

Fungsi sosial hak atas tanah dalam pengadaan tanah untuk kepentingan umum = Social functions on land rights in respect to land procurement for public interest purposes.

Lieke Lianadevi Tukgali, author

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Abstrak

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Disertasi ini membahas mengenai fungsi sosial dalam pengadaan tanah untuk kepentingan umum. Asas fungsi sosial yang terdapat pada Pasal 6 Undang- Undang Nomor 5 Tahun 1960 (UUPA), yakni semua hak atas tanah mempunyai fungsi sosial, yang berarti bahwa hak atas tanah apapun yang ada pada seseorang tidaklah dapat dibenarkan, bahwa tanah tersebut dipergunakan semata-mata untuk kepentingan pribadi.

Tetapi tidak berarti bahwa kepentingan perseorangan akan terdesak sama sekali oleh kepentingan umum/kepentingan masyarakat.

Kepentingan masyarakat dan kepentingan perseorangan harus saling mengimbangi. Asas fungsi sosial ini tidak akan berubah, akan tetap saja. Namun penafsiran menjadi berubah-ubah tergantung pada kebijaksanaan pemerintah. Dalam perlindungan hukumnya, pengadaan tanah untuk kepentingan umum secara wajib telah ada yaitu dengan Undang-Undang Nomor 20 tahun 1961, namun secara sukarela hanya dalam bentuk Peraturan Presiden saja, yaitu terakhir dengan Peraturan Presiden Nomor 36 Tahun 2005 juncto Peraturan Presiden Nomor 65 Tahun 2006, yang tidak mempunyai kekuatan hukum. Namun Undang-Undang Nomor 20 Tahun 1961 digunakan hanya sekali saja, sedang selain ini tetap digunakan pengadaan tanah secara sukarela, walaupun pelaksanaannya secara wajib, yakni dengan musyawarah semu, dengan cara intimidasi.

Dengan teori Utilitarianisme Jeremy Bentham untuk kepastian hukum dengan memandang nilai kemanfaatan serta teori Utilitarianisme Jhering, penulis mencoba mencari jawaban fungsi sosial dalam pengadaan tanah untuk kepentingan umum, yakni keseimbangan antara kepentingan individu, kepentingan masyarakat dan kepentingan umum yang diselaraskan dalam fungsi sosial hak atas tanah.

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ABSTRACT

The following dissertation is outlining about the social functions in respect to land procurement for public interest purposes. The fundamental of social function in the Article 6 of Law no 5 of 1960 (UUPA), defines that all land rights have its social function, meaning that the rights of any lands which attached to individual shall be used for public interest, and shall not be used for individual interest. Such definition does not mean that the individual interest will be urged by the public interest. Each public and individual interest shall be well-balanced. Nevertheless, such fundamental will never be changed, and must be fixed no matter what, but the definition can be varied depending on the Government Policy. In legal protection context, the principle of procurement land for public interest purposes has already been formed and governed in the Law No. 20 of 1961, and lastly governed in the Presidential Regulation no.36 of 2005 juncto Presidential Regulation No.65 of 2006, which had no jurisdiction. However, The law no.20 of 1961 was only implemented once, apart from that, the

common procedure of procurement land still accomplished voluntarily by holding apparent conferences and discussions, and by conducting intimidation.

By considering the benefit value and applying Jeremy Bentham Utilitarianism theory to seek legal certainty, as well as applying Jhering Utilitarianism theory, the writer trying to find the answer of social functions in respect to land procurement for public interest purposes, that is to harmonize between individual and public interest in accordance to social functions itself.;The following dissertation is outlining about the social functions in respect to land procurement for public interest purposes. The fundamental of social function in the Article 6 of Law no 5 of 1960 (UUPA), defines that all land rights have its social function, meaning that the rights of any lands which attached to individual shall be used for public interest, and shall not be used for individual interest. Such

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