



IJLESS

editorijless@gmail.com

Volume: 3, Issue 3, 2016 (July-Sept.)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

www.ijless.kypublications.com

ISSN:2455-0418 (Print), 2394-9724 (online)

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www.kypublications.com

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(Education-Sports-Social Studies)

Editor-in-Chief

DONIPATI BABJI

(Law)

THE SOCIAL FUNCTION QUIDDITIES OF THE PROPRIETARY RIGHTS TO LAND COMPENSATION IN MAROS REGENCY

RESEARCH ARTICLE

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ABSTRACT

This study uses primary data, as the primary source supported by secondary data. Determination technique based sample with purposive sampling, while the specification of the research used a descriptive, analytical research type of social-judicial. Based on the research that the intrinsically social function of property rights to land is an element of unity in its source of customary law and serve as a national law governing land rights in Indonesia, therefore the state has the power to regulate them. The legal status of the social function of property rights to land in Indonesia after the Law No. 2 of 2012 is its repressive. Power of entry into force of the social function of property rights to land is by giving proper compensation and fair, but in actual essence in the Maminasata lane of Maros Regency is changing the profit.

Keywords: Social Function, Property Rights to Land, Damages

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1. INTRODUCTION

1.1 Background

Implementation of development of public interest, one of the roads are taken by the government to be able to meet the demand for land used to do by way of diverted public land specified in Article 6 of the Basic Agrarian Law (BAL) that all land rights have a social function. The article is a principle of social function over land rights in Indonesia which is the applicable legal principles and should not be eliminated, meaning that remain valid throughout the ages in the Unitary State Republic of Indonesia (USRI).

In the social function of property rights to land to do with the release of rights over land with the provision of Article 1 paragraph (4) of Law No. 2 of 2012 that the land acquisition is the activity of providing land by giving compensation appropriate and fair to the parties entitled, Furthermore, in the explanation of Article 2 (b) provides that the term "fairness" is to guarantee a decent replacement to the parties entitled to the land acquisition process so getting the chance to be able to establish a better life.

The provision for the social function of land titles was a limited release and transfer of rights, in the sense of releasing the legal relationship between the owners of the land rights to the government or the regional government to serve the public interest development. Although it is released in the public interest, but should not be taken arbitrarily, as private property rights have been guaranteed protection in Human Rights (HR), namely Article 28 H paragraph (4) of the 1945 constitution, which regulates every person is entitled to have private property rights and the right it belongs to should not be taken over arbitrarily by anyone.

Development of the government in this case the President is certainly should really pay attention to the development of the public interest, in order to achieve the interests of the welfare of the people. When the construction of the public interest was about to be run and its implementation, the fulfillment of the social function of property rights to

land held by land acquisition, land acquisition sometime in development for public interests collide with the interests of holders of rights to land so deadlocked. Therefore, the government uses a reference in the legislation to allow the release of land rights.

Social functions as one of the powerful reasons for exercising the right to master the state of the soil, further strengthening its position towards the search of land under development for the public interest, the consequences of the *marginalization* holder of the title for the land continues. Money, politics and power as well as the reason for the development for public interest cause easy holders of rights to land disturbed from their own land.^[10]

Therefore, when the state requires the development of land for public purposes so people are encouraged to voluntarily relinquish his right to the land in the public interest, on the basis that all land rights is to have a social function. Such things are the concrete manifestation of the balance between private rights with public rights adopted by the national land law in Indonesia. No collateral arrangement at the same time a balance between rights to land which is private, but has a social function and there is no superiority of private interests over the public interest or otherwise.

1.2 Formulation of the Problem

How does the reality of the social function of property rights to land in the rule of law in Indonesia?

2. LITERATURE REVIEW

2.1. The Understanding of the Social Function

The social function in Western Law essentially derives from the absolute property rights and appears in the form of a reduction or limitation of individual rights for the common (communal). This concept was influenced by Aristotle's theory^[11] that the social function of man must have individual property rights, property rights are important to give responsibility for a social survival.

It was developed by J J Rousseau^[7] states that do not agree with their private property, with the existence of private property in the form of land tenure case of war or crime, for example, rich people who have a lot of land will lead to the emergence of repression against people who do not own land. On the basis of this theory that individual property rights are recognized not only recognized collective rights. Collective rights to land will bear a social function regulated by the state.

