UNDER THE TABLE:
A CORRUPTION CULTURE IN INDONESIA

FROM THE PERSPECTIVE OF CRIMINOLOGY AND LAW

The anatomy of culture of abuse of power in Indonesia from the standpoint of criminology and law has an impact on deviations not only on the discretion of power and moral behavior of republic officials. In fact, many public officials abuse power by being corrupt or punished, even by severe law, even the perperators of power violations continue to commit corruption or it can be seen that there is no clear effect for corruptors. However, it is a wrong system in the life of the nation and state, when public officials who depart from the people do not have the view of life as a nation and state as they should. Therefore, in accordance with the views and suggestions of the author, this nation and state need to return to the joint system of life of the nation and state of Indonesia, namely implementing the points of practice and appreciation of the Pancasila precepts with truth rather than mere rhetoric, because the ideology of th Pancasila state has been built since the country was founded by the founding fathers.

This book is written by an academic who concerns about the abuse of power by public officials in exercising their power and authority. This book is a compilation or anthology of articles of abuse of power in Indonesia that have been published in international journals indexed by Scopus, Copernicus, and direct open access. Despite its weakness and strengths, the substance of this book has gained recognition from scientists at the international level.

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DR. (LAW). DR. (CRIM). BAMBANG SLAMET RIYADI, S.E., S.H., M.H., M.M.

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LPU-UNAS

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OPENING SPEECH

Dr. Drs. El Amry Bermawi Putera, M.A.
Rector University of Nasional, Jakarta

Universitas Nasional (National University) is one of the second oldest private-owned institutions in Indonesia, in its active participation in evolving the nation's intelligence by encouraging all academicians to apply the Tri Dharma (Three Academic Commitments) of Higher Education. One concrete form is publishing their work in scientific journals, scientific articles and books. This book, ladies and gentlemen, is a compilation of scientific articles, a work or an anthology of Dr. (Law). Dr. (Crim). Bambang Slamet Riyadi, S.E., S.H., M.H., M.M., entitled "***Under The Table: A Corruption Culture In Indonesia From The Perspective Of Criminology And Law***" Dr. (Law). Dr. (Crim). Bambang Slamet Riyadi, S.E., S.H., M.H., M.M. is a lecturer at the Faculty of Law at the Nasional University.

The writer nicely reviews the deviant behavior which is repeatedly practiced by politicians, the executive, legislative and law enforcement. One form of deviation includes the abuse of power loaded with practices of KKN (Corruption, Collusion and Nepotism.) Abuse of power tends to occur repeatedly and will cause public distrust of state or government administrators.

In human life, the desire to have power is a natural thing in the history of human civilization, in which power is considered as a means to access and maintain interests. Power has its own magnetism so that in practice it is full of conflicts of interest among individuals, groups and classes. This book provides some illustrations of how conflicts of power and deviations that occur in Indonesia seem to have been entrenched belief, so it legally interferes the realization of a fair and humane legal process. Ideally a leader earned the trust should be able to use his power for the benefit of society and the country.

The publication of this book, certainly enriches knowledge and studies related to the emergent abuse of power at various levels of life in the executive, legislative and judiciary. This is illustrated by the writer based on the criminological and legal approaches. In addition, the burgeoning of the use of power has led to the rampant culture of KKN, as well as conflicts of interest in land possessions, which in principle is for individual or personal interests. Such power deviations are a reality that still occur in Indonesia.

Hopefully this book will be a significant reflection for leaders in the legislative, executive and judiciary, politicians and practitioners to better understand the nature of power which, in principle, prioritizes the interests of society. And this book is worth reading by students in the fields of political science, sociology, criminology, economic crime, criminal law, business law, agrarian law, sociology of law, philosophy of law and for researchers, lecturers, and civil society.

Happy reading....

Jakarta, March, 8, 2021
Rector

Dr. Drs. El Amry Bermawi Putera, M.A.

OPENING SPEECH

Prof. Dr. Basuki Rekso Wibowo, S.H., M.S.
Dean of Faculty University of Nasional, Jakarta

First of all, allow me to say Happy Eid Al Fitr, may Allah SWT accept all our prayers and continue to protect us all.It is an honour for me to deliver the opening speech for the publishing plan of the book titled "***Under The Table: A Corruption Culture In Indonesia From The Perspective Of Criminology And Law***" written by Dr. (Law). Dr (Crim) Bambang Slamet Riyadi, S.E., S.H., M.H., M.M. – our fellow lecturer at Faculty of Law Universitas Nasional.

The book is an example of the great work of Universitas Nasional's academic community in providing critical thinking and solutions to issues that are timely and relevant. The outstanding work of the book is able to clearly illustrate how the practices of abuse of power have frequently occurred in the recent decades. The practices of abuse of power have the potential to cause corruptions which not only harm the country but also hurt the people.

Therefore, systemic strategies and integrated efforts to prevent and overcome the abuse of power are urgently needed. In the book, the author offers brilliant ideas to solve the problems. Having said that, the book is indeed a valuable asset as well as an important contribution to

be used as a reference in the field of law in Indonesia. Once again, I congratulate Dr. (Law) Dr. (Crim) Bambang Slamet Riyadi, S.E., S.H., M.H., M.M., for the achievement. Thank you.

Jakarta, March, 8, 2021
Dean of Faculty of Law University of Nasional, Jakarta

Prof. Dr. Basuki Rekso Wibowo, S.H., M.S.

OPENING SPEECH

Dr. Suryono Efendi, S.E., M.B.A., M.M.
Vice Rector in Academic Affair University of Nasional, Jakarta

In this preface, I would like to say congratulation and well done to Dr. (Law) Dr. (Crim) Bambang Slamet Riyadi, S.E., S.H., M.H,. M.M., that had finished the research report in this book version with title of "***Under The Table: A Corruption Culture In Indonesia From The Perspective Of Criminology And Law***". According the title and systematically explanation of this book, I Think is still the interesting, crucial, urgent and hot issue, especially for case of Indonesia. Most of Indonesia People had been believe that the stagnation and degradation in almost all sectors of our life in this country causes by the corruption behaviors by use of "Power".

Therefore, the study about this must be more and more explore and expose deeply until this nation find the scheme of state policy goes to the rules and enforcement law for decrease of corruption behaviors as the Nation based on our culture. Finally, I hope this book can be one of reference for the others researchers, lecturers and students to continue to the next investigation, observation and analyze of this theme.

As the Vice Rector in Academic Affair of Universitas Nasional, I would like to say bravo and well done for Dr. (Law) Dr. (Crim) Bambang Slamet

Riyadi, S.E., S.H., M.H., M.M., as lecturer in Law Faculty of Universitas Nasional
for this achievement. We Hope that achievement can be trigger of inspiration for all lecturers and student. Thank you for your attention.

Jakarta, March, 8, 2021
University of Nasional, Jakarta Vice Rector in Academic Affair

Dr. Suryono Efendi, S.E., M.B.A., M.M.

OPENING SPEECH

Prof. Dr. Muhammad Mustofa, M.A.
Professor of Criminology, University of Indonesia

I t is honored to be invited to write a forward for a book. Especially the theme of the book is also my concern i.e. the abuse of power in Indonesia is related to the corruption.

At the first decade of the Indonesia since its independent, The First Vice President of Indonesia, Mr. Hatta (Lubis and Scott, 1985: ix), asserted that corruption has become a culture for some Indonesian. According to Zimring and Johnson (20050 and Brasz (1985) that there is a relationship between power (authority) and corruption. Brasz for instance, asserted that the corruption (abuse of power) used silently by authorities based on the authorities embedded in their official position, that inflict a financial loss of the organization. They rationalized that their official position and its decision is legal (Brasz, 1985). Historically, according to historian Ong Hok Ham, the Javanese Rulers (during colonial era) did not separate their official properties as rulers with their private ownership (1985).

The conceptual perspective above, are in accordance the idea of the book written by Mr. Bambang Slamet Riyadi. I believe that his works will contribute to the understanding of power and the abuse of power

in Indonesia. The use (and abuse) of power in Indonesia could not be understood based on the experience of other culture, but should be based on the Indonesian own experience. The author demonstrates that the abuse of power in Indonesia are in contradict with the basic philosophy of Indonesia, Pancasila.

Depok City, March, 8, 2021
University of Indonesia Department of Criminology

Prof. Dr. Muhammad Mustofa, MA.

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OPENING SPEECH

Prof. Dr. Sudjito Atmoredjo, S.H., M.Si.
Professor of Law, University of Gadjah Mada

I am happy and welcomed with gratitude the publication of a book entitled "***Under The Table: A Corruption Culture In Indonesia From The Perspective Of Criminology And Law***" by Bambang Slamet Riyadi.

This book contains a collection of papers that have been published in international journals indexed by Scopus, Copernicus, and direct open access. As a consequence of the collection of papers, this book does not have a linear line of thinking. More precisely, this book is seen as an anthology of the author's thoughts. However, the substance in each paper is quite valuable and has scientific value.

Despite its weaknesses and strengths, the substance of this book has gained recognition from scientists at the international level. Therefore, it should be appreciated, and made as additional reading material for criminology and law students.

Congratulations to the author. Hopefully this book is useful as a means of spreading knowledge.

Yogyakarta, March, 8, 2021
University of Gadjah Mada
Faculty of Law

Prof. Dr. Sudjito Atmoredjo, S.H., M.Si.

Author's Preface

O you who believe, you must be the one who upholds (the truth) because of Allah, be a fair witness. And never hate you against one person, encourage you to do unjust Be fair because fair is closer to godliness. And the fear of Allah, surely Allah knows what you are doing". (Al-Maidah [5]: 8).

The author gives his Gratitude upon the presence of Allah S.W.T., with HIS help, the author can complete a book entitled "***Under The Table: A Corruption Culture In Indonesia From The Perspective Of Criminology And Law***" The basic idea why the author writes this book is the concern over the widespread abuse of power and authority in all sectors in Indonesia. This book is a collection of eight scientific manuscripts that have been published in the International journal by Scopus and Copernicus Indexed also Open Direct Access.

The essence of power is the individual realm to influence the way of thinking and behaving in accordance with what they want. Such power can be obtained from various sources which are divided into formal power and personal power. Power is generally synonymous with politics. The essence of politics is as an effort to participate in governance and control the people.

The process of politicians to gain power in bureaucrats, executives and legislators as public officials is full of rent seeking (corruption, collusion, nepotism), lack of morals, so is rent seekers, as public officials who are given the task of public policy in making and issuing regulations not used for the benefit of the people, even cause harm to the country. This is done with the abuse of power, to restore political costs or the promotion of career positions through the political broker.

Indonesia is increasingly aware that the entire life of its people is trapped in the trap of abuse of power that provides impacts on the despicable act of corruption. From waking up to going to bed again at night, from birth to being transported to the grave, corruption almost dominates the entire life of the nation and state.

The culture of abuse of power tends to do more sophisticated corruption in the form of gratuities in gifts of money or goods, for bribery of draft laws and regulations that benefit individuals and businesses of certain business groups and establish mutually beneficial relations between power forces as public officials and companies that want large profits.

The politicians who have served and received authority from the people, have rationalized the abuse of power as an act of corruption. It is actually a form of crime that is very alarming for the nation that glorifies democratic values and opposes all forms of corruption. Rationalizing abuse of power impacts the corruption performed by politicians that occur among officials in the bureaucrats, executive, and legislative branches as a form of white-collar crime increasingly enlivening the Indonesian political scene after the reform era.

The culture of abuse of power in Indonesia is a very big problem and can be said to be stage four Covid 19. It can be said that the abuses of power have become part of a culture that has plagued all lines, starting from state officials to the people, going from smooth to rough, from the

controversial to the full of intrigue. The implication of the practice of abuse of power is an act of corruption that is not limited to public or legislative officials, but also involves many people.

The cultural anatomy of abuse of power impacts deviant actions not only in the depressions of power and moral behavior of public officials. In fact, many public officials abuse of power is performed by being corrupt or punished, even by severe law, even the perpetrators of power abuses continue corruption or it can be seen that there is no clear effects for corruptors. However, it is a wrong system in the life of nation and state, when public officials who depart from the people do not have a view of life as a nation and state as they should.

Therefore, according to the views and suggestions of the author, this nation and country need to return to a system of joints of the life of the nation and state of Indonesia, that is carrying out the points of practice and appreciation of the precepts of the Pancasila with the truth not just mere rhetoric, because the state ideology of Pancasila has been built since the country was founded by the founding father.

Regarding the completion of the book on the abuse of power in Indonesia from the perspective of criminology and law, this cannot be separated from the support of:

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Finally, the author hopes that the book will benefit us all. As a human work, there is no perfect work. Constructive criticism and suggestions are expected from the readers for the perfection of this book.

Jakarta, March, 8, 2021
Faculty of Law, University of Nasional. Jakarta, A Lecture in Business Law & Criminology

Bambang Slamet Riyadi,
Author

Table of Contents

Chapter 1

OPENING

A. The Definitions of Power

Power has two conceptual meanings; the first is power to, meaningful, referring to actions as "what the recipient can do with the power he or she has" and the second is "power over", meaning that the power recipient has power over the giver power to make the recipient of the power to do something, there is a correlation of power between the recipient of the power of attorney and the authorities in all these actions. Power to has grammatically interpretation as a fundamental concept in the use of the term "power ", even though those who interpret power to as an aspect of power in political interpretation, they see the power of one actor over other actors, as something important in viewing political power.

Power, in substance does not have the representation of an institution or a group, as citizens are subject to carry out something to the state.

Power is not the most important system with regard to or powerful with powerless. Power is not like the sovereignty of a country or legal institutions that can presuppose external domination or domination of personal or group interests.

Theory of power according to Michel Foucault (1990: 92) states that power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitutes their own organization; as the process which, through ceaseless struggles and confrontations, transforms, strengthens, or reserves them; as the supports which force relations find one another, thus forming a chain or system or on the conflict, the disjunctions and contradictions which isolate them from one another; and lastly, as the strategy in which they take effect, whose general design or institutional crystallization is embodied in the state apparatus, in the formulation of the law, in the various social hegemony.[1]

The essence of power is not the substantial owner who conquers or who or who is powerful while the others are powerless. The power is scattered, omnipresent, in every social relation; in this case the power has a comprehensive abstract ability in the form of the production of each event and every relation. That power is everywhere because power comes from everywhere.

Stewart Angus (2001), states that power wants to explore the characteristics and opportunities of new power, as an alternative in analysing the condition of society in the space and time of final modernity, at first it has succeeded in showing important differences between the concepts of power and domination. Power in the form of domination is a form of power covering something and someone. Furthermore, he formulates transformative politics in the end of modernity, now he

1 Michel Foucault (1990). *The History of Sexuality: An Introduction, Vol. 1.* NewYork: Vintage Books.

shows the concept of public space, citizenship, and social movements as an embodiment of power in the form of empowerment. Here comes the power over something or someone that can be owned by even the lower layers.[2]

Actually, the need for power is something that is natural in this life as long as it can be accounted for. Therefore, it is difficult to avoid that the reality of life is based on the intrigues of that power. A power requires legitimacy for the implementation of the desired agency, including state power by means of acceptance and support of the people, without the support of the people the existence of power is threatened. Sometimes power as a tool of legitimacy "acts against norms, the joints of national and state life" depends on the power obtained.

Steven Lukes Power: A Radical View in Peter Bachrach (1970) Steven, proposes a three-dimensional conception of power (three-dimensional conception of power) to criticize the conception of power behaviouralists, while offering a new analysis which he values to be more adequate in understanding power. Steven criticizes the one-dimensional conception of power and also the two faces of power from what Steven calls as the two-dimensional conception of power (two-dimensional conception of power).[3]

Lemke (2000) asserts that Governmentality (governance) is a concept of power used by Michael Foucault to study the capacity of personal autonomy, exercise control and how it relates to politicians and economic expansion of the country. Government is the concept of power that can be used as a power from below with power from above. Governmentality is seen as a potential power practice in the subject so that it has a capacity for self-control, thus doing it violently and

2 Stewart. Angus,.(2001) Theories of Power and Domination: The Politics of Empowerment in Late Modernity. Sage Publications. London.
3 Peter Bachrach and Morton S. Baratz, (1970) *Power and Poverty: Theory and Practice* (Oxford: Oxfor University Press,.

consensually is carried out, not in the partner of dominance, but in the social partnership among individuals. A power colleague presents a situation and condition of personal is in the realm of choice of action. Individuals do not feel confident forced or do not have the choice to do anything other than carrying out that has been determined by the dominant group, however, potentially within the subject there is self-control over life practices with social control aimed at the interests of politicians and to exploit state finances.[4]

Power in Indonesia is in the hands of politicians who are in the bureaucrats, executive and legislative and even the judiciary. They get that power through political party channels. The founders and administrators of the political parties as a political broker have the tendency to receive some funds to be able to pass a prospective politician in the bureaucrats, executives and parliament through an election contestant. Or else, they get a position in a strategic position in a state- owned enterprise to be able to influence a regulatory policy that tends to benefit the political broker, so they can be said to be in corruption, collusion and nepotism (KKN).

B. The Corruption of Power

Power in Indonesia is fully held by politicians who are in government, bureaucrats, executive and legislative and even the judiciary. The holders of power in the history of human civilization are to hold a power, determining a situation and condition, and the morality of politicians as public officials determines control social. The morality of the politicians holding the power develops for the sake of personal interests and groups in a system, it will have an impact of conflicts of interest.

A conflict of interest occurs when the responsibilities of bureaucrats, executives and legislators as public officials clash with their personal

4 Lemke, Thomas. (2000). *Foucault, Governmentality, and Crituque*. Paper presented at the *Rethinking Marxism Conference*, University of Amherst, September 21-24.

and party economic affairs. In a narrow sense, a conflict of interest refers to an environment where a politician uses his position or position in government, either openly or secretly, to gain personal financial gain. Conflicts of interest between public duties and personal interests have been the cause of many scandals involving public officials with very serious consequences.

Conflict of interest contains three important elements. First, there are economic and financial interests of individuals and their parties, and this can happen to other types of interests, for example, guaranteeing benefits for family members. Basically, there is nothing wrong in pursuing personal interests. The problem arises when these personal interests conflict with the second element, namely, "public duties/ responsibilities".

The politicians as public officials at the beginning of the election depart from an idea that idealism upholds the interests of the people of Indonesia who are prosperous. If they are elected, they will make social changes, accept authority, give authority to make public policy, so they are called agents of change. However, the behaviour of these politicians tend not to carry out the commitments of those promises and even to make a justification and rationalization of a policy that is detrimental to the state, for the personal, group, and party interests.

The process of obtaining a power that is fraught with corruption, collusion and nepotism (KKN) and conflicting interests of political power and moral corruption as public officials will also be corruption, collusion and nepotism (KKN), if they serve as officials who are tasked with public policy abuse their power, to restore political costs or promotion of position through the political broker. Abuse of power as a public official implies harm to the interests of all people in an institution and even harms the state, because the public official has a conflict of interests for individuals or groups.

Abuse of power as a public official to make public policy is only seen as procedural and administrative errors, but if it is done with the aim of benefiting yourself or others or corporations that result in economic losses and state finance, then in fact it is a behaviour of social deviation and white-collar crime behaviour, as regulated in Law Number 31 of 1999, which has been amended by Law Number 20 of 2001 on the Eradication of Corruption.

The implementation of public officials should be based on the principle of legality, the principle of protection of human rights, especially in this case the principle of not abusing power and authority. The principle of prohibiting the abuse of power and authority is regulated in Article 10 paragraph (1) letter e of Law Number 30 of 2014 on State Administration. This principle requires every government agency and/or official not to use its authority for personal or other interests and is not in accordance with the purpose of granting such authority, not to exceed, not to abuse, and/or not to confuse authority. And, the provisions of Article 17, that government bodies and/or officials are prohibited from abusing authority. The prohibition includes a prohibition to exceed the authority, a prohibition on confusing authority, and/or prohibition to act arbitrarily.

Abuse of power is an important element of white-collar crime in the form of corruption. According to Lord Action 1887, in Gati 2000, i tis stated that power tends to corrupt, absolute power corrupts absolutely. The abuse of power does not only occur in the business sector or bureaucracy of government agencies but also in organizations that focus on social activities. This has encouraged many parties to separate functions within the organization.

C. Criminological Viewpoint on the Culture of Abuse of Power

Cultural criminology tries to integrate the fields of criminology and cultural studies or to import insights of cultural studies into

contemporary criminology. In view of this, cultural criminology is taken as a basic perspective to match criminal dynamics with subcultures, and the importance of symbolism and style in shaping the meaning and identity of subcultures.

Cultural criminology was built from the integration of simple British cultural studies in 1970s into contemporary American criminology. Cultural criminology uses the insights of cultural studies as a developing field and the study of culture today, exploration of identity, sexuality, and social space.[5] Moreover, with a focus on representation, imagery, and style, cultural criminology combines not only the insights of cultural studies, but also the intellectual reorientation provided by postmodernism. As a blend of the modernist duality of form and content, as well as modernist hierarchy, the criminology of culture is based on the postmodern proposition that form is content, style is substance, which is presented and re-presented. As part of this exploration, they in turn investigate criminal subcultures and irregularities as a whole.[6]

Culture of abuse of power as a white-collar crime committed by politicians as public officials or abuse of power is corruption among politicians and holders of power of the Indonesian government at this time. It is the evidence of how much social influence of bad culture is inherited by the nation from the time of the kingdom, colonial, old order, new order and reform order. The bad culture is the corrupt behaviour of public officials, who should instead provide protection and welfare of the people, not prioritizing the interests of themselves and groups.

The condition of culture of power abuse behaviour in the community inherited by this nation continues to imprint and become a motivator

5 Lawrence *Grossberg, Cary Nelson,* Paula Treichler.-Editors (1992). *Cultural Studies*. New York: Routledge.

6 Nancy Fraser. (1995). Politics, Culture, and the Public Sphere: Toward a Postmodern Conception. In Social Postmodernism: Beyond Identity Politics, ed. L Nicholson, S Seidman, pp. 287–312. Cambridge, UK: Cambridge Univ. Press. p. 291.

as well as inspiring bad behaviour for some people, although various efforts to take action and eradicate political crime or corruption have always been a program in every period of the government that holds the reins of power. Mertons' idea of 'social structure and anomie' in his book Social Theory and Social Structure, shows a correlation with Durkheim's theory in the criminological tradition known as' strain theory'. Merton explains the strain theory answering the question, that reasonable reasoning might give the impression: whether social conditions which are 'wrong' make some people deviate. Merton is committed to the level of sociological analysis, where the source of deviation can be traced to the nature of social structure. Rejecting the effort of individualization because of deviations, he argues that deviations are born in certain groups, not because humans compose them from biological tendencies, but because they respond normally to the social situations in which they are in them.

This fact illustrates that in theory the strain of power abuse culture behaviour in society is not born from individual behaviour. Current community behaviour is a response to or from a social situation that they experienced before. Deviant social conditions can be a driver of deviant behaviour by individuals or society. Abuse of power by politicians as state officials, is a white-collar crime in the form of corruption, which is a reflection of social behaviour that has been done by the community before.

In differential association theory, most people who behave power abuse culture to do corruption, they do it because of relationships with others. Individuals will, as a result of interactions with other individuals, know the attitude of the implementation of crime and new crime techniques (Ainsworth, 2002: 63). Thus, it can be said that the perpetrators of abuse of power crimes commit crimes because they have influence and relations with other criminal offenders. This means that social structures and socio-cultural situations that apply to a society can influence and shape individual behaviour.

The behaviour of the culture of abuse of power to conduct community service programs exhibited by state officials and companies in the case of "papa asking for shares of PT. Freeport Indonesia", cannot be separated from the structure and social culture that has been passed down from this generation for generations. The culture of abuse of power to commit corruption in Indonesia grows and develops through 3 historical phases, namely; the Kingdom era, the Dutch Colonial period and the modern era now. During the royal era, a culture of corruption was noted in the intrigue over the power struggle that was carried out during the era of Singosari Kingdom, Demak Kingdom, Banten Kingdom and so on. The royal era had a big role in instilling the nation's embryo of opportunism. For example, the existence of "courtiers" who tended to be nice to attract the sympathy of the king or sultan. These circles were suspected to be embryos of opportunists who had a corrupt character in the order of our current government.

During the Dutch colonial period, the practice of abuse power culture to carry out community service learning had begun to enter the socio-political cultural system of the Indonesian people. The culture of abuse of power was built by colonialists for 350 years. They deliberately chose local figures to be used as clowns of public officials in controlling the administrative area of their power, such as Demang, Tumenggung, and other officials who incidentally were Dutch colonial colonizers to guard and supervise certain territorial areas. Those who were appointed and employed by the Dutch to harvest tribute or taxes from the people were used by the Dutch colonizers to enrich themselves by exploiting the rights and lives of the Indonesian people. Explicitly, the culture of abuse of power in the colonial era practicing hegemony and domination had educated the Indonesian people not to hesitate to oppress their own people through the behaviour and practice of abuse of power.

Furthermore, in modern times, the development of the practice of culture of power abuse began when the Indonesian people were free

from colonial shackles. However, the culture of abuse of power inherited since the kingdom and colonial times does not necessarily disappear. The culture of abuse of power to corruption, collusion, and nepotism (KKN) has become increasingly clear in the era of democracy. This is reflected in the behaviour of government officials starting from the Soekarno's Old Order, Suharto's New Order to the current presidential reform era.

The historical depiction of the culture of power abuse in Indonesia above explains how the culture and social behaviour of the community, in this case, white-collar crime behaviour that is part of the culture or previous social behaviour can influence and encourage the same behaviour in society afterwards. This means that the current criminal behaviour cannot be separated from the influence of culture and social behaviour of the previous community. The culture and behaviour of the community beforehand became learning for the culture and behaviour of the community afterwards.

The culture of abuse of power behaviour that occurs never escape from the motives and goals of the implementation of a crime of politicians as public officials. In the case of politicians' corruption, making regulations in the form of laws and regulations, there are a lot of conflicts of interest, both individual, group, corporate, political party and government interests. The interests of the government itself have an inevitable relationship with the interests of individuals, groups and political parties. Abuse of power by politicians involving government officials will become a political crime if the government officials involved become the main role in playing the law to protect their interests.

Crimes are created by the government to protect and maintain its power. Special crime laws, such as conspiracy law and traditional law, are designed to control and punish those who threaten the country. Perpetrators of political crimes generally do not feel themselves as

criminals. They even receive support for their behaviour from certain segments of society. Government political crime is related to its belief in political sovereignty. Public acceptance of political crimes depends on the level of government policy that considers such actions to be legal. This means that a crime can be accepted by the public if the policies of the ruling government consider it a legitimate action. Therefore, political crimes committed by political elites and powerful government officials will always take cover behind their political sovereignty. Consequently, some people will judge correctly or justify political crimes committed by political elites or government officials in power, even though the policy is in violation of the law. In essence, it aims to get its interests by utilizing its position and power.

It will be discussed the definition of abuse of power by white collar crime theory, according to Bryam Tunner. In order to understand white-collar crime, it is important to first understand the definition of crime itself. In his Criminal Justice Jay Albanese asserts that crime is a natural phenomenon because people have different levels of attachments, motivation, and virtue. He based his opinion that was proposed first by Emile Durkheim. In the Rules of Sociological Method, Durkheim defined crime as being actions that offended certain very strongly held collective sentiments. What causes the normal crime is society's inability to be released from it. All societies experience transgressions, albeit in varying forms and levels of severity. The existence of crime across time and place makes it a normal and expected part of group living.[7]

According to the Black's Law Dictionary, Abuse of power by white collar crime is any act done in violation of those duties which are individually owed to the community. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and which combination, of the following punishments: death, imprisonment, fines,

7 Bryan Turn,(2006) *The Cambridge Dictionary of Sociology* New York: Cambridge University Press,. p. 96

removal from office or disqualification to hold and enjoy any office of honor, trust, or profit.[8]

White-collar crime according to Shepherd in Hollin, he defined the crime under functionalist school within sociology. He was told that society functioned as an integrated structure, its stability depended on the agreement, or consensus among its members about the norms, rules, and values which were uniformly respected. Thus, a society's legal system is a reflection of the consensus of what will and will not be tolerated as acceptable conduct. A crime is a violation of criminal law, an act that meets with the disapproval of the majority. This explanation contains a number of important consequences that being an act cannot be said as the crime before the act was really committed, thought without action is not a crime, the act must be legally forbidden and anti-social behaviour is not a crime unless prohibited by law.[9]

Of Hollin's opinion, white collar crime is, in contradiction to the consensus approach of the crime. Marxist views crime as a function of the large capitalist system which produces those who have wealth and power and those don't. Each group, or class, within society, commits the type of crime that is dictated by their respective systems. The poor commit crimes within their scope, such as theft, murder, and burglary; the middle class commit typical white-collar crimes such as tax evasion and theft from employers; while the wealthy and powerful upper class indulge in activities such as exploitation, profitability, and environmental pollution and damage.[10]

Of Stephen Schafer's opinion, white-collar crime is While, in the Soviet Union system. The crime is "social danger" that means the damage, risk,

8 Campbell Henry Black, (1990). *Black's Law Dictionary*. Sixth Edition, United States of America: ST. Paul, Minn. West Publishing. p..370.
9 Hollin, Clive R. (1989) Psychology and Crime: An Introduction to Criminological Psychology. London and New York: Routledge, Tylor and Francis Group. p. 4.
10 Hollin, Clive R. (1989), ibid. p. 7.

or danger which causes economic and political institutions, as prevailing ideological representation, inflicted to its impact.[11]

A broader definition of crime is proposed by Herman and Julia Schwendinger, in John Lea, who argues that crime is a violation of human rights: "Basic rights are differentiated because their fulfilment is absolutely essential to the realization of a great number of values ... [hence] the right to racial, sexual and economic equality. The abrogation of these rights certainly limits the individual's choice to fulfil himself in many spheres of life. These rights therefore are basic because there is so much at stake in their fulfilment. It can be stated ... that individuals who deny these rights to others are criminals. Likewise, social relationships and social systems that regularly cause the abrogation of these rights are also criminal. If the terms of imperialism, racism, sexism, and poverty are abbreviated signs for theories of social relationships or social systems which cause the systematic abrogation of basic rights, then imperialism, racism, sexism, and poverty can be called crimes according to the logic of our argument.[12]

Meanwhile, according to Agnew and friends, the crime of classical theory is as follows. While according to classical strain theories, individuals from all social classes are likely to pursue a financial achievement of goals or high status. However, lower-class individuals are often troubled by achieving these goals through legitimate means. The disappointment caused by unachieved this goal drives some individuals to do the crime. Crime may be used to achieve a financial goal, obtain status in the eyes of one's peers, seek revenge against the perceived source of goal blockage, and reduce the disappointment and other negative emotions.[13]

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11 Stephen Schafer, Stephen, (1971) The Concept of the Political Criminal, The Journal of Criminal Law, Criminology, and Police Science, Vol. 62, No. 3 Sep, p. 80.

12 John Lea,(2002), Crime & Modernity: Continuities in Left Realist Criminology. London: Sage Publication p.6.

13 Agnew, Robert., Piquero, Nicole Leeper., and Cullen, Francis T (2009),. , General Strain Theory and White-Collar Crime in Simpson, Sally S & Weisburd, *David* (ed.). *The Criminology of White-Collar Crime. New York: Springer Science, Business Media*, LLC. p. 35.

Furthermore, what is abuse of power meant by white-collar crime? What distinguishes traditional crime from white collar crime? EH Sutherland (1940: 1-3) in Friedrichs, in the initial characterization of his white-collar crime published the following year in the American Sociological Review: Sutherland alluded to crime in the upper or white- collar class, composed of respectable or at least respected business and professional Men. The principal attribute of this crime is that it consists of "violation of delegated or implied trust" Examples of white-collar criminality in business included various forms of misrepresentation, manipulation, embezzlement, and bribery.[14]

Edwin Sutherland (Zagaris, 2010; 1) in Ferguson, in his speech at the American Sociological Society defines white collar crime as, "A crime committed by a person of respectability and high social status in the course of his occupation (Zagaris, 2010: 1). Sutherland used the terms of white-collar crime to distinguish between the crimes committed abuse of power of white-collar crime by professionals and the upper echelons of society (which usually wore white shirts in their work clothes) against the crimes committed in public or "street crimes" such as robbery, murder, or assault. He also highlights that white-collar crimes did not involve violence or threats of violence but were often identified by their basis on fraud, trust, and craft. In addition, most white-collar crime is connected to legitimate business activity, it is part of a continuum between legal business endeavours and illegal business practices.[15]

Sutherland, in David, sometimes asserts that abuse of power is a white-collar crime committed by people with high status, while at other times he stresses that it is carried out on one's journey. In his major empirical contribution studying white-collar crime, he focused on crimes committed by organizations or individuals acting in organizational

14 Friedrichs, David O. (2010). *Trusted Criminals White Collar Crime in Contemporary Society,* 4th Edition, Australia: Wadsworth Cengage Learning. p. 4
15 Ferguson,J.E, (2010) White-Collar Crime. New York: Chelsea House Publishing,. p.13

capacities. Although he used various explanations, the most frequently cited explanations were both to the established social standing of white-collar criminals and the special opportunities for crime that came from distinguished occupational positions.[16]

The FBI's opinion that abuse of power is a white-collar crime is "categorized by deceit, concealment, or violation of trust and is not dependent on the application or threat of physical force or violence. Such acts are committed by individuals and organizations to obtain money, property, or services, to avoid the payment or loss of money or services, or to secure a personal or business advantage.[17]

Becker's opinion (1968) in Geason, it is stated that abuse of power to rationalization theory is while traditional criminology is tended to see criminals driven by their conditioning and environment. More recent economics-based theories portray them as rational abuse of power for decision-makers who base their decisions to commit crimes on an analysis of the risks of the venture compared to the expected profits. That is, the criminal does a cost-benefit analysis.[18]

The opinion of Bennet (1986) in Geason, it is stated that abuse of power to rationalization theory as; Rational choice theory as its basis. That is, it rests on the assumptions that offenders freely and actively choose to commit crimes, that abuse of power to decide to commit the crime is made in response to the immediate circumstances and the immediate situation in which the offense is contemplated; and the motivation to offend is not constant or beyond control, i.e. it is dependent on a calculation of costs and rewards rather than being the result of inheriting or acquiring a disposition to offend.[19]

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16 David Weisburd & Waring (2004) Elin, *White-Collar Crime and Criminal Careers* New York: Cambridge University Press p 8

17 Federal Bureau of Investigation (FBI): White Collar Crime," Available online. URL: *http://www.fbi.gov/libref/factsfigure/wcc.htm*. Accessed in December, 30, 2019

18 Geason, Susan (1988) *Crime prevention, Theory and Practice*. Canberra: Australian Institute of Criminology, p. 4.

19 Geason, Susan (1988). Ibid p. 5

Raymond Paternoster said the abuse of power to the theory of rationalization as; a human being is a rational and self-interested creature who is affected by their actions. In the rational choice theory, abuse of power is criminal behaviour not different from noncriminal behaviour in which the persons intentionally choose to do a crime, and the reason for committing a crime is that would be more rewarding and less costly than noncriminal behaviour. They choose to do crime under rational consideration against the costs and benefits of an intended action. The rational choice of an offender is rational and self-interested and chooses of committing a crime under his assessment that his behaviour should be profitable to some need better than noncriminal behaviour. It gives human beings what is called in the criminology field an agency. People with agencies act as if they have free choice over which courses of action they cannot act as agents on their own behalf. The other side of agency might be thought of as determinism people behave in a particular way not because they want to or choose to do so but because some cause have acted on them to compel them to behave in a certain manner.[20]

Francis T and friends, state that the election of abuse of power in the theory of rationalization as; the rational choice theory focusing on benefits and costs as subjectively perceived by individuals. It is aimed at individual decision-makers rather than the corporation as a whole. The individual's decision of abuse of power to commit a crime or violate the rule involves a series of factors. To calculate the potential costs of crime, the actors subjectively estimate the certainty and severity of formal and informal legal sanctions, and the certainty and importance of loss of self-respect. The offender considers the benefits of crime, including the perceived higher benefits of noncompliance and the perceived cost of rule compliance.[21]

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20 Raymond Paternoster (2009). Deterrence and Rational Choice Theories. in J. Mitchell Miller (ed). *21st Century Criminology: AReference Handbook* United State of America: SAGE Publications, Inc. p. 237

21 Agnew, Robert., (2009) Piquero, Nicole Leeper., and Cullen, Francis T. General Strain Theory and White-Collar Crime in Simpson, Sally S & Weisburd, David (ed.). The Criminology of White-Collar Crime. New York: Springer Science, Business Media, LLC p. 66.

In Rationalization Theory of abuse of power according to Hollin, it is stated; In this case, the rational choice works alongside the classical theory. It holds the central concept of free will in explaining why a person commits a crime. When the opportunity to abuse power is crime arises, the individual has a free choice between criminal and non-criminal behaviour. If the payoffs for the criminal act are greater than the retribution it will bring, so the probability of a crime increases. At its most basic, this suggests that severe retribution will deter people from any criminal act.[22]

Thomas Hobbes's opinion about the abuse of power assumes that humans seek personal advantage naturally without regard to the rights of others and this triggered abuse of power is criminal behaviour. Travis Hirschi (1969) claims that a deviance act should be controlled by external social forces or internal predispositions. The social control theory of delinquency is based on the assumption of social integration and the idea that individuals from bonds to society that restrains from their delinquent impulses, the more bonds an adolescent has through friendship ties, the abuse of power is less delinquent or criminal act will be. In his rational choice theory, Geason (1988: 5) claims that offenders freely and actively choose to commit the crimes. The motivation depends on the calculation of its costs and rewards. Abuse of power choose to do crime under rational consideration against the costs and benefits of an intended action.

D. The Exploitation of Power From The Perspective of Authority of State Law

Soekanto's opinion in W. Riawan Tjandra states that, the state is only seen as an instrument of power, then the impact of the streams regarding the state as an agency of service, so that the concept of welfare state arises, especially looking at humans not only as individuals, but also as

22 Hollin, Clive R. (1989) Psychology and Crime: An Introduction to Criminological Psychology. London and New York: Routlege, Tylor and Francis Group, p. 4

members or citizens of collective and that humans are not merely tools of collective interest but also for their own ends.[23]

Power in the management of state finances as an instrument to realize the welfare of the people by attribution is given by public officials, in this case it is based on Article 6 paragraph (1) of Law Number 17 of 2013 on State Finance. The governance of state finances carried out by the state in the administration of government functions which include regulatory, service, development, empowerment, and protection functions must be based on the principles of legality, general principles of good governance (AUPB) and good governance that have been contained in various regulations in Indonesia. One of them is Law Number 30 of 2014 on Government Administration.

According to Law Number 30 of 2014 on Government Administration, it is stated that the Government Administrative Law guarantees basic rights and provides protection to the citizens and guarantees the implementation of the duties of the state as required by a rule of law in accordance with Article 27 paragraph (1), Article 28 D paragraph (3), Article 28 F, and Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Based on this provision, citizens are not objects, but subjects actively involved in the administration of government.

