

## **LAND USE REFORMULATION OF NORTH JAKARTA EX-RECLAMATION FOR LAND PROCUREMENT TOWARD AFFORDABLE HOUSES IN JAKARTA**

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### **Abstract**

Jakarta Bay Reclamation is the process of land acquisition by the government of Jakarta within government Jokowi Widodo, who was replaced by Basuki Tjahaja Purnama (Ahok). Later, in the 2017 gubernatorial election Anies Baswedan and Sandiaga Uno won an absolute and seized power in the capital. With the win, according to the governor's promise during the election campaign that Anies has suspended the reclamation project and confirms the termination of the contract with the developers, some of whom started reclamation and want to restore the land benefit for the greatest prosperity of the people in accordance with the mandate of the state constitution. This action reaps the pros and cons because the developers have invested large enough to planning a new city for business purposes and converted into for the benefit of the people. The study aims to analyze and provide alternative solutions regarding the use and utilization of land reclamation which covers approximately 1500 hectares in order to find a win-win solution. The method used is normative juridical approach to address how policy should be appropriate so that the reclaimed land can be reused and do not become wastelands. From this research found an alternative solution by dividing the three steps, among others who had given position, which was the reclamation process, and that has not been processed yet been obtained prior permission from the governor. Complicating this issue is caused due to developers who build without permits and permit reclamation is still under debate, so there are some developers who commit violations in the sphere of administrative and legal procedures, and increasingly complicated in the land that has been reclaimed in fact already issued building rights to on behalf of developers perceived by the governor Anies as a rule are not prudential practice.

**Keywords:** Land Bank, Reclamation, Land Acquisition, Affordable Housing.

### **1 BACKGROUND**

In some areas, reclamation in Indonesia causing many conflicts. At least, it is caused by three interests; interests of the government, employers, and society (fishermen). The interests of the Government and local authorities to give permission for reclamation to catch local revenue, the interests of employers to reclaim the beach, because they want to increase the company's revenue, while the interests of society (fishermen) to defend coastal areas so that it does not diminish their livelihood. Reclamation in Indonesia has been governed by the (Act No. 26 of 2007 on Spatial Planning and Public Works Minister Regulation No. 40 PRT / M/2007 on Coastal Reclamation Region), but has not been able to complete the reclamation (Huda, 2013), This is caused by the laws governing the reclamation and the local authorities do not know the rules relating

(Sandro, Rona, Supartono Supartono, and Mhd Halkis, 2018), In addition, the central and local governments tend to be more concerned with employers than fishing communities, thus triggering the conflict in reclamation (Bintari, 2018), Positive law as the law made by the government and the legislative council and local government with local legislature, the rule that was born as a result of an agreement between them, and the neglect of Islamic law that was created by God to set all things in this world, including in the management of the universe such as coastal (Mangunjaya, 2006), God as the creator of this universe, allowing to manage and utilize natural, if for the benefit of mankind as a whole, and not to men. Therefore, in the implementation of reclamation, the Government and local authorities need to synergize Islamic law into positive law in solving problems of social and natural resources (Supriya, 2016).

According to statistical data of 2017-2018, the population of Jakarta can be divided into two major groups, namely; resident in the afternoon and evening. That is, in Jakarta there are waves when daytime population growth, given the permanent workers in the Jakarta region at Urban areas, such as Bogor, Depok, Tangerang, and Bekasi. Therefore, the urban group known as BODETABEK. This region is the supplier of a daytime population of up to 5 million people (Rahmatulloh, 2017), Meanwhile, residents who settled in Jakarta in the evening or at night Jakarta population ranged between 10.2 million people, whereas in daytime population of Jakarta as many as 15 million people (Tambun, 2017).

Seeing the growing population or growing, in addition to Jakarta as the center of government and commerce center, urbanization increases each year, one of them due to their culture of "going home" every feast "Eid". So, no wonder, if the government intends to develop a residential area including business districts and other social needs, given the availability of land is very limited and there is no government program to develop the capital area by entering an urban area mentioned above becomes a part of the nation's capital. One development area of these settlements with the development of coastal area by means of reclamation. Reclamation of recent years is the conversation warm and full of controversial, especially reclamation Jakarta Bay, this program called "The Giant Garuda" that is intended to build 17 islands, with a total area of 5,155 hectares plans according to Governor Regulation No. 121/2012 in the era of Governor Fauzi Bowo (Permanasari, 2019).