Social functions according to Leon Deguit^[3] (1922) that the right to be a social function in the sense that one's own power is limited by the interests of the people, therefore there is no subjective rights, there is only a social function. The definition can be associated with land rights that the user rights over the land just consider the interests of a society. They are the starting point to the denial of the existence of a subjective right that there is only a social function, therefore people have the object or the ground only to fulfill a social function in society, and this means that private rights are not recognized recognized collective rights.

Theory of Karel Marx (1845)^[12] that the capitalism discusses the issue of inequality that exist in capitalist society. Community in the form of capitalist society has two groups of people, those who own the means of production and labor. According to the capitalist society is characterized by inequality which the bourgeoisie are those with wealth and labor work for the owners of wealth to create wealth.

While the concept of the social function of property rights to land under customary law, the communal character Holleman^[1] (commune tracks) owned by the Indonesian nation is the individual interest was always balanced with the public interest. They really appreciate the collective character of the community than individualistic character, therefore mentaliteit all judgments, decisions and actions in the legal pressure that is used is of the power authorities and the existing society.

The concept of social function in the national agrarian law based on customary law, which is part of the mind of a man from Indonesia, the Indonesian human is a human person at the same time social beings, who seek the realization, balance, harmony, and harmony between personal interests and common interests, as well as the interests of society. The inclusion of social function in the agrarian legislation is an affirmation of the legal nature of customary land in Indonesia.

The social function when pulled into the system of national land, the skeleton is a system that analyzes the relationship between the components or parts of the land system as a whole. The system analyzed it, is that the social

function of land in relation to the components or parts that need to be reorganized to provide maximum benefits to the people in general.

2.2 Definition of Property Rights to Land

1) Right of Ownership of Land According to Liberal Doctrine

Thomas Aquino ^[7] stated that private property is a natural right of man. Also, it can be seen from the level of creation starts from the earth, animals, and plants and eventually humans. The soul of each person prefers to have something right to own property, such as land ownership rights and are reluctant to have something together because usually create conflict. Something that you own will get better with the maintenance of which is owned jointly. In metaphysical theory is propounded by Immanuel Kant ^[9] to legitimate the abstract ideas about the law of private property.

Individual human personality should not be contested. An object, is a legitimate form of land that belongs to him, if he relates a meeting with the ground, so that others who wear them without permission is detrimental. Interfere with the rights of someone essentially attacks on personalities. Therefore, the land is used as an element of property rights and judicial practical objective.

The ownership of land is a right that most perfect of the right material. Because holders of rights to land granted flexibility and full freedom to do it material rights accordance with the rights that have. This means that holders of rights to land can take control of a ground absolutely no inviolable (*droit inviolable et sacre*) by others, including the ruler though.

Thus the concept of property rights to land in liberal doctrine is put individual has complete freedom of property rights over the land, therefore the land attached, personally to the owner that is absolutely true, meaning land and landowners is a unity that cannot be separated.

2) Properties Collective Land According Socialist Doctrine

Fredrich Engels and Karl Marx ^[5] (1818-1883) declared the abolition of property rights. The lack of ownership of the means of production such as land titles is causing interest to change social conditions, will create social bonds for individuals who do not have it.

The idea of the abolition of private property rights with the argument that human alienation would be existence is that the system of private property rights where the work is a worker (proletarian) is at the mercy of feudal (bourgeois). To this end the order not to antagonize the better individual property rights abolished in order not to cause conflict in society, therefore the property of individual's better serve as communal property rights, namely the right of state property. The feudal (bourgeois) is a cause of social inequality, to the workers (proletariat).

Thus, the doctrine of socialist negates property rights to land absolutely, because all the land will become the property of the collective (state property). This collective right cannot create property rights of individuals, all of the assets nationalized by the state. Therefore, individual property rights abolished, then it violates human nature or human nature as being an individual, social beings and creatures of God Almighty.

3) Right of Ownership of Land According to the Basic Agrarian Law (BAL)

Humans have a relationship with the land it is entitled to have it. The ownership of land set in Article 20 paragraph (1) of the Basic Agrarian Law is a right hereditary, strongest and most were able to possess the land by the provisions of Article 6.

