THE IMPORTANCE OF DEVELOPMENT PLANNING IN LAND ACQUISITION FOR PUBLIC INTEREST BASED ON LAND SAVING MODEL REGULATION

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Abstract

Land acquisition for public interest is a process that must be done by the government and local government in realizing the development of infrastructure that will support the economic growth and competitiveness of the nation. However, in practice there is a conflict of interest between the rightful party (landowner), the community with the government and the local government due to many factors which one of them is related to the non-establishment of development planning, as in the issuance of permits for housing construction around the airport that disserve residents of the housing. By using the doctrinal method and the concept of pengayoman and progressive law and also thickest version rule of law theory from Tamanaha, this paper offers land acquisition regulation for public interest based on land saving model which is based on the establishment of development planning system. Land saving model will be a saving of land owned by the government/local government in line with the development planning document to simplify the process of land acquisition for public interest. Development planning system which includes: long and medium term development planning and institution work planning have an important role in the actualization of this land saving model, because the development planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district will be the basis of land acquisition with this model. Through an established and sustainable development planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

Keywords: land, acquisition, planning, development, regulation.

A. Introduction

Development carried out by the state is basically done for the benefit of the nation with the greatest benefit to the welfare of the people. Development has a variety of forms and types, one of which is the development to meet the public

good or for public interests (public purpose). [1] The development of this model is basically done to accelerate the process of economic development.

The acceleration of economic development is an important issue that is a priority policy of the governments of countries in the world. With good economic development, a country will be able to demonstrate the existence and improve position bargaining against another country. Vice versa, the unstable economic development and slow would reduce the bargaining position of a country in the world. The dynamics of the world economy in recent years shows the progress of its own for the region. The emergence of China and India as new countries have good economic growth, so that the starting position is calculated as an influential country in the world. China and India have managed to build the acceleration of the economy with appropriate policies related to utilization of comparative resource (natural resources) and competitive resources (human resources). Indonesia as a sovereign country should also be able to overtake China and India in the context of building a significant economic acceleration. [2]

The advantage of Indonesia's resources to accelerate the process of economic development requires adequate infrastructure as its ingredients, in this context development is done by building a specific infrastructure aimed for the public interest. Infrastructure development for the public interest requires land as a place to be used for development, so it will be related to the mechanism of land acquisition for the public interest. [3]

Public land acquisition will be related to the development of the economic sector in a broad sense which of course the private sector also contributes to the expansion of its business. The private parties have an interest in the land acquisition because in reality they are in desperate need of infrastructure development such as roads, ports, airports and so forth both in terms of

[1] *Tim Penyusun, Naskah Akademik Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum* (Academic Manuscripts Act No. 2 of 2012 on Land acquisition for Development for Public Interest), DPR-RI, Jakarta, 2010, P 1.

[2] Ade Arif Firmansyah et all, Land Acquisition In Accelerating And Expansion Of Indonesia's Economic Development Program: A Review Of Law, Moral And Politic Relations, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 August 2015, ISSN 2289-1560, P.18.

[3] Ade Arif Firmansyah, Legal Protection Pattern of Indonesia's Land Acquisition Regulation: Towards The Thickest Version Rule Of Law, International Journal of Business, Economics and Law, Volume V Issue 4 December 2014, ISSN 2289-1552, P. 142.

investment and utilization. In addition to the interests of the government and the private sector, the wider community's interest in infrastructure development to facilitate life is also in the land acquisition process. However, other interests that should not be forgotten are the interests of those whose land is used (direct affected) and those affected (indirect affected) in infrastructure development for the public interest.

