

Juridical Implication of the Ambiguity Meaning of Public Interest within the Land Acquisition Law for the Public Interest Construction

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Abstract

Research on juridical implication of the ambiguity meaning of public interest is a normative legal research that aims to address issues of public interest within the meaning of the legislation and the implication of such an ambiguity meaning of public interest in the land acquisition law. In this research, the primary source of law is derived from legislation, while the secondary source of law is derived from the law books and the legal journals. In addition, this research is also equipped with two approaches, namely legislative conceptual approach and legislative historical approach. The Analysis of the legal material is preskriptis analytical. The result of the research shows that the concept of public interest in law No. 2 of 2012 was formulated fuzzily. The juridical consequent of the ambiguity meaning of public interest in the legislation causes the lack of legal certainty in its implementation. Another implication of which is that a legal activity which was initially for the public interest, however, in its development could change into the business interest and for profit-oriented.

Keywords: Juridical Implication, Public Interest, Land Acquisition Law.

1. Introduction

Land acquisition for the implementation of development, which is carried out by the government for the public interest, as the concept of public interest in the legislation, has been differently understood among the legislations in Indonesia. According to Presidential Decree No. 55 of 1993 that public interest is the interest of the whole society (Article 1, paragraph 3). According to Presidential Decree No. 36 of 2005 defines that public interest is the interest of the majority of society (Article 1, paragraph 5). And based on Presidential Decree No. 65 of 2006 says that public interest is the interest of the majority of society (Article 1, paragraph 5). In addition, the Act No. 2 of 2012, on land acquisition for the construction of the public interest (LN.2012-22.TLN. 5280), gives a definition that public interest is the interest of the nation, state, and society which should be realized by the government and be used as much as possible for the people's welfare (Article 1, paragraph 6).

The definition given by Article 1, Section 6 of Act No. 2 of 2012 above is still a vague definition (*vage normen*) (Bruggink, 1999). The Act only mentions enumeratively the development activity for the public interest, without giving a clear borderline, so that in its implementation, there are any divergences of interpretation of what constituted as the public interest (Yusriadi, 2010). For example, whether a hospital founded by the government then managed by the state-owned enterprises (BUMN) or private parties can be categorized as public interest or not, even though the hospital, in practice, is no longer performing a social health service but merely for profit. It also happens to the toll road, airport, port, and terminal which are managed by the state-owned enterprises (BUMN) or private parties for profit (profit-oriented) (Adrian Sutedi, 2008). Limitation of the public interest's criteria will be quite important in order to avoid the different interpretation in practice. So it can be clearly distinguished between the development for public interest and the development that aims only for profit (profit-oriented).

The main focus of this research is to analyze the concept of public interest, its meanings and types in legislation, and judicial implication of the ambiguity meaning of the public interest within the Land Acquisition Act for the development of the public interest.

2. Method of the Research

This study is a normative legal research that examines the legal principles, concept of law, and the rule of law (Jhony Ibrahim, 2011; Soerjono Soekarno & Sri Mamudji, 2004). The approaches used to analyze the sources of law of legislation (statute approach) are a conceptual legislative approach and a historical legislative approach. (Peter Mahmud M, 2005; Jhony Ibrahim, 2011).

Legal materials used in this study include the primary and the secondary legal materials (Soerjono Soekarno & Sri Mamudji, 2004; Jhony Ibrahim, 2011). Primary legal materials include legislation itself, while secondary legal materials include law books and legal journals.

Analysis of the legal materials is prescriptive-analytical which aims to produce a prescription of what should have been the essence in a legal research adhered to the character of law as an applied science. A review and analysis use the logic of the law, the legal arguments, and the legal principles (Peter Mahmud M, 2005).

3. Theoretical Framework

To analyze the existing problems, this study uses a legislative theory, legal certainty theory, and theory of legal discovery.

3.1. Theory of Legislation

Conceptually, the term of legislation has two meanings. They are the law in a material sense and the law in a formal sense. The law in a material sense is any forms of binding rules for its content. While, the law in a formal sense is the rules made by the legislative (House of People's Representatives) and the executive (President). The law in a formal sense is better known as the law/act while the law in a material sense is better known as legislation (A Rosyd Al Athok, 2012).