Government Administration Arrangement in Law Number 30 of 2014 guarantees that decisions and/or actions of government bodies and/or officials towards citizens cannot be carried out arbitrarily. With Law Number 30 of 2014, citizens will not easily become the object of state power. In addition, this Law is a transformation of the General Principles of Good Governance (GPGG) which has been practiced for decades in the administration of government, and is concreted into binding legal norms.[24]

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23 W Riawan Tjandra, (2008) State Administrative Law, Yogyakarta: Publisher of Atma Jaya University, p. 11

24 Abuse of Power Judging from the Law https: //www.djkn. kemenkeu.go.id/ 2016/artikel/baca/11296/Useuse.accessed 30 January 2020- DJKN-

The administration of government must be based on the principle of legality, the principle of protection of human rights and the General Principles of Good Governance (GPGG), especially in this case the principle of not abusing power. The principle of not abusing one's own authority is regulated in Law Number 30 of 2014, namely Article 10 paragraph (1) letter e and its explanation. This principle requires every agency and/or government official not to use his authority for personal or other interests and is not in accordance with the purpose of granting such authority, not to exceed, not to abuse, and/nor to mix authority.[25]

According to the provisions of Article 17 of Law Number 30 of 2014, government agencies and/or officials are prohibited from abusing authority, the prohibition includes a prohibition in exceeding authority, a prohibition on confusing authority, and/or prohibition of arbitrary actions. Government agencies and/or officials are categorized as exceeding authority if decisions and/or actions taken exceed the term of office or the time limit for the exercise of authority, exceeding the limits for the area in effect of authority; and/or contrary to statutory provisions. Government agencies and/or officials are categorized as a confusion of authority if decisions and/or actions taken are outside the scope of the field or material authority given, and/or are contrary to the purpose of the authority granted. Government agencies and/or officials are categorized as acting arbitrarily if decisions and/or actions carried out without a basis of authority, and/or in conflict with court decisions that have permanent legal force.[26]

Abuse of power and authority carried out by government officials should not be examined through a criminal process because in accordance with Law Number 30 of 2014 as long as the abuse of authority does not contain an element of criminal conduct, it is an administrative domain whose settlement is carried out by the official's supervisor and

25 *Ibid*.
26 Abuse of Power Judging from the Law, *Ibid*.

the sanction against officials who have been proven to have misused authority in the form of revocation of authority, sanction of reprimand or dismissal.[27]

Regarding legal implications of abuse of power to the administration of public officials that harm state finances, the opinion of Philipus M Hadjon, administrative law is known as the term of authority, which is aligned with the term "bevoegdheid". The difference between authority and the term of bevoegdheid is that they are used both in the concept of public law and private law, whereas in Indonesia it is always used in the concept of public law that the use of authority is intended to control the behaviour of legal subjects. Authority must have the legitimacy and conformity of the law, containing interpretation of authority standards, namely general standards and special standards.[28]

Of the abuse of power or unreasonableness, both of which are the main parameters of whether there is a deviation in the use of government authority, of course, in addition to the principles of other administrative law. In the event that there is an element of abuse of authority and arbitrariness, then there is an element of maladministration and of course there is an element of unlawful conduct, and the act becomes the personal responsibility of the official who commits it. Abuse of power is broader in understanding than unreasonableness, but in the study of administrative law both are necessary to determine the presence or absence of corruption, collusion, and nepotism of public officials.[29]

The aforementioned statutory regulations have occurred conflict (conflict norm) after the enactment of Law Number 30 of 2014 on Government Administration, namely Article 17 to Article 21 which regulates the prohibition on the abuse of power and authority by

27 Abuse of Power Judging from the Law, *Ibid*.
28 Philipus M. Hadjon et al, (2011) Administrative Law and Corruption, Yogyakarta: Gadjah Mada University Press, p. 11
29 Philipus M. Hadjon dkk, (2011). Ibid, p 49

Government Agencies and/or Officials as well as granting authority to the Government Internal Oversight Apparatus and the State Administrative Court to conduct supervision and testing regarding whether or not there is an element of abuse of power and authority carried out by Government Officials. Meanwhile, previously there were provisions in Article 3 of Law Number 31 of 1999 on Eradication of Corruption, as amended by Law Number 20 of 2001 on Eradicating Corruption in conjunction with Article 5 and Article 6 of Law Number 46 of 2009 on Corruption Criminal Court, which one of the elements regulates Corruption due to abuse of power, where absolute competence to examine the problem is given to the Corruption Court.[30]

In Krisna Harahap's opinion, of the Supreme Court Judge of the Supreme Court of the Republic of Indonesia, it is explicitly stated that the government administration law impedes efforts to eradicate corruption. It is because the provisions contained in the law are clearly not in line with the eradication of corruption, particularly Article 3. Worse yet, the provisions in the government administration law can even reduce the authority of the criminal act of Corruption in assessing the element of "abusing power and authority" in criminal acts of corruption. This is evident from the policy of President Jokowi who instructed the Attorney General and the Chief of the Indonesian National Police to prioritize the government administration process in accordance with government administrative laws before investigating public reports regarding alleged abuse of authority, particularly in the implementation of the National Strategic Project.[31]

The authority to examine and decide upon the element of abuse of power and authority because of a position in a criminal act of corruption is an absolute competence of the Administrative Court. It

30 M. Sahlan (2016). Elements of Abusing Authority, Journal of Law IUS QUIA IUSTUM NO. 2 VOL. APRIL 23, , p 271-293
31 M. Sahlan (2016). Elements of Abusing Authority, *ibid*.

is because the concept of abuse of power and authority in government administration law and the concept of abuse of power and authority in the law on the eradication of corruption theoretical and practical are the same concepts. When there are two laws (legislation policy) with the same level regulating the same aspects, based on the principle of "lex posteriori derogate legi priori", the established law then applies.[32]

The root of the problem arises the potential for power and authority disputes to adjudicate between the Corruption Court and the Administrative Court in dealing with the abuse of power and authority in the Corruption Act due to differences in concepts, theories, and arrangements regarding power, authority and authority in Indonesian law.[33]

The legal implications of abuse of power by public officials in the state administration law on the abuse of power and authority that have an impact on state financial losses due to administrative errors becomes an individual responsibility by returning the state financial losses incurred as a result of the actions of the public official.

32 *Ibid*
33 *Ibid*

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Chapter 2

CORRUPTION, COLLUSION, AND NEPOTISM: A LIST OF CULTURE OF CORRUPTION IN EACH REGIME OF THE INDONESIAN GOVERNMENT

A. Opening

This research is entitled Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia. Political corruption as stated by historian Norman Johan Powell, there are 4 (four) basic understandings. The first understanding, political corruption is patently illegal behavior in the sphere of politics. The second understanding, political corruption relates to government practices that, while illegal, may be improper or unethical. The third understanding, political corruption involves conflicts of interest on the part of public officials. The fourth understanding, "political corruption also has an ethical, rather than a legal, basis; it is related to political behavior that is nonresponsive to the public interest.[1]

1 Mark Grossman, "Political Corruption in America: An Encyclopedia of Scandals, Power, and Greed," second edition, volume 1 (New York: Grey House Publishing, 2008), p.. ix.

Indonesia is equipped with abundant natural resources. According to the 1945 Constitution, these natural resources should be controlled by the state for the maximum prosperity of the people. In fact, the Indonesian people are not prosperous because of these natural resources. That is due to the management of natural resources laden with abuse of power and corruption.

The phenomenon of countries that are rich in natural resources tends to have lower economic growth, higher poverty rates, and lower welfare. This phenomenon is referred to as the curse of natural resources (natural resource curse).

The concept of structure thought found many anomalies from the implementation of structural policy package prescriptions in a number of developing countries, including Indonesia. In Indonesia, democratic actors who have been brought up in corrupt political-economic systems can freely collaborate with business interests that are naturally driven by profit-oriented behavior. In a space of democratization and market liberalization that has not been well consolidated, the "affair" of political power and economic power is often able to create a network of power that can easily change its face into an engine of state budget dredging and exploitation of state resources on a massive scale. As a result, even though democracy is developing, markets are increasingly open, but at the same time corruption practices are also expanding to be able to create their own networks of power, able to create systems of protection and legitimacy, and through that legitimacy they can also enforce 'political order' in the structure that power.[2]

According to Heywood defines political corruption as the following, Corruption in politics occurs where a public official (A), violates the rules and or norms of office, to the determinant of the interest of the

2 Hadiz and Robison (2004. 'Reorganizing Political Power in Indonesia: A Reconsideration of so-called 'Democratic Transitions'. The Pacific Review 16 (4), 591-611.

public (B) (or some subsection thereof) who is the designated beneficiary of that office, to benefit themselves and a third party (C) who rewards or otherwise incentives A to gain access to goods or services they would not otherwise obtain.[3]

The definition is a summary of Heywood from various experts. Political corruption occurs when a public official violates the laws and norms in relation to the public interest or a certain section, or as a public official receives a benefit for his own benefit or a third party who gives a gift or incentive to the public official where the gift or incentive is intended so that the third party has access to goods or services that the third party should not have.

In Indonesia, political corruption in the parliament and bureaucracy is included in the category of crime, regulated in Law Number 31 of 1999 concerning Eradication of Corruption, Article 2 (paragraph 1) defines corruption as follows: "Everyone who is against the law commits acts of enrichment alone or another person or a corporation that can harm the country's finances or the country's economy, is sentenced to prison with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp 200,000,000, 00 (two hundred million rupiah) and a maximum of Rp 1,000,000,000.00 (one billion rupiah).[4]

Then the term corruption was complemented into Corruption, Collusion, and Nepotism (KKN). Law No. 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion and Nepotism amended by Law Number 20 of 2001 concerning State Administration that is Clean and Free of Corruption, Collusion and Nepotism, defines corruption, collusion and nepotism. Article 1 (3) of Law no. 28/1999 defines "collusion"

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3 Paul M. Heywood (ed), Routledge Handbooks of Politica Corruption (New Yor: Routledge, 2015), p. 22.
4 Progressive Books, Law on Corruption (Jakarta: Progressive Books, 2006), p. 53-57.

is: “Corruption is agreement or cooperation in a manner against the law between State Administrators or between State Administrators and other parties that harm other people, society and or the state.

Article 1 (4) of Law no. 28/1999 defines “collusion” as follows: Collusion is agreement or cooperation against the law between State Administrators or between State Administrators and other parties that harm other people, the community and the state. “ While Article 1 (5) of Law no. 28/1999 defines nepotism as an act of the conduct of a State Operator in an unlawful manner that benefits the interests of his family and/or cronies over the interests of the community, nation and state “. Politicians in government, parliament and political parties are people who are given authority, give authority, and make authority. They abuse the authority hidden in their power mandate, so it is often referred to as culture corruption political behavior. One of the modes i is through regulatory corruption, in the form of legislation products and derivative policies, to their implementation. Due to the behavior of these politicians, Indonesia is almost categorized as a kleptocracy state, a country ruled by thieves (klepto).

Said and Suhendra’s opinion was supported by Magnis Suseno who stated about the pretense culture of the community towards the deviant behavior of other residents related to property ownership. That is, citizens in the culture of omission (ommision culture) have a tendency to allow a variety of dishonest practices in obtaining property, because it avoids social disharmony and is free from the assumption of order destruction. In such a technical system, a person’s desire to open up the practice of deviant economic behavior actually has fatal consequences for his social life. That is why whistle blowers corrupt behavior makes them prisoners and convicts. As if in such a cultural structure, a person who is supposed to be a hero in the fight against corruption ends up becoming a loser.[5]

5 Frans Magnis Suseno (2003) in Listiyono Santoso and Dewi Meyrasyawati. (2015). The Cultural Strategy Model for Corruption Eradication in Indonesia. Journal of Political Review. Volume 5. Number 1. p. 28

Bribery is the most common mode in investigating corruption cases. There are at least 51 cases of corruption with bribery. The value of bribes is Rp. 169.5 billion while money laundering is Rp. 46 billion. The mode of abuse of authority amounts to 30 cases. The amount is not as much as a bribe, but the value of losses caused by the state reached Rp 6.3 trillion. The nominal is at the same time the biggest compared to other modes. Last year, there were at least 271 cases with a total state loss of Rp. 8.4 trillion. The number of suspects is 580 people with different backgrounds, ranging from state civil servants, the private sector, to officials of State-Owned Enterprises (SOEs). (Read: 65 Percent of Corruption Crimes handled by the KPK is a Case of Bribery).[6]

The modus operandi of corruption in the behavior of politicians in Indonesia is to collaborate on mutually beneficial agreements with bureaucratic officials, especially state-owned enterprises (BUMN) as milking and who are victims of political corruption behavior. From the New Order era to the Reformation era, state-owned enterprises devoid of dairy cows by politicians in the government and parliament. Even though not a few politicians were punished, it did not make the practice of "blackmailing" especially state-owned enterprises. As a result, especially state-owned enterprise continues to be a target of political corruption. Overcoming crime with white-collar crime patterns that tend to be collaborative, is not easy. Moreover, the motive is the demands of the class and the high cost of political parties in Indonesia. As a result, a culture of political corruption continues to occur by utilizing the authority and power they have.

Related to criminal culture, A. Josias Simon Runturambi (2017) examines the Meaning of Crime and Deviant Behavior in Indonesian Culture. The results showed the meaning of crime and deviant behavior are relative and contextual. The relationship between deviant behavior

6 Indonesian Corruption Watch (ICW), 18 February 2020

(crime) and habits (culture) shows the correlation of relationships that can not only be analyzed using theories of interactionism crime but with a critical crime theory known as cultural criminology. The core of this perspective describes crime as culture and culture as a crime. Crime as culture speaks of local deviation as a culture that views behavior as a deviation at the same time as a behavior of subcultures, symbols, rituals and something that is considered meaningful collectively. Within this subculture or arena of deviation, outward appearance shapes the contents and views of others towards the formation of distorted cultural identities. Whereas culture as crime sees deviant behavior of culture as a meaning of reconstruction of culture which is defined as deviation, labeling is carried out by the community towards criminogenic cultural products through the media or legal intermediaries. Local deviant behavior shows the target of criminalization but accepted criminalization develops as a cultural process. This research is important to analyze how corruption which is a deviant behavior can become a culture that develops in Indonesia and haunts almost all aspects of people's lives.[7]

Identification of problems: culture corruption behavior of politicians in the parliament and bureaucracy in the reform era in Indonesia is still ongoing corruption can be said as a culture of corruption that has been so severe, that Indonesia is almost categorized as a kleptocracy country, and as a country ruled by thieves (klepto) and even has been spread of viral infections or COVID-19.

Based on the theoretical analysis of corruption culture behavior perspective white collar crime, there is three explanations about a goal the offender wish to achieve when they doing a crime. First, white collar criminals committed under their personal interest. Second, they committed crime under their group or party interest and finally, committing a crime to preserve their power interest. In this three cases

7 A. Josias Simon Runturambi. 2017. The Meaning of Crime and Deviant Behavior in Indonesian Culture. Indonesian Anthropology. Vol. 1. No. 2. p. 125-135

of white collar criminal interest, not all of the offender can be easily ensnared by law and sentenced. Many reason that can save the offender from charge, it could be the official protection, guarantee from the ruler, and the result of political bargaining among parties in the official state.

B. Corruption, Collusion, and Nepotism: A List of Culture of Corruption in the Regime of The Third President, BJ Habibie

The attempts to eradicate white collar crime on the reform government after the fall of New Order government was began of the third President of Republic of Indonesia who served only for 1 Year 5 Months since 21 May 1998 to 20 October 1999 (Sindownews.com., 2014) It issued the Law No. 28 1999 on the State Implementation that clean and independent from KKN (Sindownews.com. 2015) specifically enacted the Law No. 31 of 1999 as substitute of Law No. 3 of 1971 on Corruption Eradication. The government also issued Presidential Decree No.30 Year 1998 on the Formation of Investigation Commission of State Officials Wealth (KPKPN), KPPU, or Ombudsman Agency (Sembirin 2015).

The commitment to eradicate KKN was conveyed by the third Indonesian President of reform era, when announced the members of Development Reform Cabinet. But the commitment was tarnished by the release of phone records of President and the Attorney General (AMG), regarding disclosure and investigation of various corruption criminal acts of the New Order president so doubt the commitment of corruption eradication. The case of white collar crime sticking out due to the pressure of some NGOs such as ICW (Indonesian Corruption Watch) is the case of Attorney General which resulted in the resign from his post as Attorney General (Suara Merdeka, 2008).

ICW reported the Attorney General to the Armed Forces Military Police on charges of accepting bribes from a businessman, who was later freed from the investigation the Attorney. In his press conference, ICW

revealed a number of personal accounts of Attorney General and his wife, valued at no less than USD 9 billion, although salary as Attorney General no more than $ 7 million (Tempo, 1999).

C. Corruption, Collusion, and Nepotism: A List of Culture of Corruption in the Regime of The Fourth President of the Republic of Indonesia, Abdurrahman Wahid

The attempt to suppress and combat white collar crime by this fourth president is done through of the Law enactment No. 28 years of 1999, namely the establishment of Commission for Investigation the Wealth of State Officials (KPKPN) (Tragedi Sosial dan Sejarah, 2016) Furthermore, it also established the Ombudsman Agency and the issuance of Government Regulation No. 19, 2000 and then formed a Joint Team on Corruption Eradication (TGPTPK), however, after through a judicial review of the Supreme Court, TGPTPK finally dissolved (Hukum online, 2014). The dissolution was done because TGPTPK considered not in line with Law No. 31 of 1999. (Jaya, 2005: 75) The dissolution consequences of TGPTPK, the fourth President are considered not support the efforts to combat corruption (ICW, 2003).

During the fourth president of Indonesia is going direct fired against two ministers involved in corruption cases without further action of law enforcement through the judicial process. The two ministers involved in these cases is Minister of Industry and Trade (JK) and the Minister of State-Owned Enterprises (LS) (Sindownews.com, 2014) The President in this case also considered by public is not able to show the leadership that supports to the eradication of corruption. President frequent take meetings outside the presidential agenda even in places that are inappropriate in his capacity as the state supreme leader. For example, the president met with the son of the Second President of Republic of Indonesia at Hotel Borobudur, whereas at the time he involved in corruption cases and firing the Chief Justice. Then the conglomerate (SW) through the Attorney General (MU) gave warrant to Termination

of Investigation (SP3). Other cases that plagued this fourth president is the case of Buloggate and Brunaigate (ICW: 2003)

D. Corruption, Collusion, and Nepotism: A List of Culture of Corruption in The Fifth President of The Republic of Indonesia, Megawati Sukarno Putri

The new institution of law enforcement and white collar crimes during the government of President Megawati was the establishment of Corruption Eradication Commission (KPK). Before the Commission formed the government has conducted a study of Law No. 31, 1999 as amended by Act No. 20 of 2001 on Corruption Eradication. Based on Law No. 30 2002 on the establishment of the Corruption Eradication Commission then established the KPK (Sindonews.com, 2015).

However, in line with establishment of the KPK the law enforcement efforts against white-collar crime was assessed declined compared to the previous reform period. International Transparency Society states that lack of sharpness President Megawati in combating corruption under human rights violations indicate the absence of the government's intention to create a clean government independent from corruption. Based on the annual reports of international institutions of Political and Economic Risk Consultancy, Indonesia recorded his worst score on overcoming corruption during President Megawati (Indrayana, 2008: 37).

The corruption of culture behavior perspective white collar crime are reported by the public after the formation KPK was quite a lot. Less than a year, KPK has received 1,452 reports from the public about corrupt practices. Ten cases were followed up in the investigation process and already two corruption cases were successfully delegated to the Corruption Court. The major corruption cases overcome by KPK was corruption in the General Election Commission (KPU). The results of investigations and inquiries of KPK has succeeded to throw

the chairman and members of KPU as well as some employees of Commission Secretariat to prison (Police and Security Studies, 2011).

In addition, the case that sticking and dragging the involvement of the Fifth President is legal case of BLBI (Bank Indonesia Liquidity Assistance). According to BPK audit the state losses estimated to reach Rp.144.54 trillion. However, the National Bank Restructuring Agency (BPPN), which issued the Settled Certificate (SKL) to bankers who received BLBI funding issued SKL, pursuant to Presidential Instruction No. 8, 2002. Based on the instruction, the Attorney General issued a Warrant to Termination of Investigation (SP3) for parties that receive BLBI funds (Merdeka.com, 2015) Another quite shocking corruption case is corruption in congregation by Parliament member (DPRD) of West Sumatra that involved Governor of West Sumatra and 43 of 55 members of West Sumatra DPRD 1999-2004. They were sentenced from 24 to 27 months in prison (ICW, 2015).

E. Corruption, Collusion, and Nepotism: A List of Culture of Corruption in The Regime of The Sixth President of the Republic of Indonesia, Susilo Bambang Yudhoyono (SBY)

In the first 100 days of work program of United Indonesia Cabinet, President SBY declared the eradication of corruption culture behavior with theme "Creating an equity and Democratic Indonesia." SBY actualize its support in Presidential Instruction No. 5 Year 2004 on Acceleration of Corruption Eradication to assist KPK on organizing the report, registration, announcements and examination of LHKPN (State Organizer Wealth Report). Based on the Instruction BAPPENAS (National Development Planning gency) issued National Action Plan for Eradication of Corruption (RAN PK) 2004-2009 (Hukumpalembang, 2015).

Anti-corruption team established during President SBY is Coordinating Team for Eradicating Corruption (Timtas Tipikor) under Presidential

Decree No. 11, 2005. The important task of team is inquiry, investigation and prosecution in accordance with the law applicable to the case and/ or indication of corruption. Then seeking and arresting the offender allegedly committing the criminal act as well as tracing its assets to the optimal finance return (Police and Security Studies, 2011).

The government period of President SBY can be said that of which many ensnare corruption culture behavieor the white-collar offenders. In law enforcement the case of white collar crime was done without selective, so no wonder in the administration period of SBY many politicians or party cadres whether as state official or parliament politician entangled in the law case. Here are names of state officials and politicians in the circle of President SBY involved in white collar crimes

a. Minister of Youth and Sports as well as Secretary of High Council of Democratic Party becomes suspected in corruption case of development of Training Center and Education of Sports School (P3SON) Hambalang, Bogor, West Java, sentenced 4 years in prison (Antaranews.com, 2014)
b. General Chairman of Democratic Party suspects of gratification related to development of Training Center and Education of Sports School (P3SON) Hambalang, Bogor, West Java. The Cassation Court sentenced 14 years imprisonment with fine 57 M (Kompasiana, com, 2015).
c. House of Representatives Members from Democratic Party, the suspect of bribery scandal of athletes homestead, Palembang. Anti- Corruption Court sentenced 10 years in prison and fine Rp 1 billion to restore state losses Rp 12.58 billion and USD 2.35 million or around Rp 27.4 billion (Kompas.com, 2015)
d. General Treasurer of Democratic Party becomes suspect for bribery scandal of development projects SEA Games athletes homestead, sentenced 8 years in prison by the Corruption Court, Jakarta.
e. Members of Supervisor Board of Democratic Party become suspected in bribery scandals of Buol Regent, Central Sulawesi,

sentenced 2 years 8 months in prison (Kompas.com, 2013).

f. Head of Work Unit of Oil and Gas Upstream Executive and the Deputy Minister of Energy and Mineral Resources (ESDM), a suspect of bribery in Ministry of Energy and Mineral Resources. Minister of Energy and Mineral Resources in this case is responsible to this scandal.
g. Former Vice President and Governor of Bank Indonesia was rated responsible for the Bank Century scandal.
h. General Secretary of Democratic Party, youngest son of President SBY involved in corruption received USD 200 thousand. But until now KPK has not followed up the allegation.
i. Housekeeping employees of President SBY involved scandal of Hambalang project. However, KPK has not set the status of the suspect.
j. Members of Parliament RI from Democratic Party are touted receive money from Chairman of SKK Migas (JPPN.com, 2014).

Other case of white-collar crime are sentenced during the Corruption Court President:

a. Previous Indonesia Police Chief involved in corruption cases of processing immigration documents while serving as Indonesia Ambassador in Malaysia. Sentenced for 2 years.
b. Two Indonesia Bank officials as suspected in use of YPPI funds amounting to Rp 100 billion. Each was sentenced to four years in prison,
c. The Governor of Bank Indonesia suspects use of YPPI funds amounting to Rp 100 billion, was sentenced to five years in prison,
d. Besan President along with another suspect becomes suspect disbursements Indonesian Banking Development Foundation (YPPI) amounting to Rp100 billion.
e. The prosecutor was caught accepting bribe 610,000 dollars from obligor BLBI, sentenced 20 years in prison, and the obligor sentenced for 5 years in prison.

f. Project Manager of Training Development and Procurement training tools of Depnakertrans involved inflating additional budget amounted to Rp 15 billion and Checklist Budget Rp 35 billion, sentenced 4 years in prison.
g. Former Governor of Riau as well as Golkar Parliament members be suspects corruption in procurement 20 units of fire trucks worth Rp 15 billion, sentenced 4 years in prison.
h. Former governor of West Java and Director General of Regional Autonomy Department of Interior became suspect in Damkar Case. KPK also makes suspect Former Head of Program Management Bureau, West Java and Former Supplies Head, Finance Bureau staff in East Kalimantan and Chairman of Commerce Chamber and Industry, Depok.
i. PPP Party Member of Parliament and District Secretary of Bintan was caught in bribery case
j. Golkar Party Member of Parliament and former Member of Parliament who serve as Deputy Governor of Jambi receive disbursement of Rp 31.5 billion from Bank Indonesia.

F. Corruption, Collusion, and Nepotism: A List of Culture of Corruption in The Seventh President of the Republic of Indonesia, Joko Widodo (Jokowi)

The attempts of Jokowi government to eradicate corruption is promoted through bureaucratic reform. Good governance will result in professional office holders and high integrity. To implement this agenda Jokowi President issued Presidential Instruction (Inpres) No 7, 2015 on Prevention and Combating Action of Corruption. This instruction is elaboration and implementation of Government Regulation No. 55 2012 on National Strategy for the Prevention and Combating of Corruption for Long Term 2012-2025 (PresidenRI.go.id, 2015)

According to ICW total case of corruption in 2014 during administration of President Jokowi is 629 cases with 1328 suspects and total losses

amounting to Rp 5.29 trillion. Four high state officials are decided to be a suspect. Among them is Minister of Religious Affairs and Minister of Energy and Mineral Resources. Then Chairman of Audit board of Finance and Chairman of House Commission VII 2009-2014 In addition, 43 heads of regions was suspected of corruption and mostly from Golkar and Democrat Parties. Meanwhile 81 parliament politician members became suspected of corruption (Selatpanjang Post, 2016).

Indonesia Corruption Watch provides five record one year of government's performance in combating corruption. First, government still hostage to the political parties interests, especially the supporters party. Second, the performance on eradication of corruption, especially, the handling of corruption cases by police and prosecutors are still far from expectations. The performance in eradication of corruption is dragged into the noise of laws, in particular criminalization and weakening KPK. The Prosecutor Corruption Satgasus established in January 2015 has not produced the results. The measures of prosecutor's investigation are grounded in two pretrial hearing involved Minister of State Enterprises Board and Victoria Securities Indonesia. The Prosecutor ended corruption case of the fat accounts ownership of 10 heads of regions based on the findings of PPATK. Handling corruption of misuse the Bansos funds in North Sumatra Province became unclear since handled by the Attorney General. Third, government is considered not able to save KPK from weakening efforts. Criminalization toward non active KPK leaders cannot be stopped. Fourth, do not appear the strong regulation to support eradication of corruption, such as Asset Confiscation Bill, Bill on Mutual Cooperation (MLA), and Bill of Cash Transaction Restrictions. Fifth, government has not fully implement 15 anti-corruption agenda as stated in Nawacita Program. This impressive an anti-corruption agenda is not a government priority (Sindownews. com, 2015a).

The case that draw most attention of Indonesian people both nationally and internationally are corruption and desecration cases committed by

Jakarta Governor. The corruption case that ensnared Jakarta Governor as suspect linked to the purchase of land in Cengkareng and Sumber Waras hospital, but so far the case has not been decided. The expert of Constitutional Law Yusril Ihza Mahendra said, police, prosecutors and KPK was too slow in dealing with this case (Sindownews.com, 2016). Likewise, the cases of religion defamation is offending majority of Indonesian Muslims and seized a long time and finally made suspect status to Governor of DKI.

About 800 securities accounts related to corruption and default payments in PT Asuransi Jiwasraya (Persero) have been blocked. The blocking request came from the Attorney General's Office to the Financial Services Authority (OJK) and was then executed by PT Kustodian Sentral Efek Indonesia (KSEI). "All requests come from the Attorney General's Office and OJK's anticipation to assist the Attorney General's legal process," said OJK Deputy Commissioner for Public Relations and Strategic Management Anto Prabowo when contacted in Jakarta, Friday, January 24, 2020. According to Anto, the number of blocked securities accounts will continue to grow , it could even exceed 800. Because the investigation process at the AGO is still ongoing. According to him, the FSA and the Attorney General continued to coordinate intensively to handle the Jiwasraya case. Previously, Jiwasraya was experiencing a default condition of up to Rp 12.4 trillion. Then, the company was also plagued by corruption issues involving the Managing Director of PT Hanson International, Benny Tjokrosaputro. The country's total loss is predicted to exceed Rp 13.7 trillion.[8]

In accordance with existing regulations, all securities account blocking processes are carried out by KSEI. However, the blocking order came from the FSA. Since January 16, 2020, the Head of the Attorney

8 Aftermath of the Jiwasraya Corruption Scandal, 800 Securities Accounts were Blocked https://bisnis.tempo.co/read/1299067/aftermath-scandal-corruption- jiwasraya-80. Accessed March 17, 2020 01.00 a.m.

General's Legal Information Center, Hari Setiyono, has also mentioned blocking the securities account. According to him, prosecutors' investigators blocked the securities and securities custodian accounts belonging to the suspects of the Jiwasraya Case. Then on January 22, 2020, it was the turn of the Indonesia Stock Exchange (IDX) and the OJK to suspend trading temporarily, aka the suspension of five shares related to the Jiwasraya scandal. IDX Corporate Secretary Yulianto Aji Sadono said the suspension was carried out as a form of commitment by the capital market regulator to maintain orderly, fair and efficient securities trading. The decision to suspend refers to a letter issued by OJK No. SR-11/PM.21/2020 on January 22, 2020. The letter contained a Temporary Suspension of Securities Trading. The fifth is PT Inti Agri Resources Tbk. (IIKP), PT Eureka Prima Jakarta Tbk. (LCGP), PT Hanson International Tbk. (MYRX), PT SMR Utama Tbk. (SMRU), and PT Trada Alam Minera Tbk. (TRAM).

Government bureaucratic activities which are realized in the form of projects, are conducive land for corruption. It is common knowledge that project leaders get a "kick back" of between 30% and 40% of the project value (maybe more, which will be shared with officials or their superiors). For project partners who carry out project work, so that they do not incur losses in working on the project, there is no other way in bidding, except to "mark up" the value of the project, or conduct KKN with the tender committee. From this then arises the terms "wet office" and "dry office", which are considered only natural and do not feel that illegally taking state property is a major crime.

G. Conclusion

In criminology, acts of corruption fall within the scope of white-collar crime and are actually forms of action that are far more detrimental to society than conventional crime. However, the level of public concern about the symptoms of this type of crime, because it is invisible, is relatively not as high as that of conventional crime. In Indonesia, it

can be said that crime in the form of corruption (KKN) has spread in various aspects of people's lives, for example in the fields of law and law enforcement, politics, business, government bureaucracy, education, and even in the religious field as people have been interpreted to have happened. in the organization of Hajj. It is not surprising that Transparency International from the results of its survey places Indonesia as one of the most corrupt countries in the world. Although this form of crime is serious, the pattern of overcoming it does not indicate seriousness. The proof, corruption continues.

Government bureaucratic activities which are realized in the form of projects, are conducive land for corruption. It is common knowledge that project leaders get a "kick back" of between 30% and 40% of the project value (maybe more, which will be shared with officials or their superiors). For project partners who carry out project work, so that they do not incur losses in working on the project, there is no other way in bidding, except to "mark up" the value of the project, or conduct KKN with the tender committee. From this then arises the terms "wet office" and "dry office", which are considered only natural and do not feel that illegally taking state property is a major crime.

By paying attention to the description above, then in an effort to tackle the problem of corruption, if it is not intended to change or improve conditions conducive to corruption, then the effort will be in vain. For example, the formation of a Corruption Eradication Commission (KPK), which is more repressive, will not be able to do much in dealing with corruption. Because the kleptocracy, which is a mirror, has eradicated corruption in Indonesia, it needs to be fought by developing a culture of anti-corruption and a culture of separation of assets from personal property. Therefore, in tackling the problem of plentiful democracy, it is necessary to involve criminologists and other relevant experts to conduct in-depth research in order to explain various factors that are conducive to the occurrence of corruption and design coping strategies.

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Chapter 3

CORRUPTION CULTURE ON MANAGING NATURAL RESOURCES: THE CASE OF POLITICAL CRIME "PAPA ASKING STOCK OF PT. FREEPORT INDONESIA"

A. Opening

The research of corruption culture in Indonesia is a very complex research involved psychological, social, moral law and justice studies should be carefully distinguished. Political crime, in criminology, was explained to be a criminal act of offender that aimed to change an existing social culture situation, change an established political order as well as to state and religion in against the law. Szabo (2011:10) reveal that political crimes are those infractions committed for reasons over and above the self-interest of their perpetrator and which are an attempt to achieve changes of a political, social or religious order. How to do the crime is contrary with opinion of many society so the act committed is violation to the common law. Meanwhile, Borgatta and Montgomery said that many western classical sociologists and criminologists limit definition of political crimes only to crimes committed against the state like treason, sedition, sabotage, terrorism, espionage, subversion and conspiracy (Solomon & Oryina, 2016).

Corruption culture on management natural resources in Indonesia during this time refers to the treason act against the state or terrorism act to date becomes top agenda of the state. However, during this reform, although in the past it was also committed, corruption culture is more prominent its handling on the criminal behavior of political elite or state official which in the circles of power, particularly related to the abuse of office authority or its authority, using public resources for private purposes and power groups interests.

Corruption culture, the relationship between crime and power, actually has been long and intimate. In particular, many people perceived Suharto's New Order regime to be a criminal regime because it's institutionalized corruption, collusion, nepotism and political crimes. In reform era, the efforts to crack down political crimes committed by political elite and state officials, particularly related to the crime acts of corruption, collusion and nepotism, Indonesian Government has established institutions of corruption crime eradication, known as KPK (Corruption Eradication Commission).

Since its inception 20 years ago, the KPK with its surveillance function has been the greatest weapon against corruption and political crime in Indonesia. Wiretapping and 'hand capturing' operations allows the officer for rapid collection of evidence and led to arrests of hundreds of national and regional politicians, state managers and officials, judges and businessmen exchanging cash for political favors. But at the top level of political elite and state office the KPK's penetration has been very limited. It has been unable to investigate the biggest case involved a powerful figures like presidents, their spouses and children as well as political bosses (Mulholland, 2016).

The number of cases that cannot be resolved, particularly the crimes handling involved public officials or political bosses for 2 years under President Jokowi-JK administration since 2014-2016 shows clearly

the performance of law enforcement that can be said still weak. It was alluded to Democratic Party Chairman, Susilo Bambang Yudhoyono (SBY) the sixth ex Indonesian president. SBY hopes the judicial process for this government no longer enforced by intervention of power, since people saw there is the invisible hand that makes the performance of law enforcement in Indonesia become obstructed and deteriorated (Top News, 2016).

B. A Brief on Corruption Culture within the Political Crime

Corruption culture is crime behavior and act is not simply dominated by the criminals on street such as theft, robbery, rape, murder, assault etc. but also have penetrated in the parliament house government bureaucracy and political domain. Sutherland (Ferguson 2010), the crime in the first category is often related to "street crimes", while the other as "white color crime," "political corruption" and "political crime". This three last term are seldom related to penal law but a little They almost identical in case who was doing the crime and under what interest the perpetrator was done the crime, the locus the crime was done, either in state or political domain. Before discussing about political crime in Indonesian parliament, especially in the case 'Papa Asking The Stock of PT. Freeport Indonesia, this article will first describe at a glance the term crime, white color crime, political corruption and the political crime.

Standard definitions of corruption of cuture, in society, identical with all behavior that breaks the criminal law or including dimension such as 'evil act'. According to Reiner (Tierney, 2006:13) definition of crime as: 'an illegal act, omission or event, the consequence is that the perpetrator, if he is detected and decided to prosecute, is prosecuted by or in the name of the State'. Reiner uses these statements as a means to explain that lawyers have for a long time accepted that no human activity is criminal and deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions.

Therefore, the deeds of perpetrator can be categorized as "crime" when it involves all the act that may cause the harm, danger, damage, destruction or disadvantage of others people. The people feel threatened to the consequence of doing this act. In addition the deeds that has been recognized and agreed by the society may cause harm and disadvantages and furthermore the society give response again the deeds by punished the perpetrator.

Furthermore, what about corruption of culture perspective white collar crime? Sutherland, a sociologist and pioneer of white-collar crime, defining this term as "a crime committed by respectability person and has high social status in his occupation." Sutherland used the term of white-collar crime to differentiate the crimes committed by professionals and those in the upper echelons of society (who typically wore white shirts with their business suits) from common or "street crimes" such as robbery, murder, or assault. It was also to highlight that these newly identified white-collar crimes did not involve violence or threats of violence but were often identifiable by their basis on fraud, and craft (Ferguson, 2010).

Sutherland expressed that corruption of culture perspective white-collar crime was not an isolated phenomenon, but a significant part of the landscape of criminal behavior. White-collar crime has for the most part been treated as a deviant case, it is used primarily to provide a contrast to the common crimes and street criminals. The white-collar criminals were often middle-aged men of respectability in high social status. They lived in affluent neighborhoods, and they were well respected in the community. Sometimes he stressed that the crimes committed by individuals of high status, while at other times he stressed crimes carried out of one's occupation (Weisburd & Waring, 2004).

According to Gois white-collar crime involves the abuse of power by persons who are situated in high places where they have opportunity

for such abuse. White-collar crime refers not to the social positions of offenders but rather to the context in which white-collar crimes are carried out or to the methods used in their commission (Weisburd & Waring, 2004) Albert J. Reiss and Albert D. Biderman proposed that "white-collar violations are those violations of law to which penalties are attached that involve the use of a violator's position of significant power, influence, or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain (Benson & Simpson, 2009).

Corruption culture perspective white-collar crime is also synonymous with the full range of frauds committed by business and government professionals. These crimes are characterized by deceit, concealment, or violation of trust and are not dependent on application the threat of physical force or violence. The motivation behind these crimes is financial --- to obtain or avoid losing money, property, or services or to secure a personal or business advantage (FBI, 2016).

Some definitions above show that white collar crime is a crime committed by respectable people with high social status associated with the job or position held. The perpetrators usually do not use threats or violence aimed at obtaining unauthorized personal benefits by way of abusing the power, office, influence and trust given. White collar crime can occur either within a company or country.

The crime are built in the white collar crime term basically not far different with the term of political corruption. It can be described as the abuse of the public roles or public official and resources for private benefit (Johnston, 2005) It means that all form of transgression acts committed by a people in using public resources based on his public official role for personal interest can be categorized as political corruption.

This, what about political corruption? Political corruption is the abuse

of entrusted power by political leaders for personal or private gain, with the goal of increasing power or wealth. Political corruption should not involve undertaking of money; it just take the 'trading in influence' or granting favours that poison politics and threaten democracy. Political corruption involves a wide range of crimes and illegal acts committed by political leaders before, during and after leaving office. It is perpetrated by political leaders or elected officials who have been vested with public authority and who bear the responsibility of representing the public interest. There is also a supply side to political corruption– the bribes paid to politicians – that must be addressed. Political corruption is an obstacle to transparency in public life. In established democracies, the loss of faith in politics and lack of trust in politicians and parties challenge democratic values. In transition and developing states, political corruption threatens democracy and makes vulnerable the newer institutions of democracy (Hodess, 2004).

Then, what about the corruption of culture? Corruption of corruption is the abuse of entrusted power by political leaders for personal gain or private, with the aim of increasing wealth or power. Political corruption should not involve exploitation of money; political corruption only do the 'trade' effect or relief is political poison and threaten democracy. Political corruption covers a wide range of crimes and illegal acts committed by political leaders before, during and after the release positions. Political corruption do political leaders or elected officials who have been given public authority and the responsibility to represent the public interest. Political corruption is an obstacle transparency in public life. In established democracies, the loss of trust in politics and a lack of trust in politicians and parties are challenging the democratic values. In transition countries and developing, political corruption threaten democracy and democratic institutions makes it vulnerable new (Hodess 2004).