Although public land acquisition is currently designed to support economic growth and the nation's competitiveness. However, in the implementation there is a conflict of interest and conflict between the direct affected people, the community and the government and the local government, even give the negative impact to indirect affected due to many factors, one of which is related to the non-establishment of development planning documents. For example, airport expansion is linked to development planning aspects and residential development permit around it. Based on several studies conducted, the noise level of airport activity has caused various problems, ranging from decreased hearing levels to rising blood pressure of residents in the area around the airport. Some of the research that has been done and proved the problem are: [4]

1. Research in Neglasari and Selapang Jaya urban areas Tangerang, Banten, around Soekarno Hatta Airport. The number of respondents 150 people, from the results of the study known only 12 people (8%) respondents who did not experience communication disorders, the rest as many as 138 people (92%) have communication problems. [5]
2. Research conducted around Ahmad Yani Airport Semarang with the number of respondents 50 people. The result of the research shows the residential area around the Airport like Cakrawala II housing (56,58 dBA), Puspogiwang (56,77 dBA), Graha Padma I (65,87 dBA) and Graha Padma II (64,36 dBA) The quality standard threshold (55 dBA / Minister of Envoronmental Decision

[4] Ade Arif Firmansyah et all, Law Design Of Institutions Coordination As An Efforts To Harmonize Policy Housing Development Around The Airport In Indonesia, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 11, Issue 4 December 2016, ISSN 2289-1560, P.52-53.

[5] Arif Maskur, *Persepsi Masyarakat Mengenai Gangguan Non Auditory Terhadap Tingkat Kebisingan Di Kawasan Pemukiman Sekitar Bandara Internasional Soekarno-Hatta Pada Tahun 2012*, (Public Perception Regarding Non Auditory Disorder to Noise Level in Settlement Area Around Soekarno-Hatta International Airport In 2012) Thesis, Faculty of Public Health, University of Indonesia, 2012. P. 94.

No. 48 of 1996 on Noise Level Standards). Respondents The population around the airport influence the noise on the health of the body is generally hard to sleep the percentage (60%), followed by not able to sleep the percentage (18%), less hearing the percentage only (14%) do not use any tool percentage (100%), causing disturbed comfort. [6]

3. Research in the area around Ahmad Yani Airport Semarang, which is located in Cakrawala Housing (± 1000m) and Semarang Indah Housing (± 5000m). Total of respondents as a sample of 60 taken randomly. The noise measurements show that the Cakrawala housing has noise exposure above the noise level (NAB) level of 69 dBA (NAB 55dBA), while the Semarang Indah Housing has exposure noise below the NAB of 51 dBA. These results indicate that exposure to noise affects blood pressure (p = 0.00). The increase of respondent's blood pressure at Cakrawala Housing has higher percentage that is 83,3% for cystole blood pressure increase and 59,9% for diastole blood pressure increase compared with Semarang Indah Housing with percentage 69,9% for systole blood pressure increase and 49, 9% for increased diastolic blood pressure. Exposure to chronic noise due to flight activity has a significant effect on blood pressure. [7]

The reality of the problems that arise above is due to the absence of harmonization between the development planning aspect and the unstable model of land acquisition regulation for public interest which is currently in effect. This paper will further describe the importance of development planning document in the land saving model regulation offered as a solution in realizing the land acquisition for the public interest that is more friendly and minimize the conflict that synchronized with development planning document.

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[6] Mochamad Chaeran, *Kajian Kebisingan Akibat Aktifitas Di Bandara: Studi Kasus Bandara Ahmad Yani Semarang* (Assessment of Noise Due to Airport Activities: Case Study of Ahmad Yani Airport Semarang), Thesis, Magister of Environmental Science Diponegoro University, 2008, P. 69.

[7] Hani Afita, Poerwito dan Muhtarom, *Pengaruh Paparan Bising Menahun dari Aktivitas Penerbangan terhadap Tekanan Darah Studi Kasus: Kawasan Sekitar Bandar Udara Internasional Ahmad Yani Semarang* (The Influence of Noise Exposure from Flight Activities to Blood Pressure Case Study: Area Around Ahmad Yani International Airport Semarang), Journal of Medika Science, Vol. 5, No. 2, July-December 2013. P. 94.

B. Research Method

This research is done by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses a statutory approach and a conceptual approach. [8] The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis then concluded deductively.

