

# Legal Politics of Direct Investments Having Justice and Achieving Prosperity for Society

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## ABSTRACT

One way for people to not lose their land and the investors can use the land, can be done by leasing. The UUPA has stipulated the existence of lease rights for buildings, but there are no laws and regulations governing the period of leasing, so that there is often misuse of the lease period which can disadvantage the landowners. Related to that, there are problems, namely: how should the policy of land law in the field of investment be directed to be able to accommodate the interests of society and investors? This study uses the theory of Justice and State of Welfare, the research method uses a legislative approach, historical approach and analytical approach, the source of legal material in the form of primary, secondary and tertiary legal materials. Conclusion: The state must be present to protect the interests of the people, because usually the people are in a weaker position than the owners of capital pemilik modal. Suggestion: The President and the House of Representatives must make laws and regulations governing the object, time period and lease sanctions.

**Keywords:** Land, Leasing, Society, Investor.

## A. INTRODUCTION

Every country tries to bring in as many investors as possible to invest as one of its efforts to obtain national development financing. Investment has an important role in increasing economic growth and employment. Nowadays, there is intense competition in attracting foreign capital. Therefore, a conducive investment climate is needed so that it can increase Indonesia's attractiveness in attracting investment.<sup>1</sup> Investment can encourage economic growth through the availability of jobs so it can improve the welfare of its citizens. The effort was also carried out by the developing Indonesian government, which began with development in the economic field that needed investment to provide national development funding sources.

Therefore, the rational central government and regional governments competes to promote investment policies that are friendly to the business world and attractive to attract capital. Failure in this policy will have major implications for the economy and public welfare. Considering the important role of investment, the investment policy in the hands of a reasonable government will be the main policy or at least as one of the main policies.<sup>2</sup>

The role of investment in order to improve the Indonesian economy from time to time experiences a tidal phase depending on government policy at that time.

During the reign of President Soekarno, also known as the Old Order era, with the domestic social and political situation was strongly influenced by the anti-colonial movement; everything related to foreigners, including foreign investment was considered taboo. The political trauma of the land law applied by the Dutch colonial government was based on *Agrarische Wet* (S. 1870 – 55) with the conception of the *Domeinverklaring*.

The concept of land ownership according to *Agrarische Wet* is the land owned by the State, in contrast to the concept of land ownership by the State adopted by Law Number 5 of 1960 concerning Basic Principles on Agrarian Principles (LN. 1960 – 104, TLN. 2043), hereinafter referred to UUPA. The concept of state control does not mean that the State is the owner of the land, but the State is only the authority of the land, who authorized to regulate, manage, attempt land and supervise its implementation.

During the Old Order government there was no specific policy regarding investment, because the government was preoccupied with the socio-political and security issues of the State, so there was no adequate investment in Indonesia. Without adequate investment, the Indonesian economy will become fragile and eventually economic stagnation will occur. This stagnation in the economic field caused a deterioration in the economic situation, which caused the Old Order government to fall and be replaced by the New Order government.<sup>3</sup>

<sup>1</sup> Erman Rajaguguk, *Sambutan dalam buku Suparji, Penanaman Modal Asing di Indonesia insentif v pembatasan*, Fakultas Hukum Univ. Al Azhar, Jakarta, Juli 2008, hlm. xii.

<sup>2</sup> Didik J. Rachbini, *Arsitektur Hukum Investasi Indonesia*, Jakarta: PT. Indeks, 2008, hlm. 13.

<sup>3</sup> *Ibid*, hlm. 21.

The New Order government under the leadership of President Soeharto de facto began since 1965. In the New Order government investment policies were issued with the establishment of Law Number 1 of 1967 concerning Foreign Investment (LN. 1967-1, TLN. 2818, as already amended by Act Number 11 of 1970 concerning Amendments and Addition to Law Number 1 of 1967 concerning Foreign Investment (LN 1970 - 46, TLN 2943), and Law Number 6 of 1968 concerning Domestic Investment ( LN 1968 - 33, TLN 2853), as amended by Act Number 12 of 1970 concerning Amendments and Addition to Law Number 6 of 1968 concerning Domestic Investment (LN 1970 - 47, TLN. 2944).