Reclamation program in the Bay of Jakarta with various conflicts spawned disputes between the central government and the developer during the administration of President SBY, namely among environment with six developers (PT Bakti Era Mulia, PT Taman Harapan Indah, PT Mangala Krida Yudha, PELINDO II, PT Pembangunan Jaya Ancol and PT Jakarta Propertindo), then alongside the President Jokowi to cause friction between the central agencies, namely the ministry of maritime, ministry of maritime affairs and fisheries against the governor of Jakarta, given permission reclamation in September 2013 declared expired and was not renewed, when Jokowi served as Governor of Jakarta, but when Jokowi took time off for his election president campaign, when the acting Governor of Jakarta Basuki Tjahaya Purnama (called Ahok) has an extension principle license expired in September 2013 issued in 2012 for the F, G, I, and K island. instead issued permits for the implementation of the development of the G island for subsidiary Agung Podomoro, PT Muara Wisesa Ocean on December 23, 2013 (Nurhidayah, Laely, and Alistair McIlgorm, 2019), This situation sparked a dispute between the developer and the governor WALHI. In the month of September 2015, the Indonesian Environmental Forum (WALHI), the People's Coalition for Fishery Justice Indonesia (Kiara), and the number of fishermen in Muara Angke sued the government of DKI for issuing permits for the island G to Pluit City in the State Administrative Court (Administrative Court), which ultimately dated May 31, 2016, the State Administrative Court (Administrative Court) Jakarta won the lawsuit fishing North Jakarta against PT Muara Wisesa Ocean and the Government Jakarta which issued a permit Implementation G Island stating that the judges received the lawsuit fishermen and cancel the license of the island reclamation G by Jakarta Governor Basuki "Ahok" Tjahaja Purnama PT Muara Wisesa Ocean, a subsidiary of the developer Agung Podomoro (Dudayev, 2017).

Maritime coordinator order of the Minister at the time, Rizal Ramli reclamation project is a moratorium on April 14, 2016. However, both the governor and the developers when it does not want to give up, with all the efforts to fight that resulted in Rizal Ramly was dismissed from his position as Coordinating Minister maritime, and then replaced by Luhut Binsar Panjaitan on 12 August 2015 and declare that the reclamation project continues (Davis, 2017).

Beach reclamation project eventually become an issue of entering the political and legal conflict, because it involves many problems for people living estuary foreshore North Jakarta will be negatively affected development of reclamation such as flooding, obstruction of access to the beach, and disrupt the lives of the people by the beach. Thus, the political issue is rolling towards the election campaign of gubernatorial in 2017, where one of the candidates for governor Anies Baswedan promised to stop the reclamation project if it wins the election for governor, and right sometime after the inauguration, the commitment as governor-elect, Anies

reiterated his campaign promise that was first done is to stop the reclamation project. And this is evidenced by forming Reclamation Management Coordination Agency North Coast Jakarta in June 2018, which aims to evaluate all relevant permits reclamation and verified in detail. The conclusion drawn is to stop the reclamation which is one of its political promises, because reclamation can have a negative impact on fishermen and the environment (Widya, 2019).

This study aims to analyze the factors associated with legal certainty in investing is associated with the legal corridors for in the Constitution that, earth, water and natural resources contained in it is managed and controlled by the state, as much as possible is used for prosperity and well-being people. With the conflict between central and local institutions or fellow human beings at the center, then the conflict between the government and non-governmental organizations with investors and developers begs the question, how the legal position for decisions and policies taken from granting permission to continue the reclamation project? And how reformulation proportional division of settlement on land that has been built is associated with the role of open access land bank for housing as the fulfillment of the rights of people who are shaped reclaimed land ready to build?