As specified in the provisions of Article 21 and Article 49 paragraph (1) of the Basic Agrarian Law, in principle, only citizens of Indonesia who may have property rights to land, either alone or jointly with others. Besides, certain legal entities established and entities designated by the government in the field of social and religious as a legal entity that can have property rights to land along the land was used directly in the field of social and religious ^[8]. For foreigners and foreign legal entities are prohibited from having rights to land in Indonesia. So who is entitled to have ownership rights over land in Indonesia only Indonesian citizens and Indonesian legal entities?

3. RESEARCH METHODOLOGY

This research is non-doctrinal or social-juridical research (social, legal research) or so-called empirical legal research. The population of this research is a society of Maros Regency, whose land is affected by the development in the

public interest. Land Board, Office of Maros Regency, Office of the District Head CQ of the Land Subsection Head of Maros Regency.

The total of the population gets a compensation for land acquisition of the 304 population. Sampling used purposive sampling (samples intended). Samples were taken for a total of 39 questionnaire respondents, in addition to using some of those interviewed that the National Land Agency Employees Maros, village chief, village chief and community leaders who considered is competent. The data collection techniques used was interviewed, questionnaires and documentation.

4. DISCUSSION

4.1 Overview of Research

This research was conducted in the path length Maminasata \pm 20 kilometers, while the area traversed 5 districts and 8 villages, which has been realized replace the loss, which is about the length of \pm 13.7 kilometers. The number of parcels which have already received compensation as much as 304 fields with a total loss dressing Rp.71.811.487.496, -

Planned land is compensated as much as 548 fields unpaid replace the loss is the 244 fields. For the second phase will be continued in the Moncongloe village with a wide street about 60 meters, the length of streets that will be paid replace the losses for the second phase of 6.3 kilometers. Therefore, the amount of land is given for damages on track Mamminasata in Maros regency area of approximately 20 kilometers in length.

4.2 The Reality of the Social Function of Property Rights to Land in the Rule of Law

1) The Urgency of the Social Function of Land Property Rights in the Rule of Law

The social function of property rights to land has been the concept of Indonesian society since the beginning until now experiencing growth captivates the generations that next. The concept is based on the human being is a creature *monopluralis* Indonesia, namely as being an individual, social beings and creatures of God Almighty.

In Article 6 BAL that any land rights with social functions. It is that the land is owned by someone not be held in absolute and must have a social function. That which must be believed by Indonesian human beings and not as an individual or a social creature alone, as has been stated by Aristotle that human beings are creatures *zoon politicum* (individual human beings and social beings) but also as creatures of God Almighty.

The social function of property rights to land can be interpreted synonymous with development in the public interest. It can even be interpreted to have other functions that are supporting development in the public interest. Such interpretation of the policy pursued by the various policies, both legislation and in practice development itself ^[10]. Therefore, the social function of property rights to land lies in the politics of land that the government's policy, to the need for planning, allocation and use of land, with the use according to a predetermined plan by the government in the form of development in the public interest.

This is in line with the opinion of Montesquieu ^[6] that if the government wants to carry out development in the public interest such as public roads, public market, public cemetery, and so the government should provide compensation for individuals harmed in this case the government should act like an individual against another individual.

In effect the social function of land titles in the system of national land law still contains elements of togetherness that comes from traditional law, communal-religious, which serve as the basis of national agrarian law. Elements of togetherness on land, property rights are governed by the customary law and the laws that apply. The togetherness of property rights over land are directly or indirectly derived from the right of the people who are together for achieving development rights in the public interest.

a. State power in the Set Property Right to Land

The setting of property rights on land given to the state authority, in accordance with Article 4 paragraph (1) BAL sets, based on the rights of control of the country as defined in Article 2 determined the existence of a variety of rights to the earth's surface is called the land, which can be given to and owned by people either alone or jointly with others as well as legal bodies.

The article points out; the state had the authority giving land rights to an individual or legal entity. Basically, any land rights either directly or indirectly rooted in the rights of the nation in which the rights of the nation of a collective right

of all people and are used to achieve the welfare of the people. It implies that the essence of the land in Indonesia with social functions.

The right of the people to the land ownership rights of land tenure is the highest and covers all the land in the territory of the Republic of Indonesia, which is a joint land, perpetual, and is the holding company for the rights to another land. The right of the people on the ground has the nature and religious commonalities. The commonality means all land territory of the Unitary State Republic of Indonesia (USRI) is a common property of the nation, Indonesia (Article 1 (1) of the Basic Agrarian Law). Religious means all land in the territory of the Republic of Indonesia is a gift of God Almighty in accordance with Article 1 (2) BAL.