During the New Order government many regulations were issued under the law concerning investment, and even seemed to ease the entry of foreign investment in Indonesia. Until then in 1998 there was an Indonesian national crisis, which began with the economic crisis. The economic crisis that hit Indonesia in 1998 is a result of the crisis experienced by several countries. The economic crisis in Indonesia had implications for political upheaval which affected the fall of the New Order regime.

After the fall of the New Order regime and change of the regime into the Reform Order regime, Indonesia's economic growth began to improve, to attract investment it applied Law Number 25 of 2007 concerning Investment (LN 2007 - 67, TLN. 4724).

Efforts to attract investors to invest in Indonesia continued until now, including the government of President Joko Widodo and Vice President Jusuf Kalla (Jokowi-JK government) that keep continuing through fourteen (14) economic policy packages. The policy issued by the Jokowi-JK government certainly aims to increase the enthusiasm of investing in Indonesia, both by domestic investors and by foreign investors. The enthusiasm of investing in Indonesia has been endeavored to be increased by the government, but the legal instruments for that are still felt to be lacking, especially for direct investment that requires land in making investments.

One way to invest directly is by renting land owned by the community. Article 44 paragraph (1) of UUPA has determined as follows:

A person or legal entity has the right to lease the land, if he has the right to use land owned by another person for building need, by paying to the owner some money as rent.

The provisions of this Article do not clearly state the period of rent that a person may have. So that there is a legal vacuum, namely that there are no laws and regulations that clearly specify the period of lease of land that may be carried out by landowners and renter, so that the society does not have guidelines for that.

Based on the background above, this paper was made, entitled LEGAL POLITICS OF DIRECT INVESTMENTS HAVING JUSTICE AND ACHIEVING PROSPERITY FOR SOCIETY. The purpose of the research with this title is to obtain a regulation that provides justice for both the landowners and investors, so it can improve the welfare of all parties. The formulation of the problem that will be raised in this paper is: How should the legal politics of land in the field of investment be directed in order to be able to accommodate the interests of society and investors?

## **B. RESEARCH METHOD**

This research is a normative legal research or qualitative normative juridical law research. The normative juridical method is also called doctrinal research, which is a study that refers to legal analysis, *law as it is written in the book* and *law as it is decided by judge though judicial process*. Qualitative research is analyzing the data as a whole and as a unity (holistic).

This research uses two theories, namely the Justice theory and the welfare state theory, and uses a legislative approach, historical approach and analytical approach. As a support, this study uses primary, secondary and tertiary legal materials.

## **C. REVIEW OF RELATED LITERATURE**

### **Legal Politics**

According to Imam Syaukani and A. Ahsin Thohari, "Political law is the basic policy of state administrators in the field of law that will, is and had already in force, which originates from the values

prevailing in the society to achieve the aspired goals of the State”.<sup>1</sup> According to Bagir Manan as quoted by Winardi, “Legal politics includes the politics of law enactment, the politics of legal findings and the politics of implementation and law enforcement”.<sup>2</sup>

### **Direct Investment**

Investment is a term derived from Latin, namely *investire* which means to use, while in English is called investment,<sup>3</sup> and in Indonesian it is called investment. The term investment is usually used in legislation, while the term investment is usually used in everyday relationships.

According to Pandji Anoraga,<sup>4</sup> investment can be classified into two ways, namely direct investment and indirect investment. Direct investment means that the investor presents physically to run his business, which can be done by establishing a company, while indirect investment means that the investor does not need to present physically to run his business, which can be done by buying an obligation bonds, paper documents of State treasury, other emissions (shares) issued by the company, and deposits and savings with a period of at least one year.

The physical presence referred to in direct investment is that the investors establish a company. By establishing a company, there will be an additional employment, with employment, the community will earn income, by earning income, the public will be able to shop to fulfill their needs, with the shopping society, the real sector of the economy will move, which it will give prosperity to the society.