## **2 RESEARCH METHODOLOGY**

The method used is the normative juridical approach with empirical data, where the data found in the field and practices that are already on the streets are used as primary data to be oriented to the primary legal materials then theoretically approach is legislation that the statutory approach, then analysis approach law reform theory of John Henry Merryman which suggests three models reformulation of the legal framework (Merryman, 1977), Merryman mentioned as the harmonization of laws, which are known as the three models, namely "tinkering Harmonization", "Following Harmonization" and "leading Harmonization" (Budoyo, July 2014), In terms of model framework law harmonization to make arrangements to create a legal product itself through the discovery of the law, legal drafting and explore the values in the society is an idealist and a nationalist to determine win-win solutions to the existing conditions, namely reopening the results of reclamation already exist, taking into account the mandate of the constitution, without ignoring the interests of the people.

## **3 DISCUSSION**

### **3.1 Models of Reclamation**

#### *3.1.1 Reclamation in Singapore*

At the beginning of the 20th century, especially 1919 to 1923, Singapore reclamation done to improve public facilities such as roads, railways, and coastal protection from a military aspect. Singapore at the beginning of independence designing economic development program that allows at the same time the project requires massive land reclamation. Singapore experienced a surge in demand for industrial land, infrastructure, commercial and residential (Glaser, R., P. Haberzettl, and RPD Walsh, 1991), Some projects reclaiming hundreds hectare Mainland way. Jurong Industrial Estate was developed in the early 1960s to meet the needs of industrial land. In 1968, 153 factories established in Jurong (Chua, 2011), 46 of which are being built. Not much of the old Jurong remained. Most Jurong longer constrained by Pandan reservoir and Sungei Pandan. At the same time as the development of Jurong Industrial Estate, central business district Singapore is also extended to land reclamation. Singapore economy is weak also changed drastically through postwar industrialization and land reclamation (Kuruville, 1996).

Although Singapore aquatic ecosystems destroyed by land reclamation projects and mass industrialization (Schulz, 2007). The government continues to seek accommodation and restoration of damaged environment. Since the mid-1990s, the Environmental Impact Assessments (EIA) is a major concern with the aim of identifying potential environmental impacts of development projects and suggested solutions to reduce environmental impact.

In order restoration, environmental activists and the government continues to strengthen the biotic community. Although 25% flora and fauna extinct native Singapore, Singapore introduced alien flora and fauna ecosystem in order to enrich biodiversity the country (Sodhi, Navjot S., and Barry W. Brook, 2006), Similar efforts in developing a nature reserve has been protecting the local wildlife; only half of whom live in the nature reserve.

#### *3.1.2 Reclamation at Dubai*

The Palm Islands are artificial islands in Dubai, United Arab Emirates. The islands are the largest land reclamation project in the world and is the largest artificial islands in the world (Ouis, 2010), This artificial

island development is the idea of Sheikh Mohammed bin Rashid Al Maktoum, which aims to increase tourism in Dubai, for the Dubai government realized against the depletion of the supply of petroleum content. Uniquely, each island shaped like palm trees, with a crescent-shaped roof, and has a wide range of facilities and entertainment centers. Nakheel Properties become a trusted contractor to build this artificial island. The construction of the island, directly also add 520 km of coastline in the city of Dubai. Construction of Palm Jumeirah began in June 2001, followed by the construction of the Palm Jebel Ali, which began in 2002. The Palm Deira, which claimed immensity beyond Paris, the construction has been started since 2003 (Hvidt, 2009).