C. Result and Discussion

The provision of the right to control of the state based on Article 33 paragraph (3) 1945 Indonesian Constitution underlies the philosophical side of the land acquisition for the public interest, [9] as its juridical side refers to Article 18 of the UUPA whose contents "For the public interest, including the interests of the nation and the State and the common interest of the people, land rights may be revoked, Compensate appropriately and in a manner regulated by law. "

Basically Land acquisition for public use can be done in three ways; First, land acquisition for public interests can be done by applying for the revocation of land title to the president. The provisions on the revocation of land rights are regulated in Law Number 20 of 1961 concerning the Revocation of Land and Property Rights Above, Government Regulation Number 39 of 1973 concerning the Stipulation of Indemnification by the Court of Appeal in relation to the Revocation of Land and Property Rights Objects Above, and Presidential Instruction No. 9 of 1973 on Guidelines for the Implementation of the Revocation of Land and Property Rights Above. Second, land acquisition for public interest can also be done by releasing land rights. The disposal of land rights is regulated in Law Number 2 Year 2012 on Land acquisition for Development for Public Interest whose implementation still refers to Presidential Regulation Number 36

[8] Peter Mahmud, *Penelitian Hukum* (Legal Research), Kencana Prenada, Jakarta, 2005, P xx.

[9] Since the Dutch colonial era in Indonesia, has been known the existence of public land procurement efforts that can be done by the Dutch colonial government. When it was known there was a procedure of revocation of rights and procedures for the separation of land rights separately. Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Building Political Law, Upholding the Constitution), RajaGrafindo Persada, Jakarta, 2010, P. 252.

Year 2005 on Land acquisition for Development Implementation for Public Interest and Presidential Regulation 65 Year 2006 regarding the Amendment Presidential Regulation No. 36/2005 on Land acquisition for the Implementation of Development for Public Interest, and Regulation of Head of National Land Agency 3 Year 2007 concerning Implementation of Presidential Regulation Number 36 Year 2005 concerning Land acquisition for Development Implementation for Public Interest as has been amended by Presidential Decree Number 65 Year 2006 concerning Amendment to Presidential Regulation No. 36/2005 concerning Land acquisition for the Implementation of Development for Public Interest. Third, the land acquisition for public interests can also be done by means of sale and purchase, exchange or other means agreed by both parties, provided that the required land area is not more than five hectare. [10] How to release land rights as regulated in Law no. 2 of 2012 tends to be more respectful of community's right to land than to the revocation of land rights. [11] However, public land acquisition is still a process in which there are mutually exclusive interests.

The intersection is evidenced by the large number of land cases. During the New Order period until 2001, there were 1,753 cases. Then in 2007 increased to as many as 2810 cases. [12] Data from BPN up to September 2013, the number of land cases reached 4,223 cases (land cases in general). The number of completed cases reached 2,014 cases spread across 33 provinces throughout Indonesia. This condition arises because the substantive regulation of land acquisition for the public interest is partial and the need of land acquisition is incidental so it is prone to conflict, so the character of the regulation needs to be improved to realize the legal condition which is really inherent to the needs of society.

[10] Ade Arif Firmansyah, *Pembaharuan Substansi Hukum Pengadaan Tanah yang Berkeadilan* (Renewal of Land acquisition Substance that Bring Justice), Kanun Jurnal Ilmu Hukum, No. 63, Th. XVI, August, 2014, P 330-331.

[11] Op, Cit, Ade Arif Firmansyah, Legal Protection Pattern..... P. 148.

[12] Yanto Sufriadi, *Penyebab Sengketa Pengadaan Tanah untuk Kepentingan Umum Studi Kasus Sengketa Pengadaan Tanah untuk Kepentingan Umum di Bengkulu* (Cause of Land Acquisition Dispute for Public Interest Case Study of Land acquisition Dispute for Public Interest in Bengkulu), Jurnal Hukum No. 1 Vol. 18 Januari 2011, P 44.

Nonet and Selznick[13] distinguish three basic modalities or "statements" concerning law and society: (1) law as servant of repressive power; (2) law as a separate institution capable of taming repression and protecting its integrity, and (3) law as facilitator of various responses to social needs and aspirations. The position of land acquisition regulation for public interest is currently at an autonomous level (as a separate institution capable of defusing repression and protecting its integrity) so that its legal substance needs to be upgraded in a more substantive sense of direction or rule of law. One such effort is by using land saving model regulation that is close to the nuance of the rule of law or substantive rule of law.