### **Rights of land**

Determination of land rights by the State carried out by the Government based on the concept of the right to control from the State contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, which determines:

Earth and water and the natural wealth contained in it are controlled by the State and used for the greatest prosperity of the people.

Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, the State then determines the types of land rights, as stipulated in Article 4 of the UUPA, as follows:

#### Article 4

- (1) On the basis of the right to control from the State as referred to Article 2, the existence of various rights on the surface of the earth, which are called land, can be given to and owned by people, either alone or together with other people and legal entities.
- (2) The land rights referred to paragraph 1 of this article authorize the use of the land concerned, as well as the body of the earth and water as well as the space above it is only necessary for the interests which are directly related to the use of the land within the limits according to this law and other higher legal regulations.
- (3) In addition to the rights of land as referred to paragraph 1 of this article, it also stipulates the rights of water and space.

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<sup>1</sup> Imam Syaukani dan A. Ahsin Thohari, *Dasar-Dasar Politik Hukum*, 2004, Jakarta: PT. RajaGrafindo Persada, hlm. 44.

<sup>2</sup> Winardi, *Dinamika Politik Hukum Pasca Perubahan Konstitusi dan Implementasi Otonomi Daerah*, 2008, Malang: Setara Press, hlm. 7.

<sup>3</sup> Salim H.S, dan Budi Sutrisno, *Hukum Investasi di Indonesia*, 2008, Jakarta: RajaGrafindo Persada, hlm. 31.

<sup>4</sup> Pandji Anoraga, *Perusahaan Multinasional dan Penanaman Modal Asing*, 1994, Semarang: Pustaka Jaya, hlm. 46.

Furthermore, Article 16 paragraph (1) letter e UUPA stipulates that land rights as referred to Article 4 paragraph 1 are lease rights.

The lease rights as stipulated in Article 16 paragraph (1) letter e of UUPA, are then re-described in Section VII with the title “Right to Rent for Buildings in Article 44 and Article 45 of the UUPA, described as follows:

#### Article 44

- (1) A person or a legal entity has the right to lease the land, if he has the right to use land owned by another person for building purposes, by paying the owner some money as rent.
- (2) Payment of rent can be made:
  - a. Once or at a certain time;
  - b. Before or after the land is used.
- (3) The land lease agreement intended in this article may not be accompanied by conditions containing elements of extortion

#### Article 45

Those who can become holders of lease rights are:

- a. Indonesian citizens;
- b. Foreigners domiciled in Indonesia;
- c. Legal entities established under Indonesian law and domiciled in Indonesia;
- d. Foreign legal entities that have representation in Indonesia.

Furthermore, in the Elucidation of Articles 44 and 45 UUPA determines the following:

Because lease rights are usufructuary rights which have special characteristics, they are called separately. The right to lease is provided for buildings in connection with the provisions of Article 10 paragraph 1. The right to lease agricultural land is only temporary (Article 16 jo 53). The state cannot lease land, because the State is not the owner of the land.

Reading the explanations of Articles 44 and 45 of, it can be observed that landowners can only rent their land for buildings only, they cannot rent land for agriculture, because every agricultural land owner is obliged by the UUPA to actively work on it by himself. The provision is stipulated in Article 10 paragraph (1) of the UUPA, as follows:

Every person and legal entity that has a right to agricultural land on its principle is obliged to work on or actively pursue it himself, by preventing extortion methods.

Based on the provisions of Article 10 paragraph (1) of this UUPA, it is not justified that agricultural landowners rent their land to other parties, and must work on and cultivate their own agricultural land.

Although the UUPA in Article 44 and 45 determines the definition and the one who can own (the subject of rights) from the lease rights, the UUPA does not regulate the procedures for leasing land, which is related to the period of time and so forth.