Jimly Assyidiqie (2011) states that legislation is a written rule contains legal norms that bind the public, either set by the legislative or executive according to the applicable regulation. A similar opinion is also given by Mahfud MD (2009). He states that legislation is all of the laws in the broadest sense which are formed in a certain way, by a competent authority, and set forth in a written form.

In contrast to the above opinions, Maria Farida Indrati (1998) argues, the term of legislation (*wetgeving, legislation, gesetzgebung*) has two different senses, namely: first, legislation is the process of formation of the state regulation, both at the central and at the regional level; second, legislation is all state regulations as the result of the formation rules, both at the central and the local level.

In relation with the theory of legislation, Maria Farida Indrati (1998) says that there is a hierarchical norm in legislation. The legal norms are flaked and tiered in a hierarchical arrangement. A Lower norm is applicable, sourced, and based on a higher one, so that a lower norm should not be in conflict with a higher norm.

If the lower norm is not in line with the higher norm, it means that there is a disharmony in the legislation. If there is a disharmony or conflict norm of legislation, then it will be settled by the principles of law, namely the principle of *lex superiori derogat legi inferiori* (the higher law overrides the lower law). (Wicipto Setiadi, 2010). On the other hands, in formulating the norm in the legislation there should be a clear bill and not multy interpretation and unambiguous so as to create a legal certainty (Mohammad Sinal, 2013).

3.2. Theory of Legal Certainty

Legal certainty contains two meanings, namely; first, the existence of the general regulation to make the people know what action should or should not do; second, in the form of legal security for the individual from the arbitrary of the government. With the general rule, an individual can determine what should be done or charged by the government against the individual (Peter Mahmud M, 1999). Sudikno Mertokusumo (2003) argues that the legal certainty is a justisabel protection against arbitrary action, which means that someone will have something to be expected in a certain circumstance that is the realized order from the legal certainty.

Legal certainty is not merely in the form of articles of the law but also the consistency in the judge's ruling, between a judge's ruling and that of the other judges for a similar case that had been previously decided. In keeping the legal certainty, the role of the government and the the existence of the court are extremely important. The government should not publish the rule of implementation which has not been regulated by law or contrary to law (Peter Mahmud M, 1999).

Legal certainty is an important principle in the legal and law enforcement action. Among the existing regulations, legislation can provide a higher legal certainty if compared to the common law, customary law, or jurisprudence (Peter Mahmud M, 1999). To be able to create a legal certainty, the legislation, in addition to meet the formal requirements, must also meet the other requirements, namely: (1) clear in its formulation; (2) consistent in its formulation both internally and externally; (3) precise and easy to understand the used language (Muhammad Sinal, 2013; Teguh Prasetyo & Abdul Halim B, 2012).

3.3. Discovery of Legal Theory

Discovery of law is a law-making process conducted by a judge or other legal officers who are given the task to implement the law against the legal concrete events (Sudikno Mertokusumo, 1993). The discovery of law, which made as the existing law, is incomplete or unclear. In this circumstance, a judge is supposed to seek and find its legal decition (*rechtsvinding*). The theory about a legal discovery has answered the question about the unclear norms and thus it requires interpretation.

Legislation that is unclear, uncomplete, static, and can not follow the development of society, gives rise to an empty space to be filled by a judge by finding a legal decition conducted by way of explaining, interpreting or complementing the available legislation. The legal discovery by a judge is not solely concerning

with the application of the legislation to a concrete event, but also to create legal and its legal form as well (Ahmad Rifai, 2010).

A judge, in conducting a legal discovery, should bases on the available and the existing methods. The methods of a legal discovery include a legal intepretation method and legal construction or reasoning method (*redeneerwijzen*). The interpretation of the law occurs when there is a statutory provision that can directly set on a concrete event, this method is done in term of the existing rule, but it has not been unclear to be applied to a concrete event since there is a vague norm (*vage normen*), conflict among the legal norms (*antinomy normen*), and the uncertainty of the legislation (Ahmad Rifai, 2010; Jazim Hamidi, 2011).

