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RESEARCH ARTICLE

HARMONIZATION OF ARRANGEMENT OF ACQUISITION OF LAND RIGHTS FOR INVESTMENT IN THE ERA OF REGIONAL AUTONOMY BASED ON THE PRINCIPLE OF JUSTICE IN INDONESIA

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Abstract

The enactment of regional autonomy through Law Number 23 of 2014 concerning Regional Government in the management of government is an effort to realize regional independence in carrying out various aspects of development. Related to the limited funding of development funding, the step that must be taken is to create a conducive investment business climate in order to stimulate activities in other business sectors in a better direction. Investment business activities must be supported by all institutions in activities such as guaranteeing legal certainty in order to create opportunities for investment. Law Number 25 of 2007 concerning Investment seeks to accommodate existing regulations. The rules in the Investment Law are treated for investment throughout Indonesia, with the provisions only limited to direct investment, this investment policy aims to create conducive, promotive investment, provide legal certainty and efficiency while taking into account national interests. The problems discussed in this study are related to the ideal policy of acquiring land rights for investment purposes in Banyumas Regency and the concept of harmonization of the Banyumas Regency Government's policies towards acquiring land rights for investment in the Regional Autonomy era. The results show that the Regional Government has the role of directing and controlling investment companies in acquiring land based on consideration of land tenure and technical aspects of land use. For this reason, the Location Permit is intended to determine the land that corresponds to the applicable Regional Spatial Plan, which is intended for investment activities. In the coordination and consultation meeting between the investor and the community holding the land rights in the location to be designated in the Location Permit, the Regional Government acts as the supervisor and facilitator. Local governments must be brave to refuse investments that are not pro-regional autonomy by using the principle of pro-etif to investment and the Notary public should also play an active role in providing input to investors regarding the legality of the deed material that is made related to investment, so that the investments given remain attentive to the local wisdom of the local community.

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Introduction:-

During the reform era, the demands related to the land sector, that the authority of the Central Government over land administration in the regions be delegated to the Regional Government. In the implementation of regional autonomy, which gives broad, real, and accountable autonomy authority to the Regional Government with a view to improving the welfare of the community, the management of local natural resources is reasonable. Investment activities in the regions are expected to be able to revive the Indonesian economy which had collapsed due to a prolonged monetary crisis. Therefore it is necessary to study the role of local governments in the process of acquiring land rights for investment purposes, as well as on factors that can influence a conducive investment climate.

Furthermore, The enactment of regional autonomy through Law Number 23 of 2014 concerning Regional Government in the management of government is an effort to realize regional independence in carrying out various aspects of development. Related to the limited funding of development funding, the step that must be taken is to create a conducive investment business climate in order to stimulate activities in other business sectors in a better direction. Investment on business activities must be supported by all institutions in activities such as guaranteeing legal certainty in order to create opportunities for investment. Law Number 25 of 2007 concerning Investment seeks to accommodate existing regulations. The rules in the Investment Law are treated for investment throughout Indonesia, with the provisions only limited to direct investment, this investment policy aims to create conducive, promotive investment, provide legal certainty and efficiency while taking into account national interests. The same also applies to some regional like Banyumas regency for example.

The growing needs of use of land in Banyumas Regency, has the potential to cause land problems. What is of concern is that the resolution of land cases generally takes a long time. Land problems can involve individuals, communities, plantations, Perhutani, and government land. Not yet registered all of the land parcels through the Systematic Complete Land Registration (PTSL), is the cause of the emergence of land dispute problems in the community because until now in Banyumas district there are at least 730 thousand uncertified lands.

Based on the problem mentioned above, the author are interested to study it further in this research with The main problems discussed in this study are related to the ideal policy of acquiring land rights for investment purposes in Banyumas Regency and the concept of harmonization of the Banyumas Regency Government's policies towards acquiring land rights for investment in the Regional Autonomy era.

As for the method of research, the author uses (socio legal research) as research approach asit is really effective in studying the problem that occurred in the society. Collection of legal materials through field research and literature study. Furthermore, an analysis is carried out in a descriptive form in the form of explanations of the legal norms.

Research Result And Discussion:-

In order to analyze how to harmonize the Banyumas Regency Government's policy towards the acquisition of land rights for investment in the Regional Autonomy era, can be seen in a review of several related theories as presented below.:

Harmonization of Law Theory:

Harmonizing the law, LM Gandhi, quoting tussen eenheid en verscheidenheid: Opstellen over harmonisatie instaaat en bestuurecht (1988) said that harmonization in law includes adjusting legislation, government decisions, judicial decisions, legal systems and legal principles with the aim of increased legal unity, legal certainty, justice (justice, gerechtigheid) and comparability (equit, billijkheid), usefulness and clarity of law, without obscuring and compromising legal pluralism if needed. According to the National Legal Development Agency in a book compiled by Moh. Hasan Wargakusumah, legal harmonization is a scientific activity towards the process of written harmonization that refers both to philosophical, sociological, economic and juridical values.

Philosophical values can be interpreted if the legal method is in accordance with the ideals of the law as the highest positive value. Juridical value that is if the formal requirements for the formation of legislation have been met. Sociological value, namely the effectiveness or the results of the use of laws and regulations in people's lives and economic value, namely the substance of the legislation should be prepared with regard to efficiency in the implementation of the provisions in the legislation.