### 3.1.3 Reclamation in Netherlands

Speaking of the Netherlands, said reclamation perhaps the most words come to mind. Not without reason, it can happen because the Netherlands is a pioneer country in the implementation of the reclamation technology weapons. Based on the condition in which almost half of the land area of the Netherlands is one meter below sea level (Madigan, 1953), Making reclamation become indispensable technology. However, it was reclaimed in the Netherlands to save a unique thing that perhaps not everyone knows. Reclamation in the Netherlands implemented the system Polder (De Mulder, EFJ, Van Bruchem, AJ, Claessen, FAM, Hannink, G., Hulsbergen, JG, & Satijn, HMC, 1994), Therefore, dijk and sea walls found in the Netherlands (Polderman, 1975), Reclamation Flevoland region or once a region *Zuiderzee* in 1916 a big flood, and it was decided that *Zuiderzee* (An inland sea in the Netherlands) will be covered by reclaiming and "*Zuiderzee Works*" starts. in 1932, *Afsluitdijk* completed, the sea closes completely. This was then called with *Ijsselmeer* which means the lake at the end of Ijssel's river (Van Loon, 1975), Flevoland is an area that is claimed as the world's largest artificial island. Polder Project southern sea or *Zuiderzee Works* has resulted in a new land of 48,000 hectares, East Flevoland resulted in 54,000 hectares in 1950, and South Flevoland 43,000 hectares in 1954. From this poledrisation technique discovered to date, the Netherlands has produced about 500,000 hectares of new land (Hoeksema, 2007).

Reclamation of the three models in the world, shows that in general, the reclamation is done with the purpose of repair and recovery of damaged watery area or useless become better and more useful. This area can be used as residential land, attractions and commercial district. Indonesia has a large area and consists of thousands of islands (Suparlan, 2016). What shall be the purpose of large-scale reclamation in the Bay of Jakarta, if you then do not heed the people's interests and pulled the purpose of the nation, it becomes important to know the legal basis to initiate reclamation referenced in Jakarta bay.

## 3.2 The Jakarta Reclamation

Transition of leadership is the political dynamics that cannot be avoided, i.e. when Jokowi at this time to be president, then his home office as governor transferred to his deputy, Ahok. At the moment this is a matter of policy leadership Ahok massive reclamation project initiation related Jakarta bay (LIANA, 2016), The question then is, what is the legal basis for the implementation of reclamation Jakarta bay? When in fact already expired and the signal termination of the project in the future Jokowi as governor definitive because it must meet several requirements, such as environmental impact studies and public trials, especially to the public beach in North Jakarta. Whether acting governor can make the decision to deviate from his predecessor officials while?

If legally, there is no prohibition to act with the same authority, the act of acting governor Ahok can be categorized into action that exceeds its authority, known by *misbruik van recht* (Van Neste, 1967), In theory, there is a combined theory tries to unite elements of the will and interests in terms of rights (Soeroso, 2006), Apeldoorn (1972) states that the so-called rights law is linked to a human or subject-specific laws and thus transformed into a power and a right arises when to start moving. So, the right is a power (*macht*), which are regulated by law and this rule is based on morality and not only physical strength alone. Rights must be executed in accordance with its objectives, namely in accordance with the social interest or public interest (Van Apeldoorn, 1972).

Running rights which are not fit for purpose so-called abuse of the right or *misbruik van recht, abus de droit*. According to Utrecht, exercise rights goal is not appropriate to deviate from the purpose of the law, which deviate from the guarantee of legal certainty. Therefore, the question must exercise this right in accordance with the purpose of that law, that the abuse of rights is considered to occur if a person uses his rights in a manner inconsistent with the purposes of society (Arrasjid, 2005).

General overview of the case law relating to abuse of law, but also examine the extent to which the case law and legal literature on the subject accordingly. In particular, investigated the extent to which certain criteria of abuse of law is more prominent in the case law of the other steps. It is now generally accepted that misuse

could result in disciplinary (Byers, 2001), Abuse of power, often close to civil law theory on the abuse of rights, characterized by the exercise of power for purposes other than those provided by law.

There are three main categories of abuse of power (Kolb, 1994):

1. The administrative measures that are foreign to any public interest. This kind of abuse of power, most often found in measures relating to public officials, the maintenance of public order, expropriation for public purposes, and urban planning.
2. The administrative measures taken for public use, but it is not that where the necessary powers to act given to its maker aimed at protecting the financial interests of the State or public authorities, to resolve the dispute or defeat a court decision.
3. Abuse of procedure. Abuse occurs when the administrative procedure, hiding the actual content of an act in a wrong appearance, using the procedures provided by law for other purposes, in order to avoid certain formalities or to remove certain guarantees.