The social function of property rights to land should be seen as a tool or factors of production to the common prosperity of society and not as a mere individual interest, as opposed to the ideals of the Indonesian nation is to realize a just and prosperous society. Therefore, the rule of law to achieve justice in the field of property rights to land outlined in Article 6 BAL governing all land rights have a social function. This means that land use must be in accordance with the circumstances and the nature of their rights, so the ground is beneficial for the community, state, and nation.

Social functioning problems, ownership rights over land in connection with the justice and expediency in order to put the soil is really utilized as it should be useful to its owner is also beneficial to the community, state, and nation. Utilization of land by the community and its owner can be balanced usefulness would be able to bring about justice, without sacrificing any of the parties, i.e between the interests of individuals with common interests ^[2].

Basically the land is owned by the community, state and nation that embody the community, so the state only has the right to regulate in order to pursue wealth and prosperity together. Given that interest is an interest that should be mutually offset between individual interests with the public interest for the realization of social function.

b. Embodiment Social Function of Property Rights to Land in the Rule of Law

The Article 18 of the BAL of revocation of land rights by giving compensation. Follow-up of various provisions of the foregoing article will give birth to the Land Reform Law (Law No. 1 of 1961) and Ontogening Law (Law No. 20 of 1961). With the legislation mentioned above is an embodiment to regulate land owned by the community, so that land ownership rights that can function socially?

Further elaboration of the social function of property rights to land in the BAL contained in Article 18 of the BAL concerning public interests, including the interests of the nation as well as the common interests of the people, the rights may be revoked by giving compensation appropriate and in a manner provided by law. With the Article 18 of the BAL is an assurance to the public about the rights of land remains bound by the terms of the form of compensation paid.

The social function of property rights to land aims to prosper themselves and shared prosperity and the realization of social functions in relation to the public interest, should be maintained so that their interests are weak economy got a reasonable protection, the social function of property rights on this land long held by the public Indonesia with collective rights. Therefore, the social function of property rights to land is the birth of a justice and expediency that showed the private function within the frame that provides a variety of social harmonious relations and mutually fulfill in order to achieve prosperity in society.

2) Social Function Legal Status Property Rights to Land in Positive Law

In Article 1 (6) of Law No. 2 of 2012 states that the Public Interest is the interest of the nation, the state and society should be realized by the government and used for the greatest prosperity of the people. Furthermore, in Article 9 paragraph (2) confirms that procurement of Land for Public Interest implemented by giving Indemnity decent and fair.

To carry out the aforementioned article that compensation can be carried out if there is a team Appraisal handle in terms of interpreting the value of the land given for damages. Compensation payment must necessarily be viewed from the physical aspects of the land where it is located in a particular area (zone the land), and should be viewed in terms of the aspect of non physical that the losses suffered by the owner of the land as a result of damages as if the land was cultivated by the owners in the form of farmland, and is required in the public interest or social function necessarily landowners will lose their jobs or livelihoods. Thus the compensation should be seen as aspects of soil physical and non physical.

The construction of public interest or social functions as proposed by Andi Darmawan, SH., MH as Chief of Administration Maros Regency that team Appraisal in Maros regency in land acquisition in the path Mamminasata difficult for governments in determining the payment of compensation for the land, because the team Appraisal very busy and energy spent only three people so slow its completion, the result may hamper the development of common interest in Mamminasata lane^[14].

When traced General Provisions Article 1 paragraph 2 of this law: Acquisition of land is the activity of providing land by giving compensation appropriate and fair to the parties entitled to the land acquisition process. Then set out in Article 2 which stipulates that the public interest is implemented based on the principles of humanity, justice, usefulness, certainty, openness, agreement, participation, prosperity, sustainability and alignment.

Fairness and expediency, are likely to be realized, because at the time of release of property rights over the land for the construction of the public interest would be released per path land as defined in Article 5 parties entitled shall release the land at the time of land acquisition for public purposes after the redress loss or under a court decision which has obtained permanent legal force.

The valuation of the damages done per plot intended to get a sense of justice, and therefore on a plot adjoining in certain circumstances that one can be rated higher because the construction has been completed, but the one rated lower because everything is up released so that its value is different at the time of starting the construction of the building when completed.