### **Lease Rights of Land**

Leases according to the Indonesian general dictionary mean: use (borrowing) by paying money or that can be used (borrowed) by paying money.<sup>1</sup> In the dictionary of legal terms, there is a rental term that gives the following meanings:

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<sup>1</sup> W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia*, 2006, Jakarta: Balai Pustaka, hlm. 1112.

An agreement in which the one party is capable of submitting a material to another party so that this party can enjoy it for a certain period of time and for the receipt of a certain amount of money, money of which party is recently able to pay.

From these two definitions, basically there are similar words, namely hands over to use or enjoy things by paying them. If it is seen that there are those who hand over the goods to be enjoyed by paying them, then it can be known that the owner of the object is one party and the payer is the other party, or there are two parties. The owner of the object or the first party hands over the object to the payer or the second party so that the second party can use the property of the first party.

Leasing is a consensual agreement, meaning that it is legal and binding on the second point of reaching an agreement on the main elements, namely goods and prices. The obligation of one party to hand over the goods to be enjoyed by the other party, while the obligation of the last party to pay the rental price. So the item is handed over and not to be owned, but only to be used, its use is enjoyed. Thus the delivery of goods is only a mere handover of power of the leased item.<sup>1</sup>

Leasing is regulated in the Civil Code, hereinafter referred to the Civil Code, in the Book III on Engagement, chapter VII on Lease. Article 1548 of the Civil Code determines:

Leasing is an agreement, in which one party binds itself to give the other party the enjoyment of an item, for a certain time and with payment of a price, the payment of which is later agreed by the party.

Next, the Article 1549 of the Civil Code determines:

All types of goods, both immovable, both movable and rentable.

Reading the provisions of Article 1548 and 1549 of the Civil Code, it can be observed, that leasing is a reciprocal agreement, in which one party submits their property, either immovable objects or movable objects, to be enjoyed or used by the paying party within a certain period in accordance with the agreement.

The provisions in Article 1548 and 1549 of the Civil Code, when compared with the provisions of Article 44 paragraph (1) of the UUPA, the same thing is obtained, namely that both can use the rights of others by paying a sum of money. If Article 1548 and 1549 of the Civil Code concerning movable and immovable objects, Article 44 paragraph (1) of the UUPA concerning immovable objects, especially land. It's only if Article 1548 of the Civil Code states that within a certain period, Article 44 paragraph (1) of the UUPA does not specify a period of time.

### Theory of Justice

Justice, for Aristotle is a virtue related to human relations. Justice means doing good, justice is the main virtue or in other words: "Justice consists in treating equals equally and unequals unequally, in proportion to their inequality".<sup>2</sup>

Based on this principle, justice becomes two forms, namely distribution justice; justice that is determined by the legislator. Where the distribution contains services, rights and goodness for members of society according to the principle of proportional equality. Then corrective justice; justice that guarantees, supervises and maintains this distribution against illegal attacks.<sup>3</sup>

John Rawls in his book *A theory of justice* explains that the theory of social justice is the difference principle and as *the principle of fair equality of opportunity*. The core of the teaching from the theory of the difference principle is that social and economic differences must be regulated to provide the greatest benefit to those who are most disadvantaged.<sup>4</sup> The purpose of the term socio-economic difference is referring to an inequality in prospects or the potential of a person to get the basic elements of welfare, income, and authority. Then, the core of teaching of the theory of *the principle of fair equality of opportunity* is to show to those who have the least chance to achieve the prospects of welfare, income and authority.

### Theory of Welfare State

The modern welfare state which is often referred to the state of prosperity (*wohlfahrt staats, welvaarstaats, modern welfare state*), or often also called the modern state, is a characteristic of a country that becomes a

<sup>1</sup> Subekti, *Hukum Perjanjian*, cetakan XVI 1996, Jakarta: Intermasa, hlm. 90.

<sup>2</sup> Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, (Yogyakarta: Laksbang Mediatama, 2008), hlm. 36.

<sup>3</sup> Abdul Ghofur Anshori, *Filsafat Hukum*, (Yogyakarta: Gadjah Mada University Press, 2006), hlm. 47-48.