Curruption culture on political crime involves political decision makers.

It takes place when the politicians and public official, who are entitled to enforce the laws in the name of the people, are themselves corrupt. Political corruption is when political decision-makers attempted to sustain their power, status and wealth. Political corruption not only leads to the misallocation of resources, but it also affects the manner in which decisions are made. It manipulate political institutions and procedural rules, affects the government institutions and political system, and frequently leads to institutional decay (Amundsen. 1999).

Furthermore, Amundsen said corruption culture on political crime, which usually supported by the ruling government should be considered as one of the basic modes of operation of authoritarian regimes. It is one of the mechanisms through which the ruling government or authoritarian power-holders enrich themselves. Therefore, political corruption for the authoritarian power is not a disease should be avoided, it is in fact a deliberate, wanted and applied practice; it is one of the rulers modes to enrich and control the economy. As consequently, political corruption is a "normal" condition in the corrupted ruling government.

Corruption culture on political crime, therefore, to be a mean of public officials to perpetuate and maintain their power, position and wealth illegally and damage the state. Political corruption has also become a vehicle to sustain the political parties that support it. Political corruption as well as other corruption crimes gradually undermine the democratic order built and depriving the people's welfare.

Now, what the relationship of crime, white collar crime and corruption of culture on political with "political crime"? Many sociologists and classical criminologists especially those of the western societies most tend to limit the corruption of culture on political crimes only to crimes committed against the state like treason, sedition, sabotage, terrorism, espionage, subversion and conspiracy Basically, in-depth and critical analysis to the concept would make one agree that there is

more dimensions of political crimes such as other politically motivated crimes in search of power like in the case of crimes committed in search of wealth (Solomon & Oryina, 2016).

Louis Poral has postulated a broadened view of corruption culture on political of economic crimes as a criminal offenses which are committed in the course of political activities, such as theft from public funds, corrupting police officers, or misuse of power by officials and it can be categorized as the pseudo-political criminal act (Schafer, 1971) The term corruption on culture on political crime is used also to signify illegal acts that are designed to undermine an existing government and threaten its survival. Political crimes can include both violent and nonviolent acts and range in seriousness from dissent, treason, and espionage to terrorism and assassination (Ross, 2003).

Corruption culture on political of economic crime in this study does not talk about the crimes committed against the state like treason, sedition, sabotage, terrorism, espionage, subversion and conspiracy, but the offence act committed by state or public official to maintain their own power, official and wealth through using an unauthorized public resources for their private or group gain. The political crime in this research was the crime act were committed by political elites, corporate and government official who involved in the case of 'papa asking the stock; of PT Freeport Indonesia

C. The Abuse of Power to Maintain Political Power: The Case of "Papa Asking the Stock of PT. Freeport Indonesia"

Corruption culture on politic crime the case "papa asking the stock' have been much discussed when Minister of Energy and Mineral Resources, Sudirman Said reported the recording of conversations of the Chairman of House of Representatives, Setya Novanto, President Director of PT Freeport Ma'roef Sjamsoeddin and Mining and Oil and

Gas Entrepreneurs Riza Chalid to MKD. What actually the interests behind this meeting so that Chairman of the House of Representatives, Setya Novanto dared to profiteer name of President Jokowi and Vice President Jusuf Kalla to discuss the renewal of the contract period of PT. Freeport before expired in 2021 became an interesting problem in this research.

As it is known, the giant mining company from United States, PT Freeport Indonesia (PTFI) during two years of Jokowi-JK administration has spawned some important news, among them cases of "Papa Asking The Stock", thye extension of export license for concentrates, the debate of stock divestiture, to the breakdowns in thousands of PT.Freport Indonesian workers. The divestment became one requirements of contract extension of PT. Freeport Indonesia would expire in 2021 in the agenda of this meeting. This case actually has given the advantage to PT Freeport Indonesia, because the results of meeting the PT Freeport Indonesia can still exporting concentrate after government extended the concentrate export license until January 11, 2017. While the concentrate export license has run out August 8, 2016 and in fact only can be done simultaneously with the extension license contract extension. In fact, PT. Freeport Indonesia has not fulfilled its obligations perform downstream or processing the mining products into value of mine by building a processing plant and refinery (smelter) in accordance to Law No. 4. 2009 on Mineral and Coal Mining (Mining). Until this case sticking PT. Freeport Indonesia building of smelters have not materialized (Jumadil End, 2016).

The majority faction in the Council Honor Court (MKD) assesses that the Chairman of House of Representatives, Setya Novanto has committed an offense for holding meetings and conduct of agreement with the Director of PT Freeport Indonesia, Ma'roef Sjamsoeddin together with Mining and Oil and Gas Entrepreneurs Riza Chalid related to the contract extension PT. Freeport Indonesia and the divestment of stock

which in fact beyond their authority. It also has violated the prohibition for the Parliament members had intercourse with partner for a specific purpose with aim to collusion, corruption and nepotism. Therefore, in accordance to Article 39 of Law MD3 that in terms of MKD handling the cases of severe ethical violation and impacted on the dismissal sanction, MKD formed ad hoc panel (Cerana Net, 2015).

The settlement of this case shows some awkwardness that illustrate many interests involved. So the only way is best to safeguard their interests is to free the Chairman of House of Representatives, Setya Novanto from the reported violations errors. Some awkwardness were revealed among other things:

1) All judges MKD (13 judges) who initially agreed to do an open hearing, changed approve a closed hearing to hear explanation from the Chairman of House of Representatives, Setya Novanto.
2) As the reported the Chairman of House of Representatives, Setya Novanto refuse to answer questions if associated with the recording. The reason is the tape was invalid and should be considered non-existent, while he recognized the existence of meeting.
3) Riza Chalid not meet the call and went abroad. Surprisingly, as a the key witness there is no blocking effort made to bring the witnesses or presented forcibly.
4) Sudirman Said pretend innocent in his department who was intervened by the Chairman of House of Representatives, Setya Novanto, whereas he has in fact been aware of the intervention 4 months before reporting to MKD.
5) Maroef Syamsuddin, as President Director of PT. Freeport Indonesia. He appeared with a professional the logic of the foreign corporations who wish entrenched and continue straddling Indonesia's natural resources, still fighting for PT Freeport Indonesia can continue to operate at least 20 years and mentioned a number of emergency situations that will face Indonesia if the contract is not renewed.
6) The President Jokowi responded by showing his anger, because his

name has been misused in the agreement. However, surprisingly he was not responding to the judicial process when MKD decided innocent (Nasti, 2015).

7) Jusuf Kalla (JK) as Vice President chose to be Soedirman Said's defenders and blame the Chairman of House of Representatives, Setya Novanto and trying for Sudirman Said in this case not displaced from the working cabinet.
8) MKD grant the Chairman of House of Representatives, Setya Novanto and said the recordings evidence obtained is unauthorized despite the recording content is true and valid. because it is done not at the behest of law enforcement, so that cannot be used as evidence in criminal case. Armed with the decision of the Constitutional Court Number 20 / PUU-XIV / 2016 dated 7 September 2016, the Setya Novanto Council urged the Council Honor Court to his vindication and honor.
9) MKD grant the demands of the Chairman of House of Representatives, Setya Novanto commit a review of the decision of MKD and decided: 1. grant application for review the trial process under the complaints case of Sudirman Said. 2. declare the trial court did not fulfill the legal requirement to give Decision of Conduct for by the Constitutional Court Decision No. 20 / PUU-XIV / 2016 dated September 7, 2016 that evidence of electronic records as evidence in the main trial process of MKD is invalid. 3. restore the dignity of the Chairman of House of Representatives, Setya Novanto and other parties involved in the trial process of MKD. (Mustain, 2016).

Corruption culture on political crime, at The Case "Papa Asking The Stock' was recognized has been detrimental to the state and society because the presence of agreement has been granted an extension license to export concentrates that should not be done prior the filing back of a contract extension in 2019. This case has caused a very large losses of the state caused the damage of political crime is greater than the damage

of street crime. Chambliss. (2001) exemplified the report of The Joint Economic Committee of the U.S. Congress estimating the damage due to street crime every year for $ 4 billion. While the report of The Senate Judiciary Subcommittee on Antitrust and Monopoly, estimates the cost of corporate crime (state) more than $ 200 billion one year --- five times from the cost of street crime. The meaning is the state damage caused by political and corporate crime is four times greater than the losses caused by the street crime.

Theoretically, there are two possible scenarios underlying corruption culture on case of "Papa Asking The Stock'. That what is happening and desirable in this case violated procedures that should be committed, either from government or corporate parties. It was possible to cover the evil plans of agreement that will be, in the process and has been implemented. The case of 'papa asking the stock' also raised the possibility as a way of the issue diversion.

Another possibility is to prepare divestment design like the extension of previous contract that not be input for government and society welfare but be a cone for group of peoples. As happened in the extension of previous contract. The stock divestment may also be used as a bargaining position that the construction of smelter to be resolved immediately. According Chambliss (2001) for covering the purposes of a crime variety of ways can be done by the law enforcement and politicians such his statements. "Not only the law enforcement officers who can hide behind the smoke screen of street crime. The politicians also can deflect other issues to avoid responsibility". The meaning is that plan to crime can be done with take shelter behind the crime he was created itself, as a way to divert attention of society from more fundamental issues.

This situation can be seen from the way the American large companies perform an imaging issues to cover a big case happened. For example, when Bill Gates of Microsoft in the investigation of monopolistic

practices in 1997, its contributions to political parties increased in 1998. A few days after a judge found Microsoft liable for violations of antitrust, Gates being a guest at the White House, he was posing with President Clinton and president of the World Bank. The tobacco industry raised its contributions of political campaign when threatened with imposition of law that would raise the taxes on cigarettes and forced to pay billions of dollars as compensation for medical costs caused by smoking (Chambliss, 2001).

The corruption of culture on case of 'Papa Asking The Stock' reported by Minister of Energy and Mineral Resources (ESDM), Soedirman Said from the recording results of the meeting between the Chairman of House of Representatives, Setya Novanto, President Director of PT. Freport Indonesia Ma'roef Sjamsudin as well as the Mining and Oil and Gas Entrepreneurs Riza Chalid some time ago, according to some economic and political analysts load several scenarios, including: According to the economic observer, Ichsanuddin Noorsy there are some scenarios in case of 'Papa Asking the Stock' PT Freeport Indonesia, among others.

The government in this case the Ministry of Mineral and Energy Resources has missed published Memorandum of Understanding (MOU) dated July 24, 2014, which contains about the renewal license on export 775,000 tonnes of copper concentrate for the next six months. The events of meeting President Director of PT. Freeport Indonesia, Ma'roef Sjamsoeddin, the Chairman of House of Representatives, Setya Novanto, and he Mining and Oil and Gas Entrepreneurs Riza Chalid actually shows if PT. Freeport Indonesia requires to export concentrate, the case of 'papa asked the stock' just as an angler not related to matter of the contract renewal, because the extension of contract included in other negotiations (Metrotvnews, 2015).

According to PDIP Politicians, Effendi Simbolon the scenario of 'papa asking the stock' is essentially constructed as diversion of public

issue concentration. The goal is how nobody touched the corporation of Indonesia and PT Freeport Indonesia. According to Effendi Simbolon, Rini Soemarno (Minister of BUMN) and Sudirman Said is spearheading of the McMoran interests (Own Stock of PT Freeport). Effendi said many officials and businessmen who have been part of conspiracy of the case 'papa asking the stock'. In fact, he was sure, oil entrepreneur at once the elder brother of Minister of State Owned Enterprises (BUMN) Rini Soemarno, Ari Soemarno certainly be in behind of the game played by Sudirman Said, who became the representative of PT Freeport (political Radar, 2015).

According to the Indonesian Political Economy Association Observer (AEPI), Salamuddin Daeng there are three points behind the case of 'papa asking the stock'. First, PT. Freeport Indonesia is seen have not give contribution in terms of state revenue. Secondly, there is an effort to divert the divestment from government to a particular party. Under the provisions of work contract PT. Freeport Indonesia must divest the stock 51 percent to the government. There are scenarios of political elite to political engineering that the divestment do not fallen into the government hands but fell into private hands. Third, Daeng assess there is tendency of mining companies to avoid the Mining Law No. 4 of 2009 which requires building a smelter in the country. Since, there is no companies that build the smelter (Daeng, 2015).

D. The Criminology Study of the Case "Papa Ask for Shares" of PT. Freeport Indonesia: An expose on the Corruption Culture in Indonesia Government

Perhaps it is not wrong to say that the number of cases of corruption culture among politicians and power holders of Indonesian administration at this time to be an evidence of how big a social influence of bad culture inherited from the nation since the days of empire, colonial, old order, new order and reform era. The bad culture is the corrupt behavior of public officials, which should actually provide protection and welfare to the people and not to put its own interest and group.

The corrupt behavior condition of society inherited by this nation continues to imprint and became driving as well as inspiration of bad behavior for most society, although numerous attempts of prosecution and eradication of political crimes or corruption has always been program in each government period in power. Mertons idea of 'social structure and anomie' in his book 'Social Theory and Social Structure', show a correlation with Durkheim's theory in criminology tradition known as 'strain theory'. Merton explains the strain theory to answer the questions that common reason possibility of giving the impression: whether 'faulty' social conditions. makes some people deviated. Merton committed at the sociological level analysis, where the source of m deviation can be traced from the nature of social structure. He reject individualization effort of deviation cause, he found that deviation were born in the certain group, not because of men composed the biological tendencies but because they provide response in normal social situations where they are within it. (Tierney, 2006).

These facts illustrate that in strain theory the behavior of society not born from individual behavior. The behavior of today's society is a response to or from social situations they have experienced before. The deviant social conditions could be the driver of individuals or communities deviant behavior. Political crimes and corruption committed by the society is reflection of social behavior which are ever made public before. The corrupt behavior exhibited by state and company official in the vcase of 'papa asking the stock', cannot be separated from the social structure and culture had been inherited of this nation. Lafran Pane (2012) the establishment initiator of HMI say that the corruption culture in Indonesia growing through 3 phases of history, namely; the Empire period, the Dutch colonial period and modern times recently. In the empire periode, the corruption culture recorded how intrigue scramble oh power was done in Singosari Kingdom, Demak Kingdom, Banten Kingdom and so on. Kingdom period have contributed implanting embryos of opurtunisme of the nation. For example, the existence of

"courtiers" that tends to be nice to draw the king's sympathy or sultan. This circle is considered to be embryo of the opportunistic that has corrupt character in our recent administration order.

In the Dutch colonial period the corruption practice start come into the socio-political and culture system of Indonesia nation. The corruption culture of colonialist was built during 350 years. They choose local leaders deliberately to made as the political clown used to control their powers administrative area, such as headman, *tumenggung*, and other officer which is the colonial Dutch people to maintain and supervise the certain territorial areas. They appointed and employed by the Dutch to harvest tribute or taxes of the people, used by colonists to enrich themselves by sucking the right of Indonesian people. In explicit, the colonial culture practicing this hegemony and dominance educate Indonesian people not hesitate to oppressive their own nation through the corruption behavior and practices. Furthermore, in modern times the development of corruption practice begins when the Indonesia nation free from colonial bondage. However, the corrupt culture was inherited since the days of Kingdom and Colonial does not necessarily disappear. The corruption, collusion and nepotism culture to be more obvious in shape at the democratic era. This is reflected from the government officials behavior from the old order of Sukarno, Soeharto's New Order until the President of the current reforms era.

The depiction of Indonesian political crime history above explaining how the cultural and social behavior of society, in this case, the crime behavior became a part of culture or social behavior can influence and encourage similar behavior on the society afterwards. That mean a crime behavior existed currently cannot escape from the culture influence and social behavior of the previous society. The previous culture and behavior of society become learning for the culture and society behavior afterwards.

The behavior crimes never escape from the motives and objectives of the implementation of a crime. In the case of 'papa asking the stock', there are many conflicts of interest, whether individuals, groups, corporate, political parties and government interests. Interests of the government have a relationship that cannot be avoided with the individuals, groups and political parties interests. Political crime involved the government officials would be a political crime if government officials involved to play an important role in organizing the laws to protect its interests.

The government political crimes related to his belief in political sovereignty. Public acceptance of a political crime depends on the level of government policy which considers it as a legitimate policy. This mean that the crime accepted by the society when the ruling government policies assumed it as a legitimate act. Therefore, the political crimes committed by political elite and the ruling government officials will always hide behind the political sovereignty. Consequently some people will judge right or justify the political crimes committed by the political elite or powerful government officials although basically the policy is unlawful.

Corruption culture committed by the Chairman of House of Representatives, Setya Novanto, President Director of PT. Freeport Indonesia Ma'roef Sjamsudin and Riza Chalid essentially aimed at securing its interests by utilizing their position and power. According Clinard & Quinney (1973) in addition to political crime the crimes act they did could also be categorized as occupation crime. This means that the rules of employment or occupation is created in such a way to protect their occupation. The perpetrators generally work the same offense together with occupation activities. Before committing the crime, they rationalize beforehand carefully the plan of crime. Some of occupation, or a occupation group, tolerates or even supports such crimes. This crime is generally done respectable people.

The happy ending case of 'papa asking the stock', in which the Chairman of House of Representatives, Setya Novanto, is not innocent, vindicated his name, reappointed as the Chairman of House of Representatives after his resignation, and no convictions of all those involved in this case, was a case example of political crimes successfully implemented. The society considers this case has been resolved and did not know many people have been benefited. The settlement of this case can be regarded as a win-win solution. The political crime in this case of 'papa asking the stock' showing how the political criminals have to count maturely in their actions. In the classic criminology Sandra Walkate (2002) says that the main characteristic of classical criminology is essentially the assumption that the perpetrators are individually involved in the decision making process are taken into account rationally when going to commit a crime. This means that one character of the perpetrator is doing rational calculation before committing a crime.

One form of a rational calculation to corruption culture on political crime in the cases "Papa Asking The Stock" is the government's actions taking de-penalization. It's means made the case actually in the criminal realm just put in another realm that is the civil realm or even simply categorized within the offence realm of code of conduct for board members as in the case of 'papa asking the stock' involved the Chairman of House of Representatives, Setya Novanto, According to Simanjuntak (1981) in the de-penalization process, criminal sanctions are removed at the criminal threatened behavior. The criminal qualification omitted, but the nature of the fight or unlawful was retained. The settlement of the case was entrusted to the other realm, such as the civil law realm, administrative law, or otherwise. In this case, as is known the solution just decided as the violation case of the code of conduct.

In the settlement of legal cases, the law enforcement officials and prosecutors want to give punishment. They want the guilty man be punished even though they are not enough evidence to convince the

judge. The demands for punishment encourages law enforcer planting the evidence, to doctor the evidence, and lied in front of the court. (Chambliss. 2001). In the effort to de-penalization the case of 'papa asking the stock' which should come into the criminal law was changed into the offense to the ordinary code of conduct.

Based on the scenario corruption culture of political committed in the case of 'papa asking the stock', the decision of law enforcement to de-penalization the case, and the settlement of happy ending case can be assumed if this crime drama of politics crime may have been agreed by the perpetrators, so in the final result the society accepted that the complained parties, the Chairman of House of Representatives, Setya Novanto was innocence, that this case was not detrimental to the state, and that the Chairman of House of Representatives, Setya Novanto is entitled to reoccupy his position as the Chairman of House of Representatives after resigning during play the political crime drama. According to Chambliss this phenomenon is closely related to the form of 'organized state crime' that is the crimes committed by the state officials in connection with the policy (Carrabine, et.al, 2009). Meanwhile, according to Smith, (2006), political crime in this case including the state crimes against democracy (SCAD). That is a crime involved the use of illegally state authority and resources by the public officials to achieve a specific goal. The organized state crime and state crimes against democracy is the form of organized political crime committed by the political elite and public officials to the state for obtaining personal gain or group to sustain the cost of maintaining their position or power.

E. Conclusion

The case of "Papa Asking The Stock" PT. Freeport Indonesia is a very complex case of corruption culture on political crimes with perfect design of political game represented by the political elite, government and corporate. The perfection of political crime design involved the state officials such as the Chairman of House of Representatives, Setya

Novanto, Minister of Energy and Mineral Resources Soedirman Said, President Director of PT. Freeport Indonesia Ma'roef Sjamsoeddin, Mining and Oil and Gas Entrepreneur Riza Chalid, scalp the name of President Jokowi and Vice President Jusuf Kalla as well as mentioned the involvement of other important state officials and political elite.

This perfection of evil design culminated in happy ending case. The vindication of the Chairman of House of Representatives, Setya Novanto, and restoration the abandoned positions temporarily during the trial. Based on decision of Constitutional Court and the Council Honor Court the Chairman of House of Representatives, Setya Novanto is stated not guilty, which means not violating the code of conduct for board members although obviously there is a violation. Everyone involved in this case is implicitly decided innocent including the key witnesses the Mining and Oil and Gas Entrepreneurs Riza Chalid. President Director of PT. Freeport Indonesia Maroef Sjamsoeddin and Sudirman Said as Minister of Energy and Mineral Resources.

The research findings revealed the existence of corruption culture on political crime agreement scenario in case of 'Papa Asking The Stock' that are provoking the extension of concentrates export license, diversion of issues and political lobbying to suppress stock divestment and smelter development. The nature of social structures and socio-cultural situations, responses to social situations and relationships with the perpetrators affecting individuals and groups crime behavior. A previous social culture behavior encourages learning in behavior at the society afterwards. State creates the crime laws to protect and maintain its power. The perpetrators rationalize the criminal act on securing and save their interests. Rationalization of corruption culture on political crime in the case of "Papa Asking The Stocks' bring forth the law de-penalization mitigating and generating a verdict not guilty to the perpetrators. Corruption culture on political crimes identical with crime organized state or state crimes against democracy.

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Chapter 4

POLITICAL CORRUPTION MODEL IN INDONESIA: A REVIEW OF WHITE COLLAR CRIME IN PARLIAMENT AND POLITICAL PARTY

A. Opening

Corruption has been a chronical problem that struck Indonesian nation. Although efforts to eradicate corruption has been done by government since reformation era, but has not seen a convincing signs that this problem will be resolved immediately. Indonesia was still among the top ranks number of corruption in the world. Eradicating corruption in Indonesia is not as easy as turning the hand, it take high integrity of law enforcement and government through a long process, since the corruption has become a culture that is deeply rooted in all areas of community life.

Corruption has affected the government system as well as community life massively. The most severity of corruption in Indonesia, so to overcome it required very strong legal instrument on handling this situation (Muladi, 2005). The criminal act of corruption have contaminated the

behavior of public officials from the highest to the lowest level. Therefore, Bung Hatta said that corruption in basically has rooted in the culture of Indonesia (Supeno, 2009). The forms of corruption is vary, ranging from common to extraordinary practices. The corruption happens are most linked to various violations by individuals or groups against the public policy or regular procedure (Kurniawan, 2009).

The term "corruption" comes from the Latin word corruptio or corruptus copied into various languages. In English, corruption or corrupt, and Dutch coruptie. Literally the term is interpreted as evil, rot, or dishonesty. Black's Law Disctionary (Black; 1979) defining corruption:

> "... an act done with an intent to give some advantage inconsistent with official duty and the rights of other. The act an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others".

World Bank and Transparency International (TI) defines corruption as the misuse of public office for private gain. Under this definition, Petter Langseth explains:

> "As such, it involves the improper and unlawful behaviour of public- service officials, both politicians and civil servants, whose positions create opportunities for the diversion of money and assets from government to themselves and their accomplices (Langseth; 1999)

'Corruption' represents normative perception of capitalist 'excess': the culmination of systemic process of collusion among economic and political elites that resulted 're-confusion' of public and private spheres (Girling, 1997). Corruption is understood, and referred to, as

the private wealthseeking behaviour of someone who uses state and public authority, or misuse of public goods by public officials for private ends. Corruption is when individual are misusing public authority they are bestowed for private benefit (Amundsen. 1999) Thus, corruption involves breaching the trust, by a person in a position of trust, who acts on private basis illegitimately (Kaye, 2007)

In Indonesia, the juridical term of corruption has been stipulated and regulated in the Law No. 31, on Eradicating Corruption is the acts causes the financial loss of state in a way against the law or abuse of the authority. bribery, embezzlement in office, extortion, cheating, conflict of interest in procurement and gratification. The criminal act that have similarity on breaching the law like corruption is "collusion", and "nepotism", hence come up the term KKN (Corruption, Collusion and Nepotism). The Law No. 28, 1999 on Implementation of Clean Government Free from Corruption, Collusion and Nepotism amended by the Law No. 20. 2001 on Implementation of Clean Government Free from Corruption, Collusion and Nepotism. Therefore, it can be said that corruption is a criminal systemic process of crime of abusing the power or authority to get improperly advantage for benefit of himself or his group that against the law and cause the financial loss of state. The crime act of corruption in Indonesia has become so chronic and has even been done overtly either in the legislative, executive and judicative level in the government structure. The most concerned this corruption acts is actually supported and protected on the mutual interests basis.

According to Norman Johan Powell, (Grossman, 2008) there is four understanding of political corruption. First, "political corruption is patently illegal behavior in the sphere of politics". Second, "political corruption relates to government practices that, while illegal, may be improper or unethical" Third, "political corruption involves conflict of interest on the part of public officials", and fourth, "political corruption also has an ethical, rather than a legal, basis; it related to political behavior

that is nonresponsive to the public interest". Gerring & Thacker (2004) said that political corruption, is an act by a public official or with the acquiescence of a public official, that violates legal or social norms for private or particularistic gain.

Political corruption involves political decisionmakers. It takes place when the politicians and public official, who are entitled to make and enforce the laws in the name of the people, are themselves corrupt. Political corruption is when political decision-makers use to sustain their power, status and wealth. Political corruption leads to resources misallocation and affects the way in which decisions are made. Political corruption is to manipulate political institutions and procedural rules, affects the government institutions and political system, and frequently leads to institutional decay (Amundsen. 1999).

The political corruption crime acts is always associated with the political constellation situation and conflict of interests arise among the central and local parliament members (DPR/D) and political parties or in bureaucratical structure of government. The political corruption in this context is corruption done by parliament and political parties members who are caught in the criminal acts of corruption. The forms of their corruption behavior is from planning process in parliament, budgeting to implementation of planning result. It includes bribery occurred during the process (Dasahasta, et al., 2013) This situation is called Lord Scod (Kaye, 2007) as "gerrymandering". The granmandering constitutes the manipulation of constituency boundaries for party political advantage, is a clear form of political corruption. So, it would be any misuse of municipal powers, intended for use in the general public interest but used instead for party political advantage.

The term of parliaments and political parties in the political corruption study in Indonesia related to high state institutions, i.e., regional and local House of Representatives (DPR/D) and political parties members

involved in parliament or the government bureaucratic structure. In Constitution 1945, Indonesia adopting unicameral parliament. This unicameral is symbolized by the existence of the People Consultative Assembly (MPR) as the holder of people's sovereignty. Based on the amendment of Constitution of Republic of Indonesia 1945, unicameral system was converted into bicameral parliament system, which consists of House of Representatives (DPR) and Regional Representatives Council (DPD). This means that legislative power is in the hands of House of Representatives (DPR) and Regional Representatives Council (DPD) (Rochmawanto, 2016). DPR members are parliament members representing the people promoted by political parties, while DPD is parliament representing the region not from community or party in the region, but figures that could represent all elements existed in the regions. Furthermore, political parties involved in the political corruption case are members of political parties representing the interests in political parties' policies (Legowo, 2005).

This fact is consistent with the notion of John Emerich Edward Dalberg Acton, that "power tends to corrupt and absolute power certainly corrupt." Acton called the political corruption as "corruption of power", namely, the corruption caused by the abuse of public interest for the personal or group benefit. For example, someone who sign up as a candidate of parliament member or regional head election, then they will count the accumulation of capital issued and when in the positions of political office will attempt to recover the capital cost in various ways, including the ways that actually breaking the rules (Girling, 1997).

This article will describe and analyze the models of political corruption in Indonesia, especially the corruption among the parliament and political party members that held the public official of post-reformation as well as analyzing why many parliament and political party members are actually involved in the crimes act of corruption and efforts as well as what challenges encountered by Indonesian government in the

framework of eradicating the corruption, especially those committed by political actors in the parliament and government, both individually and congregation.

B. A Brief to Understanding the White Collar Crime and Political Corruption in Indonesia

Before defining white-collar crime, it is urgent to first understand the definition of crime itself. Sociologists said that "[a] crime is held to be an offense which goes beyond the personal and into the public sphere, breaking prohibitory rules or laws, to which legitimate punishments or sanctions are attached, and which requires the intervention of a public authority (the state or a local body)." (Marshal, 1998) Black's Law Dictionary defines crime as "[a] positive or negative act in violation of penal law; an offense against the State."(Black, 1999).

Crime is harm or wrong prohibited by statute and committed against society that regulated by the criminal justice system. The Saxon concept of "breaching the King's peace"— the crimes is considered harmful to the king and society. Even when a crime committed against individual, such as when person murders other, the action considered to be offense to society. That why when someone is charged with crime act, he or she is charged by government not the victim directly. If convicted a criminal person may be punished with monetary fines or confinement in jail. In some case, the punishment may be death penalty (Knight, 1996).

In relation to the white-collar crime, Federal Bureau of Investigation (FBI) defines white collar crimes as crimes categorized by deceit, concealment, or violation of trust and are not leaning on the threat of physical force or violence. Such acts are conducted by individuals or organizations to get money, property, or services, avoiding payment or loss of money or services, and securing personal or business benefit (FBI, 2016) Some author state that white-collar and corporate crime involve events that are committed by pen or computer rather than

revolver or knife. Some have argued that white-collar crime is marked by the absence of violence (Geis, 2011).

Sutherland (1983), a sociologist and pioneer of white-collar crime, defining this term as "a crime committed by respectability person and has high social status in his occupation." Sutherland used the term of white-collar crime to differentiate the crimes committed by professionals and those in the upper echelons of society (who typically wore white shirts with their business suits) from common or "street crimes" such as robbery, murder, or assault. (Ferguson, 2010).

White-collar crimes in the corruption context in Indonesia many committed by public officials or state officials, behining from New Order to Post-Reform period. White-collar crimes in Indonesia typically involve the parliament and political parties members were in the government. They betray the trust that people given through actions breaking the law by abusing his power to enrich themselves and/or struggling the interests of group This is consistent with the Amundsen's statement (1999) that political corruption is when laws and regulations are systematically abused by the rulers, side-stepped, ignored, or even tailored to fit their interests.

Political corruption in Indonesia is not only happens in the executive and judicative sphere, but also in legislative. Transparency International said that Indonesia was among the most corrupt state in the world and corruption many committed by public officials or state officials who hold the power running the government wheel. Political corruption in Indonesia was proved most detrimental to state, and the fact many committed by the state official who has important authority in controlling the government functions. The greater the corruption committed by public officials or state officials in stealing the state property, there is often the possibility of undue sentence, even the corruptor could avoid the meshes of law. The public officials or state officials involved

in corruption can manipulate the law as well as public opinion for his defense. (Masduki, 2016).

Political corruption that lively occurs among the parliament or political parties members in Indonesia over this past decade was committed in order to reap the personal benefits or party through decision-making of policy is basically most alarming. The corruption practice controlled by this political corruptor was not much different from what is called as the kleptocracy government, a government led by the thieves. The political actors in parliament or political parties no longer voicing the people interests they represented, but it depends on who is brave to pay anyone, or dependent on the political bargaining between the political parties (Masduki, 2016).

The shift of power from executive, which took place during the old order and new order administration to the legislative after reformation, has created conflict of interest characterized by political bargaining, so making implementation of clean government free from corruption does not becomes main agenda. In the politics context, the issue of eradicating corruption just used as tool to build political alliances or threatening opponent then makes short and long term political bargaining to share the power. Political parties do not make state administration free from corruption became one of main political agenda, since they still rely on financial support from outside party, which often done by violating legal provisions concerning limits in amount of funds might be accepted. (Irwan, 2002).

According to Transparency International, Indonesia's Corruption Perception Index in 2012 reached assessment number of 32. Using scale of 0-100, where 0 means the most corrupt state, while 100 means the cleanest state, number 32 means that Indonesia is a quite corrupt state. So even with data shown in two years before in which Indonesian Perception Index in 2011 got score 3 using scale of 0-10, while in 2010,

Indonesia got 2,8. In addition, based on data from KPK, the amount of corruption case in political institutions does not have decline tendency each year. The corruption that still always regarded merely as criminal problem, many committed by those in the ministry. From 2004 to 2011, there are 91 corruption cases in the ministry, followed by 49 cases in the regency/municipal, 27 in provincial government and Parliament, as well as 22 in BUMN and BUMD (Qorib, 2012).

In addition, data from Global Corruption Barometer of Transparency International, which surveyed 11 institutions in 2010/2011 claim that parliament/legislative institution was the most corrupt instancy in Indonesia with score of 3.6, followed by political parties and police, with respective value of 3.5. Meanwhile, the judicial institutions got score of 3.3; public officials/civil servants with value of 3.2; the education system with value of 3.0; as well as private/business sector, military and media, with respective value of 2.8. Lastly, non-governmental organizations (NGOs) and religious institutions, with respective value of 2.5 (Izzati, 2013).

Furthermore, the Reports Center and Transaction Analysis (RCTA) mentions as much as 69.7 per cent of Parliament members were indicated corruption. Then, the note from Ministry of Home Affairs (MOHA) found during 2004 to 2012, there are 431 the provincial parliament members and 998 members of the District/Municipal parliament involved various legal status, and the most are corruption cases. (Izzati, 2013) In relation to the political party corruption, Indonesia Corruption Watch (Batamtoday, 2013) notes that in 2012, Golkar Party is political party in which its cadres most involved in corruption. About 14 cadres of Golkar Party was caught in corruption cases. In addition to Golkar, 10 cadres of Democratic Party was caught in corruption case. Followed by PAN and PDIP each 8 cadres ; PKB 4 cadres, Gerindra 3 cadres, as well as PKS and PPP each 2 cadres. The cadres involved are those of executive and legislative official. Additionally, ICW has also noted that

there are 24 regional heads of various political parties are handling by KPK, Judiciary and Police. As for legislature, there are 25 people from DPR and DPRD.

C. Corruption Under the Table: Where Interests are Conflicted in the Indonesian Parliament and Political Parties

Conflict of interest in the political corruprion context denotes situation in which the public official has private financial interest sufficient to influence the implementation of his or her public duties. A primary reason why political corruption related to conflicts of interest is that it reduce public trust and confidence in the integrity and impartiality of public official. The rise of conflict of interest can be as damaging as an actual conflict (Mafunisa, 2003) Conflicts of interest in both of public and private sectors have become a major problem of public concern in the worldwide. An increasingly commercialised public sector that works closely with the business and non-profit sectors gives rise to the potential for new forms of conflict between the individual private interests of public officials and their public duties. In the private sector conflicts of interest have been identified as a major cause behind corporate governance shortcomings. When conflict-of-interest situations are not properly identified and managed, they can seriously endanger the integrity of organisations and result in corruption in the public sector and private sector alike. (OECD, 2003).

Although conflict of interest is not ipso facto corruption, there is increasing recognition that conflicts between private interests and public duties of public officials, if inadequately managed, can result in corruption. A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence to their performance and responsibilities as a public official. The weakening performance of public service task could result from public officials who abusing power for personal interests/group (OECD, 2008).

According to Frier (Mafunisa, 2003) conflict of interest happens when the responsibilities of public official clash with his or her private economic affairs. In its narrowest sense, conflict of interest refers to circumstances in which public official uses his or her government position, either overtly or covertly, to achieve personal monetary gain. Conflict of interest between, public duty and private interest has been the cause of numerous scandals involving public official with serious repercussions.

Conflicy of interest contain three key elements. First, there is economic interest or private financial, which could also be another kind of interest, viz., securing advantage for family member. In fact, there is nothing wrong in pursuing private interest.The problem arises when this private interest clash with second element of, "public duties/ responsibilities". Public employees have responsibilities to discharge by virtue of their offices. They must put their public duties before their private interest. Third, conflict of interest interferes with public duties of public official in that objectivity and judgment are likely to compromise (Mafunisa, 2003)

Conflict of interest involves someone in position of trust, including politicians competing in professional or personal interests" (COE 2007, Gençkaya, 2009). In Article 13 of Council of Europe's Committee of Ministers Recommendation No. 2000 (10) (Gençkaya, 2009) explains what the conflict of interest is:

1. Conflict of interest arises from situation in which public official has private interest to influence an impartial and objective performance of his public official duties.
2. The private interest of public official includes any advantage to himself, his family, his close relatives, friends and persons or organisations with whom he has had business or political relations.
3. Public official is the only person who knows whether he is in that situation, the public official has a personal responsibility to avoid it.

Conflicts of interest generally fall into two categories: pecuniary and non-pecuniary interests. (ICAC, 1996; see Gençkaya, 2009). Pecuniary interests involve the interest to get actual or potential financial gain. It can result from staff member, or member of his or her family, owning property, holding shares or position in company bidding for government work, accepting gifts or hospitality. The benefit could be an increase in property value because of favourable rezoning decision, or the selection of particular tender for a contract. While non-pecuniary interests do not have a financial component. It may arise from personal or family relationships, or involvement in sporting, social or cultural activities.

Different categories of conflict of interest can be identified include: the use of inside knowledge and influence (use official information for personal gain or the gain of others), self-dealing (situation where one takes action in official capacity which involves dealing with oneself in private capacity and get benefit for oneself), the misuse of government property (using the government property for any kind of activities which not associated to the implementation of their duties), outside employment (work or activity in which person engages outside normal working hours for additional remuneration but the outside employment of public employees clashes with the implementation of their official duties), post employment (conflict of interests for public official that arise on retirement or resignation, where there is potential opportunities of using confidential information or expertise obtained in public office for their own benefit or his prospective employer), gift-giving traditions and entertainment (seeking or accepting gifts and hospitality that might influence an impartial discharge of his duties from public official), influence peddling (practice of soliciting some form of benefit from individuals or organisations in exchange for the exercise of one's official authority or influence on their behalf) and personal conduct (OECD, 2008). Most of corruption cases dragged Indonesian politicians due to the influence of conflict of interest.

The conflicts of interest are based on personal interests or group encourage corruption behavior. Someone who has conflict of interest usually realize he was in conflict of interest position, without involve directly in corruption acts. As Reed's (2008, Gençkaya, 2009) opinion, "In reality, the conflict of interest is properly understood as a situation, not an action, and it is clear that a public official may find him or herself in a conflict of interest situation without actually behaving corruptly." But, conflict of interest is actually has close relationship with corruption acts committed by the culprit. Conflict of interest is a situation, such a plan or desire, which is only known by a person and not an act, while corruption is a concrete manifestation of conflict of interest someone does.Thus, it can be said the difference of role between conflict of interest and corruption are very thin and can not be separated, like the life and body. Corruption will not occur if the corruptor does not have a conflict of interest and otherwise conflict of interest will not be achieved without corruption. Conflicts of interest and corruption have similarities in violation of legal norms and rules as well as the existence of conflict of interest between personal interests/ groups with public interest.

D. The Interjection of Hidden Interest: Corruption Models in White Collar Crime in Parliament and Political Parties

Nowaday, Indonesia nation has been increasingly aware that entire life of its people caught in the corruption snare network. Beginning from wake up in the morning until ready to sleep at night, from birth until being escorted to the grave, corruption has controlled the whole life of Indonesian people. Corruption committed from still primitive models to highly sophisticated. The form is diverse, from stealing money in the safes, cutting project money, increase the price, demanding commission from contractors, citing money from the licensee or even trafficking licenses, rewarding blank stock to the officials. A more sophisticated corruption is money laundering, bank fraud against the property himself, issuing regulations that favor certain groups, and establishing mutuallly benefit relationship between political power and a large companies (Basyaib, et al, 2002).