Construction of law can be done if it is not found a statutory provision which can directly be applied to a legal problem, or in term of the rule does not exist, so there is a legal vacuum (*vacuum recht*) or void of the law (*wet vacuum*) (Sudikno Mertokusumo, 1993). To fulfill this void of the law, a judge uses his/her logical reasoning to further develop the text of the law. A Judge is no longer holding on to the sound of the text, however, a judge can not ignore the principle of law as a system (Sudikno Mertokusumo, 1993; Jazim Hamidi, 2011).

4. Result of the Research and the Discussion

4.1. The Concept of Public Interest

Land acquisition and/or revocation can only be done if the construction carried out is for public interest. As a concept, public interest is variously interpreted by many experts. Schenk (1992), as quated by Muchsan (1997), interprets public interest as the interest that gives more benefits rather than losses. It means that the provided benefit can be enjoyed by the public, although it causes harm to some individuals. While Van Poelje (1971) defines public interest is something which must be implemented by the government through its policy (Mucshan, 1997). While Van Wijk (1976) adds that the meaning of public interest is the people's legal demand that must be served by the government in order to realize the welfare of the whole society (Muchsan, 1997).

The similar meaning of public interest, as expressed by some famous experts above, can also be found in Article 18 of Land acquisition Law and Article 1 of Law No. 20 of 1961 which is explicitly stated that public interest is including the "interest of the nation as well as the common interest of the people". Furthermore, in the memory of the explanation of Law No. 20 of 1961 number 4 letter b, it is mentioned that public interest includes: (1) the purpose of the efforts of state (Central and Local Government); and (2) the purpose of the private enterprises for public interest where the necessary land can not be obtained by the agreement with the owner. The need to solve the problem about the use of the land without right either by the people and the Government deems it necessary to master some of the land belonging to the owner, while the owner is not willing to give the land on the basis of consensus.

Thus, it can be concluded that public interest referred to UUPA and Act No. 20 of 1961 are: the interest of the nation and the state; common interest of the people; and the interest for the need of development such as construction of road, port, building for industry, housing and health care, worship, the center of community life, social, cultural, development of agricultural production, animal husbandry, fisherie, industry, transmigration and mining (Gunanegara, 2006).

Presidential Instruction No. 9 of 1973 on guidelines of revocation rights to Land and the objects above It, also gives definition of public interest when the development for the benefit of the nation and the State; for the benefit of the wider community; for the benefit of all people; and for the sake of development, covering the field of defense, public work, public supply, public service, religion, science, art, culture, health, sport, public safety disaster, social welfare, tomb/grave, tourism and recreation, and undertaking the economic enterprises that benefit for the people's welfare (Perangin Effendi, 1986; M. Yamin & Abdul Rahim L, 2011).

Presidential Instruction No. 9 of 1973 regulates public interest by its designation. Maria SW. Sumardjono (1991) proposes that the concept of public interest, in addition to fulfilling its designation, it should also be felt by the public in general. Furthermore, in order that the elements of the benefit can be fulfilled and felt by the people in large, there should be an effective and efficient way through an integrated research.

According to Olloan Sitorus and Dayat Limbong (2004), in order that the concept of public interest in the above rules is not biased, it should ideally be limited by the three criterias, namely: *first*, the development activities are supposed to be carried out by the government; *second*, the development activities are then owned by the government; *third*, the development activities are not conducted for merely profit-oriented.

The criteria of public interest as mentioned above can be described by Adrian Sutedi (2008: 76), as follows:

First, the development activities undertaken by the government impose districition that the process of implementation of the development can only be done by the government. This still raises the issue of how to manage the construction of the tendered to the private sector. In practice, many development activities which were originally for the public interest, but the management of the activities is then done by the private sector.

Second, these activities are actually owned by the government, this sentence provides the limitation of development activities for the sake of the public interest that can not be owned by individual or private. The

private and individual sector can not have such a development for the public interest that requires land acquisition from the community.

