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Analysing the Shift of Authority to the Land in Developing Investment in Indonesia

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ABSTRACT:- This work is aimed at exploring an appropriate solution in creating the legal certainty to the land use for developing investment in Indonesia. This legal certainty is highly required to guarantee the investment development. In Indonesia, since 2004, through the decentralization policy, the Indonesian government has shifted most of authorities of central government to regional government, including authority to the land. This policy has sparked legal uncertainty in utilizing the land, particularly for investment activities. For that reason, this work will elaborate and analyze the reasons behind of the shifting of authority. In addition, it will analyze the implication of the shiftment. At the end, this work will offer an appropriate solution in creating legal certainty in utilizing the land. All of the objectives will be elaborated and analyzed through normative and empirical legal research. The normative legal research will be used to formulate and to create the appropriate legal approaches in creating the legal certainty in the utilization of the land. While, the empirical legal research will be used to identify and to analyse reasons and implication of the shift of authority to the land. The solutions will be focused on coherencing the conflicted norms, the fulfillment of the legal vacuum and interpreting the unclear norms in utilizing the land for strengthening and developing investment activities in Indonesia.

Keywords: *shift of authority, decentralization, land use, investment*.

I. INTRODUCTION

Implementation of Law No. 23 Year 2014 on Regional Government (LG), as amended by Law No. 1 Year 2015 concerning the Stipulation of Regulation in Lieu of Law (decree) No. 1 of 2014 and the latest by Law Number. 9 Year 2015 on the second amendment of Law No. 23 of 2014 on local government in lieu of Law No. 32 of 2004 on Regional Government and Law No. 22 Year 1999 on Regional Government (Local Government)[1] has caused the shift of authority and influence policy[2], government in the administration of land matters in

[1] Regional autonomy is a right, authority and duty to regulate and manage the administration and public interests in accordance with the legislation, while the autonomous region is the unity of the legal community who have boundaries authorized to regulate and manage the affairs of government and public interests own initiative based on the aspirations of the people within the Unitary State of the Republic of Indonesia (see Article 1, item 6 of Act Number. 23, 2014). According to M. Solly Lubis, that the legislation governing regional autonomy already exists before birth Act Number. 23 of 2014 as a replacement ID. 32 of 2004 and No.. 22 of 1999 which, among others Law Number. 5 of 1974 and the regulations of other legislation, but the concept of regional autonomy that is referred to in the law has not been fully implemented or being implemented in accordance with the wishes of the people and the desire of local governments, meaning that governmental authority still controlled by the central government (the material lectures M. Solly Lubis, issues of regional autonomy second semester of the Academic Year 2012/2013 at the University of North Sumatra)

The validity period of local government system in Indonesia is as follows: a. The period before the Independence of Indonesia, include: 1) Good governance based regions Regerings Reglement (R.R.) 1854. 2) The regional administration based Indische Staatsregeling (I.S) 1925. 3) The local government during the reign of the Japanese occupation. b. Period Act Number. 1 of 1945. c. Period Act Number. 22 Year 1948. d. Period Act of the State of East Indonesia Number. 44 1950. e. Period Act Number. 1 Year 1957. f. Presidential Decree No. period. 6 Year 1959. g. Period Act Number. 18 1965. h. Period Act Number. 5 Year 1974. i. Period Act Number. 22, 1999.

[2] Policy is a translation of the policy derived from English. Password policy is defined as a plan of action or a statement of objectives, proposed or adopted by any government, political parties, and others.

Indonesia as regulated in Law Number. 5 of 1960 on the Basic Agrarian Law (BAL) as well as affect the substance of the law of some other legislation such as the Decree of the Indonesian People's Consultative Assembly (MPR RI) Number. IX / MPR / 2001 on Agrarian Reform and Natural Resources Management, Government Regulation (PP) No.. 25 Year 2000 regarding Government Authority and Provincial Government as Autonomous Region, the Decree of the President (Presidential) Number. 34 Year 2003 on National Policy on Land Affairs,[3] Government Regulation (PP) No.. 38 of 2007 on the Division of Government Affairs between the Government, Provincial Government and District Government/City[4].