The political crime of corruption in Indonesia was actually the most alarming crime for nation exalting democracy values and against all corruption forms. The political corruption happens among parliaments and political parties member as one form of white collar crime has enliven Indonesian politics in post-reform. It was revealed due to the concrete step of government, though impressed slow in eradicaring the corruption crime in government institution. In addition, because the rapid support of community to realize clean government and dignified, free from the corruption, collusion and nepotism crimes.

Indonesian political corruption model which occurred in parliament and political parties surrounding can be seen from disclosure of the cases involving the suspected of corruption either in parliament or political parties. The uncovered political corruption model, among others.

Corruption committed by politicians is always use cover of official policy. In this case, the business group may affect formulation of national budget or legislation that profitable to their business interests. During President Suharto came into power, at least since the early 1980s, when Soeharto's sons and daughters grow up and enter to the business sector, a lot of president's policies or ministers was overtly issued to facilitate the interests to build the Cendana business empire. Whether it be giving a monopoly, licensing, soft loans, taxs holiday and the ease of other business facilities. (Masduki, 2016) This situation was still found in the post reformation government today.

Political corruption in parliament can also be seen in the involvement of parliament member at various government projects either at national or regional levels. These involvement form was occurred since implementation of budgeting function that is since the discussion stage of National or Regional Budget Plan (APBN/APBD) proposed by Budget Committee in National and Regional House of Representative (DPR/ DPRD) or discussions at commission level of parliament. In

planning process, the parliament members "set" that certain budget accommodated in the budget project plan. The corruption occurs when the budget project is directed to win the private partners who have close relations with government officials as well as became colleague or business cronies of parliament or political parties members (Dasahasta, et al., 2013).

This corruption model is just understood when the project won in tender process/ government procurement with allegiation of budgeting mark-up or the loss of bestek or project quality resulted in procurement. In addition to occur in the cronyism framework or using the oligarchy power of entrepreneurs-ruling party, others corruption modes also occur in parliament, i.e., bribes to get support for the project approval. The bribery case also occurred in the implementation context of functions, legislation authority and supervision. (Dasahasta, et al., 2013).

Sell-buy vote in parliament, in some cases such as the selection of regents, mayors, or governors in some district was proved have been perpetuating status quo. The corrupted old officials have succeed to extend its power eventhough their political parties basis in parliament has collapsed and shifted by reformist political parties. Politicians are fond to change people mandate with money, usually argue for the sake of political parties. It's no secret that a candidate must grope pockets deeply in order to succeed in the list of legislative candidates. Many people who succeed sitting in parliament supported by entrepreneur or because of nepotism. These representatives most potential to commit political corruption to recollect its costs incurred.

The parliament member apart of which party they come from has a lot of opportunities to make money politics is form of bribery crime. Money politics is going into a political process involving DPR proved that these institutions become a means of negotiating the interests. The more vocal of parliament members in questioning various measures and policies in

government circle, to conduct their duties supervising the goverment performance often opening the opportunity to play money politics to cover the existing problems. There are at least three political forum in parliament that allows the money politics practice. First, forum for Act discussion. Second, Hearing (RDP) and Third, the selection of public officials (Irwan, 2002).

E. Eradicating the Extraordinary Crime: Indonesian Government Effort to Battle Political Corruption

Political corruption has very extraordinary impact in life, so it is categorized as extraordinary crime. To address it can not only with application of penal (criminal law) but should be integral to non penal effort, viz., removing the factors conducive underlying the corruption. The eradication ethos of corruption should be a commitment of government and society, both national and international scope. Eradication of political corruption should be priority cause the consequences are very distracting and impede the nation development, hindering the achievement of national goals, undermining the use of national resources, threatening the entire social system, damaging the state apparatus in fostering good governance and dignified.

According to Ferguson (2010) political corruption requires a joint response from the government. The government's response should ensure that citizens are protected from offenders. One of the most effective ways to do government in the political corruption context is to ensure that businesses and individuals are susceptible to white-collar crime is regulated and given supervision necessary to protect the community.

Since the reformation era the measures of eradicating corruption was implemented by Law No. 31, 1999 on Corruption Eradication, as amended by Act No. 20 of 2001. Then ratified and implementated of Law No. 30, 2002 on Corruption Eradication Commission (KPK) that

becomes spearheading to eradicate the corruption. Another legislative policy in order to eradicate corruption is to ratify UNCAC through Law No. 7 Year 2006 which is believed can strengthen Indonesia's efforts to eradicate the corruption (Dasahasta, 2013).

UNCAC mandates to party state in order to take strategic role related to efforts to eradicating the corruption in accordance with the national legal system. One of the government role was to publish National Strategy on Prevention and Eradicating Corruption (Stranas PPK) under Presidential Decree No. 55 2012. Nastra PPK focused in increasing prevention and prosecution so that expected may continue, consolidate and complete the policy of eradicating corruption that have significant impact for the improvement of public welfare, sustainability of development, and consolidated democracy system.

In prosecution of the political corruption crimes in parliament, it has formulated Law of Susduk set some elements can be the prevention base of the parliament political corruption (Dasahasta, 2013):

1. Code of conduct; stipulated in Article 207 Susduk which are translated through DPR Regulation No. 1, 2010 on Code of Conduct of DPR RI. Under this rule is set a few things directly related to corruption. Article 2 on priority the public interest in which DPR RI members have to priority public interest than personal interests, political parties, and group (paragraph (1)). Article 3, paragraph (4) states that DPR RI Members must report personal wealth and family in accordance with legislation. Article 3, paragraph (8) DPR RI Members are prohibited from using his position to seek convenience and personal gain, family, relatives and his group. Article 4 paragraph (4) on prohibition of receiving gratuities, Article 5 of Article 6 of the accountability and openness. Article 8 regulates conflicts of interest.
2. Prohibition; Susduk Statute about prohibition. In Article 208 regulates three mportant things; double position (paragraph 1),

doing job has conflicts of interest potential (paragraph 2) and corruption, collusion and nepotism (paragraph 3). In Article 209, sanctions against the ban, DPR members may be dismissed as member if violates paragraph (1) and paragraph (2). For acts of corruption (paragraph 3) DPR members can be investigated by relevant institutions without President permission in accordance with Article 287, Rules of Parliament Procedure paragraph (3) letter c. for entry in the category of special criminal act.

3. Honorary Board; the Honorary Board in DPR give hope to people who find indications or allegations to violations code of conduct. In Susduk Statute the Honorary Board can reports in accordance its duties under Article 127; implementation of members obligations (Article 79), obstruction and presence, the fulfillment the requirements as DPR member in accordance with Election Law No. 10, 2008 (Pileg Statute), and violatingprohibition (Article 208). Honorary Board also tasked to uphold Code of Conduct in accordance with DPR statute No. 2, 2011 on Proceedings Procedures of Honorary Board.
4. Public Information Disclosure. Under the Law on Public Information (Law No. 14, 2008) DPR issued decree of Parliament on Public Disclosure No. 1 in 2010. This statute provides guarantees for public information disclosure and mechanism regarding procedures for requests information to DPR RI.

In the corruption eradication context of political parties to discuss its linkages with this system. Political Parties Statute No. 2, 2008 which renewed by Law No. 2. 2011 set several things are very closely related to Political Parties integrity; 1) Function mainly related to political recruitment, 2) Liabilities primarily related to political parties finance, 3) Political Parties Finance mainly related to transparency and accountability, 4) the rules on sanctions imposition. Meanwhile, to suppress the political corruption crimes in political parties, there are provisions of financial integrity regulated by Article 40 paragraph (3) and (4) set ban for political party (Dasahasta, 2013).

Political parties are prohibited: a) receive or giving to outside party the donations that is contrary to laws and regulations; b) receive donations of money, goods, or services from any party without notifying a clear identity; c) accepts donations from individuals/ companies exceed the limits specified in legislation; d) solicit or receive funds from state-owned enterprises, region-owned enterprises, and village- owned enterprises or other designations; e) use fractions in People's Consultative Assembly, provincial DPRD, Regional DPRD, as a source of funding the Political Parties. Political parties prohibited from establishing business entity and own shares of an enterprise.

The numerous of political and bureaucratic corruption are revealed and handled by KPK has impact on the elite inconvenience to the performance of eradicating corruption. The inconvenience expressed in counter-attack against the law enactment and weakening attempts to regulation. It is becomes severe challenge of KPK. These weakening efforts done in two ways, firstly, through legislative process in DPR and secondly, through testing process in Constitutional Court (Dasahasta, 2013).

First, specifically for testing in Constitutional Court against KPK statutes, it has so far performed 17 times. In testing process, starting from Asshiddiqie to Mahfouz MD era, overally MK reject the petition as weakening effort to KPK statutes. Second, related to legislative process in DPR until today revision effort to KPK statutes continued to do. The revision attempts accordance with Parliament decision No. 02 B/DPR RI/II/2010 on Legislation, 2011. In the files of Legislation Bill 2010 to 2014, KPK draft contained in order no: 79 compiled by DPR/ Government.

It should to note, since the second period of SBY government never prepared KPK revision draft or academic paper. So there is strange why DPR so eager to revise KPK statutes. The imposed revision effort was

reinforced by the Vice Head of DPR from Golkar Party, Priyo Budi Santoso H. PW No. 01/0554/DPR RI/2011 dated 24 January 2011 that Commission III DPR prepared KPK statutes draft and Academic Paper. If analyzed, the revision efforts related to instruments weakened i.e., related to legal action (investigation, investigation, and prosecution). This is done through the revision of Law 30, 2002.

The weakening efforts including: (i) authorizes in KPK prosecution will be trimmed by DPR (ii) DPR will also questioning the tenure of KPK substitute leadership and Termination Instruction of Investigation (SP3); (iii) establishment plan of KPK Supervisory Board formed by DPR just open potential for political intervention to KPK as well enlarging DPR authority; and (iv) KPK tapping should upon trial permit, whereas corruption is extraordinary crime, but, this efforts have drawn from Prolegnas (Dahasta, 2013).

Various weakening efforts undertaken by DPR has cut KPK authority on eradicating corruption. This suggests that corruption is extraordinary crime. Not only of modes and systematically techniques, as a result of the corruption crime parallel and ruin the whole system of life, both in economic, political, socio-cultural and even to moral damages and community mental (Rukmini, 2009; See Halif, 2011).

Economic losses due to corruption can clearly be felt by public, it is reflected by not optimal of economic development, increasing poverty, social injustice and minimal acquisition of economic activity tax. Losses in politics fields, corruption leads to public service discrimination or award as the political rights of society. While losses in socio-cultural and moral field the corruption has generate social ills, since such actions is considered as lawful and reasonable act (Hamid & Sayuti, 1999; See Halif, 2011).

The weakening efforts of political corruption by parliament members

shows clearly that corruption is still maintained by state officials. According to Amundsen (1999) corruption is regarded as the regime model, and power holders mechanisms to enrich themselves. In this government corruption not considered as disease to avoid, corruption is practice applied, desirable and deliberate as well as a way to enrich themselves and controlling economy. But in a democratic country like Indonesia, political corruption is essentially incidental, and can be handled by means of reform, strengthening and reviving checks and balances of the existing political institutions The corruption indifference in the state or government's attitude that not serious on eradicating corruption would sociologically cause turmoil in society due to increasing the poverty figure and unemployment caused by the theft of state social budget by personal or group interests. Raimon Aron (Simanjuntak, 1981; See Halif, 2011) states that corruption crime in a state will eventually invite turmoil of revolution, and became very powerful tool to overthrow a government. This proved as the reign of president Soeharto and Abdurrahman Wahid, both dropped from governance due to tripping of corruption cases.

The corruption crimes basically can not be solved just by penal criminal policy, but needs to integrate with non-penal policy i.e., by removing conducive factors causes the crime. As a science examining the crime, criminology has important role in helping find the conducive factors of corruption crimes. Sutherland insists that one of the object of criminology besides sociology of law and penology is etiology of crime, a criminology study that seeks to analyze the causes the rise of crime (Sutherland & Cressey, 1960; see Halif, 2011).

Samuel P. Huntington states that one causes of corruption crime is modernization. Corruption in a society, sometimes more common than other and in developing countries corruption is more general in a period of government than others. The facts show the corruption development related to social and economic modernization rapidly

(Halif 2011) Modernization causes the loss of traditions, thereby creating "deregulation" situation in society. This called Durkheim as anomie or normlessness or destruction of social order as a result of the loss of standards and values, so that causing individual loss of grip (Atmasasmita, 2010).

The corruption crome can be caused by changes in cultural values towards materialism resulting from modernization process, so people think that success is only seen from succeed in economic sector. Indonesian society vying to achieve it, Merton's anomie theory called culture aspiration or culture goals. The state is required capable of providing institutionalized means, container or means to achieve these goals. Normatively the state guarantees their means and the goal set out in Constitution 1945. The constitution given assurances that "every citizen has right to work and a decent living for humanity" as such is one example contained in Constitution 1945 Article 27 Paragraph (2).

The modernization demands eliminate religious values, culture and law. Though these values becomes fundamentals of Indonesian society social interaction, if those values missing, the Indonesian people are in a situation of "anomie". In situation of anomie, the corruption crime as an extraordinary crime is rampant in Indonesia to date.

According to Durkheim's anomie theory the deviant behavior is caused by the sudden economic change in modernization process. Sudden changes cause society crashed in unfamiliar way of life. The rules as behavior supervisor's is no longer held. Modernization has changed Indonesian society characteristics which traditionally socio-agrarian into socio-modernist industrialist. This quickly and suddenly changes has delivered Indonesia people to unfamiliar way of life. Finally, the religion value, culture and law as the Indonesian behavior source was disappeared, so the corruption crimebecomes

rampant, especially in government institutions, due to the anomie condition on Indonesian society, although they has high intlectual capacity (Halif, 2011).

Durkheim's anomie theory reinforced by Robert K. Merton still associate the problem of evil with anomie, but Merton anomie theory different from Durkheim. The real causes of crime is not caused by sudden change, but social structure. Substantially still relationship between Durkheim's anomie theory with Merton, it can be seen from sudden change not only causes stress generating an anomie, but also resulted in paradigm change towards cultural values, will finally arrive at anomie condition in certain situations.

Merton analyzes paradigm change of cultural values that succeed can be seen from the success in economic field. This paradigm applied in ideals (Goals). To achieve that, people establish the certain ways (means) should be done. Although, not all people achieve the justified ideals. Therefore, many people trying to achieve the ideals in a way of violating law (illegitimate means). This situation occurs due to inequalities of social conditions caused by formation process of community itself, society structure led to anomistic structure. Individuals in an anomistic state are always faced with psychological pressure because its inability to adapt aspirations as well as possible in very limited opportunities. (Atmasasmita, 2010; see Halif, 2011).

This situation is caused social structure has limited access to the destination through legitimate means. The lower class will choose illigimate means because unable to obtain through legitimate means. Likewise, the society in high social status, when unable to face social change and social structures that prevail then they will strive to achieve its objectives by using illigimate means. This has resulted into anomie state so to achieve their goal the society tend to use illegitimate means by breaching law such as in the crime acts of corruption.

F. Conclusion

Political corruption involving the parliament and political parties members in Indonesia can be categorized as extraordinary white collar crime for the most extraordinary impact to the nation life. Eradicating corruption in Indonesia can not be done in terms of criminal law alone but must be followed by non penal efforts, i.e, removing factors lie behind them. Criminology has important role in analyzing conducive factors of corruption crimes. Ccriminology analysis against corruption asserted that political corruption is form of crime, legally, socially and its consequences.

Various political corruption models of the parliament and political parties members in Indonesia are: a) official policy framing model, b) development planning passage models, c) project mark-up budget model, d) buying and selling votes model to wfight over position e) bribes/money political model to negotiate the interest, basically works behind the power or as corruption of power. This corruption exploited power for personal or parties interests through misusing official functions entrusted by public.

The rampant of political corruption crime in Indonesian parliament in the criminology analysis can be caused by the society inability in two factors, firstly, sudden change factor caused by negative influence of modernization that subject to materialism and consumerism as well as ignoring traditional values, culture and religion; secondly, unfair social structure factors, between the purpose or ideals (goal) of society, does not offset by legitimate means as well as strict control of government. The consequence of this situation led to the public including parliament and political parties members tend to engage in corruption by using illegitimate means.

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Chapter 5

A CLAIM DISPUTE OF EIGENDOM VERPONDING LAND AND THE EFFORT TO REACH SETTLEMENT WITH THE AGRARIAN LAW

A. Opening

The agrarian term is derived from the word *akker* (Netherland), *agros* (Greek) means farmland, *agger* (Latin) means land or a plot of land, agrarius (Latin) means cultivation, rice field, agriculture, *agrarian* (English) means agriculture land. In Black's Law Dictionary mentioned that the meaning of agrarian is *related to land, or to a division or distribution of land; as an agraria laws*.[1] The broader meaning of 'agrarian' involves land, water, rather than simply the meaning of 'land affair'.

Definition of 'land' in our lives can be used for many purposes. In the law of land, the word 'land' is used in juridical sense, as a definition which formally given the limitations of statutes that *on basis of right to*

1 Urip Santoso, 2012, Agrarian Law – A Comprehensive Study, Jakarta: Kencana Prenadamedia, page 1.

control the State ... is determined the existence of various rights upon the surface land of the earth, which is called of the land, which can be given to and belongs to the people. Thus it is clear, that the 'land' in a juridical sense is 'surface of the earth' (paragraph [1])[2]. In this regard, the land can be seen as an integral part of economic valued property asset, and therefore most vulnerable to conflict.

Definition of *Eigendom* is the most perfect rights on an object. A person who has *Eigendom* right can treat any things to his own objects provided that not contrary to law or others rights. How to acquire Eigendom rights are as follows[3]:

a. Taking (opening land);
b. *Natrekking* (object increase due to natural changes);
c. Passage of time /*Verjaring*;
d. Submission (*overdracht*/Levering)

According to Netherland Indies legislation[4], '*Eigendom right is the right to get a free pleasure of an object and to control it completely provided that not used in contrary to Act or general rules established by authorized power to shape it and when it does not interfere other rights, except to rights revocation for the public interest with restitution*'. Eigendom right upon the land divided into two, that are[5]:

1. *Eigendom* according to BW without rights of the Ruler:
   Under the Netherland Indies Acts the *Eigendom* right over this land is only given to: the necessity to expand towns and villages including also peocuring the grave; to set up the craft buildings as well as to expand the existing ones. Granting the land with *Eigendom* rights

2 Boedi Harsono, Boedi Harsono (2007) Indonesia Agraria Law – History of Formation of Agrarian Principal Act, Contents and Implementation, National Land Law, Volume 1, Jakarta: Penerbit Djambatan, page 18
3 Sirini Ahlan Sjarif, (1984) Essence of Object Law According to Menurut Burgerlijk Wetboek, Jakarta: Ghalia Indonesia, page 14.
4 Sudikno Mertokusumo (1988) Indonesia Agrarian Rules, Edition 2, Yogyakarta: Liberty page 35-36.
5 *Ibid*.

should not exceed ten *bouw* (*Bouw* = 7000-7400m²). The *Eigendom* rights over these lands can be given to each person, as well as to Indonesia nation.

2. *Eigendom* with businessman rights
   This type of *Eigendom* rights is *Eigendom* right in the private lands. In the regulations applicable at the time of Netherland Indies colonial government there is no provision regarding the so-called private land. It's just that people refer to it as 'particuliere landerijen' that is the big or small land in which there is generally population that has been since the days of VOC and then under Daendels and Raffles have been sold to individuals as such the buyer gets the 'seigniorial right'. This phenomena becomes the background of Verponding Eigendom land dispute in the present, with basic of problem the land tenure and became an dispute object in future. The Agrarian law at least can be seen from European Agrarian Law, Customary Law and National Law. In principle, European law before French Revolution, the King is God representative on earth, so at the time the Kings in Europe has great power to regulate his country, even the king was regarded has power over all things, the King is the State ruler and the King was ruling the lands on their country. In France applies the watchword Le'etat c'es Moi or 'state is me', theory reflected a great power over the land. The King is regarded as deputy of the State and State landowners. This theory is also applicable in United Kingdom and Netherlands. Indonesia as colonial of Netherland enacted this theory in Indonesia, which means that all the land in Indonesia are the King property and because the King subject to colonial administration, then all land in the colonial country being converted to the Netherlands King.[6]

If we trace to identification the conflict occurs because of their authorization/utilization gaps due to policies/discriminative laws to

6 Agussalam Nasution, 2012, Theory of Agrarian Law have appliedin Indonesia, Medan, Law Magistrate Program, Post Graduate Program, Muhammadiyah University, North Sumatera.

regulate the authorization relation. Then this identification is most relevant when we associate to the cause of the uproar of various agrarian conflicts are frequently occurs in Indonesia. According to Usep Setiawan, an activist, the rise of land social conflict, more due to mismanagement in the policy implementation, and imbalance due to imbalance in land ownership. In essence, the agrarian conflict reflects the state of non- fulfillment justice for communities who relies his life from the land and natural resources, such as the farmers, fishermen and communities. This injustice appears as a result of applying the wrong concept of the state's mastery right over natural resources.[7]

In another side, the concept application of the concept of the state's mastery right over natural resources devoted largerly to people welfare, in practice more used to legitimize the state in terms of providing opportunities as much as possible for the big capital owners to open businesses of land management with an excuse to carry out an economic development. As consequence of these objectives then issued various government policies, which often from the policy eliminating the existence of society, including indigenous peoples from the land being their livelihood during this time. On the other hand against them/ people who have been expelled from their land, did not accept injustice as consequence of the policy and then push them to take the fight, so the conflict occurs. The conflicts occur between communities/farmers who defend their rights of all forms of arbitrary domination by corporations that own capital which cloaked behind the state protection/concession.[8] Agrarian conflicts can also be seen from the agrarian law itself that has many source of law. Looking at the Legal Pluralism Theory, Agaria conflict can be seen as the result of more contradictive law adopted by differrent parties, particularly the customary law and state law. The pluralism theory more emphasizes that agariaan conflict due to the imposition of two legal opposition, the state law on the one side and

7 *Ibid*.
8 *Ibid*.

customary law on the other side. For example in certain cases the land conflicts involving indigenous peoples and the state, where the state in the capacity as a holder and manufacturer of verious policy/law. This opinion is also reinforced by policy theory. This theory is also often to be reference to identification the causes of agrarian conflict. According to this theory, the agrarian conflict is the result of specific policies of the state, such as; development policy. With the development policies, then automatically all the potential/existing resources, including agriculture, and nature become an object at stake. In order to earn the money as much as possible as the development capital. These conditions caused the emergence of new forms of capitalism, which is undermining the domain of people livelihood. And sometimes make them/ people as victims who expelled from their land cause of the concessions policies for large capital owner/investor in the land tenure.[9]

In the dormant of Eigendom Verponding land cases whether government can hide behind the limitations? However the land conflict phenomenon of Eigendom Verponding besides related to conflict theory also have impact to the government services are not optimal in the land sector, so this legal phenomenon can be studied also in the Public Service Theory. A.P. Parlindungan (1991) states the land registration budget was most expensive, so it depends on available budget, employee affair and infrastructure required so that to be prioritized certain areas mainly those having high trading traffic one another according to consideration of the concerned minister and the existing urgency.[10] In condition of the existing legal pluralism, taking over of the land by State, and not well implementated of government program, then the Eigendom Verponding land conflict occurs. The protracted conflict must be related to many aspects, such as public policy in relation to the service.

9 *Ibid.*
10 A.P. Parlindungan, 1991, Coment on the Agrarian Principal Law, Mandar Maju, Bandung,hlm.115.

If the case of Eigendom Verponding land studied in Dogmatic Law perspective, according to agrarian law, this case could be traced on what should be known about: a) what violations happened? b) who was the offenders? c) when the violation was done? d) where the law gaps and weaknesses on agrarian regulation in terms of protecting the community property rights? e) why agrarian legislation rule was not effective in preventing the occurrence of the alleged violation of agrarian law on the eigendom verponding land? f) how the renewal solution of laws and regulations with philosophical foundation, formal and material in order to prevent taking over of the rights illegally on the eigendom verponding land owned by other party?

B. A Brief History of Agrarians in Indonesia

The European/Netherlands Agrarian Law is contrary to custom where land ownership based on customary laws is communal property or partnership (beschikkingsrecht). In this case each partnership member can works the land by clearing the land first and if they cultivate the land continuously, the land could be the right of individually property.[11]

At the time of Indonesia under British colonial government, Raffles started to investigate the stand of land, especially in the Java island. On 13 January 1812, Raffles established a committee in charge of studying the stand of land and anything is deemed necessary to expedite the government wheels.[12] On 14 June 1813, he expressed a memory to the committee:

> *The power and authority of the Indonesia leader is limited The state of lands will be leased to the village heads, who should be responsible about its exploitation to the Government. The lands were should be leased back to farmers with the light requirement.*[13]

11 Syafruddin Kalo, Different Perception on Land Authorization and its Consequence to Farmer Community in East Sumatra in the Colonial Period that continues to the Independent Period, New Order, and Reformation, Study Program of Criminal Law, Faculty of Law North Sumatera University .

12 Supomo, Djokosoetomo, 1951, History of Customary Law Politics, Volume I (1609 – 1848, Edition two, Djambatan, Jakarta, page 74 in A. Teluki (1966) Comparison of Property Right upon the Land and Recht van Eigendom. Bandung: PT Eresco, page 6.

13 A. Teluki (1966) Comparison of Property Right on the Land and Recht van Eigendom, PT Eresco, Bandung, page 6 with adjustment on written spelling.

Raffles based 'landrente-stelsel' on view that since the time immemorial has been a tradition that the King was regarded as the land owner, (although) in fact this is a view imported from India[14] and therefore it is rightly the farmers as the land users to pay rent to the government which replace the Kings position. This Raffles view cannot be wondered because in the Sultanate[15] regions in Central Java, at that time often occurs the heads of fellowship replaced by the king servants, sometimes the King give rights to his employees or his families members to collect taxes from the partnership. Thus the king took over the law partnership lands into his own hands, so the customary rights are held by the King, and therefore vome into being the notion, that land is belong to the King.[16]

Therefore the customary rights is lost, right to enjoy, rights to precedence, right to graze the cattle, while the right of land ownership changed in the form and generated into 'right to work or right to cultivate that very wobbly. This erroneous Raffles's view influences the agraria politic of Netherland Indies in the 19th century.[17]

When Indonesia returned by Britain to Netherlands in 1816, then on 1 May1827 the Netherland Indies colonial government issued a treatise containing that Javanese incompetents seeking the crops that could be sold in European markets, because of 'primitief-conservatief ' soul as well as their lower education level so that they are not possible accept something new about how to cultivate the land.[18]

Van den Bosch, a high officer in Netherland Indies, applying a forced

14 Ph Kleintjes, 1929, Staatsintellingen van Nederlandsch Indie, J.H. De Bussy, Amsterdam, hlm. 380. (See also Van Vollenhoven, 1933, Het Adatrecht van Nederlands Indie, Derde Deei, 2de stuk,E.J.Brill, Leiden, hlm.536) in A. Teluki, Ibid, page 6
15 Soekanto, Op Cit. page 127 dalam A. Teluki, Ibid. page7
16 A. Teluki, Op Cit. page .7
17 Ibid.
18 F.W. Stapel, 1940, Geschiedenis van Nederlandsch Indie, Deel V. Joost van den Vondel, Amsterdam, hlm. 116-117 dalam A. Teluki, Ibid. hlm.7.

cultivation. All land are belongs to the King, so every farmer has to pay rent by giving up some of their crops. Van den Bosch system is known as 'Cultuurstelsel' or 'forced cultivation.' In addition there are also agricultural land cultivated by European private entrepreneurs who obtained the land from the Government by rent, but this policy of leasing out the land to private stopped by Netherland Indies government in 1839.[19]

The existence of private land is political will of Netherland Indies colonial government that poured into its legislation. The purpose of selling the land on a large scale to those private was primarily for financial gain or to fill the cash of Netherland Government and Netherland Indies colonial government, and opening the grove that cannot be done by Netherland Indies colonial government considering the shortage of funds and personnel.

Thus, the private lands owned by private persons, either they are Netherland or Europeans who have Netherland nationality. The consequence of the existing private lands is the emergence of 'big landlords' with 'seignorial rights' (landheerlijke rechten) that are privileges granted to them by Netherland Indies colonial government, so this private lands almost like a 'Small country in the State' (Staatjes binnen de Staat).[20]

The gentlemen (owner) of private land consisted of Europeans and Orientals. It is almost rarely we can find an Indonesian as the owner of private land. Who can have private land is not only their personnel, but legal entities such as limited companies and municipalities, such as Jakarta and Surabaya.[21]

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19 A. Teluki, Op Cit. hlm.8
20 Bachsan Mustafa, 1988, Agrarian Law in Perspective, Bandung: CV Remadja Karya, page 32.
21 *Ibid*.

In essence, the right of Indonesia people on the land has comunalistic nature that means all land in the territory of Republic of Indonesia is common land of Indonesia people. In addition it has also religious characteristic that means all land in the territory of Republic of Indonesia is believed as a gift of God Almighty. The common land is declared as national wealth that shows the civil elements, namely the possession relationship between Indonesia Nation with the common law. However, the right of Indonesia nation is not means the right of private property that does not allow for the individual rights.[22]

Definition of 'control' and 'master' can be used in physical sense and juridical meaning; it also has civil and public aspects. Juridical control is wased the rights protected by law and commonly provide authority the right holder to master physically the land that has personal right. Another type of judicial control viz., even gave authority to control the land that have personal right physically, in fact the physical mastery is carried out by others. For example, if the authorized land is leased to another party, the land is physically controlled by other party in the lease rights. In this case the land owner by its juridical control, are entitled to claim to submit back the concerned land physically to him.[23]

In the law of land is also known juridical control that did not give authority to control the land in question physically. Creditors of the rights holders of security on the land have jurisdiction control over the land made as collateral, but juridical control on the land as collateral remains in the land the owner. The control right on the land when have been connected to the specified person land (legal entity), then what is means by the control right over the land is the control right based on a right or power which in fact gives the authority to take legal actions as how appropriate one who has the right.[24]

22 Urip Santoso (2012) Agrarian Law—A Comprehensive Study, Jakarta: Kencana Prenadamedia Group, page 78; Boedi Harsono (2002) Toward Improvement of National Land Law in Relation with TAP MPR RI IX/MPR/2001, Jakarta: Universitas Trisakti, page 43.
23 http://e-journal.uajy.ac.id/361/3/2MIH01442.pdf
24 Boedi Harsono (2002) Toward Improvement of National Land Law in Relation with TAP MPR RI IX/MPR/2001, Jakarta: Universitas Trisakti, page 23

The land owner started with occupied an area by an indigenous people who later called as the communal lands (common land). In rural areas outside of Java, the land is recognized by customary law not written either based on descent or region relationship. Along with the changes of socio-economic patterns in any society, the common land of indigenous peoples are gradually controlled by society members through alternating cultivation. Individual ownership system is then began to know in the communal ownership system.[25]

In the national law of land there are various control rights on the land, namely:

1) The right of Indonesia nation as the highest right of controlling the land has civil and public aspects.
2) The right of control from the state is solely has public aspect.
3) The land right of indigenous people has civil and public aspect.
4) Individual right, have civil aspect consist of the right on land as individual rights are directly or indirectly have rooted in the rights of nation.Various rights on land in Article 16 determine that: The right on the land that can be owned by that individuals include:
   a) Ownership right
   b) Cultivation right
   c) Building use right
   d) Usage right
   e) Rent right
   f) Land opening right
   g) Rights of picking forest products
   h) Other right including the rights above shall be established by law and a temporary right.

Because of Indonesia people right have communalistic character, there is a provision of the Right Controlling of State on the land (HMN). HMN not be interpreted to control physical absolutely, but solely as the task of managing all the common land that does not allow undertaken

25 http://e-journal.uajy.ac.id/361/3/2MIH01442.pdf

themselves by entire of Indonesia nation, so that in its implementation, the Indonesian people as the rights holders and bearers of the mandate, at the highest levels was delegated to the Indonesia State as power organization of the people.[26] In practice, HMN often ignore individual right upon the land as happened on Verponding Eigendom case for taking over without proper compensation as set out in the agrarian law.

The state does not have authority to sell or mortgage the land. The problem of agrarian arises when HMN authority confronted with individual property right and communal rights (common land). People who had been there before the State existed, inherent in them living right, economic rights, political rights, social and cultural rights, and ecological rights. All human rights are recognized in our constitutions UUD 1945.[27]

According to legislation: Under basis of the rights to control from the State, determined the existence variety of rights on the earth's surface, called the land, which can be provided to and owned by people either alone or jointly with others, as well as law entity. The words 'either alone or jointly with other persons and law entities,' shows that in conception of National Land Law, those lands can be controlled and used individually and no necessity to control and use it collectively.[28]

The private nature of individual right refer to the authority of the right holder to use the relevant land for benefit and in fulfilling private needs and his family. The provisions of law states that every Indonesia citizen both men and women have equal opportunities to obtain the rights over the land as well as to obtain benefits and the results both for themselves and their families. The words 'for benefit and the results both to themselves and their families' shows personal nature of the rights on the land in the conception of National Land Law.[29]

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26 Urip Santoso, Ibid, hlm. 79.
27 Bernard Limbong (2014) Opinion of Agrarian Policy, Jakarta: Pustaka Margaretha, First Printing, June 2014 page 90
28 Boedi Harsono, Op Cit, hlm. 223- 224.
29 *Ibid*.

Eigendom verponding land status applied at the time of Netherland Indiess' Agrarian Law after the enactment of agrarian legislation must be converted into property right through land registration is the duty of government and landowners.

The provisions concerning the rights on the land under Netherland legislation called *Eigendom*, no longer valid since the enactment of national agrarian legislation. In order to provide legal certainty and clarity to the *Eigendom* right holder, it was made the provisions of conversion. With the provision of the conversion, the *Eigendom* rights as individual or group property rights on the land converted into property right with almost similar ownership power. The provisions of conversion is that the *Eigendom* rights on the existing land at beginning into force of the Laws of the Republic of Indonesia, that since at the time become property right, unless who has the right is not eligible.[30]

The word 'conversion' is derived from Latin convertera means reverse or change name with giving new name or new properties so that have new content and meaning.[31] What is meant by conversion of land rights is change in old land rights into new land rights according to agrarian legislation.[32] Long time before the agrarian legislation of Republic of Indonesia has already known the term of land rights conversion, as in the case of indigenous property rights into the right subject to west civil law (BW) called agrarische *Eigendom* and authorization right becomes the use rights of managing right.[33] 'Right conversion on the land' is differet to 'right transition on the land'. Right conversion on the land related to right types of the land that exist before and after the applicable of agrarian legislation of Republic of Indonesia. While the right transition

30 Jun Junaedyng, OpCit.
31 Pankga Hasibuan (2012) Right on The Land (Conversion in Agrarian),18 Mei 2012, http://pankga.blogspot.com/2012/05/hak-atas-tanah-konversi-dalam- agraria.html.
32 H. Ali Achmad Chomzah, Agrarian Law (Indonesia Land Affairs) Volume 1, Jakarta: Prestasi Pusataka, 2004, page.80 in Wibowo Tunardy, Ibid.
33 Pankga Hasibuan, O Cit,

on the land talking about process or procedure the transfer rights on the land from one party to other party.[34]

Property rights *(Eigendom)* is the highest rights belongs fully to a citizen forever and can be handed down to the descendants thereafter, one of the causes of this right is the highest rights is permanent in character and certainly without the limit of time set it out, in beginning of the emergence of this right the position of state itself becomes marginalized as the ruler of people's livelihood. While for other rights according to agrarian legislation of Republic of Indonesia has limit of time, and their land is controlled by State, the 'State land'. For those former holders of land rights are given opportunity to be able to apply for rights on the land of their former right as long as not used for public interest or if it is not occupied by community at large.[35]

Broadly speaking, rights conversion of on the land are divided into three types, namely:

1) Rights conversion on the land derived from the western lands
2) Rights conversion on the land derived from the former land of Indonesian rights;
3) Rights conversion on the land derived from the former land of self-government.[36]

Right to control of the state, as set out in legislation that earth, water, and space, including natural resources contained in it at the highest level is controlled by the state, as organization of all people; Rights to control of the state in agrarian laws governed give its authority as follows, that is for[37]:

34 Wibowo Tunardy, Op Cit.
35 Agung Ibrahim Hasibuan, Asisten Urusan Hukum dan Agraria, Bagian Umum BUMN, Sejarah dan Terbitnya Hak Milik Atas Tanah, Sub Portal BUMN,25 September 2014, http://www.bumn.go.id/ptpn1/berita/477/Sejarah.dan. Terbitnya.Hak.Milik.Atas.Tanah.
36 Agung Ibrahim Hasibuan, Op Cit, hlm. 1.
37 Boedi Harsono (2007) Indonesia Agrarian Law – History on Formation of Agrarian Principal Law, Contenti and Its Implementtion, Volume 1, National Land Law, Penerbit Djambatan,hlm.267-268.

1) Arranging and conducting allocation, use, supply and maintenance of earth, water, and outer space;
2) Determining and regulating legal relations between people with earth, water, and outer space.
3) Determining and regulating legal relations between people and legal acts concerning with earth, water, and outer space.

The state authority are sourced in the rights to control of the state according to provisions of law should be used to attain the greatest welfare of people, in sense of nationality, prosperity, and freedom in society and an independent Indonesia laws state, sovereignnity, just and prosperous. It is determined also that the rights to control of the state above its implementation can be delegated to autonomous regions and customary law societies, merely required and does not contrary to national interest, according to the existing provisions.

The right to control of the State (HMN) is term given by national agrarian law to legal institution and concrete relationship of law between the State and the Indonesia land. The state authority in the land affair sector is the task delegation of nation[38]. In explanation of law is stated that:

> *Law Number 5, 1960 on Basic Regulation of Agrarian Principals is based on the establishment that in order to achieve what is specified in Article 33 paragraph (3) the Constitution is unnecessary and out of place, that Indonesia nation or the State acting as the land owner. Is more appropriate if the state, as the organization of power from the entire people (nation) acted as the ruling body.*

The foundation of state to control and regulate the utilization of land and natural resources which referred to as the right to control of the

38 *Ibid, 271.*

state (HMN) was guaranteed by constitution. The estuary is the greatest welfare of people. In concept of the integralistic state proposed by R. Supomo in session of BPUPKI on 31 May 1945, economic development (including the land) uses 'state socialism' system, ie the welfare for all Indonesian people. HMN orientation is: 'Earth, water, and natural resources contained therein shall be controlled by the State and used for the greater prosperity of people.' Therefore the purpose of HMN is 'the greatest prosperity of people of Republic of Indonesia".

In its implementation, HMN should have spririt of basic values of Pancasila. In implementing HMN Government should rellied on the command of Constitution 1945 that is about independence, justice, fairness, equality, and prosperity. In the state context, HMN should trully take note of the two things simultaneously in qualified balance i.e.' between development interests and basic rights of people (both individual and communal) On the one hand the central amd local government have authority to give permission to investor for national interest, including for the people prosperity through the taxation mechanism, but at the same time Government is obliged upholding the rights of people in social, economic, and cultural (customary) sectors.[39]

Take over of *Verponding eigendom* land by the government in relation to the provisions on revocation of land. The state accordance to the law has right in revocation of right on the land[40] as follows: that for public interests, including the nation and State interests as well as common interests of people, the rights on the land may be revoked, by providing adequate compensation and in the ways set by law.