Justice Theory:

Justice is one of the most discussed legal goals throughout the history of legal philosophy. Aristotle wrote extensively about justice. He stated that justice is a policy related to human relations. Furthermore, Aristotle in his writings "Retorica" distinguishes justice in two kinds, namely distributive justice (*justitia distributiva*) as justice which gives to each person based on his services or distribution according to their respective rights, and cumulative justice (*justitia cummulativa*) as accepted justice by each member without regard to their respective services. This cumulative justice is based on transactions (*sunallagamata*) whether voluntary or not.

In addition to Aristotle, Thomas Aquinas has also described justice by differentiating it into two groups namely general justice (*justitia generalis*) and special justice (*justitia specialis*). General justice is justice according to the will of the law which must be carried out in the public interest, whereas special justice is justice on the basis of equality or proportion. Special justice is then described in three forms, that is:

1. Distributive justice (*justitia distributiva*) is justice in which are proportionately applied in the field of public law in general;
2. Commutative justice (*justitia commutativa*) is justice that comes by equating achievement with achievement.
3. Vindicative justice (*justitia vindicativa*) is justice in terms of imposing penalties or compensation in criminal acts. A person will be considered fair if he is convicted by a body or fine in accordance with the amount of the sentence that has been determined for the crime committed.

Justice is an important and urgent issue to be understood in human life, both in the sphere of society, state, and international relations. This phrase has long been voiced by John Rawls who is considered the most comprehensive theory of justice to date. Rawls's theory itself departs from the understanding / thinking of utilitarianism, so that it greatly influences the thinking of Jeremy Bentham, J.S. Mill, and Hume are known as figures of utilitarianism. Even though, John Rawls himself is more often included in the group of adherents of Legal Realism.

Once the importance of the value of justice in society demands that these values can be realized and live, especially in the life of the nation and state. In country size. each has its own theory of justice which may differ from one another, and the Republic of Indonesia is no exception.

Theory Of The System of Law:

Lawrence M. Friedman, stated that there are three components embedded in the legal system. The three components are: first, structure; The structural component of a legal system includes various institutions created by the legal system with various functions in order to support the operation of the system. One of them is the Court. Second, the substantive component includes everything that is the output of a legal system in the form of regulations, decisions, doctrines insofar as these are used in the process concerned. Third, the component of culture (culture). Legal culture by Friedman referred to as 'the gasoline of the motor of justice'. which are then formulated as attitudes and values that have a relationship with law and the legal system.

Building a legal system is important, but building community legal awareness is more important, because legal awareness involves understanding, applying and implementing law. While building a legal system is related to three things, namely the legal structure; legal substance and legal culture.

The three elements of the legal system are theorized by Lawrence M. Friedman as the Three Elements of Legal System. The legal structure according to Friedman, is the framework or framework, and as parts of the law that continue to always survive, or parts that provide a kind of form and boundary to the whole.

Based on the analysis mentioned above, several things that can be concluded related to this research are:

1. The Regional Government has the role of directing and controlling investment companies in acquiring land based on consideration of land tenure and technical aspects of land use. Location Permit is intended to determine the land that according to the applicable Regional Spatial Plan is intended for investment activities are still often constrained by landowners needed for investment, this causes the ideal policy of acquiring land rights for investment interests in the area has not been harmonious. In the coordination and consultation meeting between the investor and the community holding the land rights in the location to be designated in the Location Permit, the Regional Government acts as the supervisor and facilitator.
2. Through the harmonization of laws and regulations, a legal system will be formed that accommodates demands for legal certainty and the realization of justice between the central government and regional governments in the

implementation of regional autonomy, especially with regard to investment. It is expected that BPN and BKPM as institutions that produce regulations that apply to their institutions, review the regulations issued, especially in the case of acquiring land for domestic investment companies so that there is no overlap between one regulation and another and is expected to be contained in the form of one regulations contain complete and comprehensive both starting from the Location Permit process, land acquisition to the processing of certificates for investment.

Conclusion:-

Through the harmonization of laws and regulations, a legal system will be formed that accommodates demands for legal certainty and the realization of justice between the central government and regional governments in the implementation of regional autonomy, especially with regard to investment. It is expected that BPN and BKPM as institutions that produce regulations that apply to their institutions, review the regulations issued, especially in the case of acquiring land for domestic investment companies so that there is no overlap between one regulation and another and is expected to be contained in the form of one regulations contain complete and comprehensive both starting from the Location Permit process, land acquisition to the processing of certificates for investment.

Harmonization of law in a global perspective, ideally the harmonization step that is leading harmonization, ideally taken as a model, both in its original form (adoption) and in a form that has been modified (adaptation) models of developed country law, including uniform law and model laws designed by international agencies. With this step, the resulting legal norms have more transnational values.

Local governments must be brave to refuse investments that are not pro-regional autonomy by using the principle of proleatif to investment and the Notary public should also play an active role in providing input to investors regarding the legality of the deed material that is made related to investment, so that the investments given remain attentive to the local wisdom of the local community;

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