The shift of authority from making the management system of government, especially in the administration of land matters either change in the functioning of government as well as all forms of implementation of policies related to land matters in Indonesia. Policy is a set of draft measures proposed by a government or a group of people or in a particular environment by showing the obstacles and opportunities, on the implementation of the proposal in order to achieve certain goals.[5] *Policy is do or not to do something by person or governaunce (Policy is doing something or not doing something, either an individual or persorangan or government).*[6] In line with the change of the legal instrument, the land affairs administration system through the distribution or transfer of power or authority of the government in the implementation of land affairs has undergone a shift in authority, whether in the form of delegated authority (deconcentration)[7], In line with the change of legal instrument, the system implementation land matters through the division or a transfer of power or authority of the government in the implementation of land affairs has undergone a shift in authority, whether in the form of delegated authority (deconcentration) in the provincial government and as well as through the

Policies should also be interpreted as statements regarding the underwriting contract or a written statement. This understanding implies that the so-called policy is regarding a plan, statement of purpose, the contract guarantees and well written statement issued by the government, political parties, and others. Thus anyone can be involved in a policy.

[3] Article 2 (1) and (2) of Presidential Decree Number. 34 of 2003, states that Article (1), Part of the authority in the field of land held by the Government of Regency / City Government. Article (2), the Authority referred to in paragraph (1) is a) licensing of locations, b) the implementation of land acquisition for development purposes, c) dispute settlement fief, d) the settlement of the problem of indemnity and compensation of land for construction, e) determination of subject and object redistribution of land, as well as compensation for the maximum excess soil and absentee land, f) determination and problem resolution communal land. G) for resolution of the problems of land utilization and empty. H) licensing of open ground. I) land use planning regency / city.

[4] Government Regulation Number. 38 of 2007 which permits the location, land acquisition for public purposes, dispute resolution arable land, settlement of issues of indemnity and compensation of land for development, determination of subject and object redistribution of land, and compensation for loss of land excess of the maximum and absentee land, establishment of communal land, utilization and troubleshooting the vacant land, permission to open land, land use planning and regency / city. While the authority of the provincial government is the location permits, land acquisition for public purposes, dispute resolution arable land, settlement of issues of indemnity and compensation of land for development, determination of subject and object redistribution of land, and compensation for loss of land excess of the maximum and absentee land, establishment of communal land, utilization and problem resolution vacant land, permission to open land, land use planning and regency / city. Provincial authorities / municipalities that location permits, land acquisition for public purposes, dispute resolution arable land, settlement of issues of indemnity and compensation of land for development, determination of subject and object redistribution of land, and compensation for loss of land excess of the maximum and absentee land, establishment of communal land , utilization and problem resolution vacant land, permission to open land, land use planning and regency / city.

[5] Muhammad Solly Lubis, cited from Carl J. Friedrich, Public Policy, (Bandung: Mandar Maju, 2007), p. 7.

[6] Tan Kamello, interviews, Medan, dated January 11, 2016.

[7] Deconcentration is the delegation of governmental authority by the government to the Governor as representative of the government and to the institution or vertically in a particular region. (See Article 1 point 9 of Law No. 23 of 2014).

handover of authority (decentralization)[8], as well as the co-administration (medebewind)[9] the local government district / city. This provision at least make it less obvious when linked to Article 33 paragraph (3) of the 1945 Constitution which is the back of the UUPA[10]

Article 33 paragraph (3) of the Constitution (Constitution) of 1945 as a whole has given mandate to the state as the supreme organization of all the people with the "Right to Control State"[11] over all the natural wealth of Indonesia both earth, water, space and all the natural resources contained therein. Rights of control over land by the state is the implementation of tasks in which the authority of the nation is the element of public law[12]. This shows that the state has the authority fully the right to organize, organize designation, utilization, use and maintenance as well as the supply of natural resources. Is more appropriate if the country as a whole the people's power organizations acting as the ruling body. From the point of this is to be seen the meaning of the provisions of Article 2 (1) UUPA.[13]

