflicts in simple community conditions is directed to folk institutions because traditional dispute or conflict resolution institutions are institutions that maintain order and restore magical balance in society. Meanwhile, conflicts or disputes in modern society, where social relations are more individualistic and oriented towards the market economy, tend to be resolved through dispute resolution institutions that refer to legalistic state institutions.⁴¹ Based on direct interviews in the field, residents of Glagah Village who were affected by the construction of the NYIA Airport prefer the land dispute resolution model using a non-litigation model, namely through the Sulastriyono forum.

"Village Consultation", instead of having to take the Court (litigation) route. This model is very rational and can be relied on as a model of legal policy to resolve conflicts or agrarian disputes in the future.⁴² Apart from being considered too long and cumbersome for the court bureaucracy or taking a long time, the non-litigation model guarantees more legal certainty and a sense of justice for the affected residents.⁴³ The dispute resolution model through the "Village Consultation" forum includes three stages that must be followed. It begins with deliberation to reach a consensus.⁴⁴ Then the negotiation process and finally the mediation process.

Apart from involving the disputing parties, all of these processes must also involve religious leaders, traditional leaders or community leaders, and village youth representatives as relevant social stakeholders. Parties' involvement as social stakeholders is a form of respect for every conflict or dispute that has been faced by the community so far. Their attitudes, character, advice, and example in the context of social-society relations are more heard, respected, and obeyed as unifying glue for citizens. The advice and arguments of these social stakeholders are more effective in resolving conflicts or disputes that arise than approaches by formal means such as courts and the application or threat of positive legal sanctions.⁴⁵ The significant contribution of these social stakeholders has been institutionalized as part of the cultural order of customary law, and the values of local wisdom of the community are preserved and practiced for generations.⁴⁶

The settlement of land disputes with the "Village Discussion" model is carried out in the following ways:⁴⁷

⁴¹ Asmara, Arba, and Maladi, "Penyelesaian Konflik Pertanahan Berbasis Nilai-Nilai Kearifan Lokal Di Nusa Tenggara Barat."

⁴² Benjamin L. Read and Ethan Michelson, "Village Dispute Mediation in China, 2002–10: An Enduring Institution amid Rural Change," *Asian Journal of Law and Society* 5, no. 2 (2018): 450, <https://doi.org/10.1017/als.2018.6>.

⁴³ I Nyoman Putu Budiarta, "The Existence of Pancasila as A Basic Rule Toward the Dispute Settlement of Complaint Offence Through Penal Mediation Outside the Court of Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 2 (2019): 1.

⁴⁴ Rusdin Alauddin, Husen Alting, and Andi Sumar Karman, "Strategic Model for Land Dispute Due to Nickel Mining Business in North Maluku Province," *International Joint Conference on Science and Technology* 2 (2019): 120.

⁴⁵ Faisal Santiago, "A Legal Perspective of the Law Enforcement of Land Dispute," *European Research Studies Journal* 20, no. 4B (2017): 580, <https://doi.org/10.35808/ersj/912>.

⁴⁶ Lutfi Rumkel, Belinda Sam, and M Chairul Basrun Umanailo, "Village Head Partnership, Village Consultative Body and Customary Institution in Village Development," *International Journal of Scientific & Technology Research* 8, no. 8 (2019): 1062, <https://doi.org/10.2139/ssrn.3461855>.

⁴⁷ The results of interviews with academics Prof. Jawahir Thontowi and Kamal Firdaus, a senior advocate and observer of the NYIA Kulonprogo Airport conflict.

1. In the initial step, the disputing parties, including village youth representatives, sit together in a "Village Conference" deliberation forum. This forum aims to reach a consensus on the appropriateness measures related to compensation worthy of acceptance by the village and affected residents while still prioritizing the principles of kinship, sincerity, justice, honesty and upholding the values of local wisdom.
2. If an agreement has been reached through a consensus deliberation forum, namely the "National Consultation" as referred to in point 1 above, then the next step is for the parties together with the social stakeholders to arrange a schedule for the negotiation process to determine more concretely, at least covering: First, the forms of compensation, whether sufficient in the form of money or compensation in other forms; Second, the amount of compensation that is appropriate for the affected people with the principle of sincerity and mutual benefit for both parties; Third, what is the appropriate mechanism for giving or compensation schemes;
3. At the last stage, a mediation process is carried out as the last step to reach a mutual agreement. At this stage, a Mediator Team is formed, involving representatives of religious leaders, traditional leaders or community leaders, Village Heads, and village youth representatives. This team is authorized to resolve and decide any disputes that arise. The mediation results are stated in a written statement as a form of mutual agreement "Development Discussion", and then signed by both parties, the witnesses and the mediator team.
4. Furthermore, the collective agreement results are submitted to the government authorizing institutions and the people's representative institutions (Village Consultative Body and DPRD) for follow-up. Previously, an official peace deed was done to have the power of authentication and evidence to be legally binding.