Thus, the elements of right revocation on the land is as follows: The nation/state interest, common interests of people, as part of

39 Bernard Limbong (2014) Opinion of Agrarian Policy, Jakarta: Pustaka Margaretha, First Printing, June 2014

40 A.P. Parlindungan, 1993, Revocation and Right Exemption on the Land – A Comparison Study, CV Mandar Maju, Bandung, page.4.

general interest, therefore, if revoked the rights on the land; must be compensated; worthy; and must already regulated by a law.[41]

In system of national agrarian law we do not recognize the existence of land confiscation of person for construction, except (confiscation) as a crime. Likewise the confiscation due (difference) a person's political views, but all must be with an indemnity, and it is worthy either by government or parties who affected by the right revocation of the land rights. Similarly, the right revocation that occurred one-sided from government, it should be sought as there has been a common will as happens in ordinary purchase.[42] Schenk states that any directly losses and as result of right revocation of the right should be granted reparation. In many cases the resolution of Eigendom Verponding dispute by the government or even private often ignore compensation to landowner and this is what makes the occurrence of conflict.[43]

The case of *Eigendom Verponding* land X is the law conflict case of agrarian field, particularly in land, and in general as part of problem or the agrarian conflict. The agrarian conflict is multidimensional so can not be seen only as agrarian problem or legal aspects alone, but also related to non-legal variables.[44] The foundation of national agrarian law is the state basis of Pancasila, constitution1945, and MPR decrees, as well as the provisions of national agrarian land. There are some sectoral laws related to agrarian, ie legislation on *forestry; Water Resources; Fishery; Management of Coastal Areas and Small Islands; Capital Investment; and Land Procurement for Development for Public Interest.*

The national agrarian law is regarded as umbrella act of all laws and regulations that governing the agrarian and land affair. But *de facto* there

41 *Ibid*, page 5
42 *Ibid*
43 Schenk, 1975, Onteigening, Penerbit Kuwer, page 52 in A. P. Parlindungan, Ibid, page 4.
44 Bernard Limbong, Opinion of Agrgarian Policy, Jakarta, Margaretha Library, First Printing, Juni 2014 page 3

has been the lack synchronous between content material of national agrarian legislation and sectoral laws that arises conflicts of law. The law conflicts of legislation such as the lack synchronous of contents material of law does not only appen between sectoral legislation itself and national agrarian law, but also between sectoral laws itself.[45] The law conflict of this lack synchronous legislation is one of main factors the occurrence of disputes and conflicts on the agrarian during the time.[46]

The lack synchronous of vertical in terms of legislation its guidline is restored to the existing legislation, which applies principles of legislation with lower hierarchy was not applicable when contrary with legislation of higher hierarchy ***(Lex superior derogat legi inferiori)***. In principle of Legal Studies, the lack harmony between special laws with other laws, the other laws that should be excluded accordance to legal maxim ***lex specialis derogat legi generali***. Besides the legislation enacted was newer than the similar other laws , then old statute by itself is not valid anymore ***(Lex posterior derogat legi priori orlex posterior derogat legi anteriori)***.

The legal force of legislation in accordance to hierarchy as mentioned in its explanation that *in this provision what meant by 'hierarchy' is leveling any kind of legislation based on the principle that lesser legislation must not conflict with higher legislation.*

If in the case of Eigendom Verponding land X has been the actions of the parties bases its legal foundation in the provisions of an article or clause in legislation, that in fact not in synchronous with legislation on agrarian then it is returned to the higher legislation basic ***(Lex superior derogat legi inferiori)*** that is constitution 1945 and MPR. Moreover the stand of agrarian law is the law that specifically regulate the stand of agrarian as umbrella act. If there is disharmony law conflict between

45 Ibid hal 118-119.
46 Ibid hal 119.

agrarian legislation and other legislation, the laws must be set aside ***(lex specialis)***. Besides the national agrarian legislation enacted in 1960, the law of agrarian or land laws are cannot applicable ***(Lex posterior derogat legi priori or lex posterior derogat legi anteriori)***. The claim dispute of *eigendom verponding* land that has been taken over of the state, in terms of Agrarian Law, Ownership Theory, and Public Service Theory of has been very clear problem that is the interest and passion dispute for having land as a high economic value wealth.

The property rights of *Eigendom Verponding* land in agrarian law version of Netherland Indies is mechanically the nasional agrarian legislation still recognized as long conducted conversion of *Eigendom Verponding* land into ownership right status through the land registration process. This mechanism if implemented properly will be fulfilled the Property Rights aspects, Public Policy Rights, and could avoidance of conflict.

C. Alternative Solution to Reach Resolution with Theories

The property right becomes principle that must be considered in resolving the disputes or conflicts of *Eigendom Verponding* land who has taken over by the State. Of course the right to possess by the State (HMN) for development and public interests be another principle in the analysis approach and of disputes resolution of Eigendom Verponding land or private land of Netherland Indies period which taken over by the State.

The rights has meaning recognition or claim on something (a thing-can be a goods/physical that are *tangible*, services or knowledge/ information that is non-tangible) that enforceable or respected by other parties.[47] Theory of the National Agrarian Law who appreciates physical

47 Property rights in Economic of Institution. Esl.fem.ipb.ac.id/uploads/media/12. Property_ rights_SDA.pdf.

or juridical ownership should be respected. Bromley (1989) defines ownership rights as the right to obtain securely the flows of income/ profit for others respect to the flow of such earnings, associated with the transaction.[48]

Alexandr Opoulou (nd)[49] expressed three basic elements of the rights of ownership, namely (i) *the exclusivity of rights to choose the use of a resource (ii) exclusivity of rights to services of a resource and (iii) rights to exchange the resource at mutually agreeable terms.*

While Vincent RJ[50] argued that 'right' has five major elements, namely:

1) *The subject of right*, namely the right holder. They more as individuals, but can also in form of group (family, tribe, company, nation, state, region, culture, perhaps even property global)
2) *The object of right*, what it is a right to, either positive or negative as claim on something right.
3) *The Exercicing a right*, an activity connecting between subject (the holder) with object (what is claimed as a right) (the activity roomates connect a subject to an object.)
4) *The bearer of the correlative duty*, when the rights attached to someone means against others who do not get this right, so a struggle to 'beat' all the barriers of barrier from other party.
5) *The justification of a right*, is question concerning justification that these something is property of person/group (the question of the justification of a right). Therefore, the right must be based on claim toward object of that right, and it is expected no other party who objected.

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48 Property rights," *ibid*.
49 Alexandr Opoulou (nd), Public property and property rights theory, www.lse. ac.uk/ europeanInstitute/reserach/hellenicObservatory/pdf/4th_%20Symposium/ PAPERS_PPS/ LAW_CITIZENSHIP.
50 Vincet RJ. Human Rights and International Relations (Cambridge: Cambridge University Press, 2001) hal. 8, .mengadatasi Gewirth, Human Rights, p.2

Based on the ownership rights were guaranteed by universal human rights, of course it would have become philosophical value in legislations. The question is how far the law effectively running among Indonesian society.

The theory that suitable for the case of *Eigendom Verponding* land are taken over by the State, among others in the study tool of Social Contract Theory, that each person in a state feeling require each other that occurs the Social Contract.

Law is born from the top (officials) or community (living law). The laws of society will be associated with society agreement or Social Contract. Law was originally born out from value to be maintained (good value) or unwanted value (bad value). The value in this case is description of what is desirable, worthy, valuable, which affects social behavior of person who has such a value (Lawang, 1985: 13). To maintain and protect something that has that value, community members gathered to discuss how something of value can be protected and maintained. Furthermore, the society members make a deal. These agreements called the 'social contract', and it is what called the law, which is a rule or guideline in interactions among society members. In this case the agreement is taken by some members of society.[51]

John Locke began by arguing that human nature is the same each other. However, different from Hobbes, Locke stated that human characteristic does not want to meet desires with power without regard to other human beings. According to Locke, human in himselves has sense that teach principles that due to being equal and independent human being no need to break and ruin the lives of other human beings. Therefore, natural conditions to Locke are very different from natural conditions according to Hobbes. According to Locke, under natural conditions,

51 *Ibid,* hlm 11.

there are already setting patterns and natural law regularly because humans have a mind that can determine what is right and what is wrong in association between fellow.

Therefore, the natural conditions, caused some people who usually have power, does not ensure full security, there is the desire one-two parties to impose their will through the power they have. So just as Hobbes, Locke also describes an attempt to escape from unsafe condition full towards fully safe conditions. Humans create artificial conditions (artificial) by holding Social Contract. Each society member does not fully surrender all of his rights, but only partially. Between the holders (candidate) parties of government and society are not only contractual relationships, but also relationship of mutual trust *(fiduciary trust)*.

The public policy theory has been expressly argued the necessity any public policy conducted by the government is bedefited and has goods impact both to public or society. The protracted case of land problem is reflection the bad of of public policy by the governments in agrarian or land affair problem.

The cases land contained in database of BPN RI is old cases and new cases arise as implications of the old cases. The typology is vary although principally the resolution of disputes through non-litigation is a win-win solution, better known as Alternative Dispute Resolution (ADR).[52]

Public policy as social act of government turned into action thathas implicate to laws when public policy as the Government obligation that protected and regulated by legislation. James E. Anderson (1970) categorizes the types of public policy as follows:

1) Substantive and Procedural Policies.

52 Denico Doly, Penyelesaian Sengketa Tanah Melalui Alternative Dispute Resoluton (ADR), Info Singkat Hukum, Vol. VI. No. 01/I/P3DI/Januari/2014. http:// berkas.dpr.go.id/pengkajian/files/info_singkat/Info%20Singkat-VI-1-I-P3DI- Januari-2014-39.pdf.

2) Distributive, Redistributive, and Regulatory Policies.
3) Public Goods and Private Goods Policies

The redistributive policy is one policy regarding transfer of wealth allocation, ownership, or rights. Example: the policy on land acquisition for public purposes.[53] The public policy by the Government certainly has implications for the law, since the policy on the land is governed by legislation of agrarian/land sector. Carl J Federick as quoted Leo Agustino (2008: 7) defines policy as a series actions/activities proposed by a person, group or government in particular environment where there are obstacles (difficulties) and opportunities toward proposals implementation of these policies in order to achieve certain goals.[54] Irfan Islamy as quoted Suandi (2010: 12) policies must be distinguished by wisdom. Policy is translated to different policies tantamount to wisdomyang means wisdom. Definition of discretion requires consideration of further consideration, while the policy includes the existing rules within it. James E Anderson was quoted by Islamy (2009:17) reveals that policy is a series of actions that have a specific purpose followed and implemented by an actor or group of actors to solve particular problem.[55]

The scope of public policy study is very broad because it covers various fields and sectors such as economic, political, social, cultural, legal, and so on. Besides, views from its hierarchic the public policy is national, regional maupun local such as laws, government regulations, a presidential decree, a ministerial regulation, local government regulations/province, governor decision, rules of district/city, and decision of regent/ mayor.[56]

Easton gives definition of public policy as the authoritative allocation

53 http://bookerchon.blogspot.com/2013/05/pengertian-jenis-jenis-dan-tingkat.html.
54 http://eprints.uny.ac.id/8530/3/BAB%202%20-%2007401241045.pdf.
55 *Ibid*.
56 *Ibid*.

of values for the whole society or as value allocation by force to all community. Laswell and Kaplan also defines public policy as a projected program of goals, values, and practice or something attainment of program objectives, values in the practices targeted. Pressman and Widavsky as quoted Budi Winarno (2002:17) defines public policy as hypothesis contains these initial conditions and the consequences were predictable bias. Public policy must be differentiated with another policy forms another policy for example of private policies.[57]

D. Analysis of the Effort to Resolve Agrararian Conflict

The national agricultural law was oriented on the communal and individual ownership, so when there is a dispute of Eigendom Verponding land taken over by the States, this phenomenon can be approached with the conflict theory where the parties have their own interests in the conflict. Since the government involved in conflict, the government became minor viewed from the Public Policy Theory aspect where government should issue the good policy for people. Another theory, the ownership theory existed in this case can be known whether or no violation of property rights both on land owned by individual or Rights to possess of thr State (HMN). According to National Agrarian Law the State has HMN with the basic of purpose for the greater prosperity of people and respect for individual rights and customary communal (customary rights and self-government).

The resolution of disputes in the court often creates new problems. This new problem arises when there is party who do not accept the result of court verdict that won one of the parties. Other problems arise, i.e. when the same dispute object to different judicial institutions. Often found the land dispute submitted to General Courts (PU) and Administrative Court (PTUN) are different, therefore it can cause new problems in the resolution of land dispute. The resolution of disputes through non-

57 *Ibid*.

litigation is the resolution of dispute which is being developed today. The resolution of disputes through non- litigation or known better as Alternative Dispute Resolution (ADR) is regulated in Law Number 9, 1999 on Arbitration and Alternative Dispute Resolution. The resolution mechanism of dispute in this way is classified as non-litigation resolution which directed to a single agreement as a win-win solution.[58]

E. Conclusion

In many cases on disputes of *Eigendom Verponding* land are taken over by state, the legality process of land rights status become principal base the occurrence a conflict of *Eigendom Verponding* land that caused among others not completion of land registration process in Indonesia by government or by land owner itself. As exemplified by Lucas (1997), Stanley (1999), Hafid (2001) and his colleagues in which mentioned that state apparatus is often taking over forcibly the land from the hands of people so-called development projects. Although taking over was based on legislation the abolition of private lands, but there is not occur the process of providing adequate compensation as specified in the provisions of national agrarian laws. Here there is occurs a law conflict one another.

In accordance with the Legal Pluralism Theory, the status of land in Indonesia during Netherland colonial period governed by two laws, namely customary law and western law (Netherland Indies Colonial Act). Even in the internal of national agrarian law is often occurs conflict one another, both related to material side of law or disagreement in the interpretation of legislation.

58 Denico Doly, Resolution on Land Dispute Through Alternative Dispute Resoluton (ADR), Short Info of Law, Vol. VI. No. 01/I/P3DI/Januari/2014. http:// berkas.dpr.go.id/pengkajian/ files/ info _singkat/Info%20Singkat-VI-1-I-P3DI- Januari-2014-39.pdf

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Chapter 6

SETTLEMENT OF AGRARIAN DISPUTE THROUGH SOCIOLOGY OF LAW

A. Opening

Sociology derived from the words Latin Socius means friend, while Logos means science. This term was first published in a book with title "***Cours De Philosophie Positive***" by August Comte (1798-1857). The term sociology of law was first introduced by Anzilotti in 1882. The sociology of law studies a mutual influence of law and other social phenomena (Soekanto, 2012).

Prof. C.J.M. Schuyt, a professor of Dutch's Sociology of Law, in his article argued what he wished to notice was the role of law in society in organizing and maintaining distribution in the life opportunity, and of how the relative role of law relief to change an uneven distribution. Distribution of life opportunity, according to him always indicates the existence of class structure in society. Therefore, there are arised some basic questions about injustice and inequality. Then from here the

Sociology of Law must depart to discuss the extent to which the power relationships that are obviously contained in social reality. According to him, one of the tasks on the Sociology of Law, did not reveal the causes of inequality between the aspired society order with the order of society in reality (Kusumah, 1981)

Law does not work because of society changes. In social life there is always social interaction, and in social interaction there must be changes both in interaction itself and in social values, social norms, patterns of organizational behavior, composition of social institutions, stratas in society, power/authority and so on. According Lawang (1984) social change is a process where in a social system there are measurable differences that occur in a certain period of time (Adi, 2012) Given the fact that there was a change of law from the Dutch East Indies law to Indonesia's positive law, the Sociology of Law also studied public and government relationship in responding to the change of law.

Law is a norm invited the society to achieve certain ideals and circumstances, that to be a means of its society to discipline, demand and direct the society members behavior in relation to one another. In order to carry out such a function, norms must have a force that is compelling to the society members to comply it. (Rahardjo, 2006) The national agrarian law should be the norm that could compel the Government and society to achieve an agrarian order. Why the facts cannot force the Government and society to comply with the agrarian laws?

The sociological jurisprudence school (Eugen Ehrlich), says the law made must be in correspond with the living law in society. For the law norm can 'live' in society, then according to the utility school, with its figure Jeremy Bentham, believes that law should be beneficial for the society to achieve a happy life. Another figure of the utility school, Rudolph von Ihering, which related to social utilitarianism that is law

is a tool for the society to achieve goals (Law Society). Is the national agrarian law is a living law in the society? Do the society still believe that national agrarian laws can be tools of the society to achieve the goals?

In the Sociology of Law concept is said that law serves as a social control and social engineering means. Law as Social Control, the law must taken its business in such a way that conflicts and inequality that may arise does not disturb the society order and productivity. It was done through social control to create a balanced state within society, which aims to create a harmonious state among stability and change in the society. Law as a means of maintaining order and achievement for justice should be a coercion means protecting the citizens from acts and threats endangera themselves and their property. Laws can be Social Engineering in nature, where legal functions are required in each society, including in the societies are experiencing an upheaval and development. Law can play a role in changing the tought model of society from traditional tought pattern into rational/modern tought patterns. It is interesting to note that the protracted problems of *Eigendom Verpondings* land as an indicator that the law has diminished of its function either as Social Control or Social Engineering.

The agrarian law ineffectiveness to settle various legal disputes in the case of *Eigendom Verponding* land can be suspected related to the weakness of law authority factor. According to O. Notohamidjoyo, the weakness of law authority is because the law does not get proper support from non-legal social norms; no legal consciousness and a proper awareness of norms; the existence of power and authority, and the reciprocity paradigm of relationship between other social phenomena and law.

In the case context, in line with transition from the Dutch East Indies legislation to the laws and regulation of Republic of Indonesia, then all legal land under agrarian law of the Netherlands East Indies, such as *eigendom verponding*, must be converted into property rights. The

government is obliged to carry out land registration for conversion, while the *eigendom verponding* land owners must register the land to the Land Office. Why does the controversy is prolonged on the eigendom verponding land since 1960-2015?. This is sociologically understandable. In Karl Marx's view the social life (Risma R, 2013) is: 1) the society as arenas in which there are various forms of conflict; 2) the State is seen as a party actively involved in conflict with various parties to the dominant power; 3) the coercion in the law product is seen as major factor to maintain social institutions, such as property, slavery, the capital that produces inequality of rights and opportunities; 4) the State and law are seen as a tool of oppression used by the ruling class (capitalist) for personal gain.

Karl Marx argued that there are disputes in society involving the certain parties. State is an active party on the dominant power. Law is governed by the ruling or dominant class in the form of force used as a means to defend and increase personal power and as a tool of oppression. Each class has its own conflicting interests and causes the conflict occurs. The ownership and means control are in similar individual or dominant group (Risma R, 2013). Whether in case of the eigendom verpondng land dispute which taken over by the State, the Government participates actively in the existing conflict as alleged by Karl Marx's Conflict Theory? Of course this assumption still needs to be proven in research.

In contrast to Karl Marx on the controlling group of the means owners, in Dahrendorf view it is not always the means owners acted as controllers. He assumed that power relationships concerning subordinates and superiors do provide an element for the class birth. The groups clash will be the most easily analyzed as contradiction on the power relations legitimacy between ruling and lower-class groups (Risma R, 2013). Dahrendorf's analysis is very easily understood to be a review tool in case of the Eigendom Verponding land dispute between the society (or heirs) and the Government.

The discussion on the rights transfer over the eigendon verponding land by the State from the Sociology of Law aspect, so this paper is studied in sociological juridical with the question; Why the eigendom verponding land transfer caused disputes or conflicts between the parties?, what the juridical problems caused the conflict, and what is the legal standing of parties?

B. Sociology of Law, Land Dispute and Eigendom Verponding: Definition and Outlook

The meaning of Sociology of Law according to Satjipto Rahardjo is study of legal phenomena aims to give explanation on the legal practices. Sociology of Law explains the occurrence of legal practices, causes, influential factors, background of problems and so forth. Sociology of Law is scientific study of social life. One missions of Sociology of Law is to predict and explain various legal phenomena, namely how a case enters the legal system and how its settlement (Akhdhiat, 2011).

The scope of sociology of Law concerning the law and behavioral patterns as creation or form of the social groups wishes. It is behavioral pattern in a society, that is examining the ways of similar acting or behaving from people who live together in a society. Thus, Sociology of Law is a branch of science which examines why humans are obedient to the law? Or why did they fail to comply with the law? as well as other social factors that influence it. Sociology of Law discusses the mutual influence between law changes and society. The law change may affect the society leads to the law changes (Ali, 1996).

Agrarian Dispute is a relationship of parties which characterized by conflict between two or more parties related to claim of one plot of land, territory, or other natural resources based on interpretation of the same rights (read, legitimacy source) and or different to each other. In such conflict one or more parties directly acts to eliminate and/or disagree

and/or impede the other's acknowledgment of certain agrarian objects.[1] Eigendom is a term well known in Western Civil material law which means "property rights". Eigen means self or private, while dom refers to the word "dominium" which defined as "property right". Thus, "eigendom" means "private property." Now, "verponding" is a type of tax imposed on fixed objects (land and buildings) which have been proved by "eigendom" or the ownership evidence, where these taxation begins in Batavia in 1800 The ownership right *(eigendom)* is one of material rights set forth in Book II Burgerlijk Wetboek (Civil Code). However, with the issuance of Law Number 5 Year 1960 on Basic Regulation of Agrarian Principles, the ownership rights of eigendom land are revoked from the book II of Civil Code and included in Law Number 5 Year 1960 on Basic Regulation of Agrarian Principles. (Wibowo Turnadi, www.jurnalhukum.com/hak-milik-eifendom).

The legislation ineffectiveness was related to the weakness of law authorityfactor. According to Notohamidjoyo, the weakeness of law authority were caused of: 1) the law does not get proper support from non-legal social norms; Law norms are not in accordance with non-legal social norms. The laws established are too progressive so being perceived as the foreign norms for the people, and the value system in society is in general weakened as modernization result. 2) there is no proper legal consciousness and norm awareness, the legal officers who are not aware of their obligations to maintain the State law; and 3) the existence of power and authority, there is a mutual paradigm between other social phenomena with the law.

Sociology of Law has the concept that law serves as the social control means; and the law serves as social engineering means. Law as Social Control, the law must work its business in such way so that conflicts and inequalities that may arise do not disturb the order and society

1 Similar view is followed and confirmed in Law Number 5, 1960 on Basic Rule of Agrarian principles. (see Pasya and Sirait, 2000)

productivity. Social control is an attempt to create a balanced state within society, which aims to create a harmonious state of stability and change in society. It means the law as a tool of maintaining order and achieving the justice. Social control includes all the forces that create and maintain social bonds. Law is a coercion means that protects citizens from acts and threats endangers themselves and their property. Laws can be Social Engineering, where the function of law in conservative sense, the function is required in every society, including in society that is experiencing upheaval and development. Including all the forces that create and maintain social bond that embraces the imperative theory on the function of law. Law as the renewal means in society. Law can play a role in transforming people's tought patterns from traditional thought patterns into rational/modern tought patterns (Pasya and Sirait, 2000). Sociology of law sees, accepts, and understands the law as a part of social human life, not beyond it. For the sociology of law the law's life cannot be separated from the daily life of society. The law cannot be seen as stereotypes of deeds or abstract concepts, but something substantial. It is in form of human (social) behavior. Sociology of Law, for clarity, is sociology of or about law, therefore, when speaks of social behavior, it is related to applicable law *(Wibowo Turnadi, www. jurnalhukum.com/hak-milik-eifendom)*.

According to Marx's idea, Ralf Dahrendorf, the social classes classification is no longer based solely on the possession of production means, but also of power relations. There are a number of people who have and participate in the power structure, some are not in power. In this case, there are three important concepts: power, interests, and social groups. In turn, according to Garna (1992), the interests differentiation that can occur may lead to potential conflict group or actual conflict groups that collide because it has antagonistic interests. *(Wibowo Turnadi, www. jurnalhukum.com/hak-milik-eifendom)*.

Sosiologi Hukum dapat dilihat dari cara pandang yang bertingkat.

Terkait tingkatan teori, Neuman (2000) melihat ada tiga tingkatan teori, yaitu tingkat mikro (micro-level), tingkat meso (meso-level), dan tingkat makro (macro-level). Teori tingkat mikro memberikan penjelasan hanya terbatas pada peristiwa yang berskala kecil, baik dari sisi waktu, ruang, maupun jumlah orang. Teori tingkat meso menghubungkan tingkat mikro dan makro. Misalnya, teori organisasi, gerakan sosial, atau komunitas. Sedangkan teori tingkat makro menjelaskan objek yang lebih luas, seperti lembaga sosial, sistem budaya, dan masyarakat secara keseluruhan. (Creswell, 2010; Kerlinger, Fred, 1973; Holt & Winston, Merton, 1967).

Sociology of Law can be seen from a multilevel perspective. In relation to theoretical level, Neuman (2000) sees three levels of theory: micro level, meso level, and macro level. Micro-level theory provides explanation that is limited to small-scale events, both in terms of time, space, and number of people. The meso level theory connects the micro and macro levels. For example, organizational theory, social movements, or society. While macro-level theory explains broader objects, such as social institutions, cultural systems, and society as a whole.

Jack Douglas (1973) distinguishes between macrosocial and microsocial perspective. He distinguishes between the sociology of everyday life and sociology of social structures. Sociology of everyday life uses what is calls a daily perspective, interactionist or microsocial. While sociology of social structure using macrosocial or structure perspective. Sociology of social structure studies society as a whole and relationship between parts of society; Society is seen as something beyond a set of individuals who make it up. Sociology of everyday life, on the other hand, specializes in what happens to individuals, when they stare one another, act and communicating. While Randall Collin (1981) describes the state between macro and micro sociology. Collins suggests that micro sociology involves a detailed analysis of what humans do, say, and think in terms of instantaneous experience, while macro sociology sees the analysis of large-scale, long-term social processes. (Wulan, 2010)

C. Analyzing Property Right Theory, Conflict, and Public Policy Through Sociology of Law

The property right theory observe the opposition over the land is social behavior of the parties in struggling for economic rights over the land. Such case typologies are studied with the Property Right Theory and Marxist Theory of Conflict. Property Theory itself explains that property is a "*right to something*". The right contains a sense of claim for something that can be enforced or respected by others. The claims over something without legal protection over it or without can be enforced will not meaningful and provide any benefit. Therefore, the most important element of property is enforcement. Property can be defined as possession at which one has the right to (at least) benefit from it. (http://esl.fem.ipb.ac.id/uploads/media/12.Property_right_SDA.pdf) Karl Marx mentioned the occurrence of coercion in the form of law. In this context the law to the abolishment of private lands (Eigendom land that has the right to appeal in the Dutch period) could be blamed as "the coercion in the form of law."

According to conflict theory, society is always in a process of change that market with continous diasagreement among its elements. Each element contributes to social disintegration. The regularity in that society is only because of pressure or imposition of power from above by the ruling class having authority and position. (Adi, 2012).

Conflict theory is antithesis of functionalism concept because in functionalism, society is regularly in a system, so that the society regularity is more prominent than conflict in society. Conversely, conflict theory teaches that in each society there are always conflicts reflects the struggle and friction between groups or intragroups to fight for resources, power, distribution patterns of works, social structure, and fighting over other human traits such as differences in interests, dissent, sexuality satisfaction and instinct (Fuady, 2011).

Looking at the conflict Dahrendorf admits that there are differences between those with little and many power. The difference in dominance may happen drastically. But there are basically two social classes, those who are powerful and dominated (Dahrendorf, 1968). Dahrendorf, in his analysis considers that group clashes empirically may be easiest to analyze when viewed as contradictory about ligitimization of power relationships. In each association, the ruling group interests are values that are ideology of its power legitimacy, while the grassroot group interests pose a threat to this ideology and the social relationships it contains (Poloma, 1994).

Public policy as social action of Government turns into action that has legal implications when public policy as a Government obligation is protected and regulated by legislation. James E. Anderson (1970) classifies the types of public policy into: a. Substantive and Procedural Policies b.Distributive, Redistributive, and Regulatory Policies; and c. Public Goods and Private Goods Policies. Redistributive Policy that governs the transfer of wealth, ownership, or rights allocations. Example: a policy on land acquisition for the public good *(http://bookerchon.blogspot.com /2013/05/pengertian-jenis-jenis-dan-tingkat.html).*

Irfan Islamy as quoted by Suandi (2010) argued that policy must be distinguished by the wisdom. Understanding wisdom requires further consideration, while policy includes the rules that exist within it. James E Anderson as quoted Islamy (2009) reveals that policy of a person or group of actors to solve a particular problem. The scope of public policy study is very broad, covering areas like economics, politics, social, culture, law, Besides, observing from its hierarchy the public policy can be national, regional or local such as government, presidential, ministerial, Local/provincial government regulations, governor decision, regency/city regulation, and regent / major decision *(http://bookerchon.blogspot.com /2013/05/pengertian-jenis-jenis-dan-tingkat.html).*

Easton provides definition of public policy as an authoritative allocation of values for the whole society. Laswell and Kaplan also define it as a projected program of goals, values, and practices. Pressman and Widavsky as quoted Budi Winarno (2002) defines public policy as hypothetical contains preliminary conditions and predictable effects. Wolls as quoted Tangkilisan (2003) states that public policy is a number of government activities to solve problems in the society, either directly or through various institutions that affect people's lives *(http:// bookerchon. blogspot.com /2013/05/pengertian-jenis-jenis-dan-tingkat. html).*

The scope of public policy studies is extensive as it covers various fields and sectors like economics, politics, social, culture, law, and so on. Besides, it can be seen from the hierarchy of public policy can be national, regional and local such as law, regulation, presidential decree, ministerial regulation, governor decision, district regulation, and regent/ mayor decision. At the moment Government does not do activities in solving to the case problem, the Government behavior is not doing public policy well.

Public policy as a social action of Government turns into an action that has legal implications when public policy as Government obligation is protected and regulated by legislation. In the case of eigendom verponding land dispute, the type of public policy according to James E. Anderson (1970) is Redistributive Policy that is policy regulates on the transfer of wealth, ownership, or rights allocation. For example, the policy on land acquisition for public interest. What Laswell and Kaplan describe as a projected program of goals, values, and practices, is as positive as Wolls as quoted Tangkilisan (2003) that public policy is a number of government activities to solve problems in society.

Meanwhile, in the conflict theory perspective, it is believed that in solving the social problems is required a theory. Ralf Dahrendorf 's

conflict theory became the basis of Eigendom Verponding land study. For him, the classification of social class is no longer based solely on the production means possession, but also on the power relations. In this case, there are three important concepts: power, interests, and social groups. In turn, according to Garna (1992), the interests differentiation that can occur may lead to a potential conflict group or actual conflict groups that collide because of its antagonistic interests *(http://soskumtoqueville2. blogspot.com/2011/06/ empat-teori-penting-dalam-sosiologi.html)*.

The State interests that need land for development often conflict with the society interests as landowners. And that's often to be the case when there is no decent compensation system according to reasonable standard. The legal issues, including agrarian law, are sometimes contributed by irregularities of executive, judicative, and even law enforcement agencies.

The agrarian cases complexity in Indonesia is assumed to have included individual factors, communities, Government, and even influenced by the legal institutional system. The assumptions are based on the social integration paradigm. With this paradigm the sociology of law theory attempts to understand the legal institutions behavior. The presence of legal institutions is the opersionalization of an abstract ideas, formulations, and law concepts through institutions and that operation of institutions these abstract things can be realized into reality.

D. The Viewpoint of Sociology of Law with the Emergence of Legal Awareness and Social Contract

Asking the legal consciousness of society in principle questioned also the law enforcement aspect. From the beginning there was no clear agreement on the conception of legal consciousness. J.J. Von Schmid (1965) provides a review of the law feelings, namely the law judgment arises immediately from the society. While the legal consciousness is

more the formulation of the legal restrictions on the judgment, which has been done through scientific interpretation. Paul Scholten (1954) mentions the law consciousness as the awareness or values contained in human on the existing law or the law expected to exist. In fact what is emphasized is the functions values of law and not a legal judgment to the concrete events in the concerned society.

The emergence of legal awareness is driven by the extent to which compliance with the law is based on indoctrination, habituation, utility, and group identification (Bierstedt, 1970). The process takes place through internalization in human. This internalization level which further provides a strong motivation in human over the law enforcement issue. Soerjono Soekanto (1982, 1993) states that there are four legal awareness indicators, each of which is a stage for the next stage, namely legal knowledge, legal understanding, legal attitude, and legal behavioral patterns. The factors influences law enforcement are: legal factor itself; law enforcement; means/facilities; public legal awareness; and cultural factors.

Laws are made by society for society. If law made at a time is not desirable because of change, then the law must be immediately removed, or replaced by new law. If not, then the law seems to be ineffective. Conversely, if law is still valid changed, it can also happen that the law is still not running or ineffective, so if you want the desired changes in the society, it is necessary to review the changes earlier. There is a mutual relationship between social change and legal change (Adi, 2012).

The agrarian field or national land law in understanding of Legal Awareness was made by society for society. If the agrarian or land law created at a time is not desired anymore due to a change, then the law should be immediately removed/revoked, or replaced by new law. If not, then the law seems to be ineffective.

The living law will be related to society agreement or Social Contract. The law is initially born from value want to be maintained (good value) or undesirable value (bad value). Value in this case is a description of what is desirable, worthy, valuable, which affects the social behavior of person who has the value (Lawang, 1985). To defend and protect something that has value, the society members come together to talk about how something value can be protected and defended. Furthermore, the society members made a deal. The agreement is called "social contract", and the social contract is what is called law, which is a rule or guideline in the interaction of fellow members of the society. The agreement is taken by some members of society, because it almost impossible to be agreed by all the society members.

John Locke states that human traits do not want to fulfill the desire with power regardless of other human beings. The man within him has an intelligence teaches the principle that being equal and independent the human does not necessarily violate and corrupt other human lives. According to Locke, in natural conditions there are regulatory patterns and natural laws are orderly since humans have an intelligence that can determine what is right and what is wrong in the association among people.

Because of the natural condition, due to the fact that some people who usually have power, do not guarantee full security, there is the desire of one or two parties to impose their will through power that they have. Like Hobbes, Locke also explained about efforts to escape from conditions that do not Full safe to full safe condition. Humans create artificial conditions (artificial) by means of a Social Contract. Between the government and the society is not only a contractual relationship, but also a fiduciary trust.

To resolve claim disputes of the *Eigendom Verponding* land is required Legal Awareness, Social Contracts, and conflict management in agrarian

or land field through law enforcement and return to basic philosophy of the state (Pancasila) and constituions (UUD 1945).

The social exchange teaches that interaction between society members starts from the mutual exchange principle among people which in this case starts from "giving" something to others, and "receiving back" something from others in a balanced compensation, so the society behavior is done within cost benefit, in the form of "cost- reward" or "reward-punnishment". In law, a very powerful field of Social Exchange is: a contract law and criminal law fields. The exchange value in this case when criminal penalty is imposed. The burden of paying compensation, as well as penalties and physical punisgment (Adi, 2012). The subject of land disputes or conflicts is actually related to the deliberation process and determination of the compensation form and value. The form and value of fair and reasonable compensation should able to be translated in detail and clear, then calculated/formulated in a fair and balanced in the Presidential Regulation *(Limbong, 2014)*.

E. The viewpoint of a "Chaos Theory" in the Sociology of Law

In this context we can look at the chaos theory of law initiated by Edward Norton Lorenz and Ilya Prigogine. The chaos theory of law deals with disorder (law), at the same time speaking also of regularity (law). Thus, disorder in a reductionistic view, is part of the order in the holistic view (Sudjito, 2006). The chaos theory of law, is theory that is always associated with complex systems, random, unpredictable, fuzzy, paradoxical *(Seeres, 1995)*.

The law is seen as the guarantor of order and certainty, and therefore must be obeyed, without any possibility and opportunity to be criticized. According to the analytical positivism schools on what exists and happens in the law is an orderly and definite atmosphere. This is like a general view of law as a "keeper of justice" and as a keeper of order. However, through introduction to chaos theory of law, it turn out that

the order, regularity and certainty, is not the only reality of law, but there is still another reality that is chaos in law. The order and chaos in law are not two opposites things, not a black-and-white dichotomy, but as a connected, complementary, and interconnected reality in a continuous change process *(Sudjito, 2006)*.

In lya Prigogine analysis, the chaos theory of law thinkers, the self-organizational systems, obtained some interesting findings, among others: (1) the life evolution process is the process of becoming more and more orderly and complex; (2) "chance" or "randomness" is meaningless in the absence of pattern and life character, but to be the source of order, and this is what calls as the Order Out of Chaos; (3) disorder at one level leads to order at a higher level, with new laws controlling the structures behavior, suggesting more complex new types; (4) the randomness at one level raises dynamic patterns at another level.

F. The Complex Legal Reality: Conflict Theory, Public Policy Theory, and Chaos Theory, As The Arising of Legal Awareness and Social Contract

In the conflict theory Dahrendorf considers that empirically, a group clashes may be easiest to analyze when viewed as contradictory about the power relations ligitimization. In Jacques Rousseau's social contract theory, although in principle human beings are equal, but nature, physical and moral create inequality. There are arised certain privileges possessed by certain people, since they are richer, more respected, more powerful, and so on. Social organizations are used to increase power and suppress others. In turn, the tendency leads to a single power. To avoid from the privileged conditions of suppressing others causing intolerability and unstability, the society entered into a Social Contract, formed by the free will of all, to establish the justice and fulfillment of the highest morality.

Furthermore, the relation to social contract, Hobbes declared that by

nature man is equal to one another. Each of them has a passion or appetite and aversions, which move their actions. To fulfill an unlimited desire or passion, humans have power. According to Hobbes people often use their respective power so that there is an inter-fellow human, which increases the reluctance to die. To save yourself from the dangers of a human power clash make an agreement or a Social Contract, among which the agreement makes the law. While according to Locke, human traits do not want to fulfill desire with power without heeding other human beings. Under natural conditions there are regular patterns of regulation and natural law because humans have reason that can determine what is right what is wrong in the association between peers. While in Law Awareness it can be explained that legal awareness concerns the issue of whether certain legal provisions actually function or not in society. Every normal human being has legal consciousness, the problem is that legal awareness level, ie., high, medium and low *(Salman, 1989)*.

James E Anderson as quoted by Islamy (2009) reveals that the policy is "a purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern". The scope of the study of public policy is very broad because it covers various fields and sectors such as economy, politics, social, culture, law, and so on. Besides, it can be seen from the hierarchy of public policy can be national, regional and local such as law, government regulation, presidential regulation, ministerial regulation, local / provincial government regulation, governor decision, regency/city regulation, and regent/mayor decision *(http://eprints.uny.ac.id/8530/3 /BAB%20 2%20-%200740124104 5.pdf)*.

The government is demanded to commit the public policy in agrarian law, especially the settlement of Eigendom Verponding land dispute so that Government can serve public by giving the legal certainty. As Laswell and Kaplan point out that public policy is a projected program of goal, value, and practice.

Easton provides definition of public policy as the authoritative allocation of values for the whole society. Laswell and Kaplan also define it as a projected program of goals, values, and practices. Pressman and Widavsky as quoted by Budi Winarno (2002) defines public policy as a hypothetical Contains preliminary conditions and predictable effects. Wolls as quoted by Tangkilisan (2003) that public policy is a number of government activities to solve problems in the society, either directly or through various institutions that affect people's lives.

One causes of legislation ineffectiveness is related to the legal awareness level. The solution to legal awareness through Bierstedt's (1970) opinion is long-term, since it must fulfill legal awareness condition through indoctrination, habituation, utility, and group identification. Their indicators as stated by Soerjono Soekanto (1982, 1993) as sociological aspects that is the legal knowledge, legal understanding, legal attitudes, and legal behavioral patterns, still have to further studied. Meanwhile, on the other hand must also consider the legal factors themselves; Law enforcement factors; means or facilities factors; public awareness factor; and cultural factors.