The scope of the authority of the Law No. 22 of 1999 on Local Government[14] has been widely authorizes local governments in land matters, so the presence of this Act gives space special powers or authority to give flexibility to local government in the allocation of authority and the rights it is possible authority in granting rights. The purpose of the establishment of the regional autonomy law is actually to realize that all the natural resources of this nation intended for people welfare. This is in line with the substance of the People's Consultative Assembly Decree dar Republic of Indonesia (MPR) which issued MPR Decree No. IX / MPR / 2001 on agrarian reform and natural resource management. Birth of MPR Decree No. IX / MPR / 2001 into consideration points of subparagraph (c) states that the management of agrarian resources and natural resources that took place during this time has suffered environmental degradation, inequality structure of control, ownership, use and practicality, as well as give rise to various conflicts and on points letters (d) it is stated that the legislation relating to the management of agricultural resources and natural resources overlap and contradict each other.

The legal implications shift of authority from the implementation of the land affairs, the local authorities have the discretion set allotment, use and or use of land as a source of life and in order to realize national development. Or the allotment and land use in support of national development and ekonoimi populist

[8] The principle of decentralization is the devolution of government power by government to autonomous regions to set up and administer governmental affairs in the Unitary State of the Republic of Indonesia. (See Article 1 point 8 of Law No. 23 of 2014)

[9] Medebewind / co-administration is the assignment from the government to the regions and villages of the central government or the district / city or village to carry out specific tasks. (See Article 1 ang ka 11 of Law No. 23 of 2014).

[10] Arie Sukanti Hutagalung, and Markus Gunawan, Governmental Authority on Land Affairs, (Jakarta: King Grafindo Persada, 2009), p. 111.

[11] Right to Control State (HMN) is derived and comes from the right of the people, but it is necessary to differentiate that HMN concept is very different from the concept of the domain of the State (in terms of land regulation in the colonial period Agrarische Besluit known Domein Verklaring). In BAL authority of the State in question is first, organize and plan the allocation, use, inventory, and maintenance of agrarian resources (land, water and air space), the second, set and define the various rights to agrarian resources, commonly called the the legal relationship between the subject and the object of the law, third, regulate and determine the forms of legal relationships between people or between people with the object of agrarian resources.

[12] Elza Syarief, Completing Land Disputes Land Through the Special Court, (Jakarta: Gramedia,: 2012). p. 131.

[13] Budi Harsono, Indonesian Agricultural Law Association of the Land Law Regulations, (Jakarta: Djambatan, 1989), p. 5.

[14] Article 7 paragraph (1) of the Local Government, states that a regional authority includes authority in all areas of government, except for authority in the field of foreign policy, defense and security, justice, monetary and fiscal, religion, and authorities in other fields. Then in Paragraph (2) states that the authority of the other fields, as referred to in paragraph (1) shall include policies on national planning and national development control macro, financial balance, the system of state administration and institutions the country's economy, development and empowerment of human resources , utilization of natural resources and strategic high technology, conservation and national standardization. Article 11 (2) areas of government that must be implemented by the District and the City of covering public works, health, education and culture, agriculture, transportation, industry and trade, investment, environment, land, cooperatives and labor.

involving multiple parties, particularly to investors who engaged in activities in agriculture, plantations and farms, need soil or a wide area. One type or designation and land use in the investment world is Hak Guna Usaha (HGU) in managing the business field of agriculture and plantations and farms. This leasehold is the right given to a person or legal entity specified on state land or property rights of others to carry out activities in agriculture and plantations as well as in the field of animal husbandry. One of the requirements to obtain the leasehold is getting the location permit or allotment rights of local governments. Handling all administrative means mmendapatkan leasehold requires administrative requirements are quite difficult for employers or certain individuals, this is due to the bureaucratic system of government that is unprofessional and convoluted, so that the administrative needs required from the government district / the city experienced significant difficulties because of the many interests of the local government elements. Other obstacles in obtaining administrative requirements of HGU is not only on the order of bureaucratic difficulties, but also faced with the social, economic and local culture as the paradigm of regional autonomy provide and change the paradigm of social, political, thus affecting the social, economic and the culture of the local community, especially in the acquisition and utilization of state lands.