Third, “not for profit-oriented”, this phrase limits the function of an activity for the public interest, so that it is in contrast to the private interest that aims to make a profit. Activity for the public interest is not allowed at all for profit.

In line with the above opinion, Gunanegara (2006: 77), sets the 6 (six) terms and two (2) criterias for the public interest. The terms in question are; (1) controlled and/or owned by the government; (2) should not be privatized; (3) not for profit-oriented; (4) for the benefit of the environment; (5) for a place of worship and other sacred places; and (6) shall be determined by the law. While the two (2) criterias of the public interest are namely; (1) controlled and/or owned by the government; (2) not for profit-oriented since the types of use are for public infrastructure, public health, religious, social, cultural/heritage, national defense, state security, public safety, education, government agencies, and the environment. However, in the case of land revocation, the 2 (two) criterias above is in need to be coupled with the criteria; “can not be moved to another place”.

4.2. The Meaning of Public Interest in the Context of Legislation

The discussion of the meaning of public interest in the legislation starts from the Regulation of the Minister of Home Affairs No. 15 of 1975, the Minister of Home Affairs No. 2 of 1976, Presidential Decree No. 55 of 1993, Presidential Decree No. 36 of 2005, Presidential Decree No. 65 of 2006 and Act No. 2 of 2012.

The Regulation of the Minister of Home Affairs No. 15 of 1975 does not mention the term of ‘public interest’. The only thing as mentioned in the preamble is that the land in the development efforts undertaken by the government agencies, in this case, public interest is the interest of the construction carried out by the government. In addition, there is no a firm understanding of public interest, nor a list of activities that is categorized as public interest. On such circumstance, the haziness of the meaning of public interest by simply calling the interest of development, then one of the probabilities that can occur is deviation of land acquisition activities. Consequently, it can be manipulated by a private interest by the name of “a development interest” only because there is involvement of the government officials in conducting the land acquisition (M.Yamin & M Lopez, 2012).

In order to accommodate the private sector to acquire land, the government re-issued the Regulation of the Minister of Home Affairs No. 2 of 1976 No. 2 of 1976 on land acquisition done by private sector for the benefit of the government. In this regulation, there is no a certain krieria and requirement that must be met to qualify as a public interest, so that, in practice, the use of the Regulation of the Minister of Home Affairs No. 2 of 1976 causes more legal problems for landowners. Deviation of land acquisition for public interest which was originally performed by the private sector is allowed only for purposes that support the public interest, or the construction of public facilities/social facilities as provided for Regulation of the Minister of Home Affairs No. 2 of 1976 turned out by Regulation of the Minister of Home Affairs permitted to use of land acquisition agency for the benefit of private projects (Gunanegara, 2006).

With the provision of the Regulation of the Minister of Home Affairs No. 2 of 1976, the government and the private sector can force people to give up their land right on the name of development. This regulation does not only regulate the acquisition of land for the benefit of the government, but also provide opportunities to the private sector to acquire the land as land acquisition for development purposes (M. Yamin Lopez, 2012). Even in practice, the intervention through a land acquisition committee as a form of the government’s intervention often and commonly occurs, namely the private sector may use a land acquisition program similar to that carried out by the government. It also did not hesitate to use the government officials and security forces in the acquisition of land for the purpose of development, so that the private sectors can acquire their land under the average price as determined by the land acquisition committee (M. Yamin & M.Lubis, 2012)

Presidential Decree No. 55 of 1993 gives the notion of public interest as it is an interest of the whole society. Presidential Decree No. 55 of 1993 also provides for the development restriction for public interest by the government, owned by the government and not for profit-oriented. Presidential Decree No. 36 of 2005 defines that public interest is the interest of the majority of society. Presidential Decree No. 36 of 2005 does not provide any restriction as Presidential Decree No. 55 of 1993 did. Then the Presidential Regulation No. 36 of 2005 was revised by Presidential Decree No. 63 of 2006, the Presidential Decree No. 65 of 2006 for public interest is the interest of the majority of society. Presidential Decree No. 65 of 2006 does not also provide any restrictions in public interest as that of the Presidential Decree No. 55 of 1993. In addition, Act No. 2 of 2012 gives a definition of public interest as the interest of the nation, state, society and should be realized by the government and be used as much as possible for the prosperity of the people.