So, limit the abuse of power based on several factors (Bies, Robert J., and Thomas M. Tripp, 1995), among others:

1. Assumption legality of interest by the administration. This assumption associated with the presumption of legality in general in which any administrative actions benefited. However, of cases in which the abuse of power to be generated from the provision decisions, gradually adopting a common regime of evidence before the administrative court.
2. Expansion of the other objectives. Although the administration of a portion pursues different goals than what is normally justify intervention, the decision is not undermined by abuse of power because he is also aiming for the purpose in accordance with the rule.
3. Transfer of objectives pursued. This transfer can be used for cancellation and not to abuse of power, but for violations of the law, and particularly to an error in the reasons underlying the decision.

Apart from that, there is also the principle *detournement de pouvoir* as abuse of authority (Fawcett, 1957), Krishna Djaya Darumurti (2014) there has been a mistake in interpreting the misuse of authority as stipulated in Law No. 30 of 2014. Abuse of authority (*detournement de pouvoir*) is different from acting arbitrarily (*willekeur*). Whether there is an element of abuse of authority is tested with the General Principles of Good Governance that is the principle which determines that the authority given to the governing organs with a specific purpose. If you deviate from the objectives given this authority is considered as abuse of authority. Elements of arbitrary tested with the principle of rationality or appropriateness (*redelijk*). A policy is considered an element of *willekeur* if the policy was manifestly absurd or unreasonable (*konnelijk onredelijk*). The government was given the freedom of action or discretion in favor of the public good. Discretion in principle prefer the effectiveness of a destination rather than adhering to the legal requirements but still have to be accounted for. Ahok discretion in the case of Source Sane Hospital and the Jakarta Bay Reclamation does not cause legal consequences potentially burdening state finances. Ahok discretionary performed in both cases can be accounted for by the rules of the State Administration Law normatively regulated in Law Number 30 Year 2014 on Government Administration Ahok discretion in the case of "Sumber Waras Hospital" and the Jakarta Bay Reclamation does not cause legal consequences potentially burdening state finances. Ahok discretionary performed in both cases can be accounted for by the rules of the State Administration Law normatively regulated in Law Number 30 Year 2014 on Government Administration Ahok discretion in the case of Source Sane Hospital and the Jakarta Bay Reclamation does not cause legal consequences potentially burdening state finances. Ahok discretionary performed in both cases can be accounted for by the rules of the State Administration Law normatively regulated in Law Number 30 Year 2014 on Government Administration (Juliani, 2018).

Jakarta Bay reclamation megaproject is not new in the development plan of development capital. Although it has been found that the refusal of the public and fishermen because of its impact on environmental degradation and displacement of coastal living space and livelihood of fishermen in the area (Susanti, Nonik, and Afrizal Afrizal, 2018), Unfortunately, although many academic studies and citizen complaints around, it was not able to stop the construction carried out by PT Muara Wisesa Ocean subsidiary PT Agung Podomoro it. Although leadership in Jakarta turns along with the passage of time, the ambitious mega project remains insisting continued (Sembiring, 2019).

The Jakarta administration itself has repeatedly issued regulations to ensure the continuity of the reclamation. The latest, since it was first inaugurated on 19 November 2014, the Governor of Jakarta 'Ahok' Tjahaja Basuki Purnama has released a total of four (4) permits the implementation of the reclamation.

Starting from Jakarta Governor Decree No. 2238 2014; Jakarta Governor Decree No. 2268 2015; Jakarta Governor Decree No. 2269 2015; and Jakarta Governor Decree No. 2485 Year 2015. The same substance, gave permission for some companies to conduct reclamation on the coast of Jakarta. Both *misbruik van recht* principle and *detournement de pouvoir* (done without caution, related to an EIA and public response) longer associated with good governance (Ginting, 2016), not merely an error on the developer, but there was a mistake of policy (policy of governance) is considered the unfair-trade by the governor Ahok.