Controversy shift of authority from the implementation of land between central and local government to create a conflict of norms, legal uncertainty, the legal vacuum and social frictions.

The legal certainty in optimizing the utilization of the land for investment activities can be manifested through several legal approaches: (i) coherencing the conflicted norms, (ii) fulfilling the legal vacuum, and (iii) interpreting the unclear norms in utilizing the land for investment development.

Rationales of Shift of Authority to the Land from Central to Regional Government in Indonesia

That the shift of authority land matters in the era of regional autonomy caused by political factors, juridical, sociological, and economical.

Political reason

Politics is all about the process of formulation and implementation of public policy, this can only be done if a group or community gain power. Power is a form of political objectives, with the power it can bring forth the powers of a political community or state, the source of authority comes from sharing legal instruments made by the authorities of the State. Indonesian legal situation tends to be determined by political factors both before and after independence and freedom. The development of national law development is inseparable from the history of the struggle for independence of Indonesia which has a constitution as a fundamental foundation or basic norms in organizing the government. The fundamental value of the constitution or the 1945 Constitution reflects and contains the values of the nation's legal personality (Personality Law), namely Pancasila. Pancasila is the outlook of the nation as well as the realization of an equitable democracy. Thus that all the power of the state in carrying out governmental functions should be organized based on the values of divinity, humanitarian values, the value of unity, deliberation and equity value. The shift in power part of government affairs as stipulated in Law No. 23, 2014 in lieu of Law No. 32 of 2004 is one of the reasons is politically strong desire of local governments in equality and equitable distribution of national development through regional to autonomy. It is also confirmed that there is a strong presumption has been that the central government is unfair or discriminatory in organizing the distribution of development nationally so that the leaders of local communities and or politicians regions urged that the law of regional autonomy soon be promulgated or in the evaluation or in the locker which aim to realize prosperity and equal justice for all Indonesian people.

Economic reason

Indonesian nation goal as stated in the Constitution of the 1945 Constitution is to realize the people's welfare. Welfare of the people in question is not only in the improvement of the economy or people's income but universal prosperity including economic development independent of local government and responsible. The independence of the region can only be done by empowering potential of local natural resources and empowerment of human resources so that the potential of natural resources and human resources potential of local government may memandirikan region and improve the local economy. it is stipulated in consideration of Law No. 23, 2014 in lieu of Law No. 32 of 2004 provides as follows "that the local government processes directed to accelerate the realization of public welfare through the improvement of service, empowerment, and community participation, as well as increased competitiveness of the region with regard to principles of democracy, equitable justice, and the peculiarities of an area in the system of the Homeland". Thus with the regional autonomy that local governments have the flexibility and independence of autonomy to administer and organize themselves according to their ability daeranya region by involving all stakeholders in realizing the region's economy with regard to the value of democracy and alama wealth and culture in the area.

Social reason

Before the reforms of 1998 then any form of governance is centralized, meaning Segla policy for local government still held hostage and regulated by the central government, although the existing system of norms regulating the government in derah as stipulated in Law No. 5 of 1974, but impelemntasi Law does not run properly let alone management system of government at that time still characterized by an authoritarian regime that all regulation is heavily dominated by the central government. With pengeloaan paradigm shift from centralized to decentralized governance has shifted people's behavior in a variety of fields teruatam in the social field. Reform and regional autonomy nmerupakan door democracy that provides the freedom for every people to express their opinions and thoughts regarding social life. The shift in power of governance is also a part of the will and keinginana existing social order of justice and balance in the midst of the public welfare.