Legislation in the field of land acquisition for the construction of public interest details the forms of activity that categorized as public interest. Article 5 of Presidential Decree No. 55 of 1993 on Land Procurement for Development in public interest gives the category of public interest in detail, namely:

- a. public road, sewer

- b. reservoir, dam and other irrigation buildings including irrigation channel
- c. hospital and public health center
- d. port, airport, and terminal
- e. place for worship
- f. school
- g. common market
- h. facility for general cemetery or tomb
- i. public facilities including levee for flood, lava, and other disasters
- j. post and telecommunication
- k. sport facility
- l. radio and television station and the supporting facilities
- m. government offices, and
- n. facilities of the Armed Forces of the Republic of Indonesia

Based on the provisions of Article 5 of Presidential Decree No. 55 of 1993 above, the areas of activity which can be included and categorized as a public interest are 14 (fourteen) fields. Furthermore, according to Article 5 of Presidential Decree No. 36 of 2005 on Land Acquisition for Development for common interest determined that the areas of activity which can be included and categorized as public interest has expanded to 21 (twenty one) areas, namely:

- a. public road, highway, railroad (on the ground, in the space above the ground, or in the basement, drinking water supply/water supply, sewerage and sanitation)
- b. reservoir, dam, weir, irrigation, and other buildings
- c. hospital and public health center
- d. port, airport, train station, and terminal
- e. place for worship
- f. school
- g. common/public market
- h. facility for general cemetery or tomb
- i. public safety facilities
- j. post and telecommunication
- k. sport facilities
- l. radio and television station and the other supporting facilities
- m. government offices, local authorities, representative of foreign countries, the United Nations, and/or the international institutions under the auspices of the United Nations
- n. Indonesian National Army and Police of the Republic of Indonesia in accordance with the duties and functions
- o. prison
- p. simple flat
- q. garbage dump
- r. natural reserve and cultural heritage
- s. garden
- t. social institution
- u. generator, transmission, and distribution of electricity

The Presidential Decree No. 35 of 2005 and then it is revised by Presidential Decree No. 65 of 2006 on the implementation of land acquisition for the construction of public interest, areas of activity which are categorized as public interest has been changed into seven (7) areas, namely:

- a. public road, highway, and railroad
- b. dam, irrigation dam and the others
- c. port, airport, railway station, and terminal
- d. public safety facilities, such as levees for flood, lava and the others
- e. garbage dump
- f. natural reserve and cultural heritage and
- g. generator, transmissator, and distribution of electricity

The latest regulation regarding with the land acquisition for the construction of public interest, namely Act No. 2 of 2012 on land acquisition for the construction of public interest specify 18 areas of construction for the public interest, namely:

- a. defense and national security

- b. public road, highway, tunnel, railway, railway station, and railway operation facility
- c. reservoir, dam, weir, irrigation, drinking water supply, sewerage, sanitation, and other forms of sanitation
- d. port, airport, and terminal
- e. oil, gas, and geothermal Infrastructure
- f. generation, transmission, substation, network, and power distribution of electricity
- g. the government telecommunication and information network
- h. garbage dump
- i. senter and regional hospital
- j. public safety facilities
- k. public burial place or tomb
- l. social facility, public facility, and public green open space
- m. natural reserve and cultural heritage
- n. office of government / local government / village
- o. structuring the urban slum, land consolidation, and low-income housing communities
- p. school
- q. sport infrastructure
- r. common market and adequate parking area

Description of the meaning of public interest, its criteria, and types of activity as explained above can be listed in the table below.