### **3.3 Legal Theories against Reclamation**

#### **3.3.1 Good Governance**

Good governance is essentially a concept that refers to the process of decision making and implementation can be accounted for together. As a consensus reached by the government, citizens and the private sector for the implementation of governance in a country (Bourgon, 2007).

Good Governance in Indonesia have been initiated since the outbreak of the Reformation era in which in that era there has been a reshuffle system of government that demands a clean democratic process so that good governance is one means absolute Reforms implemented in the new government (Adiyanta, 2010), But over the last 15 years, the implementation of good governance in Indonesia have yet to find the form of success as aspired to the Reformation. There are still many fraud and leakage of budget management and accounting are the two main products of Good Governance.

In principle, good governance is based on the product performance of a government. The merits of the government can be judged if he had been in contact with all elements of the principles of good governance include: Participation, Rule of Law, Transparency, Corporate Social Responsibility, Consensus, Equity, Effectiveness and Efficiency, Accountability, and Strategic Vision (Atake, OJ, and WA Dodo, 2010).

If connected with the Jakarta Bay reclamation project, according to the governor Anies, this must be evaluated consistently because it does not meet the principle of good governance but very intensively conducted in the promotion of Foreign Affairs so that it can give rise to public suspicion (Son, Narendra Ghaniy, and Eriyanto Eriyanto, 2017), Whereas the implementation of reclamation rather the aspect of justice as well as non-urgent needs, to achieve the ultimate sovereignty, not just to help development and consider the interests of capital owners only.

Therefore, the principle of good governance remains key front in the publishing permit the implementation of development, in order to achieve a balance between the three stakeholders, namely State, Private Sector and Civil Society Organization. Governance can be created properly if the three stakeholders (state, private sector, and society) as a force together, support each other and have contributed in influencing decision-making. Apart from that, Equality, equality, cohesion, and the balance of roles and mutual monitoring conducted by the three stakeholders, greatly affect the effort to create good governance. The principle of good governance is used to assess whether the decision has been functioning effectively and efficiently to achieve the goals that have been outlined.

#### **3.3.2 Constitutional**

Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 as the cornerstone of the constitutional mandate that the earth, water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people. Space Unitary Republic of Indonesia is an archipelagic country, characterized by the Archipelago, either as a unitary container which includes land space, sea space and air space, including on the earth, as well as the resources necessary to improve management efforts wisely, efficient and effective order and sustainably managed for the greatest prosperity of the people (Law No. 26 of 2007 on Spatial Planning). Structuring space believed to be the appropriate approach to create an integrated management of natural resources and artificial resources in efficient and effective manner. It is expected to be guided by the rules of the layout, the quality of the national spatial continuity can be maintained in order to realize common prosperity and social justice in accordance with the constitutional foundation of 1945. But do not set clear Article in delegation to the management of small islands, so the potential conflict of authority between the Ministry of ATR / BPN and the Ministry of the CTF, such as conflicts of interest to the Jakarta bay reclamation project, which is precisely the local government of Jakarta which is considered more predominant conduct policy error in exercising its legal political (Rahardiansah, 2018), Related lounge area is very closely related to the Coast Territory and Small Islands (WP3K), regulated the use or management that is not only focused on the exploitation, but also pay attention to the preservation of resources, the realization of strategic value in a sustainable, integrated and based empower local communities, integrated regional development. It added that the norms Management of Coastal Areas

and Small Islands which will be loaded focused on legal norms are not regulated in the legislation system that there is or is more specific than the general settings that have been enacted. While Law No. 1 of 2014 on the Amendment Act 27 of 2007, an improvement from the meaning of the State towards resource tenure WP3K previously arranged with the HP-3 to permit.

Furthermore, there psycho-politic against exercising their reclamation of Jakarta, which is a real condition in the community about the level of acceptance or resistance levels against a legislation if it has met the needs of the community participated in the making of involving the community (Kalalo 2008), Thus, based on the constitutional and psycho-politic actually intended to publish a policy that is actually intended for the public interest, which in turn creates prosperity for the people.