In Article 13 paragraph (3) of the National Land Agency Regulation No. 5 of 2012 stipulates that the verification results show that the rest of the land is no longer able to function in accordance with the designation and its use as referred to in paragraph (2), the government agency requiring the land provides for damages.

The granting of compensation which is still remained land and cannot be used by the holder of rights to land because there is low or no longer productive will be released in its entirety with a view to not harm the land owners.

Therefore, where is the function of Article 1 point 2 and Article 2 of Law No. 2 of 2012 on Land Acquisition and Development in the Public Interest, which makes explicit word of justice and expediency? Whether in practice it later once implemented Article 5 is contrary to the reality. If contrary to the rules and practices where lays the formulation of the social function of property rights on land that states balance between the interests of individuals with a common interest, with the balance going to have a social function in it.

Article 41 paragraph (2) and (3) of Law No. 2 of 2012 on Land Acquisition and Development in the Public Interest, provides that the parties are entitled to submit proof of possession or ownership is the only proof of lawful and can not be inviolable later this reflects these repressive laws. Phrase that says inviolable at a later date is contrary to the legal facts that are taking place in Indonesia in this case Article 19 paragraph (2) c of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles, provides that the provision of letter proof applicable right as evidentiary tool not as a means absolute proof.

Observing the article above clause means a letter of proof is not absolute, whereas evidence of land certificates in Indonesia are still inviolable because of the tendency to evidentiary and not having the tendency of proof is absolute, whereas in Article 41 (2) and (3) is directed by said absolutely, because it cannot be contested in the future. Therefore, this law is contrary to the law anyway, so the legal status of land property rights there is a difference when they are released by the government; its legal status is absolute, whereas before it was released still legal status is strong.

Article 43 of Law No. 2 of 2012 stipulates that during the implementation of compensation payment and the implementation of the rights referred to in Article 42 paragraph (1) ownership or land rights of the parties are entitled to be clear and the evidence right declared invalid and the land became land controlled by the state.

Abolishment of the possession of the rightful parties that reject the deliberations, but it did not raise objections as stipulated in Article 43 above, is a repressive law is deliberately contrary to Law No. 20 of 1961. Whereas in Article 2 (1) of Law No. 20 of 1961 stipulates that a request for revocation of rights to land and/or objects in the Article 1 submitted by the interested to the President through the Minister of Agrarian, through the head of the Agricultural Inspection is concerned.

When linked to Article 43 of Law No. 2 of 2012 with Article 28 H paragraph (4) of the Constitution of 1945 which provides that everyone has the right to have private property rights and property rights must not be taken over arbitrarily by anyone. Article 28 H paragraph (4) of the Constitution of 1945 contrary to Article 43, because the article is its repressive, namely coercion with the words "compensation payment has been deposited with the District Court as referred to in Article 42 paragraph (1) ownership is clear and evidence of rights do not apply and the soil into soil which is directly controlled by the State ". Therefore, Article 43 of Law No. 2 of 2012 regulating land ownership becomes clear and the evidence rights do not apply.

3) The Power of Social Functions Applicability Property Rights to Land

In Law No. 2 of 2012, the construction of the public interest its scope into 18 parts, so many facilities for the benefit of society, the government and the country gain legal status in the public interest, so that the strength of the enactment of change as well as government hospitals/regional safety facilities Generally, the burial place of general government/local government, government offices/local government/rural, social facilities, public facilities and open green spaces public, structuring the urban slums, infrastructure, education/schools, sports facilities government/local government, public market and field public parking.

The number of public interest within the scope of Article 10 of Law No. 2 of 2012 will require land ownership rights even more, thus increasing its social function. In Article 12 paragraph (1) affirmed that the development in the public interest referred to in Article 10 letter b to the letter shall be organized by the government and cooperation with state-owned enterprises, region-owned enterprises or privately owned enterprises.

This Article exists a gap because it gives private parties the opportunity (Appraisal) to participate in the development work for the public interest, so that the orientation of this article will lead to the significant business venture aims for profit. If the private parties involved in it, there will be the price of land can be speculated by certain parties, so that the land, property rights, as an object of general interest will eliminate its social functions into business functions.