Table 1: Meaning and Types of Activity for Public Interest based on Legislations

Points of comparison	Presidential Degree No. 55 of 1993	Presidential Regulation No. 36 of 2005	Presidential Regulation No. 65 of 2006	Act No. 2 of 2012
Definition of public interest	Public interest is the interest of the whole society	Public interest is the interest of the majority of society	Public interest is the interest of the majority of society	Public interest is the interest of the nation, state, and society and should be realized by the government and used for the greatest prosperity of the people
Criteria of public interest	It is conducted by the government then owned and controlled by the government and used for not profit-oriented	It has no restriction regaeding with the criteria of public interest	It is owned by the goverment but there is no a clause "not being used for profit-oriented"	It has no restriction concerning with the criteria of public interest
Type of activity of public interest	(1) public road, sewer; (2) reservoir, dam and other irrigation buildings including irrigation channel; (3) hospital and public health center; (4) port, airport, and terminal; (5) place for worship; (6) school; (7) common market; (8) facility for general cemetery or tomb; (9) public facilities including	(2) public road, highway, railroad (on the ground, in the space above the ground, or in the basement, drinking water supply/water supply, sewerage and sanitation); (2) reservoir, dam, weir, irrigation, and other buildings; (3) hospital and public health center; (4) port, airport, train station, and terminal; (5) place for worship; (6) school; (7) common/public market; (8) facility for general	(3) public road, highway, and railroad; (2) dam, irrigation dam and the others; (3) port, airport, railway station, and terminal; (4) public safety facilities, such as levees for flood, lava and the others; (5) garbage dump; (6) natural reserve and cultural heritage	(1) defense and national security; (2) public road, highway, tunnel, railway, railway station, and railway operation facility; (3) reservoir, dam, weir, irrigation, drinking water supply, sewerage, sanitation, and other forms of sanitation; (4) port, airport, and terminal; (5) oil, gas, and

	levee for flood, lava, and other disasters; (10) post and telecommunication; (11) sport facilities; (12) radio and television station and the supported facilities; (13) government offices, and; (14) facilities of the Armed Forces of the Republic of Indonesia	cemetery or tomb; (9) public safety facility; (10) post and telecommunication; (11) sport facilities; (12) radio and television station and the other supporting facilities; (13) government offices, local authorities, representative of foreign countries, the United Nations, and/or the international institution under the auspice of the United Nations; (14) Indonesian National Army and Police of the Republic of Indonesia in accordance with the duties and functions; (15) prison; (16) simple flat; (17) garbage dump; (18) natural reserve and cultural heritage; (19) public garden; (20) social institution; and (21) generator, transmissator, and adequate distribution of electricity	and; (7) generator, transmissator, and distribution of electricity.	geothermal Infrastructure; (6) generator, transmissator, substation, network, and power distribution of electricity; (7) the government telecommunication and information network; (8) garbage dump; (9) center and regional hospital; (10) public safety facilities; (11) public burial place or tomb; (12) social facility, public green open space; (13) natural reserve and cultural heritage; (14) office of government / local government / village; (15) structuring the urban slum, land consolidation, and low-income housing communities; (16) school; (17) sport infrastructure; and (18) common market and adequate parking area
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Sources: Presidential Degree No. 55 of 1993, Presidential Regulation No. 36 of 2005, Presidential Regulation No. 65 of 2006, and Act No. 2 of 2012.

4.3. Juridical implication of the Ambiguity Meaning of Public Interest in the Land Acquisition Law

The meaning of public interest as provided in Article 1 paragraph (6) of Act No. 2 of 2012 is a vague or ambiguous sense (*vague normen*). The juridical implication of the ambiguous meaning of public interest can create a legal uncertainty in practice. For example, is a hospital founded by the government then managed by the state-owned enterprises or private parties can be categorized as public interest or not, even though the hospital is, in practice, no longer performing a social health service but for profit. It also happens with a toll road, airport, port, and terminal managed by the state-owned enterprises or private parties, in conducting its business activity, is not for social-oriented but merely for profit-oriented. To the formulation of public interest which has not been given a standard definition, it's just the nature of public interest can be said for the purpose of public interest and for the need of the broader social goal. Limitation of the criteria of public interest will be quite significant in order to avoid different interpretation in practice, so it can be distinguished between development for public interest and development for profit-oriented.