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II. LEGAL REASON

Regional autonomy is a constitutional order as stated in Article 18 of the Constitution of 1945. Article 18 states that "the Republic of Indonesia is divided into provincial regions and areas of the province is divided into districts and municipalities, which each province, district and city it has the regional government, which is regulated by law ". Article 18 of the 1945 Constitution is explained and reiterated that Indonesia area can be divided into several provinces and regions of the province can be divided into a Regency / City, which means each -tiap provincial and regency / city pemerintahannnya can organize themselves based on the principles of autonomy and decentralization , By order of article 18 of the 1945 Constitution, the space and opportunity for the regions to mengotonomisasikan local governance through desentrasliasi principle, the purpose for the creation of perekonoimian tyang dalah evenly ensure effective and efficient use of the budget as well as reduce Corruption, Collusion and Nepotism.

3. Legal Implication of the Shift of Authority to the Land from Central to Regional Government

3.1. Normative Problems in Optimising the utilization of the Land

3.1.1. Conflict of norms

Performance in the formation of legislation (PUU) in the last 10 years has shown an increase both in quality and quantity. It is inseparable from the process of preparation of the PUU by mechanisms that are more orderly, focused and measurable, although they will still need to be pursued with the preparation of PUU faster processing without reducing the quality of the resulting PUU. Acceleration of the settlement needs to be pushed against the main PUU program PUU formation which completion is determined within a certain time or needed immediately to realize the strategic development programs.

Delivery of most of the authority of government to local government, the local government has put at the forefront of national development, in order to create prosperity for the people in a fair and equitable. In this regard the role and regional support for the implementation of PUU very strategic, especially in regional regulations (Perda) and other local regulations in accordance with the provisions of the legislation.

By law as other PUU has a function to create legal certainty (rechtszekerheid, legal certainty). For the proper functioning legal certainty PUU must meet certain requirements, among others consistently in the formulation in which the same PUU systematic relationship should be maintained between the maxims, kebakuan composition and language, and the harmonization of relations between the various legislations.

Pengharmonisasian PUU urgency in terms of the principle of legislation lesser must not conflict with laws and regulations are higher, so fundamental to the drafting of local regulations is conformity and kesinkronannya with other PUU. The formation of local regulations has increased rapidly since decentralization by Law No.22 of 1999 and was replaced by Act No.32 of 2004, but provide a general description of the local regulations have been established questionable in terms of quality. Cancellation regulations symptoms that regulatory harmonization process center with local regulations did not go well. According to the provisions of Article 145 paragraph (2) of Law No. 32/2004 which stipulates that local regulations are contrary to public interest and / or higher PUU can be canceled by the Government.

3.1.2. Legal vacuum

Enforcement and application of the law, especially in Indonesia often face constraints related to the development of society. Various cases have occurred illustrate the difficulty of law enforcement or law enforcement agencies look for ways that the law can be in line with the norms of the existing society. But the development of society faster than the development of rule of law, so that the developments in the society became the starting point of the existence of a rule. In public life is necessary a legal system to create a harmonious community life and regular. In fact the law or the legislation that created does not include all matters that arise in the community making it difficult for law enforcement to resolve the case.

The principle of legality which is often regarded as a principle that gives legal certainty confronted by the reality that the public sense of justice can not be met by this principle because society continues to evolve as technology advances. Rapid changes occur they become issues related to things that are not yet regulated in a legislation, because it is not possible a legislation can organize all human life thoroughly so there are times when a legislation is unclear or incomplete which resulted in the existence of a legal vacuum in society.

According to the Law Dictionary, recht (Bld) objectively means the law or the law. Grotius in his book "De Jure Belli ac Pacis (1625)" states that "the law is the rule of moral conduct that ensures fairness". While Van Vollenhoven in "Het Adatrecht van Ned. Indie "revealed that" the law is a phenomenon in the turbulent social life constantly in a state of bump and hit endlessly with other symptoms of ".