Reflecting the transfer of *Eigendom Verponding* land rights by the State so that the occurrence of conflict through legal awareness is very complex and long-term. The weight of legal awareness work is impossible without the law enforcement efforts, because through this effort the society law awareness will increase, because the emergence of comfort in the hearts of society.

Locke declares that human traits do not want to fulfill their desire in power regardless the other human beings. Under natural conditions there are regulatory patterns and an orderly natural laws because humans have an intelligence that can determine what is right and what is wrong in association between fellow. Because of natural conditions, seince the act of some people who usually have power that does not guarantee full

security, there is desire of one or two parties to impose their will through the power they have. Therefore Locke describes the effort to escape from a fully insecure condition to the fully safety conditions. Humans also create artificial conditions by mean of Social Contract.

In the implementation level, social contract of legal field is difficult because it requires commitment of some members of society to urge the Government and legislature to do the law political of a national agrarian field.

The conflict character in human must be attenuated through "mutual giving and acceptance" approach when there is a struggle for something that is considered valuable such as resources and so on, then the approach is explained in social exchange.

In the case of claim disputes context over the "eigendom verponding" land ownership there should be a deliberation at the compensation process in accordance with the laws and regulations. The subject of land disputes or conflicts is actually related to the deliberation process and form determination as well as the compensation value. A just and reasonable compensation form and value which ordered by law should able to translate in detail and clear, then calculated/formulated in a fair and balanced manner on the implementation of the rules *(Limbong, 2014)*.

According to Gilles Deleuze & Feliz Guattari, chaos can only be a future opportunity if there is a change of world view. The world must be seen as a chaotic rhizome, rather than a tree (has centralistic, hierarchical, bureaucratic character) (Deleuze & Guattari, 1983). As the growth model, rhizome has some basic principles.

First, the connecting principle. This principle will be able to grow, develop and become a strong principle, if the top-down national legal politics is

transformed into the chaotic legal, namely the legal politics encouraging a conducive situation realization to dynamically relate the legal elements in society and the State, in order to learn, share experiences and give the best each other for life together, in the hereafter worldly-life scale, spiritual material. Second, the dialogue-deliberation principle. A good values and plural legal truths must be communicated to others parties through dialogue-deliberations. Based on the dialogue-deliberation principle, the arrogance of person who thinks his opinion is the best and most correct so that can overcome all problems, can be transformed into humility to integrate his opinion with the wisdom of leader, priest's devotion, scientist's intelligence, and even the innocence of traditional peasants as well as factory workers are actually rich in the legacy of life experience. In its complementary with others knowledge, then law can offer a number of alternatives in overcoming the difficulties. *(Sudjito, 2006)*

Third, the adaptability principle. Everyone should be tolerant and open as well as willing to adapt to the virtues and truths values have been obtained through implementation of the dialogue-deliberations principles. Thus, when national law meets with local law, then among both there is mutual relationship and complement, not rejection each other. Any form of disavowal to the results achieved through dialogue-deliberation should be avoided. Fourth, the wholeness principle. There is needs to be an awareness that between man, nature and God, is a unity cannot be separated as a whole. Therefore all forms of understanding, cultivation and law administration should be done simultaneously and consistently as a whole in the whole as well. *(Sudjito, 2006)*

With introduction to the chaos theory of law, it turns out that the order, regularity and certainty, is not the only reality of law, but there is still another reality that is chaos in law. The order and chaos in law are not two opposites things, nor a dichotomy of black-and-white, but as a related, complementary, and interconnected reality in a continuous, perpetual

change process. The chaos theory of law, is theory that can provide a good explanation of complex legal reality and provide an appropriate solution to the legal crisis that hit the country *(Sudjito, 2006)*.

G. Conclusion

In the Sociology of Law concept it is said that law serves as a social control and social engineering means. Law as Social Control, the law must works its business in such a way that conflicts and inequalities that may arise do not disturb the society order and productivity. It is done through social control to create a balanced state within society, which aims to create a harmonious state between stability and change in the society. Laws can be Social Engineering, where the legal functions are required in each society, including in the societies that are experiencing upheaval and development. It is interesting to note that the protracted problems of eigendom verponding land as indicator that law has diminished its function either as Social Control or Social Engineering.
Ralf Dahrendorf's Conflict Theory becomes the basis for the study of eigendom verponding land. For him, the classification of social class is no longer based solely on possession of the production means, but also of power relations. In this case, there are three important concepts: power, interests, and social groups. According to Garna (1992), the interests differentiation occurs, in turn, may lead to a potential conflict group or actual conflict groups that collide because it has antagonistic interests. Public policy as social action of the Government has changed into action that has legal implications when public policy as the Government obligation is protected and regulated by legislation.

Reflecting the case of agrarian disputes over the eigendom verponding land can be the subject of study in sociology of law and some relevant theories, namely conflict theory, public policy, and legal awareness as well as chaos theory through concrete steps by revising the norms and weak regulatory in its application, that it does not happen again at other cases in future.

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Chapter 7

PROPERTY RIGHT CONCEPT REGARDING THE UNDERGROUND SPACE BASED ON THE THEORY OF PROPERTY RIGHTS' VIEWPOINT

A. Opening

The ever-increasing number of people, while the earth's surface is not growing, makes some of the unfilled needs of the land. While the land itself can not be recreated by humans. Creation of the land by God is only one time and man can not imitate it. Humans then look for alternative expansion of land that can be used. In line with technological developments, humans began to take advantage of the underground space to accommodate its activities more intensively. Intensive use of the underground space is essentially using space in the earth body to create buildings for human activities in the soil. Building by using the underground space is done due to land limitation factor as the main reason.[1]

1 Novina Sri Indiraharti, 2017, "Perlukah Asas Pemisahan Horisontal dalam Penggunaan Ruang Bawah Tanah?" Prosiding Seminar Nasional: Problematika Pertanahan dan Strategi Penyelesaiannya, Sekolah Tinggi Pertanahan Nasional Bekerjasama dengan Pusat Studi Hukum Agraria - Fakultas Hukum Universitas Trisakti, Oktober 2017.

Since the discovery of technology that allows the use of underground spaces, today in the founding of a building, humans are no longer limited to two-dimensional land use (on the ground), but also three dimensions (above and underground), which means using the land above and beneath the surface of the earth. The use of soil beneath the surface of this earth should be space above ground.[2]

Construction of any building or facility above or below the ground shall have its base of interest. All the grounds of the rights, both primary and secondary, are furnished with certificates as proof of property right of the land. The problem arises because the laws governing the underground space itself do not yet exist.[3] It is not yet known exactly who the owners of the underground space, the scope of underground space property rights, legal acts that can be done on the property of underground space, the obstacles of the implementation of the legal act of the property of underground space, and the justification of the relationship of property right of the underground space and above soil.

To discuss the matter of the underground space law, in this analysis the proprietary theory is used. This theory is used as a foothold in the discussion of the underground space because the most crucial thing in terms of the land in general and the underground space in particular is the legal certainty. The condition of the creation of legal certainty is the clarity of property right of the underground space. The legal certainty of the property right of the underground space is an important fundamental to the use of underground spaces. Legal certainty about the owners of the underground space will also eliminate the possibility of conflict of mutual claims of property right of the underground space. In the context of rising regulations on underground spaces, the issue

2 Febrina Kusuma Putri, 2012, "Pemanfatan Ruang Bawah Tanah dan Atas Tanah dalam Pelaksanaan Pembangunan Mass Rapid Transit Ditinjau dari segi Hukum Tanah Nasional", Tesis, Universitas Indonesia, Jakarta, hlm. 1.

3 Urip Santoso, 2017, Hasil Wawancara Penulis dengan Dosen/Penulis Buku Hukum Agraria Universitas Airlangga Surabaya, pada tanggal 27 Oktober 2017.

of property right of the underground space is becoming increasingly important. There needs to be clarity and certainty about land rights and land property right concept in Indonesia.

B. Property Rights Theory: A Study

Property rights theory is based on rights that contain recognition or claims on things (a thing) can be tangible goods/physical, service or knowledge (information that intangible) or anything respected by others.[4] Bromley defines property rights as the right to secure a profit stream, as others respect the earnings stream, in respect of transactions.[5] In the term "property right" (property rights) contained the word "property" and the word property right (property right). Regarding the term "property" itself among experts there are still different views. According to Browder, Cunningham and Smith when layman is asked about the definition of "property", then the property is defined as "something tangible 'owned by a natural person, a corporation or a unit of government. Means "property" is something tangible or real that 'owned' by one person (or several persons) naturally, or owned by corporation or government unit.[6]

However, in terms of law, the answer is considered inaccurate, due to two reasons: (i) there is still confusion in the term "property" with various objects (objects) which also use the term "property", for example in terms of property stage meant not the property right of the stage, but the objects that become aids on the stage; and (ii) the definition fails to recognize that the "subject" of the property also includes something intangible. For theorists and practitioners of legal science, "property" is not a 'thing' at all, although 'things' are the subject of property (property is not just an object, although an object is a property subject). That

4 Property Rights (Hak Kepemilikan) dalam Ekonomi Kelembagaan". diakses dari Esl.fem.ipb.ac.id/uploads/media/12.Property_rights_SDA.pdf pada tanggal 21 Oktober 2017.
5 *Ibid*.
6 Olin L. Browder, Jr., Roger A. Cunningham, dan Allan F. Smith, 1984, Basic Property Law, Four Edition, West Publishing Co., St. Paul, hlm. 2.

is, who have property not only human, but can also not human. For example, the land can be owned by Bank, Religious Foundation, and others, which is not human at all.

Another property definition is given by Bentham[7] which is then summarized by Cohen as follows:

> That is the property to which the following label can be attached. To the world: Keep off unless you have my permission, which I may grant or withhold. Signed: Private citizen. Endorsed: The State.

This means that the property is something that allows the following label to be pasted. To the world: do not disturb/grab my property except with permission from me that I can give. Signed: a citizen. Given: Country.[8]

The Cohen statement assumes that the property is the norm. That is, with the possession of property by a person, then automatically apply the norm that he has the right to give permission or forbid others to use his property. These rights are the exclusive rights of the owner of an object that can not be taken arbitrarily by another party, as it is a part of human rights. As a norm, this property right rule binds everyone and whoever violates it can get social sanctions and legal sanctions at once.

Parties that can enforce legal norms against property rights violations are government agencies through legal instruments such as courts and police. Because the government's presence is ubiquitous, the conventional government is seen as part of a system that can define and enforce property rights.[9]

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7 J. Bentham, 1975, Theory of Legislation, Pub. Inc., Oceana, hlm. 68.
8 F. Cohen, 1954, "Dialogue on Private Property", Rutgers Law Review, Vol. ix, Winter, hlm. 9.
9 Edwin G. West, "Property Rights in the History of Economic Thought: From Locke to J. S. Mill," dalam Terry L. Anderson & Fred S. Micchesney (eds), 2003, Property Rights: Cooperation, Conflict, and Law (eds), Princeton University Press, New Jersey, hlm. 1.

Opoulou (nd) discloses rights that include property rights there are three, namely: (i) exclusivity of rights to choose the use of a resource (the exclusivity of the right to choose how to use something owned); (ii) exclusivity of rights to services of a resource, and (3) rights to exchange of resources at mutually agreeable terms (the right to change those resources on a contractual basis). Based on the scope of property rights granted by Opoulou (nd) it is found that the right of property right guarantees the owner the right to do everything to the property in his or her best interests, whether to use it, not to use it, or to transfer property right rights.[10]

The existence of rights that accompany property rights is likened to Edwin G. West that property rights are bundles of sticks, since the actual property consists of various rights that can not be separated. In the form of complete property right, property right may grant to its owner the right to acquire the value or benefits of the property, the right to refuse any other party to use the property, and the right to transfer such property rights to others.[11]

While Vincent points out that "the right" has five main elements:

1. The subject of right, the right-holder.
2. The object of right, what it is right to have, both positive and negative, like a claim on a right.
3. The Exercising a right, an activity that links between the subject (rights owner) and the object (what is claimed to be the right) (the activity which connects a subject to an object).
4. The barier of the correlative duty, in which the right of being attached to a person means against another who does not get the right, so it is a struggle to "defeat" all barriers/barriers from others.
5. The justification of a right, is a question of justification that

10 Alexandr Opoulou (nd), "Public property and property rights theory," diakses dari www.lse.ac.uk/europeanInstitute/reserach/hellenicObservatory/pdf/4th_%20 Symposium/PAPERS_PPS/LAW_CITIZENSHIP pada tanggal 21 Oktober 2017.

11 Edwin G. West, loc. cit.

something belongs to a person/group (the question of the justification of a right).[12]

From the opinion of the experts above, it can be summarized that the definition of property rights is an acknowledgment or claim on something that is respected by another tangible or intangible party that can be owned by human or non-human (company, religious institutions etc. according to the laws and regulations) which grants the owner the right to do everything to the property in his or her best interests, whether to use it, not to use it, or to transfer the right of property right, which can not be taken arbitrarily by the parties because it is part of human rights.

C. Establishment of the Underground Law using the Concept of Property Right as the Foundation

Theory of property right deals with the subject of right, the right-holder; the object of right, concerning what kind of rights (what it is a right to), which means concerning the scope of its right to a controlled underground space; the exercising a right, an activity that connects the subject (the right owner) to the object (what is claimed to be the right), which according to Gita Chandrika Napitupulu in this case relates to the activity of the underground space control of the space from one party to the party other (the barrier of the correlative duty),[13] in relation to the land de facto as if transfers property right, thus becoming an obstacle for landowners on the surface of the earth and/or other parties to control underground space; and justification of right, concerning the justification of why the underground space must be either the property of the landowner on its surface, or otherwise not necessarily the property of the landowner on its surface.

12 RJ. Vincent, 2001, Human Rights and International Relations, Cambridge University Press, Cambridge, hlm. 8, mengadaptasi Gewirth, Human Rights, hlm. 2.

13 Gita Chandrika Napitupulu, 2005, Isu Strategis dan Tantangan Dalam Pembangunan Perkotaan: Bunga Rampai Pembangunan Kota Indonesia Abad 21, Buku I, Urban and Regional Development Institute (URDI) dan Yayasan Sugijanto Soegijoko, Jakarta, hlm. 14.

Land as other objects, may be the property of a person or legal entity whose proof of property right is a Certificate of Property. The legal basis for individual property right of land in general is a universal right that recognizes the property right of private rights. In Indonesia, the basic law of property rights is regulated in Article 28 G and Article 28 H paragraph (4) of the second amendment the Constitution 1945. Article 28 G states that everyone is entitled to the protection of property under his control, while Article 28 H paragraph (4) of the Constitution 1945 states that every person has the right to own property and that the right shall not be arbitrarily taken over, arbitrary by anyone.

In Law Number 5 Year 1960 on Basic Regulation of Agrarian Principles, land property right rights are regulated in Articles 20-27. The definition of property rights in accordance with the provisions of Article 20 paragraph (1) of Law Number 5 Year 1960 is the right of down-heritage, the strongest and most fulfilling people can have on the land in view of the provisions of Article 6 of Law Number 5 Year 1960.

Property rights are hereditary intended to mean that the property right of the land does not only last for the life of the holder of property rights on the land, but can also be continued by the heirs if the heir dies. In other words, the term of property rights is unlimited. Property rights are strongest meaning that property rights are easily retained from the interference of others. Fully owned property shows that property rights are the parent of all other land rights in the sense that the holder of property rights may grant the land rights to another party with less right to property right, such as Hak Guna Bangunan and Hak Pakai. In addition, the nature of property rights using can be seen also from the allocation that can be used for the most widespread of other rights, which can be for housing, agricultural business or for social purposes. In contrast to Building Use Rights for example, which can only be used for buildings only.[14]

14 Aslan Noor, 2006, Konsepsi Individual property right Atas Tanah Bagi Bangsa Indonesia, Mandar Maju, Bandung, hlm. 81.

As the strongest and most fulfilled right does not mean the right to property is an absolute, unlimited and irrevocable right, as referred to in eigendom rights[15], but property rights are limited by the social function as stipulated in Article 6 of the Basic Agrarian Law. Article 6 of the Basic Agrarian Law states that all rights to land have a social function, so that property rights also have a social function, meaning that the right of property right of the subject (right holder) shall not be used solely for personal gain. There should be a balance between the interests of government and society. In addition to being hereditary, strongest and most fulfilled, property rights may also be transferred and transferred to other parties.

To know the owner of the underground space, it is necessary first to know the basic understanding of the subject of law, because the owner of the right to the underground space is as the subject of law. According Soeroso, the subject of law is something that according to the law is entitled/authorized to perform legal acts or who has the right and ability to act in law. In short, the subject of law is anything that by law has rights and obligations.[16]

In principle everyone is the subject of law (natuurljik persoon). Associated with the ability to uphold rights and obligations, people will become legal subjects if such individuals are able to support their rights and obligations. In this sense, immature persons, persons under custody and persons deprived of their civil rights, can not be classified as legal subjects in the context of the ability to uphold rights and duties. From this description it is known that all persons can become the subject of land law (landowners) to the extent of being able to fulfill their rights and obligations and not being deprived of their civil rights.

Article 21 of the Basic Agrarian Law provides for the subject of law which may have property rights in its provisions as follows.

15 Ibid.
16 R. Soeroso, 2006, Pengantar Ilmu Hukum, Sinar Grafika, Jakarta, hlm. 228.

a. Only Indonesian citizens can have Individual Property Right.
b. By the Government shall be established legal entities which may have the right and the conditions thereof.
c. Foreigners who are subsequent to the coming into force of this Law acquire the Property because inherited inheritance or mixing of property due to marriage, as well as Indonesian citizens who have the Property right after the coming into effect of this Law to lose their nationality shall be obliged to relinquish that right in the time of 1 (one) year since the acquisition of such right or loss of citizenship. If after such a period of time the Individual property right is not released, then the right shall be abolished because the law and the land falls to the State, provided that the rights of the other party to which it is burdened continue.
d. As long as a person in addition to Indonesian citizenship also obtains foreign citizenship he can not own the land with the right of miik and for him to apply the provisions in paragraph (3) of this Article.

Based on the provisions of Article 21 of the Basic Agrarian Law above, it can be seen that only Indonesian citizens can have Hak Milik. Property rights can not be owned by foreign nationals or dual citizens (Indonesian citizens as well as foreign citizens). For a foreign citizen or dual citizen who obtains property due to inheritance or mingling of property due to marriage, shall be obligated to relinquish that right no later than one year after obtaining property rights. If the period ends and the property rights are not released, the property rights will be abolished because the law and the land fall to the state with due regard to the rights of others who burden the land. Foreigners can only own land with limited limited Use Rights. However, Article 21 Paragraph (2) of the Basic Agrarian Law is granted an exemption, namely that the Government may establish legal entities which may own property. The exclusion of legal subjects who may own the land of proprietary rights may be found in Government Regulation No. 38 of 1963 concerning the Appointment of Legal Entities that Owns Property right of Land.

Based on Article 1 of Government Regulation Number 38 Year 1963, legal entities that may own land of property rights, namely:

a. Banks established by the State (hereinafter referred to as the State Bank);
b. Agricultural Cooperative Societies established pursuant to Law Number 79 of 1958 (Statute Book of 1958 No. 139);
c. Religious bodies, appointed by the Minister of Defense/Agrarian Affairs, upon hearing the Minister of Religious Affairs;
d. Social bodies, designated by the Minister of Agriculture/Agrarian Affairs, upon hearing the Minister of Social Welfare.

Speaking of the scope of underground space property rights means talking about the characteristic of the underground space property, the way it is acquired, and how the property rights loss. As with any surface soil, the underground space property is the right of the strongest and most fulfilled land and can be passed down through generations without any expiration. The proof of property right in the form of a Underground Title Certificate is a type of certificate whose owner has full property right of a plot of land in a certain area specified in the certificate.[17]

The property right status of the Certificate of The underground space property is also not limited by the time constraint as in the Right to Build. With a certificate of property right, the owner may use it as a strong proof of land property right. In the event of a matter of property right, the name contained in the Property Certificate shall be the legal owner of the Property. A Certificate of Property can also be a powerful tool for

17 Mengenai nama hak yang diberikan atas ruang bawah tanah ini, Maria S.W. Sumardjono mengusulkan untuk membedakan (sekedar nama) antara hak-hak yang diperoleh di ruang bawah tanah dan di permukaan bumi, maka penyebutannya dapat ditambah dengan, misalnya, Hak Milik Bawah Tanah (HMBT), Hak Guna Bangunan Bawah Tanah (HGBBT), dan sebagainya. Lihat Sumardjono, Maria S.W., 1991, "Redefinisi Hak Atas Tanah: Aspek Yuridis dan Politis Pemberian Hak di Bawah Tanah dan di Ruang Udara," Makalah yang disampaikan dalam Seminar Hak Atas Tanah dalam Konteks Masa Kini dan yang Akan Datang, diselenggarakan atas kerja sama Fakultas Hukum UGM-BPN, Yogyakarta, 15 Oktober 1991, hlm. 7.

sale and purchase transactions and credit guarantees. In addition, these property rights may also be attached to lower secondary rights such as Building Rights, Cultivation Rights, Use Rights, Rental Rights and Reef Rights (with the exception of tenure), which is similar to state authority (as ruler) to grant land rights to its citizens.

The characteristics of underground space property rights are:

a. Property rights may be transferred and transferred to another party.
b. Only Indonesian citizens can own property.
c. The Government shall be subject to legal entities which may own property and conditions (State banks, associations of agricultural cooperatives, religious bodies and social bodies).
d. Occurrence of property rights due to customary law and Government Determination, and due to the provisions of law.
e. Any transition, removal and imposition of title with other rights shall be registered with the local Land Office. The registration is a strong proof.[18]

The occurrence of property rights to the underground space can be through various events as regulated in Article 22 of the Basic Agrarian Law stating that:

1) Occurrence of property rights under customary law shall be regulated by a Government Regulation;
2) In addition to the manner referred to in paragraph (1) of this Article, property rights occur because:
   a) Determination of the government, in the manner and conditions stipulated by a Government Regulation;
   b) Terms of Law.

According to Edy Ruchyat, in general property rights to land may occur due to the following:

18 Adrian Sutedi, 2010, Peralihan Hak Atas Tanah dan Pendaftarannya, Sinar Grafika, Jakarta, hlm. 60.

1. According to Customary Law
   According to Article 22 of the Basic Agrarian Law, property rights under customary law shall be governed by government regulations in order to prevent harm to public and state interests. The occurrence of land rights under customary law usually originates from forest clearing which is part of customary land of a customary law community.
2. Government Determination
   Property right rights arising from the determination of the government are granted by the competent authorities in the manner and conditions stipulated by government regulations. The land granted with the right of property right may also be given as a change than the applicant has, for example the right to use the building, the right to use, or the right to use, this right is the grant of a new right.
3. Provision of Right to the State
   Such property rights are granted on the application concerned. The application for obtaining the right of property right is filed in writing to the authorized official with the intermediary of the Regent of the Mayor of the Region to the head of the Regional Agrarian Office concerned. By the competent authority of the requested property it is granted by issuing a decree granting of property rights.
4. Provision of Right to Change Right
   Persons owning land with tenure, use rights or use rights, if the wish and fulfillment of conditions may file a request for the amendment of rights to the competent authority, in order for that right to be converted into property rights. Therefore, the applicant must first relinquish his/her right to his/her land to the state land, after which it is requested (again) with the right of property right.[19]

From the means of acquisition of property rights described above, the first means of acquisition of property right (by clearing forest), can not

19 Edy Ruchyat, 2007, Politik Pertanahan Nasional Sampai Orde Reformasi, Alumni, Bandung, hlm. 47-51.

be applied in acquisition of underground space property rights, because the requested is not surface soil but a non-forest underground space.

Property rights have uniqueness indefinitely, therefore property right rights can be inherited to abandoned families. However, the property right rights may also be erased, in Article 27 of the Basic Agrarian Law it is stated that the right to property is abolished if:

a. The land fell to the state:
    1. Due to the withdrawal of rights under Article 18
       Under the provisions of Article 18 of the Basic Agrarian Law that in the public interest including the interests of the state and the state and the common interest of the people, land rights may be repealed, by compensating suitably and in a manner regulated by law.
    2. Because of the voluntary submission by the owner
       The deletion of property right of land due to the voluntary surrender by its owner relates to Presidential Decree No. 55/1993 on Land Procurement for the Implementation of Development for the Public Interest, which is further implemented in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 1 of 1994 on Provisions Implementation of Presidential Decree No. 55/1993 on Land Procurement for the Implementation of Development for the Public Interest. This voluntary submission according to Presidential Decree Number 55/1993 is purposely made for the interest of the state, which in this case is implemented by the government.
    3. Because it is abandoned
       The regulation on abandoned land is regulated in Government Regulation No. 36/1998 on the Control and Utilization of Abandoned Land. Article 3 and 4 of Government Regulation Number 36 Year 1998 regulates the criteria of abandoned land, namely:

(i) land that is not utilized and/or maintained properly.
(ii) land not used in accordance with the circumstances, nature or purpose of the grant of such right.

4. Because the provisions of Article 21 paragraph (3) and Article 26 paragraph (2), Article 21 paragraph (3) of the Basic Agrarian Law stipulates that foreigners who acquire property rights due to inheritance or mixing of marital property, as well as Indonesian citizens who have property rights and after the entry into force of this Basic Agrarian Law lost their nationality, shall be obliged waive that right within 1 (one) year of the acquisition of such right or loss of citizenship. If after such period of time the property rights have not been released, then the right shall be void because the law and the land fall to the state, provided that the rights of the other party to which it is burdened continue.

Article 26 Paragraph (2) of the Basic Agrarian Law states that any sale, exchange, grant, giving with a will and other deeds intended to directly or indirectly transfer property right to a foreigner, to a citizen in addition to the Indonesian citizenship having foreign nationality or to a legal entity, except as determined by the Government, that legal entities which may own the property and its terms, are void because the law and land fall to the State, provided that the parties' rights others whose burdens remain and all payments received by the owner can not be claimed again.

b. The land was destroyed
The purpose of the land is destroyed is the land that has changed from its original form due to natural events and can not be identified again so that can not be functioned, used and utilized properly. Due to such circumstances, the right of property may be erased.

As granting, transfer and imposition of the Property that must be

registered in a land book, the abolition of land property right rights is also required to be registered. This is regulated in Government Regulation No. 24/1997 on Land Registration. In the underground space, all manner of removal of property rights to land mentioned above, also apply.

Discussion of legal acts which may be carried out on underground space property refers to linking the subject (owner of rights) to the object (what is claimed as a right), in this case relating to the activity of the underground space control of the underground space from one party to another other parties.There are several legal acts that can be done in the context of the transfer of rights to the underground space, among others: Sale and Purchase, exchange, agreement of transfer of rights, release of rights, transfer of rights, auctions, grants or other means agreed with parties other than the government implementation of development including development for the public interest. Any transfer of title to land, carried out in the form of sale and purchase, exchange or grant must be made in the presence of the Land Deed Authority.

The sale, purchase or exchange of this grant in the conception of customary law is a legal act of a light and cash nature. It is expressly meant that such legal act must be made in the presence of an authorized official witnessing the exercise or making of that legal act. While with cash means that with the completion of legal acts before the Land Deed Authority means also the completion of legal action conducted with all the legal consequences. This means that such legal conduct can not be undone, unless there is a substantial defect in the property right of the transferred land, or defects in the capacity and authority to act on the plot of land.

Land Deed Authority has an obligation for the transfer of property right of land, can be properly implemented. Land Deed Authority

that will make the transfer of land rights have the duty to ensure the truth about the land property right rights, ensure the ability and authority to act from the parties who will transfer and receive the transfer of land rights. With respect to the object of title to the transferred land, the Land Deed Authority shall examine the validity of the documents:

1. Regarding the registered plot of land or property rights of the apartment unit, the original certificate of the rights concerned. In case the certificate is not submitted or the certificate submitted is not appropriate with lists in the Land Office; or
2. Regarding the land not yet registered:
    a. A certificate of validity to prove the old landrights which have not been converted or certified by the Village Head claiming that the person in question controls the plot of land in good faith, and there has never been any problems arising in relation to his land tenure; and
    b. A certificate stating that the parcel of land concerned has not been certified from the Land Office, or for land located in an area far from the Land Office office, from the right holder concerned by the Head of Village; and in the event that the letter can not be submitted, the PPAT shall refuse to make the deed of transfer of such landrights including the right of property right of the land to be transferred.

Article 25 of the Basic Agrarian Law states that "Property rights can be used as collateral for debt with burden of mortgage". The mortgage under Article 1 Sub-Article 1 of Law Number 4 Year 1996 concerning Mortality Rights is defined as:

> The mortgage rights over land and other land-related items, hereinafter referred to as Mortgage Rights, are guaranteed rights imposed on the right to land as referred to in Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations, the

following or not other objects which constitute a unity with the land, for the repayment of certain debts, which gives priority to certain creditor to other creditor".

The imposition of a Depositary is preceded by a pledge to grant a Deposit Insurance as a security of a particular debt settlement, set forth in the agreement and an integral part of the agreement of the related debts or other agreements resulting in such debt. The underground space as well as the surface soil, may be burdened by the mortgage.

As noted above, the legal act of the underground space property is essentially the same as the legal act of surface soil, among other things, trading, exchange, transfer agreement, other way. The obstacles to the implementation of legal action for the underground space lies in the absence of definitive rules on the underground space (a vacuum law inevitably occurring) so that the property rights of the underground space are still unregistered. Though this registration is very important for the strength and certainty of the law of property rights of the underground space. This legal strength and certainty is created by the issuance of the certificate of property right of the underground space. Without proof of property right of this right, there can be no special legal action against the underground space. So far and until now, what has happened is: If there is a legal action on the surface soil will result in the underground space is also considered as being transacted in the event. So now, there can not be a separate legal act between the underground space and the surface soil because there is no evidence of separate property right between the two.

The Local Government, also experiencing obstacles in carrying out the development in the underground space due to the existence of this underground space law kevakuam. For example, the Government of DKI Jakarta, which has planned to build subway tracks, has constrained

the absence of legal rules that accommodate this development. Whereas the cost of such development takes a long time and high investment, and involves many parties (there are investors from China, Japan, and from within the country ie the Government of DKI Jakarta itself). In such circumstances, a legal certainty is required for the parties to undertake the construction. Therefore, to overcome the legal vacuum, the Government of DKI Jakarta issued the Regulation of the Governor of DKI Jakarta No. 167 of 2012 on the Underground (Provincial News of the Special Capital Province of Jakarta No. 162 of 2012).

The regulation does not have a strong legal basis on it, because the rules of the underground space do not yet exist. A statutory ordinance should not be contrary to the above legislation, for example by Law, Government Regulation, or Presidential Decree. If the Regional Regulation is contrary to the above legislation, then academically the said Regional Regulation shall be declared null and void. This is what threatens the legal certainty of the construction of the subway network in DKI Jakarta and development in other underground spaces.

In addition to causing unenforceable legal action over the underground space and vagueness of the foundations of the construction of underground spaces, the legal underground space of the underground space also caused people to experience barriers to using the underground space. This is as happened in Makassar. The people of Makassar City have football field in the center of Makassar City. Personally, no one owns the land, so it can be said that the land is an ulayat land that belongs to the general people of Makassar. However, the Makassar City Government has granted the Right to Build to PT Tosan Permai Lestari, the capital owner who then utilized the underground space to build an underground mall under Karebosi Field.

Since the granting of Right to Build Serah to PT Tosan, the Karebosi Field was originally open to the public and became one of the green

open spaces that became the means of sports, footwear and public recreation facilities, at the request of PT Tosan Permai Lestari, limited by its utilization by Makassar City Government. This is done by the Government of Makassar City by issuing the Mayor of Makassar Regulation No. 23 of 2007 on the Division of Space Allotment and Prohibition of Use in Karebosi Field Surface Area of Makassar City.

The loss of people's right to use Karebosi Field, has made the public citizen lawsuit to the Makassar City Government. In the citizen lawsuit, the public demanded the return of their right to utilize the Karebosi Field just as before the underground underground mall underneath. However, the Makassar District Court won the Makassar City Government in the case of the citizen lawsuit by reason of the right to manage and grant the right to PT Tosan Permai to the underground space is the exercise of the authority of regional autonomy and according to Article 2 paragraph (2) of the Basic Agrarian Law determines that "The right of control of the country referred to in paragraph (1) of this article authorizes:

a. organize and organize the use, stockpiling and maintenance of the earth, water and space;
b. determine and regulate the legal relations between people and the earth, water and space;
c. determine and regulate the legal relationships between persons and legal acts concerning the earth, water and space."

The Makassar District Court's verdict in favor of the owners of capital and to the detriment of the general public is a bad precedent in the legal arrangement of the underground space. All of this can happen because of the vacuum legal vacuum. This vacuum makes the Local Government make its own laws, regardless of the interests of the community. This led to legal turmoil. As van Vollenhoven has pointed out in 1919:

> State equipments without the rules of Constitutional Law will be paralyzed, because their authority (authority) is absent or uncertain. State equipment without the Law of State

> Administration is free at all, because the tools will exercise its power at will.[20]

From the cases described above, it is known that in the life of society required a legal system to create a harmonious and orderly society life. In fact the law or legislation that is made does not cover all cases that arise in society, making it difficult for law enforcement to complete the case. The principle of legality that should provide legal certainty and protection to the community, even a principle that harms the sense of community justice. This can happen because the society continues to grow along with technological advancement, but such rapid changes have not been regulated in a legislation.

The absence of statutory rules on underground spaces that establish the "limitations" of power constraints, led to the executive officials, in this case the Mayor of Makassar and the Governor of DKI Jakarta, as if "finding and determining its own law" in regulating the space under soil. This resulted in arbitrariness. According to S. Prajudi Atmosudirdjo such matters make urgent a legislation which regulates the operation and control of administrative or administrative powers over administrative powers. This law will be the guide or the way in carrying out the law.[21]

From the description above, it is clear that the vacuum law vacuum becomes a serious obstacle in the implementation of legal action against the underground space property, becoming obstacles to the implementation of development, and on the contrary, instead creating arbitrariness by the rulers and owners of capital over the small people.

Speaking of the justification of the relationship of property right of the underground space and the land, it means talking about the justification

20 R.D.H. Koesoemahatmadja, 1975, Pengantar Hukum Tala Usaha Negara Indonesia (Terjemahan dan Saduran dari Buku W.P. Prins, "Inleiding in het adminislratiefrecht van Indonesie"), Alumni, Bandung, hlm. 10.

21 S. Prajudi Atmosudirdjo, 1988, Hukum Adminislrasi Negara, Cetakan ke-9, Seri Pustaka Ilmu Administrasi, Ghalia Indonesia, Jakarta, hlm. 43.

of why the underground space must also belong to the owner of the land on its surface, or otherwise not automatically belong to the landowner on its surface.

Discussion of this justification can be seen from five different established theories in order to justify private property.

> The first theory is occupation theory. This theory suggests that the simple facts about occupation and possession of something justify the legal protection of the occupiers or the party claiming possession of the thing.
>
> The second theory labor theory. According to this theory a person possessing/possessing property possesses a moral right to property right and controls what he produces or earns through his labor (sacrifice).[22]
>
> The third theory is contract theory. According to this theory private property is the result of contracts between individuals and communities.
>
> The fourth theory is natural rights theory, which states that natural law dictates the recognition of private property property right.
>
> The fifth theory is social utility theory which states that the law must promote the maximum fulfillment of human needs and aspirations, and the private property property right umbrella is one of promotion for the fulfillment of those needs.[23]
>
> Of the five theories above, which will be used to discuss the justification of the relationship of property right of the underground

22 Olin L. Browder, Jr., Roger A. Cunningham, dan Allan F. Smith, op. cit.., hlm. 3.
23 *Ibid*.

space and the soil is the fifth theory, the social utility theory which states that the law must promote the maximum fulfillment of human needs and aspirations, and the legal umbrella private property property right is one of the promotions to meet those needs. This theory is used because basically according to the author, the owner of the underground space is private, sourced from the state (Rights of State), which then given property right to the individuals. Exceptions to this are for lands that are public or state-owned land (land that does not have a clear property right status), then the management is carried out directly by the state. These lands are, for example, ulayat lands, land of government offices, no man's land, land along paved roads, and lands with other public property.

Based on theory of social utility which states private property property right is one of the promotions for the fulfillment of human needs, then according to the authors, the owner of the surface surface automatically becomes the owner of the underground space within the same horizontal boundary (length and width), with the depth limit to be determined later by legislation regarding the underground space.

This opinion is proposed by the author, for the sake of simplicity of property right arrangements on surface soil and underground space. Furthermore, there is provided different evidence of property right between the two lands. The existence of this separate proof of property right, will make the landowner able to perform a separate legal act between the surface soil and the underground space.

Speaking of the use of underground spaces, the decisive thing is the entrance to the underground space. There are two different conditions in this regard. The first condition, the landowners who are on the surface and underground are the same. The second condition is that landowners on the surface and underground are different.

For the same landowner between the surface and the underground, the owner of the underground space and the ground is also the same, belonging to the same person. Since the owner is the same, the entrance to the underground space is not a problem at all. For buildings with the same landowners between the surface and the underground, it usually has the characteristics of the buildings fused between the upper and lower buildings. Buildings like this underground are commonly called underground spaces. Underground spaces can be used for personal use, for example for garages, car parks, warehouses, rooms, kitchens, or for other purposes. In addition, the underground space can also be used for common purposes, for example in buildings for malls that are used by some parties with a lease system to the owner of the building.

For landowners who are not equal between the surface and the underground, then the entrance to the underground space, must use the surface soil part. To that end, the owner of the underground space must buy part of the surface soil that will be the entrance to his underground space. In this case, the authors suggest buying the land, because if only the lease system, then one day the land surface owners can not rent the land again so it will complicate the owner of the underground space.

The arrangement of the matters as stated above should be clearly regulated in the rules concerning the underground spaces to be created. This is very important in order to avoid conflicts between land surface owners and underground spaces. Where necessary, special arrangements concerning land surface acquisition issues will be used as entrance to the underground space, in order to create order and legal certainty.

D. Conclusion

The owners of the underground space. Under the provisions of Article 21 of the Basic Agrarian Law, it can be concluded that those who may be the owners of underground spaces are only Indonesian citizens and may not be owned by foreign citizens or dual citizens. In addition, those who

may have underground underground spaces are: 1) Banks established by the State (hereinafter referred to as the State Bank); 2) Agricultural Cooperative Societies established pursuant to Law Number 79 of 1958 (Statute Book of 1958 No. 139); 3) Religious bodies, appointed by the Minister of Defense/Agrarian Affairs, upon hearing the Minister of Religious Affairs; 4) Social bodies, designated by the Minister of Agriculture/Agrarian Affairs, upon hearing the Minister of Social Welfare.

The scope of property rights of the underground space. The characteristics of underground space property rights are: 1) Property rights may be transferred and transferred to another party; 2) Only Indonesian citizens can own property; 3) The Government shall be subject to legal entities which may own property and conditions (State banks, associations of agricultural cooperatives, religious bodies and social bodies); 4) Occurrence of property rights due to customary law and Government Stipulation, and due to the provisions of law; and 5) Any transition, removal and imposition of title with other rights shall be registered with the local Land Office. The registration is a strong proof. The method of obtaining the underground space is through: 1) Government Determination; 2) Provision of Right to the State; 3) Provision of Right to Change Right. The way of underground space property rights loss is generally caused because the land fell to the state and the land was destroyed. Deletion of property right rights due to land falling to the state due to: 1) Revocation of rights under Article 18; 2) Voluntary submission by the owner; The land is abandoned; 3) Violation of the provisions of Article 21 paragraph (3) and Article 26 paragraph (2) concerning land property right by foreign citizens and the transfer of land rights to foreign citizens.