In relation to the rule of law, Hawke & Parpworth quotes Albert Von Dicey as expressing the content of the rule of law ie equality before the law, which essentially the actions of the government must be based on the law. The Rule of Law requires the recognition of the predominance of the regular law (as opposed to arbitrary or wide discretionary powers), equality before the law and that the British constitution is the product of the ordinary law. In essence, therefore, the Rule of Law requires that there should be government according to law and an avoidance of arbitrary action. [14]

Dicey's statement above, then elaborated by Tamanaha which divides the state of law revolves around three clusters of meaning: first, that the government is limited by law; Second, the legal state is legally understood; Third, rule-based arrangements, not people (rule of man). [15] Furthermore Tamanaha divides the rule of law into "the thinnest" which is a formal version of the rule of law and "the thickest" which is a substantive version of the rule of law. The thinnest formal version of the rule of law is the notion that law is the means by which the state conducts its affairs, “that whatever a government does, it should do through

[13] Philippe Nonet dan Philip Selznick, *Hukum Responsif*, translation from: Law and Society in Transition: Toward Responsive Law, Harper & Row, 1978. Translated by Raisul Muttaqien, Nusamedia, Bandung, 2008, P 18.

[14] Neil Hawke & Neil Parpworth, Introduction to Administrative Law, Cavendish Publishing (UK), London, 1998, P. 2.

[15] Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (Rule of Law that Bring Happines to the People), Genta Publishing-cet 2, Yogyakarta, 2009, P. 87-88.

laws.[16] The thickest substantive versions of the rule of law incorporate formal legality, individual rights, and democracy, but add a further qualitative dimension that might be roughly categorized under the label "social welfare rights."[17]

In line with the concept of The thickest substantive versions of the rule of law above, the current regulation of land acquisition for the public interest must move from a view to bringing about a shelter for society and its formation must be interpreted progressively for the benefit of the people. According to Arief Sidharta, Pancasila as a legal goal to manifest pengayoman, [18] to protect people passively by preventing arbitrary acts, and actively by creating a human condition that allows human society to take place fairly so that every human being gets the opportunity broad and equal to develop the full potential of his humanity. [19]

Likewise with the idea of progressive law, according to Satjipto Rahardjo[20] the idea of progressive law starts from the basic philosophical assumption that law is for man, not vice versa. Thus the existence of law is to serve and protect human beings, not the other way around. Law is regarded as an institution aimed at bringing people to a just, prosperous and happy life. Progressive law embraces a pro-justice legal ideology and a pro-people law. [21] The progressive legal character that requires the presence of law is associated with empowerment as its social goal, causing progressive law also close to the social engineering of Roscoe Pound. [22]

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[16] Brian Z. Tamanaha, On The Rule of Law, Cambridge University Press, The Edinburgh Building, 2004, P. 92.

[17] Ibid, P. 112.

[18] The word pengayoman was first introduced in the field of law by Sahardjo. According to Daniel S. Lev, in 1960 Sahardjo was replaced the blindfolded lady with scales by a stylized Banyan tree as Indonesia's symbol of justice, that inscribed with the Javanese word Pengajoman-protection and succor. It also represented a quickening of the process of transformation of the heritage of Dutch colonial law into Indonesian law. Daniel S. Lev, The Lady and the Banyan Tree: Civil-Law Change in Indonesia, The American Journal of Comparative Law, Vol. 14. No. 2 (spring, 1965). P. 282.

[19] Bernard Arief Sidharta, *Ilmu Hukum Indonesia, Upaya Pengembangan Ilmu Hukum Sistematik Yang Responsif Terhadap Perubahan Masyarakat* (Indonesian Jurisprudence, Efforts of Systematic Jurisprudence Development Responsive towards Community Change), Genta Publishing, Yogyakarta, 2013. P. 105.