<sup>4</sup> John Rawls, *A Theory of Justice*, 1971, The Belknap Press of Harvard University Press, Cambridge, Massachusetts, hlm. 4

European specific phenomenon. This type of country is characterized by progress towards a democratic welfare system that must be carried out by the government.<sup>1</sup>

The intervention of the state in the economic field is devoted to market regulation in the concept of a welfare state. Welfare state is a form of government that considers that the state is responsible for ensuring a minimum standard of living for every citizen.<sup>2</sup>

Welfare from an economic point of view is the fulfillment of basic needs from each individual, namely in the form of meeting the needs for clothing, food and housing. But if only those needs are met, then life will always be stagnant, there will be no progress in people's lives, so that the country will always be a third country. To succeed a country, the society should have ability in adequate knowledge and sufficient health.

As expressed by Widjojo Nitisastro, that there are three basic human needs that are chosen for equity, namely food, clothing and housing. In addition to equal distribution of material needs, the opportunity to get education and health services is a necessity that its distribution needs to be pursued.<sup>3</sup>

Public welfare is the responsibility of the state, this is reflected in the contents of Article 33 paragraph (3) of the 1945 Constitution, which states: "The earth and water and the natural resources contained in it are controlled by the state and used for the greatest prosperity of the people". Furthermore, it is confirmed in Article 34, which states:

- (1) The poor and neglected children are cared by the state.
- (2) The state develops a social security system for all people and empowers people who are weak and unable in accordance with human dignity.
- (3) The State is responsible for the provision of appropriate health care facilities and public service facilities.
- (4) Further provisions concerning the implementation of this article are regulated in law.

The provisions of Article 33 and 34 of the 1945 Constitution are a constitutional basis for the state to intervene in the economic field.

#### D. RESULT AND DISCUSSION

It has been mentioned above that Article 44 paragraph (1) of the UUPA stipulates that a person or legal entity has the right to lease land, if he has the right to use land owned by another person for building purposes, by paying the owner some money as rent. Regarding 'other people' in this provision, it must be interpreted broadly, which is a legal subject. It is known that there are two legal subjects, namely natural person (individual) and *recht person* (legal entity).

Legal entities also consist of public legal entities (central government, regional governments), private legal entities (Limited Liability Companies, Cooperatives, Foundations), religious legal entities, and customary law communities. In Bali, customary law communities are involved in a community of customary communities called customary village or *Desa Adat*.

Customary villages in Bali do still exist and have a wealth of land which is often called land owned by customary villages or in Balinese language called *Druwe Desa Adat*. As customary law is generally not written, so does the land of customary village in Bali does not have a written rights proof/written proof of rights, but it is acknowledged by the community that the land belongs to the customary village, although there is no evidence of rights.

In addition to land owned by customary villages, in Bali there are also private lands. This private land can be proved by Certificate, or *Pipil/Petok/Gegirik* or Notification of Tax due or Property Tax (SPPT/PBB).

In the utilization of private land and land of *Druwe Desa Adat* by investors, often using a lease agreement, whether made illegally or with an authentic deed made by a notary, this also contains irregularities *penyimpangan* (hukum). These agreements are legal acts in the field of civil law while the agreed object is in the form of land, which is subject to and becomes the realm of regulation of agrarian law (UUPA) and in the Indonesian legal system, it is part of public law and does not obtain sufficient regulation in various legislations.

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<sup>1</sup> I Gde Pantja Astawa dan Suprin Na'a, *Memahami Ilmu Negara dan Teori Negara*, 2009, Bandung: PT. Refika Aditama, cetakan pertama, hlm. 120

<sup>2</sup> Johnny Ibrahim, *Hukum Persaingan Usaha, Filosofi, Teori, dan Implikasi Penerapannya di Indonesia*, 2007, Malang: Bayumedia Publishing, Cetakan Kedua, hlm. 32.