According to the Dictionary of Indonesian (KBBI) second printing in 1989, "Emptiness is about the (state, nature, and so on) empty or void", which is in the Law Dictionary defined with Vacuum (Bld) translated or interpreted together with "empty or vacant ". From the above explanation it narrowly "legal vacuum" can be interpreted as "an empty or absence of legislation (laws) which regulate the order of (certain) in the community", so the legal vacuum in the Positive Law is more precisely termed "void laws OF / legislation ". Why There? In the preparation of legislation either by the Legislature or the Executive in fact require a long time, so that by the time the legislation was declared valid then things or circumstances to be governed by the rules have changed. Besides the legal vacuum can occur because of the things or circumstances that occur have not been organized legislation, or whether it has been arranged in a legislation but it is not clear or even incomplete. It is actually in line with the proverb which states that "the establishment of a legislation always lags or underdeveloped compared to the events in the development of society".The impact caused by the legal vacuum, the matters or circumstances which have not yet been set it can happen to legal uncertainty (rechtsonzekerheid) or the uncertainty of the legislation in the community that will further result in a legal mess (rechtsverwarring), in the sense that during unregulated means permissible, as long as there is no clear ordinances and regulated means it is not allowed. This is what causes confusion (chaos) in the community about what rules should be used or applied. In a society there is no certainty of the rule applied to regulate matters or circumstances that occur.Efforts should be made to overcome the legal vacuum is as follows: Invention law (rechtsvinding) by the judge. Despite the legal vacuum, there is an attempt interpretation or interpretation of the legislation could be enacted in a positive way. Enterprises interpretation of positive law that is applicable in every case, because there are times when the law is not clear, incomplete, or may be irrelevant to the times (out of date).The discovery of the law is defined as a process of formation of the law by a judge or other judicial officers to those events which concrete law. Or in other languages are legal discovery efforts concretization of legislation in general and abstract based on real events that occurred. In other words, judges should adjust laws with concrete matters, because peraturanperaturan that there can not cover all the events that arise in the community. In addition, if a legislation it is not clear that judges are obliged to interpret so that it can be given a decision that truly fair and in accordance with the intent of the law, namely achieving legal certainty.

3.1.3. Legal uncertainty

Enforcement and application of the law, especially in Indonesia often face constraints related to the development of society. Various cases have occurred illustrate the difficulty of law enforcement or law enforcement agencies look for ways that the law can be in line with the norms of the existing society. But the development of society faster than the development of rule of law, so that the developments in the society became the starting point of the existence of a rule. In public life is necessary a legal system to create a harmonious community life and regular. In fact the law or the legislation that created does not include all matters that arise in the community making it difficult for law enforcement to resolve the case.

The principle of legality which is often regarded as a principle that gives legal certainty confronted by the reality that the public sense of justice can not be met by this principle because society continues to evolve as technology advances. Rapid changes occur they become issues related to things that are not yet regulated in a legislation, because it is not possible a legislation can organize all human life thoroughly so there are times when a legislation is unclear or incomplete which resulted in the existence of a legal vacuum in society. any legislation that does not have certainty on the material or substance of the law would create legal uncertainty.

3.2. Operational Problems in the land use as aconsequence of the authority shift to the land in Indonesia

3.2.1. Chaotic policy in optimizing the land use
3.2.2. Inefficiency and ineffectivity of the land use

4. Formulating Legal Solution in Creating Legal Certainty in the Utilization of the Land
4.1. Coherencing conflicted norms in optimizing the land use for developing investment.
4.2. Creating new norms in fulfilling the legal vacuum in optimizing the land use
4.3. Interpreting the unclear norms in the land use for developing investment