This can be proved now having researched damages property rights to land lines rising Mamminasata land prices are much higher replace the loss of the market price, according to the survey results of Heads of Government of Maros Andi Darmawan, SH., MH. That's the price of land before the determination of the government to Mamminasata lane around Rp. 50.000,- up to 150,000 per meters, although the government has given land compensation around Rp.170.000,- up to Rp. 210.000,-. The price of land was waiting for the tug between the community and government. In principle, people are always looking for a price above the market price, resulting in a tug of war with the government on land restitution, although in the end people are willing to accept the compensation ^[14].

Meanwhile, according to the results of questionnaires society in general replied that the price of land in the path of Mamminasata before any government program to Mamminasata lane only about Rp. 50.000,- per meter and the government provide compensation Rp.180.000,- up to Rp. 200.000,- for rural areas in the Tanralili district, while for areas close to the city which is in District Maros housewives in Turkale as Maros regency capital in the public market price of land 100,000,- per meter with compensation of Rp. 205,000,- for land ownership rights that have not been certified and compensation Rp. 210.000,- for land ownership rights that have been certified ^[15].

With the compensation is much higher than the market price according to the survey results Heads of Government of Maros prior to the determination and the results of questionnaires Mamminasata lane people who receive compensation shows that a much higher price of the locker loss of around 110% to 260% increase. It shows the compensation given by the government to the people is essentially dressing profit, although explicitly in Article 1 (10) of Law No. 2 of 2012 stipulates that compensation.

Given the nature of social functions such case the land ownership experience a different perception in the interpretation before the birth of Law No. 12 of 2012. As Presidential Regulation No. 65 of 2006 compensation is always based on the Taxable Value (TV) at a decent price (according to general market price), but after the enactment of Law No. 2 of 2012 for damages above the Taxable Value and a decent price. It shows the laws governing restitution, provide opportunities for communities in giving the perception of social functions are different.

Thus the nature of the social function of property rights to land by giving compensation from the government containing elements replace more satisfactory profit society, so it can be assessed that the social function of property rights over land shift in interpretation. The shift is caused by the interpretation of Law No. 2 of 2012 to enter a team appraisal as things that are independently appointed by the Minister of Finance to get a license from the National Land Agency. Appraisal team no longer be based on the Taxable Value (TV), but based on the price of a decent and fair to the beneficiary (Article 1 (10) Presidential No. 30, 2015).

The impact involves of the appraisal team without popularity Taxable Value (TV) lots of land just adjacent to the location, but the value of the interpretation of appraisal very different, so much complained of by the party receiving compensation from the government, the same location but it appears the interpretation of the value of land different between one another. Therein lies the difficulty in assessing the value of the land a decent and fair, because it is subjective, perhaps of the appraisal team is already assessing a fair of the party receiving the compensation is not fair according to their size.

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The Intrinsically social function of property rights to land is an element of togetherness therein that the source of customary law and serve as national law in Indonesia. The state has the power to regulate all land rights in Indonesia. The legal status of the social function of property rights in Indonesia following the Law No. 2 of 2012 provides that the parties are entitled to submit proof of possession or ownership is the only evidence that an unlawful and cannot be contested later this reflects These repressive laws. A sentence that said the inviolability later this contradicts the legal fact which is underway in Indonesia in this case Article 19 paragraph (2) c of the Basic Agrarian Law (BAL).

The power of entry into force of the social function of property rights to land experienced a shift in the interpretation of that compensation is given to the owner of the land before the birth of the legislation new ones based on the price of Taxable Value (TV) but after the enactment of Law No. 2 of 2012 to change the interpretation of indemnity rights ownership of land is not based on the Taxable Value (TV) but based on the price of a decent and fair so that there is an increase of 2 to 3 times that of the general market price of the restitution of property rights to land, therefore the profit is essentially dressing.

5.2 Recommendations

1. Appraisal Team entrusted to interpret restitution of property rights over land need to work as soon as possible to determine the value of property damages on the ground that the public interest in the development path more quickly Mamminasata Maros Regency realized.
2. Law No. 2 of 2012 contains repressive elements that should be revised to conform to Law No. 5 of 1960 on BAL.

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Interview and Questionnaire:

[14] Interview with the Head of Government in Office of Maro Regent, Tuesday, February 2nd, 2016

[15] The questionnaire results Tanralili and Turikale District many as 35 respondents.