Legal acts which may be exercised in the context of the transfer of rights to the underground space, among others: Sale and Purchase, exchange, agreement of transfer of rights, disposal of rights, transfer of

rights, auctions, grants or other means agreed with parties other than the government for the implementation of development including development for the public interest.

The obstacles to the implementation of legal action for the underground space lies in the absence of definitive rules on the underground space (a vacuum law inevitably occurring) so that the property rights of the underground space are still unregistered. Though this registration is very important for the strength and certainty of the law of property rights of the underground space.

Justification of property right relationship between underground and land is based on social utility theory which states that the law must promote the maximum fulfillment of human needs and aspirations, and private property property right is one of promotion for the fulfillment of those needs. Based on this theory it is concluded that the owner of the underground space is private, sourced from the state (Rights of State), which is then given its property right to the individuals. Exceptions to this are for lands that are public or state-owned land (land that does not have a clear property right status), then the management is carried out directly by the state.

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Chapter 8

POLITIC OF ECONOMY LAW IN INDONESIA: LAND CERTIFICATION PROGRAM IN THE FRAMEWORK OF LEGAL CERTAINTY ON LAND TITLE AND ITS IMPACT ON COMMUNITY ECONOMIC EMPOWERMENT

A. Opening

Nowadays, the need of land is increasing simultaneously with the increase in total population and other needs relating to land. Land is not only functioned as a place to live and farm, but it is functioned as a guarantee to obtain bank loans and for the purposes of sale & purchase and lease. Because the function of the land is important for individual and legal entity, so it requires guarantee of legal certainty over the land.[1]

Land is an important and strategic resource because it concerns in livelihood of Indonesian people that is very basic. Besides, land has multi-dimension, multi-sectoral, and multi-discipline characteristics and it also has high complexity. As it is known, land is a matter that is full of various interests, whether economic, social, political, even for Indonesia, the land also has a religious value that cannot be measured

1 Florianus S.P Sangsun, 2008, Procedure for Land Certification, Visimedia, Jakarta, p. 1

economically. The constant nature of the land and the increasing number of people who need the land increases the value of the land.[2]

Existence of land in human life has a meaning and dual function, namely social assets and capital assets. As a social asset, land is a means to bind social unity among the people to live and life, while as a capital asset, land is a capital factor in development and it has grown as a very important economic object as well as commercial materials and speculation objects.[3]

The agrarian law should provide the possibility that the function of the earth, water and space can be achieved and it must be in accordance with the interests of the people and the nation. In addition, it also should meet the people and nation's needs according to the demand of the times in all agrarian matters. Furthermore, the national agrarian law must embody the incarnation of spiritual principle of the country and the ideals of the nation, namely the Belief in one God, Humanity, Nationality, Democracy and Social Justice and in particular must be the implementation of provisions of Article 33 paragraph (3) of the Constitution 1945 of the Republic of Indonesia stipulating that "The land, the waters and the natural resources therein are basic assets for the people's prosperity and should, therefore, be controlled by the state and exploited to the greatest benefit of the people".[4]

Land registration aiming to provide guarantee of legal certainty is known as rechts cadaster/legal cadaster. Guarantees of legal certainty that will be realized in this land registration, including the certainty of the title status on the list, the certainty of the titles subject, and the certainty of the title object. This land registration issues a certificate as a proof of its title. The opposite of land registration that is rechts cadastre, is the cadastral fiscaal that is land registration aiming to determine who

2 *Ibid*
3 Achmad Rubaie, 2007, Land Provision Law for Public Interest, Bayumedia, Malang, p. 1
4 *Ibid*.

is obliged to pay tax over the land. The land registration issues a receipt of tax payment on land, that now it is known as Notification of tax due of Land and Building (SPPT PBB).[5]

The provisions regarding Land Registration shall be further stipulated in Government Regulation No. 24 of 1997 on Land Registration hereinafter referred to in Government Regulation Number 24 of 1997, which came into force on 8 October 1997 in lieu of Government Regulation Number 10 of 1961 on Land Registration, which since 1961 have regulated the execution of Land Registration as ordered by Article 19 of Law Number 5 of 1960 on the Basic Agrarian Law, which stipulates that:[6]

1. In order to guarantee legal certainty by the Government, land registration shall be applied across the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation.
2. The registration referred to in paragraph (1) of this Article includes:
   a. Measurement, mapping and accounting of land;
   b. Land registration rights and transfers of those rights;
   c. Issuance of proof of title letter that is valid as a powerful evidentiary instrument.
3. Land registration shall be carried out by taking into account the condition of country and society, the need for economic social traffic and the possibility of its operation, in consideration of the Minister of Agrarian Affairs.
4. Government Regulation stipulates the costs relating to the registration referred to in paragraph (1) above, provided that underprivileged society shall be exempted from payment of such costs.

The provisions of implementation shall be further stipulated in Regulation of the Minister of Agrarian Affairs/Head of National Land

5 Urip Santoso, 2012, Agrarian Law of Comprehensive Study, Kencana, Jakarta, p. 278
6 Article19 of Agrarian Basic Law

Agency Number 3 of 1997 on the Provisions of Implementation of Government Regulation Number 24 of 1997 on Land Registration.

The Government undertakes land registration activities by referring to an institutionalized system as performed in the registration activities during this time, starting from the application of an individual or entity and then it continues with the data processing until the issuance of proof of their title (certificate) and eventually the registration data is recorded in the land book.[7]

The authority of the Government to regulate land affairs in land use is based on the provisions of Article 2 paragraph (2) of Basic Agrarian Law on the authority to regulate and organize allotments, uses, inventories and maintenance, and to determine and regulate legal binding between individual and the earth, and the individual and legal acts regarding the earth, water and space.[8]

The purpose of the land registration is stated in the Basic Agrarian Law Article 19 paragraph (1) stating that "to guarantee the legal certainty, Government shall apply Land Registration across the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation." In Article 19 paragraph (1) of Basic Agrarian Law, it is intended that the Government has an obligation to make sure that its people carry out land registration, therefore legal entity can be achieved and land dispute can be minimized.[9]

The emergence of deregulation in July 1992 which was later established in deregulation in October 1992 aiming to attract more investment in Indonesia is the government's proper step in operating the economy to the district/city level. The main point of the deregulation policy in

7 Yamin Lubis and Rahim Lubis, 2010, Land Registration Law, CV. Mandar Maju, Bandung, p. 104
8 *Ibid*.
9 *Ibid*.

October 1992 was basically the simplification of the procedures for granting Right of Cultivation (HGU) and Building Rights on Land and the presence of different settlement time limit by the society and potential investors.[10]

The society further considers in relation to investment, the government had issued Presidential Regulation no. 36 of 2005 on the Provision of Land for the Implementation of Development for Public Interest and it had been revised by Presidential Regulation no. 65 of 2006. However, this presidential regulation provided strong compensation guarantee for society whose land was taken over for development activities, while the investors consider it as unattractive because the status of the land and the period of land use are unclear.[11]

The commencement of the policy in the field of land cannot be separated from the enforcement of Law No. 5 of 1960 containing the Basic Agrarian Law which is the main basis regarding regulation of land law in Indonesia. There is involvement with the National Land Agency of the Republic of Indonesia, in which Law No. 25 of 2007 regulates ease to obtain access to land title for investment purposes. It is stated in Article 21 that the government provides ease of service and/or licensing to investment companies to obtain land title. It is further stipulated in Article 22 that the acquisition of land title is by regulating the types of land title, period and extension of land title.[12]

Philosophically, land registration or certification is essential, with assumption after the land has been officially and legitimately registered, the owner may use it as living capital, for example for bank credit collateral. Land title and ownership stated in the Titles are the products of

10 Amir A., "Analysis of Impact of Land Certificate Program on Access to Banking Credit and Income Increase of Farmers in Bekasi Regency", Post Graduate Thesis, Master in Management and Business Studies, Post Graduate School, Bogor Agricultural University, 2008.
11 *Ibid*.
12 *Ibid*.

land registration activities that are the granting of ownership guarantee of land or property title. This activity is carried out by the government as a means of legal protection for holders of land title as stipulated in the Basic Agrarian Law Number 5 of 1960 or it is also called as the activity of determining the legality aspect of land ownership.[13]

Government policy in the regulation on land in investment in Indonesia is increasingly important to increase investor interest in Indonesia and the development of the capital market itself. Given that land is very important in investment, then government policy should be oriented for ease of investment. The amendment was marked by the enactment of the Investment Law No. 25 of 2007 on Investment that is pro investor, by granting licensing permits, the proportion of capital ownership of above 75 percent, as well as land use permit for more than 25 years. It was made by the government in order to increase investment to change economic potential into a real strength, either using capital that derives from within the country or abroad[14]. The Investment Law seeks to accommodate existing regulations, such as Law no. 1 of 1967 in conjunction with Law no. 11 of 1970 on Foreign Investment, and Law no. 6 of 1968 in conjunction with Law no. 12 Year 1970 on Domestic Investment. The Rules of the Investment Law are applicable for the investors throughout Indonesia, provided that it is only limited to direct investment, the investment policy aims to create a conducive, promotive, equitable investment and provide legal investment and efficiency while maintaining national interest.[15]

Land is an important and strategic resource because it concerns in livelihood of Indonesian people that is very basic. Besides, land has multi-dimension, multi-sectoral, and multi-discipline characteristics and it also has high complexity. As it is known, land is a matter that

13 *Ibid.*
14 Usman, Marzuki, et.al., 1990, Indonesian Capital Market ABC, Institut Bankir Indonesia, Jakarta, p. 67.
15 *Ibid.*

is full of various interests, whether economic, social, political, even for Indonesia, the land also has a religious value that cannot be measured economically. The constant nature of the land and the increasing number of people who need the land increases the value of the land.

In juridical terms, the basic policy of land in Indonesia is contained in Law No. 5 of 1960 on Basic Agrarian Law (BAL). Land management is carried out through arrangement mechanism of land use, arrangement of land possession, application of land title, and land registration. Types of land title is stipulated in Basic Agrarian Law: land title, Right to Cultivation, Building and Land title, Right of Use, Right to Rent, and Right to Clear Land and to Harvest Forest Product, and other Temporary Rights, Right to Use Water, Fish Breeding and Farming, Right to Use Space.[16]

Based on the author's research results on the land certification in Indonesia, the data obtained showed the number of land that has been certified nationally only reached 54.46%.[17] This indicates that there are still many lands, either in the form of yard land or agricultural land that has not been certified and not yet registered in land management system of National Land Agency (BPN).

Sociologically, land certification programs can basically support the development of investments in each region, but there are legislation that may inhibit the development of investments, especially those related to licensing and land certification issues for plantation investment and the granting of Certificate of Freehold Title, Building and Land title and Right of Cultivation.[18]

Subject to Article 7 of the Regulation of the Head of the National

16 Government Institution's Performance Accountability Report of the National Land Agency of the Republic of Indonesia 2013
17 *Ibid.*
18 *Ibid.*

Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity, it is stated that:

Head of Regional Office of National Land Agency gives decision regarding:

1. Granting of right of ownership to individual over an agricultural land of more than 50,000 m² (fifty thousand square meters) and no more than the maximum limit of individual agricultural land ownership.
2. Granting of right of ownership to individual over a non- agricultural land of more than 3,000 m² (three thousand square meters) and not more than 10,000 m² (ten thousand square meters).
3. Granting of right of ownership to a religious and social legal entity established pursuant to Government Regulation Number 38 of 1963 on the Appointment of Legal Entities which may have Land Ownership Title over non-agricultural land of more than 50,000 m² (fifty thousand square meters) And not more than 150,000 m² (one hundred and fifty thousand square meters)[19].

Subject to Article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority of Land Title and Land Registration Activity, it is stated that: Head of Regional Office of National Land Agency gives a decision regarding the granting of Right of Cultivation to a land which area is not more than 2,000,000 m² (two million square meters).[20]

This means, for the land which area is more than 200 ha, its authority to grant land title and land registration activities, especially the Right of

19 Article 7 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity.
20 Article 8 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority of Land Title and Land Registration Activity.

Cultivation is in the hands of the National Land Agency. This provision is clearly a regulation that can inhibit the development of investment, especially in the field of plantation because the need of land in the field of plantation is usually more than 200 ha.

Whereas subject to the provisions of Article 9 of Regulation of the Head of National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity, it is stated that:

Head of regional office of national land agency gives decision regarding
a. Granting Building Rights on land for individual over the land which area is more than 3,000 m^2 (three thousand square meters) and not more than 10,000 M^2 (ten thousand square meter);
b. Granting Building Rights on Land for legal entity over the land which area is more than 20,000 m^2 (twent thousand square meter) and not more than 150,000 m^2 (one hundred and fifty thousand aquare meter).[21]

This research will focus on land certification programs in the context of legal certainty on land title and their impact on the society economic empowerment. The number of land in Indonesia that has not been certified causes the investors to be reluctant to invest in Indonesia. As for the economic level, Indonesian society, people whose land already has an economic certificate can be said to be better than people whose land has not been certified. People whose land has been certified may use their land certificate as collateral to the bank to obtain additional business capital, so that its business will be more developed.

B. Outline on Land and the Basic Land Law

It is the same as we talk about the notion of "law", the term of Agrarian

21 Article 9 of Regulation of the Head of National Land Agency of the Republic of Indonesia Number 2 of 2013 on the Delegation of Authority of Land Title and Land Registration Activity.

Law also has several meanings. In the governmental environment, the term Agrarian Law covers a definition in a narrow scope, which is as part of the State Administration Law providing the legal basis for the authorities in carrying out its land politics, that is, the authorities to carry out acts that are deemed necessary in the field of land administration management. According to Boedi Harsono, "such authorities are included in the environment of the Administrative Land Law".[22]

Basic Agrarian Law in contrast uses the meaning of Agrarian Law in the broadest sense; because agrarian definition includes: earth, water and wealth contained in therein. The definition also covers the space, which its application is limited to "energy and elements in space to maintain and develop the fertility of earth, water and natural resources contained therein and other things that relevant with it". Agrarian Law in the broad definition is a group of various fields of law, namely land law, water law, mining law, fisheries law and possibly also space law and forestry law.

The name of Agrarian Law in Higher Education of Law is generally used in the sense of Land Law or The Law of Real Property, which is the branch of Indonesian Legal Law which regulates the rights of land ownership. Law No. 5 of 1960 on our national Basic Agrarian Law, since its enactment on 24 September 1960 to the present day, there is still lack of understanding on the background and conception underlying the Basic Agrarian Law establishment due to lack of socialization. Then it also leads to the wrong perception on Basic Agrarian Law and misinterpretation on its provisions.[23]

To understand the relationship between jurisprudence and positive law that is synonymous with the rule of law, so it is necessary to review elements of law, such as riel and idiil elements. The real element consists

22 Budi Harsono, 1987, National Agrarian Law in Higher Education in Indonesia and National Development, Speech for inauguration of Professor of Agrarian Law of Trisakti, Jakarta, p. 10.
23 Ari Sukanti, 2003, Speech for Innaguration of Professor of Faculty of Law, University of Indonesia, Jakarta, September 7, 2003.

of humans, cultures and the natural environment. The idiil element includes the ethical desire and the human ratio; idiil element will produce legal principles (rechts beginzelen) for example the principle of equity and social justice.[24]

While the human ratio produces general legal concept (rechtsbegrippen) for example on the legal subject, rights and obligations, legal events, the relation between legal and legal objects. In the definition of the National Land Law, conception or the concepts underlying the National Land Law in finishing the Land Law shall be discussed.

Article 3 of the BAL affirms that Customary Communal Land Rights still exist, but Ter Haar Bzn states unequivocally that to provide protection to a legal act in a land transaction, it is necessary to cooperate with the heads of society or village chief because they will be responsible for The transaction[25], Article 3 of the BAL affirms that Customary Communal Land Rights still exist, but Ter Haar Bzn states unequivocally that to provide protection to a legal act in a land transaction, it is necessary to cooperate with the heads of society or village chief because they will be responsible for The transaction, and the transaction shall be "transparent" and "cash" or according to the Batak people in Bagasan Tribe and in "open" and "guaranteed" legal traffic, and the Village Chief is given a sum of money that is called as pago-pago by Batak people.[26]

In addition to having a deep inner value for Indonesian people, land also functions strategically in meeting the increasingly diverse needs of the state and people, both nationally and internationally. Although in general, land can be traded but in the eyes of Indonesians who have not been influenced by the conception of Western notion yet, land is not a commodity trade, as can be seen from the attitude and actions of some

24 Budi Harsono, Op. Cit., p. 4-5.
25 Article 6,7,10 and 11 of Agrarian Law.
26 Ter Haar Bzn Mr, 1950, Benginselen en Stelsel van Adat Recht 1, B Walter Groningen, Jakarta, p. 80.

entrepreneurs in conducting their economic activities. Land is not an object of investment, moreover the object of speculation. Land as a gift from the Almighty God to the nation, is one of the main sources of survival and livelihood of the nation in achieving the greatest prosperity of the people equally and equitably.[27]

Land in the legal sense means the surface of the earth, this can be understood through the provision of Article 4 of BAL[28], which is fully formulated: "On the basis of the right of control of the state as referred to in Article 2 specified the existence of various rights to the surface of the earth, called land, which may be granted to and possessed by each person or together with other persons and legal entities."

In Code of Civil Law, land referred to commonly use term as Grond or Grond Eigendom, namely "Land" or "Land Ownership". However, because Code of Civil Law is not applicable to indigenous groups, the term Grondrechten for Land Law becomes unusual for indigenous populations. Along with the enactment of Agrarian Law of the Dutch East Indies, namely Agrarische Wet 1870, which then translated into Agrarian Law, then the term Agrarian Law became commonly used today. While the term Land Law is not commonly used.[29]

As it is known, land registration aims to obtain form of legal certainty and certainty of rights for holders of land titles. With the land registration, it is expected that a person holding the land title will feel safe, there is no disruption of the rights that belong to a plot of land. The law and registration of this land is a form of a legal event that is highly owned by a person[30]. This right of equality if reviewed in depth is a form of

27 *Ibid*.
28 Decree of People's Consultative Assembly of the Republic of Indonesia No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management.
29 Budi Harsono, 2003, Toward Completion of National Land Law on Relation Decree of People's Consultative Assembly of the Republic of Indonesia IX / MPR/2001, Trisakti University, Jakarta, p.3.
30 Bachtiar Effendi, 1992, Land Registration, Alumni, Bandung, p. 46.

manifestation of substantial Human Rights owned by someone who must be upheld and respected by others.

Pitlo, stated that when registering the land titles, the personal legal relationship between a person and the land is announced to a third party or community[31]. From the land title on a third party is deemed to know that a legal relationship exists between a person and the land in question to know the legal relationship between the person and the land concerned, for which he becomes bound and shall respect the right as an obligation arising out of propriety.

Here are some land registration systems according to Parlindungan, namely: Registration of Torrens ground system Registration of Negative ground system Registration of Positive land system.[32]

The land registration system used by a country depends on the legal principle adopted by that country in transferring its rights. Meanwhile, if in terms of guarantees provided with the certificate of proof of rights as a means of proof, then emerges various types of land registration system, among others:

1) Positive System

   A positive system in the sense of land registration means that what already listed is guaranteed to be the true state of evidence. The Government, in this case the National Land Affairs Agency guarantees the land which has been registered by its owner and for the purpose of truth and validity of each legal written proof submitted for registration in pre-determined lists.

   According to Aris S. Hutagalung, that the positive land registration system can be met in the Anglo-Saxon countries, namely England

31 Herman Soesangobeng, 2001, Advanced Agricultural Law Course, Magister Program STIH "IBLAM" Jakarta.

32 AP Parlindungan, 1989, Termination of Land titles according to BAL System, Mandar Maju, Bandung, p. 130.

and its colonies. The way data is collected on this positive system is using the registration of "titles" or concrete legal relationships, namely their rights.[33]

2) Negative System

Land registration that subject to a negative system, resulting in a person whose name is listed on the land list is not an absolute owner or, in other words, the registration of a person in the register of land as the right holder has not proved absolutely that the person holds the right. The above description is in line with the views expressed by Effendi Warin which stated as follows:

> "... on the negative system, the proof-of-title certificate applies as a powerful evidentiary means, the statements contained therein shall have the force of law and shall be accepted by the (Judge), as true information, as long as there is no other means of proof which prove otherwise. In this case, the court will decide on the correct proof means34 According to Arie S. Hutagalung. that a negative land registration system is applicable in European countries continental such as the Netherlands and Indonesia before BAL, which is based on Oversichrijvings-ordonantie S.18-27[34]. The way of collecting data on this system is the registration of "deds" Or legal action.[35]

3) Grundbuch System

This system is a land registration system, where a right to land prior to registration is firstly examined by the government, whether the person registering the land is indeed the true owner. Thus the Grundbuch system is similar to a negative system.[36]

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33 Aris S. Hutagalung, 1994, Principles of Agrarian Law, University of Indonesia Press, Jakarta, p.80

34 Effendi Warin, 1994, Agrarian Law in Indonesia: A study from the point of view of Legal Practitioner, Rajawali, Jakarta, p.98

35 Arie S Hutagalung, Op. Cit., p.80

36 *Ibid*.

4) Torrens System

As the name suggests, this system was first created by Sir Robert Torrens in South Australia. Torens system is better known by its original name The Real Property Act or Torrens Act which came into effect in South Australia since July 1, 1858. Today, land registration with Torrens system is used by several countries, such as Algeria, India, Singapore, Tunisia, Congo, Spain, Norway, Malaysia, Fiji Islands, Canada, Jamaica, Trinidad. Sistem Torrens Answering the questions above R. Suprapto, states that: "The land registration system that we use is a positive registration system with a positive tendency, meaning that land registration rights is carried out on the basis of positive data, the officer assigned to perform the registration is an officer who has the authority to test the validity of the data used as the basis of registration of rights. Registration is a guarantee of legal certainty and strong evidence, but it can still be denied, sued in court.[37]

5) Systematic System

The understanding of the systematic system in land registration is a simultaneous land registration activity covering all plots of land in an area or territory of a village, whether the land is owned by a right to land or state land[38]. The land registration system used is the registration of titles, as used in the implementation of land registration according to Government Regulation No. 10 of 1961. It is apparent with the existence of a land book as a document containing juridical data and physical data collected and presented as well the issuance of a certificate as a certificate of title to the listed land.[39]

37 R. Suprapto, 1986, Basic Agrarian Law in Practice, CV. Mustati, Jakarta, p. 324.
38 Arie S. Hutagalung, Op. Cit., p. 81.
39 Irawan Soerodjo, 2003, Law Certainty on Land Title in Indonesia, Arloka, Surabaya, p. 108.

C. Community Economic Empowerment Impact by Land Certification's Juridical Construction in the Framework of Legal Certainty of Land

Land is an important and strategic resource because it involves the basic livelihood of all the people of Indonesia. In addition, the land also has characteristics that are multi-dimensional, multi-sectoral, and multi-disciplinary and have a high complexity. As it is known that the land problem is a problem that is full of various interests, whether economic, social, political, even for Indonesia, the land also has religious value that cannot be measured economically. The constant nature of the soil and the increasing number of people in need of the soil further increase the value of the land.

To prevent widespread land disputes, the government registers land titles that will generate land certificates. The existence of a certificate of land issued is a proof of ownership of a plot of land, here the holder of the land title certificate has obtained legal protection and is guaranteed by law on the land it owns, meaning that if there is a land dispute where in the presence of certificate owned by the holder of the certificate then the legal status of the holder of the certificate is strong and the judge is obliged to consider the evidence of the certificate as a valid and strong evidence in addition to considering other means of evidence.

The provisions of the force of the law of the certificate have been stated in Government Regulation Number 24 of 1997 concerning Land Registration that the certificate is a proof letter that serves as a powerful evidentiary means of physical data and juridical data contained therein. Here what is meant by physical data is data concerning the location, boundary, and area of the land concerned, then, referred to as juridical data which are data on the legal status of the land, land owners, and any rights that the land posses. Concerning the definition of physical data and juridical data has also been described in Article 1 number (6) and (7) of Government Regulation Number 24 of 1997 concerning Land Registration.

Land registration is held to ensure legal certainty for the owner of the land concerned, this is in accordance with the sound of Article 19 paragraph (1) of Law Number 5 Year 1960 on the Basic Agrarian Law Principles (hereinafter referred to as BAL) which reads:

> *"To ensure legal certainty by the Government there is a land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation."*

In addition to land registration functions to ensure legal certainty for land owners, land registration also functions for the government and interested parties. For the government, here the government can find out the legal status of the land concerned, whether the listed land posses a right of ownership, right to use, the right to use the building, or other rights. So here the government in taking a policy can take appropriate action against the land concerned. For interested parties such as entrepreneurs who want to build businesses on the land, or individuals who want to buy land, they are not worried or doubt about the land they will buy or already bought because they themselves know the legal status of the land.

Land registration system consists of the system of registration of deed and registration of rights. In the Deed Registration system, the land registry officials only register for the land concerned, here the land registry officials do not test the veracity of the data listed. In the event of a transfer of rights, the making and registration of rights shall be made by the relevant official on the same day or the term shall be made directly on the same day, when the buyer as the holder of the right shall obtain a copy of the deed as a proof of his right. Each time a rights change is made, the deed is made as evidence, and the necessary juridical data is sought in the deeds.

The disadvantage of the registration system of deeds that the discrepancy in a deed may result in the illegality of a legal act to be committed, whereby a new deed made as evidence is based on a previous deed that is false or contains legal defects, for example, data on land boundaries that are not in accordance with actual, later it is made as evidence to perform a new legal act, it can be seen here that the legal act has contained legal defects or caused the illegal acts of the law. If this happens then the parties concerned should return to the land registry officer or also called the title transfer officer to change the wrong data in the deed.

In the registration system the rights registered are his right. In this system in any creation and transfer of rights shall be evidenced by deeds and other evidences. In the provision not only limited to the deeds listed but there are new rights created that gave birth to new evidence such as land certificates. Submission of deeds and other evidence is only as data source. It is different here that in the registration of rights it is not only determined by filing evidence, but here the land registry officer conducts research and testing of the listed land by coming to the land concerned for measurement, determination of limits, and other matters deemed need. This is done for the purposes and processing of physical data it is necessary to conduct measurement and mapping activities. This is in accordance with Article 14 of Government Regulation No. 24 of 1997 concerning Land Registry (hereinafter referred to as Government Regulation No. 24 of 1997).

Article 14

1. For the purpose of collection and processing of physical data, measurement and mapping activities are carried out
2. The measurement and mapping activities as referred to in paragraph (1) shall include:
    a. Creation of the registration base map
    b. Determination of boundaries of plot of land
    c. Measurement and mapping of plot of land and making of registration maps

d. Land listing
e. Making a certificate of measurement

In general, land registration activities up to the maintenance activities of land registration data are stated in Article 12 Government Regulation No. 24 of 1997.

Article 12

1. Land registration activities for the first time include:
   a. Collection and processing of physical data
   b. Verification of rights and bookkeeping
   c. Issuance of certificate
   d. Presentation of physical data and juridical data
2. Maintenance activities of land registration data include:
   a. Transition and burden of right registration
   b. Registration of changes to other land registration data

Basically, there are two publication systems used in the implementation of land registration namely positive publication system and negative publication system. For land registration using a positive publication system, here the state as a registrant ensures that the registration has been carried out correctly and that the person registering as the holder of the land title is no longer inviolable.

According to Budi Harsono himself, with the completion of the registration on behalf of the recipient of the right, the right holder is actually lost his rights. It cannot demand the cancellation of a legal act that removes the rights to the buyer. In certain circumstances he can only demand the loss to the State. To face the compensation is provided a special fund.[40]

40 Boedi Harsono, 2005, Indonesian Agrarian Law: History of Formation of Basic Agrarian Law, Its Execution Contents, Djambatan, Jakarta, p. 81

In a negative publication system, the state as the registrant does not guarantee that the person listed as the right holder is the person who really deserves the right. Land registration does not get people to acquire land, then actually becomes a new holder of rights. The registered person is not necessarily the true rights holder, so if it turns out later there is a mistake, it can be done improvements.

The publication system used in the Basic Agrarian Law and Government Regulation 24 of 1997 is a negative publication system containing positive elements, as stated by Budi Harsono in his book entitled "Agrarian Law of Indonesia, History of the Establishment of Agrarian Law Indonesia, Contents and its Implementation." The negative publication system adopted is not a pure negative publication system because in Article 19 Paragraph.

(2) Sub-Paragraph c of the BAL states that land registration produces certificates of proof of rights, which are valid as a powerful evidentiary instrument.

From the statement of the article can be understood that the land registration produces a certificate of proof of rights that serves as a powerful evidentiary means not as an absolute proof means. Here, "powerful" is defined as what is stated in the land book and the land certificate is guaranteed as long as the data contained therein is true and cannot be proved otherwise, if later it turns out that the certificate of the land is known to contain legal defects, then the certificate of the land can be revoked and what has been listed in the certificate is considered never to exist anymore. Unlike the proving means that is absolute (embraced in positive publication system).

Absolute here means that the evidence is inviolable even if other evidence has been submitted to it, or even if it is true that the

evidence is false. Then it is said that the land registration produces certificates of proof of rights, if we examine that in the land registration with a negative publication system will not produce a certificate of proof of rights such as land certificate, but only in the form of registration of deed only. But with a certificate of right in the form of a certificate indicates that the system used contains a positive publication system.

From the description above, we can conclude that the publication system adopted by Indonesian Government is a negative publication system containing the elements of fossif, considered as embracing the negative publication system if what is listed in the certificate can still be canceled if it can be proven that the data contained in the certificate is not true. While containing a positive element means that the land registration in Indonesia produces a certificate of right in the form of certificate which in the system of pure negative publication is not issued certificate but only in the form of registration deed, and the making of new deed as evidence for new owners.

In the legal literature there are two types of legal protection facilities for holders of land titles that are preventive and repressive. According to Hadjon on preventive legal protection to the people given the opportunity to file an objection or opinion before a government decision gets a definitive form. Thus, preventive legal protection aims to prevent the occurrence of disputes, whereas on the contrary the repressive legal protection aims to resolve disputes. Preventive legal protection is very significant for government actions that are not based on provisions of applicable rules. With the existence of preventive legal protections the government is encouraged to be cautious in making decisions based on a policy taken.

In relation to the legal protection of the certificate holder, the

preventive legal protection can be in the form of established rules relating to land and land certificates. Here the relevant law has established legal rules that can be used as a guide in resolving land disputes and as a basis or basis in providing the protection of the law itself. One of the articles which states to provide absolute legal certainty for the holder of the certificate, namely Article 32 paragraph (2) Government Regulation No. 24 of 1997 which reads:

Article 32 paragraph (2)

"In a plot of land in which the certificate has been issued legally on behalf of a person or legal entity obtaining the land in good faith and in actual control, the other party who feels the right to the land can no longer insist on such implementation if within 5 years since the issuance of the certificate does not file a written objection to the holder of the certificate and the Head of the Land Office concerned nor to file a lawsuit to the court regarding the control of the land or the issuance of the certificate."

From the aforementioned chapters this means that the law has given way for the certificate holder to own the land that has been issued the certificate in absolute terms by not ignoring the other provisions, although in actual practice the lawsuit can still be filed.

Related to the repressive law protection that is legal protection after the occurrence of the dispute, the protection of repressive law aims to resolve the dispute that occurred. In the case of a land dispute the protection of repressive law may be granted in the form of a return to the original owner, meaning that the protected by law is the legal owner of the disputed land. In order to be able to restore the original rights to the original owner there must be a path that must be passed, in case of land dispute the disputing party will settle it through litigation (court) and non-litigation (out of court).

On December 7, 2015, the government finally released the December Economic Policy Package starting from the acceleration of land

certification to tax incentives for labor-intensive industries. The government expanded the scope of incentives and ease-of-use, not only to labor-intensive industries, but also to increased services to citizens seeking land certificates.

Through the Phase VII Policy Package announced by Coordinating Minister for Economic Affairs Darmin Nasution at the Presidential Palace, the government shows a strong commitment to accelerate the process by providing convenience to people who want to take care of the land certificate. Thus the community will obtain certainty of land titles. To that end, the government will also increase the number of certified measuring officers, especially from non-civil servant elements.

Until today, the acceleration of land certification is still hampered due to the limited number of measuring officers which only amounted to 4,349 people. They consist of 2,159 civil servants (effectively working only 1727 people) and 2,190 Certified Measuring Officers. Whereas, the total number of plot of land in Indonesia, that is outside the forest area is 90,663,503 fields. Of that number, certified soils amounted to only 35,789,766 (40%) while uncertified ones are 54,832,737 (60%).

This limited certified land, in turn impedes access to public financing to expand its business, particularly micro, small and medium enterprises. Therefore the government through the Ministry of Agrarian and Spatial innovation services to accelerate the process of land certification, namely: Saturday-Sunday Service (including in Car Free Day Area), night service in the area of Car Free Night Bandung and Traditional Market in Pandeglang; Opening a service outlet to get closer to the Land Service Center with Community Settlements (already started in Bandung and Semarang regencies); Implementing "On-Line Village" Services in NTB Province, Central Bangka Regency and Batam City, using internet facility/availability; Provide charge (Rp 0,-) for the owner of Prosperous Family Card issued by the Ministry of Social Affairs.

In addition, the government also accelerated the announcement period for land registration, which originally took 60 days for periodic land registration and 30 days for systematic landscaping, to 14 working days. Another service is to change the land registration from manual to electronic system, so the total time for the land certificate process to be 30 working days (1 day for the examination of the application, 10 days for checking and land measurement, 3 days for physical and juridical data processing, 14 days Announcements, and 2 days for signing and handing the land certificate).

D. Conclusion

The provisions of the force of the law of the certificate have been stated in Government Regulation Number 24 of 1997 concerning Land Registration that the certificate is a proof letter that serves as a powerful evidentiary means of physical data and juridical data contained therein. Here what is meant by physical data is data concerning the location, boundary, and area of the land concerned, and then referred to as juridical data such as data on the legal status of the land, landowners, and any rights that burden the land. Concerning the definition of physical data and juridical data has also been described in Article 1 number (6) and (7) of Government Regulation Number 24 of 1997 concerning Land Registration.

Land registration is held to ensure legal certainty for the owner of the land concerned, this is in accordance with the statement of Article 19 paragraph (1) of Law Number 5 of 1960 on the Basic Regulation of Agrarian Principles (hereinafter referred to as BAL) which reads:

> *"To ensure legal certainty by the Government there is a land registration throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by Government Regulation."*

In addition to land registration functions to ensure legal certainty for landowners, land registration also functions for the government and interested parties. For the government, here the government can find out the legal status of the land concerned, whether the listed land possess a right of ownership, right to use, the right to use the building, or other rights. So here the government in taking a policy can take appropriate action against the land concerned. For interested parties such as entrepreneurs who want to build businesses on the land, or individuals who want to buy land, they are not worried or doubt about the land they will buy or already bought because they themselves know the legal status of the land.

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Chapter 9

PHILOSOPHY OF PANCASILA AS A MEAN TO RESOLVE LAND DISPUTE OF EIGENDOM VERPONDING

A. Opening

Etymologically the term philosophy derived from the Greek word *philosophos*, or *philein philos* means to love, while *shopos* means the wisdom.[1] In English it called Philosophy. From the Greek word *philosophos*, it consists of two words *Philos* (love) or *Philia* (friendship, attracted to) and *Sophos* (wisdom, wisdom, knowledge, skill, intelligence). Thus, philosophy means love of wisdom or truth *(love of wisdom)*. The person involved in philosophy called philosophers and in Arabic is called *Failasuf*. In another sense philosophy is fundamental and monumental human thought to seek the ultimate truth (wisdom, prudence); since this truth is recognized as the best value of truth, which made as the life principle *(Weltanschauung)*.[2]

1 P. Hardono Hadi, 1994, Nature & The Content of Pancasila Philosophy, Library of Philosophy, Yogyakarta.
2 Cecelia Suhardiman, Pancasila as Philosophy System, http://cecepsuhardiman.blogspot.com 2013/06/pancasila-sebagai-siFstem-filsafat.html

Philosophy is 'distinctive knowledge' trying to answer the problems cannot be answered by ordinary science, since the problems are outside the scope of ordinary science. Philosophy discusses about human and reality in "higher level" and therefore it has wider way of life t *(gezichtsveld)*. Not long ago in a colloquium someone had talked about satellites of Law Philosophy and helicopters of Legal Theory. Philosophy wants to penetrate "deeper" into the truths and fundamental values, and not another (higher). It sought a thorough explanation about man and world.[3]

The question then is how differences in term and meaning between Philosophy and Ideology? Philosophy is kind of knowledge/ science;whereas ideology is a way of life.[4] According to Indonesian dictionary the meaning of "philosophy" is: assumptions, ideas, and the most basic mental attitude owned by people or society; way of life.[5] While in 'glosarium' or meaning of philosophy according to Indonesian language study philosophy is: way of life; view; The fundamental ideas and views are owned by people or society.[6]

Scientifically meaning of philosophy according to Immanuel Kant is the science (knowledge) that becomes base of all knowledge wherein included the epistemology problem (philosophy of knowledge) that answer what question we can recognize. Futhermore, understanding according to Aristotle, philosophy is science (knowledge) that comprise of the truth in which contains metaphysics sciences, rhetoric, logic, ethics, economics, politics and aesthetics (philosophy of beauty). Al Farabi said that the meanings of philosophy is science (knowledge) about the essence of how real tangible nature. While Rene Descartesmakes understanding philosophy is collection of entire knowledge where God,

3 Cecelia Suhardiman, 2004, Discussion on Philosophy of Law, Faculty of Law Graduate Doctoral Program, University of Indonesia.
4 What different and Philosophy, https://id.answers.yahoo.com/question/ index?qid= 2013 021 503 4417AAP1o80
5 http://kbbi.web.id/falsafah
6 http://glosarium.org/arti/?k=falsafah

man and nature become the core of its inquiry. According to Plato, philosophy is knowledge that tries to achieve knowledge about the real truth. Langeveld said philosophy is to think about a final and decisive problems, the problem concerning the meaning of circumstances, God, freedom and immortality.[7] Considering the definitions of philosophy mentioned above, we can draw the red thread, that philosophy was science about searching the nature of truth, with the truth measurement of God.

Furthermore how does the meanings of Philosophy of Law? According to Soerjono Soekanto, Philosophy of Law is contemplation activity of values, harmonization of values and formulation of values which is coupled but sometimes clashed. According to Apeldoorn, Philosophy of Law is directions about values prevailing in society as well as indicates direction in which these values will flourish. While Lili Rasjidi define the meaning of Philosophy of Law is theoretical reflection (intellectual) of the oldest law and can be said to be the host of all theoretical reflection about law. Now, according to J. Gejssels, Philosophy of Law is general philosophy directed its reflections to the law and legal symptoms. The same thing is also foundin Meuwssen DHM's argument that definition of Philosophy of Law is philosophy reflected all fundamental problems and border issues related to the legal symptoms.[8]

If reviewed from the scope of its discussion, philosophy includes many fields of discussion, among others about man, society, nature, knowledge, ethics, logic, religion, aesthetics, and other fields (along with the development of science, appears and develops the sciences of philosophy dealings with certain disciplines, such as philosophy of social, philosophy of law, philosophy of politics, philosophy of Language, philosophy of Science, philosophy of Environmental, philosophy of Religion and philosophy related to other disciplines).