[20] The idea of progressive law first appeared in 2002 through an article written by Satjipto Rahardjo on the Kompas newspaper entitled "Indonesia Requires Progressive Law Enforcement, June 15, 2002.

[21] Satjipto Rahardjo, *Hukum Progresif sebuah Sintesa Hukum Indonesia* (Progressive Law of an Indonesian Law Synthesis), Genta Publishing, Yogyakarta, 2009. P 6.

[22] Roscoe Pound dalam dalam Bernard L. Tanya et all, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (The Law Theory of People's Ordered Strategy across Space

One such effort is by using land saving model regulation that is close to the nuance of pengayoman or substantive rule of law. Land saving regulation model can be realized by harmonizing development planning with the regulation of land acquisition for public interest. The development planning documents must be harmonized as presented in table one below.

Table 1. Form and Kind of Development Planning Document

No	Development Planning	Legal Form
1.	Long and Medium Term National Development Planning	Act
2.	Long and Medium Term Province Development planning	Province Local Regulation
3.	Long and Medium Term Regency/City Development Planning	Regency/City Local Regulation
4.	Institutional Work Planning	Various Form, Head of Institutions Regulation and Decision

By harmonizing these development planning documents, as a basis of land saving regulation model will make the land acquisition process for the public interest better. However, there is one more thing to be done in the context of the policy regulation by placing it in a special chapter on public acquisition arrangements with due regard to the processes and mechanisms for the establishment of good legislation as legitimate legal norms.

According to Adolf Merkl, whose opinion is referred to by Maria Farida Indrati Soeprapto and Ni'matul Huda, suggests that a legal norm always has two faces (*das doppelte Rechtsantlizt*). A legal norm upon which it originates is based on the above norms, but below it becomes the basis and becomes the source for the underlying legal norms, so that a legal norm has a relatively valid period (*rechtskracht*) due to the validity of a norm The law depends on the legal norms above it. [23]

and Generation), Declare that to achieve justice it is necessary to do progressive step, that is function of law to arrange change, Genta Publishing, Yogyakarta, 2010, P 155.

[23] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan Jenis, Fungsi dan Materi Muatan* (Legislation: Type, Function and Content), Kanisius, Yogyakarta, 2007, P 23. Lihat juga Ni'matul Huda dan R. Nazriyah, *Teori & Pengujian Peraturan Perundang-Undangan* (Theory & Testing of Legislation), Nusa Media, Bandung, 2011, P 25-26.

The above opinion is made clear by Hans Kelsen, according to which the law is valid if it is made by the institution or authority authorized to form it and based on higher norms so that in this case the inferior norm can be formed by the higher norm (Superior), and the law is tiered and multi-layered to form a hierarchy, in which a lower norm applies, is sourced, and based on higher norms.[24] In addition to dwelling on the side of validity as referred to Kelsen above, the legal norms/legislation in its formation must pay attention to various aspects and principles. According to Van der Vlies, it generally distinguishes two categories of principles of formation of appropriate legislation (*algemene beginselen van behoorlijk regelgeving*), the formal and material principles.[25] Regulation Land acquisition for public interest as one type of legislation in its formation also did not escape from the formal and the material principle.

According to Jimly Asshiddiqie, [26] the establishment of a good rule must be based on the philosophical, sociological, juridical, political and administrative aspects and its validity must also be reflected philosophically, sociologically, juridically and politically. Philosophically, the formulation of Land Acquisition Regulations for public interests should refer to the ideals of Pancasila law.[27] Sociologically, the Regulation of Land acquisition for the public interest is said to have a sociological basis if its provisions are in accordance with the general belief or legal awareness of the community. This is in line with the flow of Sociological Jurisprudence which views the law as something that grows in the midst of its

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[24] Hans Kelsen, General Theory of Law and State, Russel & Russel, New York, 1973, P 112-115.