Agrarian conflicts or disputes involving many residents occur, with a pattern of conflict distribution that is almost evenly distributed in every village, as residents in Glagah Village, Temon-Kulonprogo District have experienced. The construction of the NYIA Airport has had a significant impact on the majority of agricultural land and residential areas in this village. It is difficult to find a way out of land disputes by relying solely on laws or cheerful legal instruments that do not compromise with the reality of human social life and local community customs.⁴⁸ For the people of Glagah Village who are still strong in the order of local wisdom values, all conflicts or land disputes can be resolved peacefully and without chaos, if there are no actions or unilateral efforts to impose their will from outside parties (investors). All problems can be elegantly and harmoniously resolved as long as traditional elders and community leaders are fully involved in the process of resolving any land disputes that arise.

The essence of law for affected residents must be moral and ethical, and it must provide social order, safety, and the welfare of the people.⁴⁹ In such a case, the non-litigation approach or Alternative Dispute Resolution (ADR) is more desirable for Glagah Village residents than

⁴⁸ As the recognition given by Paryoko and Rizal Apriansyah as residents affected by the construction of the NYIA Kulonprogo Airport, the interview was held on July 15, 2020.

⁴⁹ The results of an interview with Mr. Panti on July 15, 2020, as Carik Desa Glagah and at the same time one of the residents affected by the construction of the NYIA Kulonprogo Airport, who until now have not been satisfied with the promises of developers and the government in providing employment and providing an appropriate compensation process and fair. Like other affected residents who were successfully questioned. They have lost their houses due to being relocated. According to residents, these relocations are still far from suitable compared to their houses were before. In addition, the promise to employ affected residents at the airport location and provide capital assistance for small and medium enterprises (SMEs) has also not been fulfilled. What is even worse, the methods of resolving land disputes or agrarian conflicts that arise do not involve the representation of community leaders, a village youth, customs and local wisdom institutions that have been maintained for generations. The government continues to use the instrument of Law No. 2 of 2012 as the primary legal foundation without being burdened.

the Court method. Efforts to resolve disputes in land acquisition for public interest should be resolved out of court first in the form of negotiation, conciliation, mediation and arbitration, with or without the help of third parties.⁵⁰

Apart from that, development for the public interest has become the central icon that is always used to legalize eliminating, confiscating and eviction the ownership of customary community rights to land. The presence of the national defense law as the implementer of the UUPA, which regulates land use and designation, should provide protection and certainty for the rights of the people. But in the history of its development, it has always been pushed towards the interests of the capitalists and the legal products as well as being a juridical tool for rogue investors and local development actors, which also affects the rulers and elites at the local level. This is certainly not in line with the spirit of Article 33 of the 1945 Constitution and the Basic Agrarian Law (UUPA) Number 5 of 1960. The UUPA has a populist spirit and spirit that prioritizes social interests and the weak economic group. However, most of the current development policies still marginalize people's access and sovereignty over the sources of life on the land.

C. Conclusion

The litigation and non-litigation approaches in the perspective of Law No. 2 of 2012 are very rigid and formal in resolving land disputes at the Yogyakarta NYIA Airport experienced by residents of Glagah-Kulonprogo Village. Law No. 2 of 2012 is considered by residents to have a more repressive character because it places the function of land as an object of investment, economy and development alone and limits the space for community deliberation based on local wisdom in seeking justice and legal certainty. Land for the affected community is not only of economic value but is an identity for people's lives for generations. The choice of "Village Consultation" based on local wisdom is considered to guarantee more legal certainty and justice for affected residents than the rigid litigation and non-litigation model according to Law No. 2 of 2012. This model is very rational and can be relied on as a model of legal policy to resolve conflicts or agrarian disputes in the future. The dispute resolution model through the "Village Consultation" forum includes three stages that must be followed. It begins with deliberation to reach a consensus. Then the negotiation process and finally the mediation process.

To redesign legal policies related to agrarian reform, it is better if the DPR and the government immediately revoke or review Law No. 2 of 2012 and its implementing regulations. Some of the essential points of the revision of the law are: First; The model "Development Village based on local wisdom as a non-litigation approach with a pattern of deliberation, negotiation and mediation must be the main instrument rather than the court. Second, it is necessary to redefine the category of national development projects, which means "public interest", which is more equitable from the community's perspective. Third, there must be proportional space and time to hold consultations for affected residents in determining the feasibility of land compensation due to airport construction. Fourth, forming a land acquisition committee must involve representatives of affected people in a fair and non-discriminatory manner.

Ideally, three types of laws should be formed: First, the law on reforming and structuring the national agrarian structure. Second, Law on the settlement of agrarian conflicts or agrarian courts. Third, the law on the Utilization and Management of natural resources for the community, including indigenous peoples with their ulayat rights. Fourth, the existence of customary law and customary institutions must be included in the legal policy scheme of

⁵⁰ For comparison, read Urip Santoso, "Penyelesaian Sengketa Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Perspektif* 21, no. 3 (2016): 1–10.

agrarian reform in the future. In addition, a kind of independent state institution or a particular authority body is needed that is authorized to formulate the grand design of national agrarian reform policies. The paradigm of agrarian reform legal policy must be based on customary law and the values of local wisdom in each region as mandated by the 1945 Constitution and the spirit of the UUPA. The intended grand design must include a redistribution system, restructuring of control, management, and land utilization.

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