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7 7http://www.pengertianpakar.com/2014/09/pengertian-filsafat-menurut-para-pakar.html#_
8 http://www.pengertianpakar.com/2014/10/pengertian-filsafat-hukum-menurut-para.html#_

The philosophy is grouped into two categories, that is philosophy as a product and philosophy as process. Philosophy as product includes two senses. First, the meanings of philosophy as kind of knowledge, science, concept of the philosopher in ancient times, theory, in system or particular views the result of philosophizing process and have certain characteristics. Second, philosophy as kind of problems encountered by humans is a philosophizing activity result. Philosophy as process have meanings that philosophy is not only a set of dogma are believed, engaged, and understood as a particular value system.[9]

The review of Philosophy of Law according to the values of Pancasila in the land dispute of "*Eigendom Verponding*" is giving intent and meaning the Philosophy of Law in the values corridor of philosophy of Pancasila, that is how the measurement in case of eigendom verponding land is taken over by the State as a foothold.

Under the reform and amendment spirit of Act 1945, it is most fair that values of Pancasila should be placed in every nation and state life, including the agriculture concepts, including within the land problems. However Pancasila is the basis of State, and way of life for Indonesian nation. So when Indonesia national legal system would ro be 'repaired', it begins from commitment to philosophy of Pancasila as the State basic and unifying the nation. In the agrarian law context, moral values in belief principle in one God, just and civilized humanity, and deliberation values, will get rid of feudalistic, capitalistic, monopolistic, bureaucratic, authoritarian and repressive values.

We learned so much, that with feudalistic, capitalistic, monopolistic, bureaucratic, authoritarian, and repressive values approach, various land cases, either in the form of dispute, conflict, as well as case, until

9 Pancasila as Philosophy System, posted 07 Mei 2013,https://febisilvia48.wordpress.com/2013/05/07/ pancasila-sebagai-sistem-filsafat/

today is still happening in many places.[10] The agrarian disputes over the eigendom verponding land were taken over the State is the legal case.

Agrarian dispute is relationship of the parties characterized by conflict between two or more parties associated with recognition *(claim)* on a plot of land, territory, or other natural resources based on interpretation upon the similar and/ or different right (*read*:source of legitimacy) one another. In such of conflict one or more parties directly acting want to eliminate and/or do not recognize and/or hinder the recognition of other party on particular agricultural objects.[11]

Eigendom is a term known in the West Civil material law, means "property rights". Eigen means 'self or personal', while dom refer to "Dominium" word defined as "property rights". Thus, "eigendom" means "private property right." As for "verponding" is kind of tax imposed upon the fixed objects (land and buildings) have been proven by "eigendom" or ownership proof, where taxes imposition started in Batavia at 1800,[12] The ownership rigt (eigendom) is one type of material rights regulated in Book II Burgerlijk Wetboek (Civil Code). But with the issuance of Acts No.5, 1960 on the Basic Regulation of Agrarian Principle, the property rights upon the eigendom land was deprived from book II of Civil Code and included in Law No. 5 of 1960 on the Basic Regulation of Agrarian Principle.[13]

The law case can be studied in juridical-philosophical (**Philosophy of Law**), in yuridis-normative (**Dogmatic of Law**), and socio-juridical (**Sociology of Law**). Against the agrarian disputes upon the eigendom

10 Lihat juga http://hukum.unsrat.ac.id/tanah/kabpn2011_3_DI_50.pdf
11 The similar view adopted and affirmed in Law No.5, 1960 on Basic Regulation of Agrarian Principle. See Gamal Pasya and T. Martua Sirait, Style Analysis of Disputants: Concise Guide to Help the Resolution Form of Natural Resources Management (Bogor, Indonesia: Samadhana Institute, 2000).
12 Bambang Eko Supriyadi, http://www.academica.edu/8895009/Hukum/Eigendom verponding_mummi_pengganggu_kawasan_hutan., mengutip Gokkel & Van der Wall (1986).
13 Wibowo Turnadi, "Ownershp Right (Eigendom)," www.jurnalhukum.com/hak-milik-eifendom/

verponding land were taken over by the State, can be identified thr at the problem, that are; 1) This legal case in juridical-philosophical (**Philosophy of Law**), in yuridical-normative (**Dogmatic of Law**), and socio-juridical (**Sociology of Law**). Identification of the problems can be studied by the problem formulation of the issues namely; 1) Is the transfer of *Eigendum Verponding* land been implemented have judicial philosophy, normative, juridical and sociological problem? 2) Why transfer of *Eigendum Verponding* land by the state arising dispute or conflict between parties? 3) How to reflect these issues in the future, so it does not reoccuring than other cases judicially-philosophical, juridical normative and juridical sosilogic?.

While the problems of Philosophy of Law with concentration on the discussion of philosophy of Pancasila whether description on the philosophy that discusses Pancasila as its object?, or description on the philosophy contained in Pancasila.[14] This paper is about Philosophy of Law by instruments of study from the side of philosophy of Pancasila. The studies with the values measurement of philosophy of Pancasila, so the question could arise are: 1) whether transfer of the *Eigendum Verponding* land has been implemented in accordance with juridicial-philosophy, juridicial-normative, and juridical-sociological? 2) how and to what extent "various measurement in the law violation allegation" is viewed with values parameter of Pancasila, Godhead values, humanitarian values, justice values and deliberation values? 3) How to reflect these problems in the future, so it does not reoccured to other cases in judicially-philosophical, juridical-normative and juridical-sosilogical?

B. Understanding the Scope and Definition of the Philosophy of Law

Some legal experts believe that the science of law does not stand alone. Hans Nawiasky divides legal studies on: *Lechts noermenlehre*,

14 Hardono Hadi, 1994, Nature & Content of Philosophy of Pancasila, Reader Filsafat, Yogyakarta, p.5.

rechts soziologie,and rechts philosophie. While Purnadi Purbacaraka and Soerjono Soekanto[15] argued that legal studies disciplines include: sciences of law, Politics of Law, and Philosophy of Law. There is also that divide the sciences whose object is law consists of: Theory of law, Sociology of Law, Comparative of Law, History of Law and science of positive law.[16]

Satjipto Rahardjo (1982) explains that Philosophy of Law questioned the fundamental questions of law. Questions about 'the nature of law.[17]According to E.Utrech (1966) Philosophy of Law provides answers to questions such as: What is the real law? Why do we obey the law? What the justice became the measurement to god and bad of law? These is the questions actually answered by the legal studies. However, for many people the answers of legal studies was unsatisfactory. The legal studies as empirical science are only see the law as a symptom, i.e., accept the law just as a *"gegebenheit"*. Philosophy of Law want to see law as a rule in the word meaning *"ethisch wardeoordeel."*[18]

In addition there are other questions that should be investigated by Philosophy of Law proposed by Kusumadi Pudjosewojo (1961):

> *"And once questioning matters of legal studies, it close the people to questions such as: What the purpose of legal studies? What are the justice requirements? What is the justice? What the relationship between law and justice? With such questions, people already go beyond the limits of legal studies and as its common meaning and step on the field of "**Philosophy of Law**" as the science of philosophy."*[19]

15 Purnadi Purbacaraka, Soerjono Soekanto, 1978, Concerning the Rule of Law, Alumni Bandung in Rasjidi, Lili; Rasjidi, Liza Sonia, 2012, Basic of Philosophy and Law Theory, Citra Aditya Life, Bandung, p. 35
16 Lili Rasjidi, Liza Sonia Rasjidi, 2012, Ibid. p.35.
17 Satjipto Rahardjo, 1982, Jurispridence, Alumni.
18 Lili Rasjidi, Liza Sonia Rasjidi, 2012, Op Cit. p.4.
19 *Ibid*.

Soetikno formulate:[20] argue that "Philosophy of Law seek the nature of law investigated the rule of law as judgments of values." L.Bander O.P.[21] state that *"De rechtsphilosophie of wijsbegeerte van hel recht is een wetenschap, die deel uitmaakt van de philosophie."* While Purnadi Purbacaraka and Soerjono Soekanto said:[22] *"Philosophy of Law is reflection and formulation of values, but Philosophy of Law also includes harmonization of values, for example: resolution between the tranquility of order, between materialism and morality, and between permanence/ conservatism and modernism."*

According to Mahadi (1989) *"Philosophy of Law is philosophy of law; philosophy about everything in the field of law deeply to the roots systematically."* Seojono Dirdjosisworo argued:[23] *"Philosophy of Law is the establishment or philosophical appreciation adhered by people or society or the State about the characteristics nature and the cornerstone for the enactment of the law."* and Van Aveldoom outlines as follows: *"Philosophy of Law requires answers upon the question: What is the law? It wants us to think carefully about our response and ask ourself, what is in the fact we will be responsive about the law."*

Where the jurisprudebnce is ends, there is began Philosophy of Law; it studies the questions unanswered by science. Total questions is innumerable, the science did not give any answer to the question of law. All legal questions can be an object of philosophical consideration. However, the Philosophy of Law experts in fact prefer to learn the most important questions. The questions that arise urgently on each man who thinks of justice and injustice.

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20 Soetikno, 1976, Philosophy of Law, Volume I & II, Pradnya Paramita, Jakarta.
21 Bender O.P.L, 1948, Het Recht-Rechtphilophiesche Verhandeling, Paul Brand- Bussum.
22 Purnadi Purbacaraka, Soerjono Soekanto, 1979, Reflections on Philosophy of Law, Institute for Legal Research, Faculty of Law Unsri, Palembang in Rasjidi, Lili; Rasjidi, Liza Sonia, 2012, Ibid.
23 Soejono Dirdjosisworo, 1984, Introduction to Criminology Research, CV Remaja Karya, Bandung.

The philosophy of law schools in general can be divided into seven schools, namely:[24] 1). **The natural law (natural) school**, believes that a good law is law can apply universal and timeless. This school appears as a reaction to the failure of mankind to seek an absolute justice. 2). **Legal positivism** view the legal certainty as primary value must be upheld. This means that law should be separated from morality because what is fair and unfair, not a jurispudrnce business, but so with the benefit of law according to discussion of sociology. In the eyes of legal positivism, the only source of law is a, Acts made by the authorities. 3). **Utilitarianism** (utilisme) argued that significant value in the law is just expediency. There is useless of making laws on paper is very just and sure, if in practice it is not beneficial to the society. So the good law measurement is is expediency, and it must be tested by experience (empirical). 4). **School of history**. A good law according to this school is law corresponding to the concerned spirit of the nation *(Volkgeist)*. The legal consciousness is departs from the nation experience (empirical), whch practiced for generations (since it believed most good and fair) and has had a valid sociologically, so no doubt its effectiveness in society. 5). **Sociological jurisprudence** was born in the Common Law system which puts jurisprudence (the judge's decision) as source of very important role. This school corresponding to its character with the law administration mindset in Indonesia. 6). **Legal realism** and 7). **Frieierechtslehre** emphasized the importance of experience as source of expediency as main value in the law. Here is the judges have freedom to interpret the law, even if necessary to be at odds with the provisions of legislation created by the authority.

Based on the Act 1945 the amendment result Indonesia is the law state. The laws of nature and utilitarianism schools, as well as schools of history were more appropriate as the soul of Article 1 (3): "Indonesia is a State of Law."

24 Darji Darmodihardjo, in March 2010, Staring Indonesia - An Anthology of Philosophy of Law in the Frame of Pancasila state, Window Mas Reader, Bandung, p.29-31.

C. The theory of Pancasila as Philosophy of Law

Ideology of Pancasila is the result of thought/thinking deeply of Indonesian nation which regarded, trusted, and believed to be the most righteous something (reality, norms, values), the fairest, the wisest, kindest and most approptiate to the Indonesian nation.[25]

To be more convicing Pancasila is a doctrine of philosophy, we should quote the lecture of Mr. Moh. Yamin on Seminar of Pancasila in Yogyakarta at 1959, entitled "Overview of Pancasila to the Functional Revolution". The contents of his speech is as follows:[26]

> "Overview of Pancasila is arranged in harmony in philosophy system. Let us warn briefly that doctrine of Pancasila we can review in accordance with an accomplished philosophers, i.e., Friedrich Hegel (1770-1831) father of the evolution of matterial philosophy as taught by Karl Marx (1818-1883), and according to reviews of the veterinary evolution according to Darwin Haeckel, and also concerned with spiritual philosophy as taught by Immanuel Kant (1724-1804).
>
> According to Hegel the essence of his philosophy is the synthesis of outer from antithesis of mind, from the mind antagonism the blend of harmonious idea. And this is right. Similarly, doctrine of Pancasila a State synthesis born from antithesis.
>
> I don't want to juggle. Remember the first sentence of Preamble of the Constitution of Republic of Indonesia 1945 that quoted earlier with the statement: That in fact the freedom is the right of every nation. Therefore, the occupation should be abolished because it contradicted with humanity and justice.
>
> The first sentence is synthesis between occupation and humanitarian

25 Burhanuddin Salam, 1988, Philosophy of Pancasilaisme, PT Bina Aksara, Jakarta. p.23.
26 *Ibid*. p. 24-25.

and justice. At the time the synthesis was gone, it gives birth to independence. That independence we arrange in Preamble of Constitution of RI 1950, which reads: "Then with this, we arrange our independence in the State Charter of Republic of Indonesia under Pancasila.'" And here called the five principle to achieve happiness, prosperity, world peace and freedom. This sentence clearly an anithese sentence. The synthesis of independence with Pancasila and the goal of nation glory called happiness and welfare. This is not clearly and conspicuously a synthesis of mind on the basis of anitese opinion?

So parallel with the goal of Hegel thought it is reasoned the opinion that doctrine of Pancasila is a philosophy system, corresponding to Neo-Hegelian dialectic. All the principle is an arrangement in a housing of harmonious philosophy mind. Pancasila as the excavation result of Bung Karno is also in line with the living reviews of Neo-Hegelian."

Now, the basic of State should be philosophy that concluded the life and ideals of independent Nation and State.[27] Pancasila as the basis of State, then agreed as philosophy of life, and way of life of Indonesian nation, as well as being the source of all sources of law. All legal products should refer to Pancasila and Constitution 1945 Does Pancasila included as Philosophy of Law? Seojono Dirdjosisworo argued that "Philosophy of Law is the establishment or philosophical appreciation adhered by people or society or State about of the nature of characteristics and the cornerstone for the ebactment the law," so based on Soejono's version definition of philosophy, and the standing of Pancasila as source of all sources of law,[28] then the standing of Pancasila as the cornerstone for

27 Ibid, p.45.

28 The term Pancasila as "source of all sources of law" have raised by Prof H. Darji Darmodiharjo, SH, the former rector of IKIP Malang and Rector of University of Brawijaya in his inaugural lecture as extraordinary professor in the course of Philosophy of Law at Faculty of Law and Society Knowledge the University of Brawijaya, Malang that entitled " Source of All Sources of Law in Indonesia, An Overview from Philosophy Side."

the enactment of law, as an ideal basis, then the standing of Pancasila as source of all sources of law, Pancasila is the philosophical of law. Accordingly, speaking about philosophy of Pancasila, means talking about "*Law Philosophy of Pancasila*."

D. Virtue in the Philosophy of Pancasila Scope

Belief in Almighty God to be principal source of life values of Indonesian nation, animate and underlie and guide the embodiment of just and civilized humanity, mobilizing unity of Indonesa that has created a fully sovereign State of Republic of Indonesia, which was democracy and led by wisdom and discretion in consultative / representatives, in order to realize social justice for all Indonesian people. Belief in Almighty God contains understanding and belief in Almighty God, the creator of nature and its contents. This belief is not a dogma but belief rooted in true knowledge, can be tested by the rules of logic. The principle values 1 covering and animating the 2nd, 3rd, 4th, and 5th principle.[29]

A just and civilized humanity is consciousness of human attitudes and actions based on the potential of human pure character in relation to norms and culture in general either against the self, fellow man, and to the nature and animals. With a just and civilized humanity, every citizen has equal position and the same against Constitution of the State, has same obligation and rights. Each citizen is guaranteed his right and liberty in relation to God, fellow human, with the State, society and also relates to freedom of expression and achieve a decent life in accordance with human rights (HAM). The values of 2nd principle was overwhelmed and animated by the first principle, covering and animating the 3rd, 4th, and 5th principles.[30]

The philosophy values of Indonesian unity in the Philosophy of Pancasila scope is not relevant in terms of agrarian disputes upon the eigendom

29 Burhanuddin Salam,Ibid, hlm. 26.
30 *Ibid*, p.28.

verponding land so that "disunity" between the conflicted or quarreled parties was not as wide as the scope of interest of the Indonesia Unity principle that has broader and deeper scope. The land conflict does not threaten the Indonesia unity.

Deliberation is a distinctive ordinance of Indonesian personality to formulate and decide something based on the people will, so it was reached decisions by unanimity/consensus. The wisdom of policy means the use of ratios/healthy mind by considering always the unity of nation, the people's interests, and implemented in conscious, honest and responsible and driven by good intention in accordance to human conscience. The fourth principle of Pancasila is them self important of the family principle of our society. The 4th principle was animated by 1st, 2nd, and 3rd principles, covering and animating the 5th principle.[31]

All Indonesian people receive fair treatment in the fields of law, politics, economics, and culture. The meanings of social justice include also the understanding fair and prosperous under the constitution. The values of 5th principle was animated by 5th, 1st, 2nd , 3rd, and 4th principles.[32]

The essence of the meaning of philosophy by some definitions refer at one point, i.e., philosophy is the result of reflection and deeply thought that produces the values of certain way. According to philosopher Prof. Dr. MJ Langeveld in his book "*Opwegnaar Wijsgerig Denken*" (leading to philosophical thinking), argues that we are entering the philosophy of when we think of any statement too radical, that is, from the base up to the consequences of the last and systematically, that is, in the narrative of the logical sequence and responsible mutual relations. What formed in the overall narrative and description of so-called philosophy. Philosophize is to seek the truth, the truth about everything that

31 *Ibid,* p.31.
32 *Ibid,* p.38-39.

question by thinking in sisematis, radical and universal.[33] Philosophy can be defined as a science and as a way of life.[34]

Justice in the life of Indonesia State and Nation is absolutely as philosophy. In the third principle of Pancasila, social justice for all Indonesian people. Then in the third paragraph of the Preamble of Constitution 1945:

> *"That in fact independence is the right of all nations and therefore the occupation on the world should be abolished because it does not correspond to humanity and justice."*

Pancasila as the national ideology provides a fundamental provision as follows:[35] 1) The legal system is developed based on the values of Pancasila as its source; 2) The legal system shows its significance as far on realizing the as justice; 3) The legal system has function to maintain the life dynamics of the nation; 4) The legal system guarantees self realization process for citizens of nation in development.

In realizing the justice, law is not merely a tool of power, not legitimacy to run exploitation that may constitute an injustice itself. The law does not synonymous with justice, but aims to make it happen for the sake of people.[36]

E. The Philosophy of Pancasila as a Mean to Resolve Agrarian Dispute

The occurrence of unlawful *"transfer of rights"* in accordance the norms, rule and regulations shall be considered null and void, in the agrarian disputes upon the *eigendom verponding* land became the state land that

33 *Ibid*, p. 22-23.
34 Darji Darmodihardjo, Op Cit. p.1.
35 Soerjanto Poespowardojo, 1991, Philosophy of Pancasila - A Socio-Cultural Approach, PT Gramedia Pustaka Utama, Jakarta, p.162.
36 *Ibid*.

took place in the presence of dominance or superiority residing on government authorities in dealing with inferiority of people individual whose almost no power. The problems to build property on land owned by other party is theoretically relates to issues of propertyf rights and public policy, primarily related to licensing. One of the conditions for respecting to the ownership rights is legal protection or enforcement by government. Here the government allegedly did not play role as it should, since the government did not attempt to enforce the property rights of its citizens well.The other side of respect to the people rights on ground are less respected or even suspected to be systematically marginalized.

If the Godhead values, become spirit on the Government decision on taking over the private land, the government will pay attention to humanity aspects (HAM) in terms of people's ownership, will conduct communication and deliberation seeking resolution to the existing dispute, and engage with social justice approach to the land owner people, for example, the provisions for compensation to landowners as specified in the *Agaria* legislation.

In regard to agrarian disputes upon the *eigendom verponding* land were taken over by State the parties will uphold humanity values, pay attention to people's rights and government rights in terms of land ownership for public use and the State. Besides the philosophy of Pancasila upholds the deliberation values. The agrarian act provides solutions either out of court or tribunal. Unlike in current the problems of *eigendom verponding* land which taken over by the State was uncertain.

The state have right to all land in Indonesia, but the proprietary rights is in the sense of managing, so that expropriation of the people land must be in consideration of people's rights to land that governed by Constitution (the Constitution 1945 of amendment result) and legislation in the hierarchy below. There is a balance between fulfilling

people's rights and state rights, people obligations and state obligation. That is the justice value imbued with the philosophy of Pancasila values.

F. The Compatibility of the Philosophy of Pancasila with Science and Theory to The Agrarian Dispute

The problems of law violations, in particular violations against the philosophy values of Pancasila principles in the land sector should at least be approached from two fundamental things, *first* reviewing the overall agrarian law through political reform of national agrarian law; *secondly*, the "*instant*" resolution upon the *Eigendom Verponding* case which taken over by the State through the court. The fundamental approach is reviewing "*Political of Law*" on the National Agrarian Law, in terms of reviewing the State policy on the shape and direction of the agarian national laws to conform with the philosophy of Pancasila value and constitution spirit.

Political of law on the national agrarian law was done both from dogmatic aspects of law and special attention to suitability of philosophy of Pancasila and constitution spirit. The efforts in questioned political of law is as follows: a). Reviewing all laws and regulations relating to the national agrarian law, particularly by legislative. The purpose is to investigate on: b) The overlaping legislation related to national agrarian one another, as material for harmonization effort to legislation in order each other is corresponding based on the hierarchy of legislation as arranged in the legislation on Making the Legislation. Overlapping the legislation result in legal uncertainty. d).To what extent the conformity of laws and regulations on the hierarchy under the Act 1945 and the philosophyof Pancasila values. f). Enforcement of law by Executive and Judicative aimed at creating the legal certainty in all parts of Indonesia area. Concerning with these two things, reviewing all laws and regulations relating to national agrarian law and law enforcement by Executive and Judicative, it will be easier to achieve comprehensive resolution on the national agrarian problems.

While, in terms of science, either the improbvement for Politica of Law or "*instant*" resolution should be based on the relevant theory i.e., Legal Certaity Theory, Public Policy Theory, Ownership Theory, and Justice Theory. The contribution of four theory in case resolution both the land problem in general and dispute case of claim on the Eidendom Verponding was taken over by the State in particular, is normative-philosophical, which provide rules that are normative and philosophical. The values of rule in the theories relative according to the philosophical of Pancasila values.

2. The Legal Certainty and Chaos Theory in Philosophy of Pancasila

According to Gustav Radbruch, law must contain three identity values, namely:[37] a). The principle of legal certainty *(rechtmatigheid)*. This principle review from the judicial point. b). The principle of legal justice *(gerectigheit)*. This principle reviewing from the philosophical point, where the justice is the equal of rights for all people in front of the court. c). The principle of legal expediency *(zwechmatigheid or doelmatigheid or utility)*.

More complex and modern demands of life forces every individual in society inevitably, like it or not want any certainty, especially legal certainty, so that every individual can determine their rights and obligations clearly and structured.[38] The legal certainty in society are needed for the sake the enactment of order and justice. The legal uncertainties will cause chaos in the society life, and every member of society will be mutually do as well as acts of vigilantism. This makes the existence of such a life is in an atmosphere of social chaos.[39]

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37 Dwika, "Justice from Dimension of Law System", http://hukum.kompasiana. com. (02/04/2011),

38 Moh.Mahfud MD 2006, Building Politics of Law, Upholding the Constitution , LP3S, Jakarta, hal.63http://repository.usu.ac.id/bitstream/123456789/25953/4/ Chapter%20I.pdf

39 M.Yahya Harahap, 2006, Discussion, Problems and Application of Criminal Procedure Code, Sinar Grafika, Second Edition, Jakarta, hlm.76http://repository. usu.ac.id / bitstream/123456789/25953/4/Chapter% 20I.pdf

The legal certainty is a matter that can only be answered normatively based on the legislation in force, not sociological, but legal certainty normatively is when a rule is made and enacted exactly as set out clear and logical in the sense that pose no doubts *(multi-interpretation)* and logical in the sense of norms system with other norms so as not to clash or conflict of norms arising from uncertainty. Legal certainty is situation where human behavior either individuals, groups and organizations are bound and in a corridor that has been outlined by the rule of law.[40]

In this context we can observe the chaos theory of law was initiated by Edward Norton Lorenz and Ilya Prigogine. Chaos theory of law with regard to irregularities *(law)*, at the same time also speak about the law regularity. Thus, irregularities in the reductionistic view, is part of regularity in the holistic view.[41]

Prior to further explanation, it need to be clarified formerly that in the chaos theory of law, what so-called chaos, can be divided into two categories. First, destructive chaos *(negative chaos)*, chaos that lead to apostasy, destruction, and misery. Chaos in this holistic perspective paradigm, arises because there is deliberation to reduce the integrity of legal reality, either in relation to its approach *(integrity of mind-hearts)*, its space-scope *(physical-spiritual wholeness)*, and its object of study *(man-nature integrity and unity of human-God). (hlm.7)* Second, constructive chaos *(positive chaos)*, the chaos that is on track *(track)* toward the wholeness of a transcendental religious legal system, the legal system that puts integrity of sense-hearts, physical-spiritual, human-natural, human-God. Islamic religion, calls such as being on the road of "*sirath al mustaqim*" that is the way people gain the favor of Allah.[42]

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40 Rahman Amin, Philosophy of Justice, Legal Certainty and law Enforcement of Justice Philosophy, Legal Certainty and Law Enforcement,http://rahmanamin1984.blogspot.com/2014/03/hukum-pidana.html

41 Series of Publishing Science, Techonology and Society, 2000, From Cambridge Towards Copenhagen , Issue I, Mizan PPS and STMIK Development Studies of ITB, Bandung, p. 10 in Sudjito, Lecturer of Agrarian Law, Faculty of Law, Gadjah Mada University, Chaos Theory Of Law : Elucidation of the regularity and irregularity in the Law, Jurnal Mimbar Hukum Volume 18 Number 2, June 2006, p. 159-292.

42 Sudjito, Ibid p.166.

The regularity theory *(such as positivism theory)*, during the time, has stopped in the explanation of the complete orderly circumstances, in society and the State. Law is seen as a guarantor of order and security, and therefore must be obeyed, without any possibility and opportunity for criticism. What is in the file of analytical positivism adherents about what is existing and happening in the law is an orderly atmosphere. With introduction to the chaos theory of law , it turns out the order, regularity and certainty, is not the only legal reality, but still another reality namely chaos in the law. The order and chaos in law are not two opposites matter, not something dichotomy like the black-white, but as the interconnected reality, complementary and intertwined in the continuous change process. The chaos theory of law, is theory that can explain well to the complex legal realities and gave the correct solution to the law crisis that hit this state.[43]

One of early figure who try to define public policy is Thomas Dye. Thomas Dye describes public policy as everything chosen by government to do or not to do something.[44] The definition was deemed too narrow to describe the public policy. There are two meanings can be taken from the Thomas Dye's definition. First, Dye argued that public policy could only be made by government, not private organizations. Second, Dye reaffirms that the public policy concerning the selection done or not done by the government.

William Jenkins defines the public policy as a decision of various actors that are interconnected to achieve a certain goals. The matter needs to be underlined William more emphasis the public policy in the policy-making process, unlike Thomas Dye that only defines public policy as a

43 *Ibid*, p.173.

44 Dalam Michael Howlett dan Ramesh, 1995, Studying Public Policy: Policy Cycles and Policy Subsystem, Oxford University Press, Toronto, p.4. in Bastian Widyatama, http://www.kompasiana.com/bastianwidyatama/konsep-dan-teori-kebijakan-publik_552c58856ea8345e6e8b4568 diakses tanggal7/15/2015 4:04 PM

choice made by the government.[45] In addition, James Anderson defines the public policy as the policy established by agencies and government officials, although these policies can be influenced by actors and outside factors.

In making policy, the government is required to make choice between objectives and alternatives, and the choice always involves the will. The government policy are generally not stand alone, but consists of a coordinated set of policies to achieve a goal.

There are three qualifications in defining the public policy, namely; (i) an idea involved a series of wished actions includes within the decision made not to make any specific steps. (ii) the actions taken by government as an institution or government officials must be accompanied by legal or customary sanctions acceptable by the oarties for the public officials often take action outside of public policy such as receiving bribes or acted beyond its authority; (iii) laws or regulations should not be mistaken for overall of the public policy; and the law or legislation must not conflict with the public policy goals. The law makers is not enough to shape policies; but also should consider implementation, interpretation, enforcement, and impact of laws and the regulation, because everything is a part of the public policy.[46] The public policy can be issued by the central government to local government, with its variety types. Without these public policies, presumably there will be no transfer of *Eigendom Verponding* land ownership , and is not likely to happen any party suspected not the owner or the heirs of the land to build on the land. Herein lies the relevance of public policy theory with the problem of this research.

Alexandr Opoulou (nd) defines *"property rights" as "the socially acceptable use to the which the holder of them can put the scare resources*

45 *Ibid*. p. 5. In Bastian Widyatama, *Ibid*.
46 *Ibid*. p.2.

to roomates Reviews These rights refer. It is the bundle of legal rights roomates describe what a person may or may not do with the resources he owns: the extentto the which he may posses, use, transform, bequeath, transfer or exclude others from his property."[47]

The rights implies recognition or claim on something (a thing), it may be goods/physical that are tangible, services or knowledge/ information that is non-tangible that enforceable or respected by other parties.[48] Bromley (1989) defines property rights as the right to obtain a secure flow of profits, for others respect to the flow of such earnings, associated with the transaction.[49] Alexandr Opoulou[50] revealed three basic elements of the property rights, namely: (i) the exclusivity of rights to choose the use of a resource; (ii) exclusivity of rights to services of a resource, and (3) rights to exchange the resource at mutually agreeable terms.

While Vincent RJ[51] argued that "right" has five main elements; a). The subject of right, i.e., the right-holder. The right-holder is more as individuals, but can also in form of a group (family, tribe, company, nation, state, region, culture, perhaps even global property; b). The object of right, what become property of the rights, both positive and negative as a claim upon the right; c). The Exercicing a right, an activity connecting between the subject (the right holder) with the object (what is claimed as a right) (the activity connect a subject to an object; d). The bearer of the correlative duty, where at time the rights attached to someone means against others who do not get the right, so it is a struggle

47 Alexandr Opoulou (nd), Public property and property rights theory, www.lse. ac.uk/ europeanInstitute/reserach/hellenicObservatory/pdf/4th_%20Symposium/PAPERS_PPS/ LAW_CITIZENSHIP.
48 Property rights (Rights of Ownership) in the Economics Institution. Esl.fem.ipb. ac.id/ uploads/ media/12.Property_rights_SDA.pdf
49 Property rights, *ibid*.
50 Alexandr Opoulou (nd), Public Property and Property Rights theory, www.lse. ac.uk/ europeanInstitute/reserach/hellenicObservatory/pdf/4th_%20Symposium/ PAPERS_PPS/ LAW_CITIZENSHIP.
51 Vincet RJ. Human Rights and International Relations (Cambridge: Cambridge University Press, 2001) p. 8, .mengadatasi Gewirth, Human Rights, p.2

to "beat" all the barriers of other party; e). The justification of a right, a question of justification that something is owned by a person/group (the question of the justification of a right).Therefore, the rights should be based on the claim over the object of the right, and it is expected that no other party objected.

From definition of property rights, it can be understood that; a). There must be something *(things)* in the form of goods/ physical that are tangible , services, or knowledge/information that is intangible. b). There must be a claim of exclusive rights owner, c). There must be benefits. The owner of something *(things)* must utilize , managing over something, changing or transferring part or all of such rights. Transfers can be in a sense to sell, grant, lease, and bequeath.[52] d). Must can be enforced *(enforceable)*. It means in order something becomes a right, in addition must contain a claim on something also claims should be protected by law. Because the rights that can not be enforced or not protected by law, that right becomes meaningless. Therefore, the most important element in ownership is enforcement. Why property rights need to be enforced, at least two reasons. First, because the enforcement of property rights is necessary by institutions, rule or authorities regime to ensure the enforcement of these rights. Second, because the property is part of human rights. The human right to have is one of the most fundamental rights.[53]

The ownership theory has five main elements in the theory are relevant to the issue of this research; a). the subject of rights , namely the the right-holder, related to the problem who owns the *Eigendom Verponding* land were taken over by the State; b). the object of right, involving what would become the property of the *(what it is a right to)*, means pertaining to the *Eigendom Verponding* land were taken by the State; c). The exercising a right, an activity connected between subject *(the*

52 *Ibid.*
53 *Ibid.*

right holder) with object *(what is claimed as a right)*, in this case related to the activity of the shift the control of the land from the *eigendom verponding* landowner to the country, as well as to the building owners who construct buildings on the *Eigendom Verponding* land were taken over by the State; d). the barrier of the correlative duty, related to the land *de facto* as if the switch of ownership, so that it becomes an obstacle to owner of *eigendom verponding* to control back; e). Justification of right, concerning the justification why the *Eigendom Verponding* land were taken over by the State no longer controlled by the suspected as heir of the owner.

Hans Kelsen *(October 11, 1881-April 19, 1973)* a national legal expert of Jews German separate between law and justice. According to him the law and justice are two different concepts. The law separated from justice is a positive law. Release the law concepts and idea of justice is quite difficult because it constantly confounded politically related to ideological tendency to make the law seen as a justice.

The tendency identifies law and justice is tendency to justify a social rules system. This is tendencies and political ways of working, not science tendency. The question whether a law is just or not and what essential element of justice, cannot be answered scientifically, so the pure theory of law as scientific analysis cannot to acknowledge it. What can be answered simply that the rules regulating the human behavior applied to all people so they find the joy within it. Therefore a social justice is social happiness.[54]

If justice is interpreted as a social happiness, the happiness will achieved if the individual needs are met. The fair rules are the rules and regulations ensured the fulfillment of these needs. But this is unavoidable fact that

54 Hans Kelsen, 1967, Pure Theory of Law, translation by M.Knight of RR2. p.7. dalam Jimly Asshiddiqie, M. Ali Safa'at, 2006, Hans Kelsen's Theory on Law, Konpress/ PT Syaamkl Cipta Media, Jakarta

prople's desire for the joy could be contrary to other wishes. Therefore, the justice is the fulfillment of individual wishes in a certain degree. The greatest justice is fulfillment as many as possible the people wishes. To what extent the limit of fulfillment level to meet the justice? The question cannot be answered on the rational knowledge bases. The answers to these questions is a justification of value *(judgment of value)*, which determined by emotional factors and subject to subjective character so that it was relative.[55]

G. Conclusion

The meaning subject of Philosophy of Law from all definitions has been described are: a). Values contemplation activity *(Soerjono Soekanto)*; b). Hints about the values prevailed in the society *(Apeldoorn)*; c). Theoretical reflections *(intellectual)* of law *(Lili Rasyidi)*; d). General philosophy that direct its reflections against law and its symptoms *(J. Gejssels)*.

The difference of term between Philosophy, Ideology and differentiate between Philosophy, Philosophy of Law and Philosophy of Pancasila. Philosophy is the type of knowledge/science; whereas ideology is way of life. According to Indonesian dictionary the meaning of *"philosophy"* are: assumptions, ideas, and the most basic mental attitude owned by people or society; way of life. While in the *"glosarium"* or dictionary the meaning of philosophy according to the Indonesian language teaching philosophy is: way of life, view and fundamental ideas are owned by people or society.

The Philosophy of Law review according to Pancasila ideology value in agrarian disputes upon the *"Eigendom Verponding"* land which taken over by the state giving an intent and meaning on Philosophy of Law in the content values measurement on the Philosophy of Pancasila, that is

55 Hans Kelsen, 1961, General Theory of Law and State, translated by Anders Wedberg, Russel & Russel, New York, Jimly Asshiddiqie, M. Ali Safa'at, Idem ,p 18.

how to measure what happens in the case of the *Eigendom Verponding* land?

In realizing the justice, the law is not merely a tool of power, not legitimacy to make exploitation that may constitute the injustice itself. The law does not identical with justice, but aims to make it happen for the sake of people.

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Chapter 10

CONCLUSION

A. Closing

Conflict of interest colours the behaviour of public officials, for the personal, group and party interests. Therefore, public officials rationalize the abuse of power to carry out white-collar crime, in carrying out the powers that are given the authority of the people, by the following methods: First, the establishment of laws and regulations which are only personal interests and certain business groups so as to harm the country. Second, making and ratifying the state budget of the state every year. There is a tendency for social deviations and does not pay attention to the welfare of the people.

Anatomy of the culture of abuse of power, impacting acts of corruption are no longer seen as something that is prohibited by law and religion. The public response to the culture of abuse of power is a continuum, from those who don't care to the people who hate it. But it seems that

they do not care anymore, because it is proven that the community is less enthusiastic in fighting the culture of abuse of power, it might assume that the impact is not immediately felt by the people. This means that the culture of abuse of power is accepted by society as something that cannot be denied. There is greed from bureaucrats, executives and legislators and even law enforcers who want to take advantage of opportunities for corruption, collusion, nepotism for their own and their group's interests.

Politicians in the bureaucrats, the executive and the legislative and even the judiciary as public officials try to take advantage of the opportunities and power available to them to commit corruption, collusion, nepotism. Starting from the concept of tribute as an instrument of the continuity of the hierarchical relationship between the authorities and the community as a sense or form of devotion, there is a change in meaning from the word of tribute which was originally a form of resignation, then modified into bribery, meaning that bribery occurred commercialization of positions and manipulation of power for personal interests or group There is a need to maintain and increase power that requires high costs, so that the culture of abuse of power becomes a necessity.

Of the rise of rationalizing abuse of power, the impact of committing the white collar crime of these public officials, is caused by the Indonesian people's inconvenience in dealing with two basic components: First, the component of sudden change, due to global changes and the modernization of people's tendency to comply with materialism and consumerism as well ignoring the values of the philosophy of life of the principles of Pancasila as a mirror and a guide to living as a nation and state. Second, social structure components (social structure) for the people of Indonesia mostly get and feel the injustice in national and state life from public officials, not trust in the people's trust. In conducting public policies, there is a tendency of personal interests and certain groups, because public officials are born from the first component, not

born in the joints of life based on the view of life or the philosophy of the founder of this nation, that is the philosophy of the principles of Pancasila.

The author finds the anatomy of culture of power abuse in Indonesia, in this realm, the problem of countries in the world, especially for the nation and state of Indonesia. The writer's opinion on the problem of abuse of power is not only the description of power and moral behaviour of public officials. In fact, many public officials are punished for abuse of power by conspiracy to jointly engage in corruption, collusion, nepotism, even any heavy law. Still, the perpetrators of abuse of power carry out continuously or there is no clear effect for the perpetrators of corruption, collusion and nepotism. However, it is a wrong system in the life of nation and state, when public officials who depart from the people do not have a view of life as a nation and state should be.

Therefore, according to the views and suggestions of the author, this nation needs to return to the identity of the Indonesian people, that is morality and way of life, the philosophy of nationhood, and the state carries out and practices the points of the principles of the Pancasila with the truth, not just mere rhetoric. It is because the ideology of Pancasila has been built since the country was founded by the founding father.

B. Author's Note

The true spirit of reform and the true spirit of amendment to the 1945 Constitution, in every life activity in the nation and state, reflects moral and ethical values and practices the precepts of the Pancasila, and not just mere rhetoric.

The implementation seriously as a moral and ethical mirror to the ideology of the Indonesian nation and state; the first precepts of the Almighty God, Civilized Justice, Indonesian Unity, Society Led by Wisdom, Consultation and Representation and Social Justice for the

Indonesian People, will be realized. Furthermore, it will eliminate from this motherland the forms of feudalistic, capitalistic, monopolistic, bureaucratic, authoritarian, repressive and power abuse cultures in societies, that lead to corruption, collusion and nepotism in Indonesia.

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