5. Closing remarks
5.1. Conclusion

1. That the factors that cause a transfer of authority in the administration of land matters in the era of regional autonomy as stipulated in Law No. 23 of 2014 concerning local government in lieu of Law No. 32 of 2004 was caused by factors philosophical, juridical, political, sociological, economical, local wisdom and culture. Namely philosophical factors that Pancasila as the philosophical foundation of the Indonesian nation has noble values that have goals and ideals of the nation Indonesia in realizing the common good and social justice, as set forth in the preamble of 1945. Factors that constitutionally juridical that Article 18 of the 1945 Constitution has provided the legal basis relating to the division of territory or autonomous regions. Political factors namely the strong desire and interest of local governments to gain authority in the administration of land matters to meet the needs of Revenue, a local. Sociological factors such as the people in the area want social change, especially in providing public services. Economic factors namely that the transfer of authority over the decentralized local governments the flexibility to explore the source of local revenue, especially in the land sector. Factors local wisdom that local governments have a diverse wealth of each area that can be a source of life for local people and local government development. Cultural factors that influence their cultural values in the society, so that cultural values can be grown and made legal means to live in the community.
2. That form of transfer of authority in the administration of land matters in the era of regional autonomy as stipulated in Law No. 23, 2014 in lieu of Law No. 32 of 2004 in its implementation is still shifting in the form of co-administration (medebewind) although the authority has in decentralization and deconcentration or to local governments. This means that the authority in the administration of land matters in the era of regional autonomy will be intervention by the central government's authority, while the local government authority was limited to matters set and still is the administrative authority.
3. That the legal implications of transfer of authority in the administration of land matters in the era of regional autonomy as stipulated in Law No. 23 Year 201 of the Local Government in lieu of Law 32 of 2004 have led to numerous legal implications, for example: Land Conflicts (Conflic of Land), abuse of authority (Maladministratif) and Conflict Policy (Conflic of Policy), Conflict of Norms of Law (Conflict of Norms), the uncertainty of Law (Legal uncertainly) inconsistencies Law (inconsistent of Norms), Emptiness Law (Legal Vacuum) and the vagueness of the Law (Unclear of Norms).

5.2. Recommendation

1. It is expected that the Central Government in this case the President of the Republic of Indonesia and the House of Representatives of the Republic of Indonesia to immediately make changes or turn the BAL No. 5 of 1960 on the BAL, so that there is legal certainty about land affairs authority between central and local government in the era of regional autonomy explicitly, concrete, systematic, universal.It is expected that the central government in this case the President of the Republic of Indonesia and the People's Council of the Republic of Indonesia Perwailan to realize the people's welfare and social justice as mandated in Pancasila and the 1945 Constitution in the utilization, allocation, use and supply of land for the people of Indonesia earnestly with giving authority to local governments regulate land use without discrimination in accordance with the philosophy of decentralization and agrarian philosophy. and if the authority of the local government land as stipulated in Law No. 23, 2014 in lieu of Law No. 32 of 2004 on local governments is not working properly then it should be the law perfected.It is expected that the Provincial Government, Regency / City that the commitment and consistent in carrying out the mandate of Law No. 23, 2014 in lieu of Law No. 32 of 2004 on local government, especially in the field of authority in the administration of land matters in the provincial government and district government / cities throughout Indonesia in order to realize the purpose of law which is justice, certainty and expediency.

BIBLIOGRAPHY

[1] Muhammad Solly Lubis, cited from Carl J. Friedrich, Public Policy, (Bandung: Mandar Maju, 2007).
[2] Tan Kamello, interviews, Medan, dated January 11, 2016.
[3] Arie Sukanti Hutagalung, and Markus Gunawan, Governmental Authority on Land Affairs, (Jakarta: King Grafindo Persada, 2009).
[4] Elza Syarief, Completing Land Disputes Land Through the Special Court, (Jakarta: Gramedia,: 2012).
[5] Budi Harsono, Indonesian Agricultural Law Association of the Land Law Regulations, (Jakarta: Djambatan, 1989).