### **3.4 Reformulation Proportional Distribution of Settlement on Reclaimed Land**

#### *3.4.1 Contradiction in Terminis*

In practice, this concept is also often used to rhetoric, i.e. sustainable development, this concept is contradictory. It is definitely not sustainable development, that would certainly slow sustainable development. Note, this is the context for dialogue cynical. In the context of this draft law is very much starting from independent colony (Seidman, 1956), unitary state (Toonen, 1990), Mental revolution (Junaidi, 2017), And the single-party system (Gill, 1994). Implementation contradiction in terms, is not only in terms consisting of two words, terms that consist of a single word can also contain contradictions (Scholten, 2003), An example is the Reformation, it means rearranging. It is also contradictory, because often the building has not finished, but it must be reorganized, as a result it does not produce anything. Reclamation drove Indonesia to contradiction in terms, where the project is already running almost complete, but then stopped because too many suspicious cases, both in the legal review, environmental assessment, environmental degradation and even the lives of the people and fishermen in the vicinity. But in response to this, the new governor of Jakarta, Anies Baswedan would stop the project and create a policy that ultimately expected to be the best way to approach the constitutional accordance with the lofty ideals of the unitary state of Indonesia (Ikwan, Melina, Fanny Lesmana, and Desi Yoanita, 2018).

Policy termination reclamation project is based on the pros and cons of a variety of interests, but the sociology of law offers a win-win solution, Generally arbitration, mediation or other means of dispute resolution outside the court process in equaled with the dispute by people who is an expert on the disputed objects with a relatively quick turnaround time, cost less and the parties to resolve the dispute without the publicity could harm the reputation and so forth. Arbitration, mediation or other means of dispute resolution outside the court process has the intention to resolve the dispute is not just decide the case or dispute (Tektona, 2011), Under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, there are six kinds of ways of dispute resolution outside the court, namely consultation, negotiation, mediation, reconciliation, legal opinion by arbitration, and arbitration.

The win-win solution that is offered to the reclamation of Jakarta Bay is by the issuance of a policy by the governor of Jakarta in the form of a draft land use reclaimed by prioritizing the interests of the people through a model approach land management in a professional who has the legal certainty and benefits as well as social justice for all people Indonesia (Radbruch, 2006).

#### *3.4.2 Land Banks as Providers of Land for Public Housing*

Land Bank practices abroad have Become a means of controlling urban growth in the form of controlling urban growth patterns and regulating land prices (Schilling, Joseph, and Jonathan Logan, 2008), In Indonesia, the case of land that is directly controlled by the state or unregistered land, land rights granted after the Offender housing and settlement development as the applicant's rights to land finalize compensation for the whole community cultivated by consensus. if there is no agreement on compensation, the settlement is conducted in accordance with the provisions of the legislation. In this case, the process of transfer of rights or compensation Referred to, pay attention to the principles of private law, Including the principle of legal certainty to the meaning of the terms of the agreement as set out in Article 1320 of the Civil Code and such article, remains a benchmark.

If we look at the problem of land acquisition laws against practices originating from the acquisition of land above, it is clear there are many legal issues that the make an impression or a direct impact to the legal uncertainty of land acquisition. There is an impression, as the executor of government land procurement for public interest Hesitant step for the paths that are final, the which Gives legal certainty to partner Governments or the government itself in the process of land acquisition (Roestamy, Martin, and Abraham Yazdi Martin, 2019), No wonder if the government is precisely the demands of land rights holders or Heirs

and Reviews those who feel they have a part of the Injured party or parties who are not satisfied with the land acquisition. Not only that, even the land that has been completed even certified, but it still does not escape than the dispute. If combined with investments, this situation makes investors count again to continue its investment in Indonesia. The issue of land is one indicator of the weak competitiveness of Indonesia in promoting investment (of course, in addition to labor and taxation issues). But the matter of land acquisition should be seen more comprehensively, simplified so that there is no legal certainty.

Problems of land acquisition by using a Land Bank in Indonesia, once initiated by Supraba Sekarwati Wijayani (2003), who designs recommendation Land Bank in order to build sustainable housing that focuses on the concept of a state of law as the foundation for building the Land Bank as well as the development rights of control state with the Model Development Area Pulogadung in industries such as Jakarta or Rungkut in Surabaya, the which can be used as early embryonic stages of provision of land.