<sup>3</sup> Widjojo Nitisastro, *Pengalaman Pembangunan Indonesia, Kumpulan Tulisan Dan Uraian Widjojo Nitisastro*, 2010, Jakarta: Penerbit Buku Kompas, hlm. 438.

A leasing agreement is an agreement between the owner who binds himself to give something useful of a something to the tenant by paying the rent price in a certain time. As an agreement, leases of land for buildings for investment purposes fully follow the norms or rules of the law applied in the contract law. Because it was from the agreement, the land lease agreement for buildings for investment purposes can be made free as agreed, both regarding the area of land, price and time period of lease as well as other provisions as long as the parties want, such as extending lease term before the end of the lease term. In fact, there are no rules that prohibit leasing for 100 years.

Land for the people is very essential, because it is part of the identity of the Indonesian people who are agrarian so that the land becomes a source of life in achieving as much as the prosperity of the people. This has the consequence that the land must be able to provide welfare for its owners and also for public. Happiness should be felt by everyone, if it cannot be achieved, then efforts are made so that happiness can be enjoyed by as many individuals as possible in that society (nation) (*the greatest happiness for the greatest number of people*).<sup>1</sup> So that the state must be present to provide justice to all parties, both to investors and landowners by making arrangements for the use of land for investment as part of the legal politics of land.

Arrangement of land leasing agreements for buildings for the benefit of investors, especially regarding the period of time or duration of the lease, it must absolutely obtain the arrangement in the law and regulations. Without a strict period of time regarding the length of time the land can be agreed to be used by other people, also by the owners of capital in a law and regulations, the use of land for the benefit of investors is potentially unable to realize the benefits of land for the welfare of their owners, even the wider community.

The regulation of land use for the interests of investors must be carried out by the state as a legal politics of land by regulating the type of land lease agreement for buildings that benefit each other between investors and citizens as land owners. The type of the utilization can be in the form of mutually beneficial cooperation agreements, such as the agreement of *Bangun Guna Serah* where practically referred to the agreement of *Build, Operate and Transfer (BOT)* by keeping in mind that the land lease agreement for buildings has the potential to create economic injustice for landowners due to lack of norms in the Civil Code and the UUPA, which regulates the conditions and gives a strict time limit on how long the land can be used by others.

Juridically, currently there is a law that specifically regulates BOT and can only be reviewed as a legal basis from: (1) Decree of the Minister of Finance of the Republic of Indonesia Number 248/KMK.04/1995 concerning Income Tax Treatment for Parties who Collaborate in the Form of Build, Operate and Transfer; (2) Circular of the Director General of Taxes Number Se-38/Pj.4/1995 concerning Treatment of Income Taxes on Income Regarding Agreements of Build, Operate and Transfer; (3) Government Regulation of the Republic of Indonesia Number 27 of 2014 as a substitute for Government Regulation Number 38 of 2008 and Government Regulation Number 6 of 2006 concerning Management of State/Regional Property; (4) Decree of the Minister of Finance Number 96/PMK.06/2007, concerning Procedures for Implementing the Use, Utilization, Elimination and Transfer of State Property; (5) Regulation of the Minister of Home Affairs Number 1 of 1977 concerning Procedures for Application and Settlement of Granting Rights of Land Parts, Management Rights and Registration.

The practice of BOT is the development of a Build, Operate, Own (BOO) agreement in principle an agreement between an investor and a land owner to utilize the land where the project the building belongs to the investor while the landowner only receives compensation in the form of building surrender / existing projects and this model agreement is rarely implemented.<sup>2</sup> Then it developed into a Build, Own, Operate, Transfer (BOOT) agreement as a combination of the BOT agreement model with the BOO agreement model. In this BOOT agreement, investors have the right to operate while collecting revenue in return for the capital invested.<sup>3</sup> The difference between the BOOT agreement and the BOT agreement model is the position of the investor in the operating period not only as an operator, but already the owner of the project in question, even though later the ownership and control of the project after the end of operation is handed back to the land owner. The last is the Build, Transfer, Operate (BTO) agreement in which agreement, the project / building directly belongs and is handed over to the land owner.<sup>4</sup> The benefit obtained by the investor is that he can operationalize the project / building including collecting revenue as a benefit obtained from the project for a certain period of time which is a reward for the implementation of the project development.