[25] I.C. Van der Vlies, Handboek Wetgeving *Buku Pegangan Perancang Peraturan Perundang-Undangan* (Handbook of Legal Drafting), Dirjen Peraturan Perundang-Undangan DEPKUMHAM RI, Jakarta, 2007. P 258-303. Lihat juga Attamimi, A. Hamid S. *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara* (The Role of Presidential Decree of the Republic of Indonesia in the Implementation of State Administration), Postgraduate Faculty University of Indonesia, 1990, dan Maria Farida Indrati S. *Ilmu Perundang-undangan: Proses dan Teknik Pembentukannya* (Legislation: Process and Technique of Formation). Jilid 2. Yogyakarta: Kanisius, 2007.

[26] Jimly Asshiddiqie. *Perihal Undang-Undang* (About the Law), Jakarta: Konstitusi Press, 2006, P. 243-244.

[27] Arief Sidharta explains that the ideology of Pancasila, rooted in the Pancasila view of life, will in itself reflect the objectives of the basic values and values which are formally included in the preamble, especially in the five basic formulas of state philosophy, and elaborated further in the articles of the Body The 1945 Constitution. The purpose of the state is realized by the administration of government by the government to prosper the people. B. Arief Sidharta. Ilmu Hukum Indonesia (Indonesian Jurisprudence). Bandung: Fakultas Hukum Universitas Katolik Parahyangan, 2010, P. 85.

own people, which changes according to the development of time, space and nation, on this matter Mochtar Kusumaatmadja[28] puts it, as follows: "Good law is law according to The living law in society, which is either appropriate or reflective of the values prevailing in that society ".

According to Syaukani and Thohari[29], if the law is built on a foundation that is inconsistent with the spiritual structure of society, it is certain that community resistance to the law will be very strong. Hart[30] argues that the existence of a legal system is a social phenomenon that always presents two aspects, which we must note in order for our review of it to be realistic.

Based on the above description, the land saving model regulation close to the nuance of pengayoman and substantive rule of law is realized by harmonizing development planning and by integrating it in land acquisition regulation for public interests using good legislation corridor as presented in the following figure.

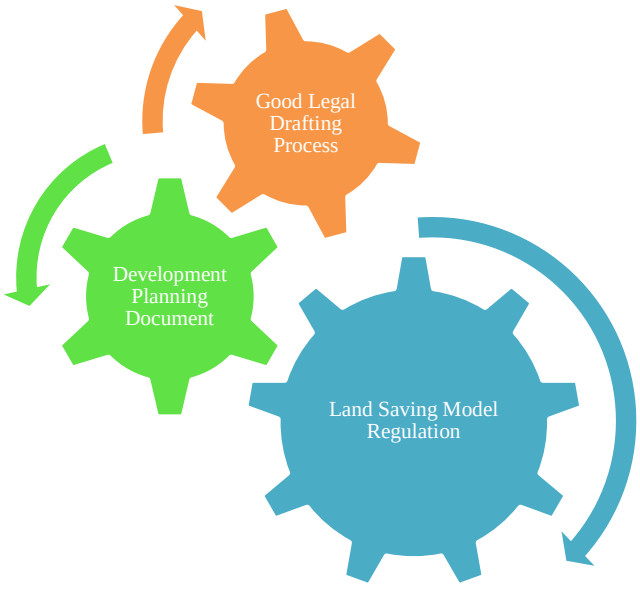

Figure 1. Development Planning Document Position in Land Saving Model Regulation

[28] Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembinaan Hukum Nasional* (Law, Society and National Legal Development), Binacipta, Bandung, 1986, P. 5.

[29] Imam Syaukani dan Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Basics of Political Law). Jakarta: Raja Grafindo Persada. 2008, P. 25.

[30] H.L.A. Hart. *Konsep Hukum* (The Concept Of Law). Bandung: Nusamedia, 2009, P. 311.

D. Conclusion

The Importance of Development planning in land saving model regulation based on the concept of pengayoman and progressive law and also the thickest version rule of law theory, so that its elements must consider the welfare of society in the context of its philosophy. Development planning system which includes: long and medium term development planning and Institution work planning have an important role in the actualization of this land saving model, because the development planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district level will be the basis of this land acquisition model. Through an established and sustainable development planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

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