Norm, that is vague, ambiguous, and interpretable, causes a lack of legal certainty. In fact, one of the purposes of the law is to create a legal certainty. A legal certainty has two meanings, it is the general rule that makes the individual know what action should or should not do; and the existence of legal security for the

individual from arbitrary government (Peter Mahmud M, 1999). If the norm is formulated fuzzily (*vague normen*) and not clear, it can not meet the two elements of the rule of law above.

In relation to the meaning of public interest in Article 1, paragraph (6) of Act No. 2 of 2012 which determines; “public interest is the interest of the nation, state, and society that should be actualized by the government and be used for the greatest prosperity of the people”. The concept of public interest as provided in Article 1 paragraph (6) of the Act is a multi interpretable concept. It is because the law just mentions the development activities for public interest without giving a clear boundary, so that, in practice, there is a different interpretation regarding with what is called public interest. The formulation of article 1, paragraph (6) of the Act is to repeat the formulation of the concept of public interest as mentioned in the Presidential Decree No. 2 of 1973 which defines public interest; “as the interest of the nation and the State, the public interest, the interests of the people altogether, and for the sake of development”.

With the wide meaning of public interest above, there had formerly been a manipulation of public interest. With a pretext for the sake of development, public land can be released by the government and in fact it is not for the public benefit but solely for business purpose. In this case Maria SW. Sumardjono proposes that the concept of public interest is not diverted in practice. In addition, it must meet the designation and must be perceived by the public widely (socially profitable or for public use or the actual used by the public) (Mary Sumardjono, 1991). So that, the benefit can be felt by a large number of society.

Furthermore, for the formulation of public interest in land acquisition Act is not ambigüe and multy interpretations, it should be limited to three criterias: first, the development activity is undertaken by the government; second, development activity will be owned by the government; and third, development activity is not conducted for profit-oriented (Olloan Sitorus & Dayat Limbong, 2004; Adrian Sutedi, 2008). The development activity which is undertaken by the government imposes limits that the process of implementation of the development can only be applied by the government, then the activity is actually owned by the government. This sentence shows that the limitation of development activity for the public interest may not be owned by individual or private sector. In addition, acquisition of land for public purposes is not intended for profit-oriented (Adrian Sutedi, 2008).

When it is compared with the previous rule, the formulation of Article 1, paragraph (6) is a backward step. The meaning public interest based on Presidential Decree No. 55 of 1993 is to provide a legal certainty as compared to the formulation of article 1, paragraph (6) of Act No. 2 of 2012. The formulation of public interest according to Presidential Decree No. 55 of 1993 is the interest of the whole society and has fulfilled the three fundamental criterias, namely: (1) it is carried out by government; (2) owned and controlled by the government; and (3) not for profit-oriented. Thus, according to the Presidential Decree above that the land acquisition is better to be conducted by the government rather than by the private sector. Then the development project is owned and controlled by the government, and the development is not used for profit.

The difficulty to define the concept of public interest is also experienced by other countries. For instance, United States of America gives restriction to public interest by using the standart of public necessity, public kindness, and public utility. On the process, it is however narrowed by the purpose of a view to oversee the implementation of land acquisition by the private sector with a limitation in the form of a beneficial activity for society and used by them (used by the public) (Adrian Sutedi, 2008).

5. Conclutions

Based on the above explanation, the writer can take some of the following conclusions:

The concept of public interest is defined differently by experts, but they agree that to avoid a bias within the concept of public interest, it should ideally be restricted to the three fundamental criterias, namely: first, the development activity is carried out by the government; second, the development activity will be owned by the government; and third, the development activity is not conducted for solely profit-oriented.

The meaning of public interest in the Land Acquisition Law is defined as the interest of the nation, state, and society and should be realized by the government and be used for the greatest prosperity of the people. The definition given by the law is a vague or ambigüe definition and inviting multy interpretations since in it there is no restriction of certain criteria for public interest as outlined by experts.

Juridical implication of the ambiguity meaning of public interest is precisely creating a legal uncertainty in practice. Consequently, it becomes unclear between development for public interest and for business. As an example, is a hospital founded by the government then managed by the private sector can be categorized as public interest or not, whereas the hospital is, in practice, no longer performing a social health service but for profit.

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