Among the types of agreements described above, the types of BOT and KSO agreements for lands owned by individual and *Druwe Desa Adat* as well as arrangements that provide opportunities for cooperatives

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<sup>1</sup> Dardji Darmodihardjo dan Shidarta, *Pokok-Pokok Filsafat Hukum, Apa dan Bagaimana Filsafat Hukum Indonesia*, 1999, Jakarta: Gramedia Pustaka Utama, hlm. 116.,

<sup>2</sup> Munir Fuady, *Kontrak Pembangunan Mega Proyek*, 1998, Citra Aditya Bakti, Bandung, hlm. 53.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, hlm. 55.

to participate as investors in utilizing state assets of local governments, becoming legal politics of land for the interests of investment in tourism, it is appropriate to encourage its development, of course the presence of the State in this case the government is very necessary to regulate all forms, terms and time period for the lease of land for buildings and supervise the implementation of these investments.

These things make the land use be truly able to provide benefits in a balanced way between investors and landowners so that justice can be achieved in order to realize society welfare, in line with the theory of justice as presented by Aristotle.

If the discussion above is associated with one of the theoretical frameworks of this research, then the findings can be said to be fair as the meaning and aim of the word “fair” according to Aristotle, that is fair which can be interpreted as according to the law and as what is comparable, namely what it should be. Then all things that are based on the law can be considered fair.<sup>1</sup> Implementatively, the findings above are also consistent with theory of John Rawls in his book *A theory of justice* defines social justice theory as the difference principle and as the principle of fair equality of opportunity.

In the face of trade liberalization, it is necessary to determine policies that provide legal certainty and convenience for investors without disadvantaging the interests of the people, in addition to striving as much as possible the availability of policy tools that can give the people the bargaining position<sup>2</sup> of the concept of “building without evicting” is one example to empower the people in interest collision to the land, which is for example: land consolidation (urban and rural) provides HGB (to private parties/investor above the land of ownership (people) and others. In this excellent concept given by Maria SW Soemardjono, it can be adopted in Bali with the concept of “Building Bali without Selling Land of Bali”.

There is also an implicit view as a customary law community in Bali. That land is an object that is not only seen in physical terms, but has religiomagic character. All customary land /Druwe of customary village in Bali have relations with *Kahyangan Desa/Kahyangan Tiga* or that is always associated with the place of God worshipping as the ruler of the universe. So that the land according to the Balinese customary law community whose lives are based on Hindu teachings, sees the land as physical and non-physical or material and non-material, so as a real object (*sekala*) and unreal objects (*niskala*), and holy and unholy. Because the concept of land in Bali is distinguished between the concept of physical land/ material with non-physical (Pertiwi or Mother Earth), while Pertiwi or Mother Earth is generated as strength (energy) and gives the life by the land to what lives on it.<sup>3</sup>

## E. CLOSING

### Conclusion

Based on the discussion above, the conclusion of the problem is that the legal politics of land is able to accommodate the interests of the people and capital owners is made in the form of leasing land for buildings between landowners and capital owners, because lease is an agreement between landowners and capital owners. The agreement will arise if agreed by the parties who made it, therefore in order to protect the land owner (the people), the State must be present. The presence of the State in this case is very necessary in the form of regulation regarding the form, terms and conditions of a clear period of time in the land lease agreement for buildings, because usually the people are in a weaker position than the capital owners.

### Recommendation

To the President and the People's Legislative Assembly DPR of the Republic of Indonesia, to make specific laws and regulations regarding Land Leasing for Buildings, which regulate objects, time periods and sanctions for those who violate them.

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<sup>1</sup> Dardji Darmodihardjo dan Shidarta, *op. cit.*, hlm 154.

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<sup>3</sup> Tjok Istri Astiti, 2010. *op. cit.*, hlm. 126.

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