The utilization of the land the which is the region's assets, empowerment of abandoned land, with land acquisition for the construction of housing and residential areas for LIP both rental and property of the subsidy; The area also can develop sources of soil derived from the company's CSR area, for the provision of houses for the workers or employees. When the land resources can be managed by a body modeled on the Industrial Zone and the National Housing Program above, could have formed a regional government as an embryo BLUDs Land Bank in the area. In addition, of course, Werner subject to the provisions in force, land acquisition models BLUDs can also use budget funds for basic infrastructure, investment and development of housing and residential areas.

Land Bank of the which is intended, According to the researcher, is a subject of law is a legal entity as it will support the rights and obligations of course as a legal entity, it needs careful thought, about the manner of its formation, the reference to the rules governing the lodging, preferably in the form of the Act, amorphous regulation as a legal entity in accordance with the principles of civil law, given the duties and responsibilities that are complex and not simple. Thoughts on the establishment of land banks are in line with the concept of Land Tenure and can also as a development lease rights, as stated in article 44 and 45 are Also missed by investors as a freehold or leasehold prevailing in some countries like China or Singapore.

In connection with BLUDs, as Mentioned above, local Governments regulate local regulation, the basic tasks and functional in the activities of the activities of Land Banking. In the United States, Land Banking regulation as a means of land management can be set by each state (Act.) So, it could have the government level City, Village or Town, can form the Land Banking. From the above, it is clear that the establishment of the Land Banking is not an impossible, only needed a strong legal foundation with the provisions of the Land Banking can only be developed by the regions, does not necessarily have to be managed by the central institution of the center.

#### **4 LAND BANK AS AN ALTERNATIVE SOLUTION**

The concept of win-win solution is associated with the role of the land bank, to be quoted that the fault lies in Governor Ahok no space or land that is reserved for the people. There are two alternatives for policy solutions as reformulating existing reclaimed land; i.e. 360 hectares of which were taken over by the government and then submitted to JAKPRO (enterprises of DKI Jakarta), all of which has not been built, used for the benefit of the people and fishermen. while the rest of the existing building with a bleached handed over to those who already have to maintain the force of law with third parties. JAKPRO then submit to the Land Bank (as BLUDs owned DKI) to be used for the construction of public housing and public facility infrastructures FASUS along with other public infrastructure.

The division of the three parties, which have been built bleached, then divided proportionally namely; 51% for public housing (as mandated by the constitution), the rest is given to the developers for commercial purposes. then, if the total land of 5,155 hectares (Governor Regulation No. 121/2012), the 2,600 hectares of land managed by the bank for the benefit of public housing, the rest are managed by the developer. there must be a clear separation, to avoid jealousy; Where are the areas of public housing, and where the area of commercial housing.

#### **5 CONCLUSIONS AND RECOMMENDATIONS**

Reclamation is well and good throughout notice procedures and statutory provisions in force, in addition, the spirit of Indonesian land law is the welfare of the people, so it must be built based on reclamation concept of social justice for all Indonesian people as the philosophical basis of the construction and the principle of land for the benefit and great welfare of the people is an absolute thing. Because beyond that, together with the violation of the Constitution as the juridical basis of nation and state in the Republic of Indonesia. Therefore,



need to be made about the reformulation Local regulations Jakarta bay beach reclamation handling more open and acceptable to the public, investors and the government, both central and local levels in accordance with procedures and conditions that apply, which based on good governance.

Policies that pitched *misbruik van recht* or *detournement de pouvoir* practiced by the executive governor of Jakarta, Ahok when it has trespassed the merit and justice, on the other hand the neglect of procedures and regulations such as the requirements of the EIA and public testing and merit has been detrimental to developer itself, given the investment that has been implanted is very large in number. With the termination of the project by the governor-elected Anis, cessation of activities on the G island altogether can be detrimental to financial investors. Therefore, reformulation is necessary in politics of land use planning on the G island and/or other islands that are in line with the constitutional mandate.

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