

THE PARTICIPATION OF LANDOWNERS IN ORDER TO PROCURE LAND FOR CONSTRUCTION IN THE PROVINCE OF NORTH MALUKU

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Abstract

The provision of land for development needs, often constrained by uncertainty on the ground, the result is still a low percentage of registered land persil, which he believed was still conditioned by the sign/natural land boundary by society, so they are not motivated to certivicate soils, and the implications of its preliminary is the poor quality of the participation of "landowner" of development programs, and tends to be a tricky when claiming a piece of land as his own, in order to obtain just compensation "".

Keywords: participation of land owners – the provision of Land for development

I. Introduction

The fulfillment of the needs of the land as the primary media for each activity the physical development becomes increasingly difficult, due to the limitations of the acreage of the land from time to time, when those needs are increasingly high. The ground gets harder "retrieved" and has become a ' commodity ' which is very expensive.

Philosophy on the ground based on Act No. 5 of 1960 (BAL), which sets the property rights over the land as a right that is hereditary, has been increasingly customize the difficulty of providing land for development projects, and often had to put Government (project owner) and land owners as parties face to face.

Various motives have become the reason of the terhambatnya of development programs, including with regard to the pengeramatan property on the ground, or because economic motives (Baro, 2002). On the other hand, the uncertain status of possession land rights have also become problems are quite complicated. The percentage of the total number of registered land persil (certified) low nationwide increasingly complicate the implementation of development programs through the mechanism of the procurement of land for the public interest as set forth in the regulations of the President Number 36 in 2005 (Regulation 36/2005).

There are however being strategic issues in the field of law, is a weak law enforcement as well as the handling of post-conflict social issues (Draft RPJMD North Maluku Province 2009-2013), and thus require law enforcement programs for the creation of a conducive situation that allows the implementation of regional development are good.

Weaknesses in the areas of law enforcement, yet can also be overcome are good, so is still the fundamental problem, exceeding the problems arising from the weakness of its own legislation, but if it can be solved, then the various failed in law should be minimized so that the legal system

can perform a role as important as facilitation of social interaction in particular the facilitation of development.

The issue of land, especially in cases of double certificate and proof of possession of the land, vagueness is legal issues that are prominent in North Maluku Province, in addition to the problems of the marriage of minors, theft, drug abuse, molestation, domestic violence (Domestic Violence), divorce, and rape (map legal issues, Legal and human rights regional Office of North Maluku Province, 2008).

Double certificate, will have implications for the legal uncertainty on land owners, so that in time it will complicate the implementation of the program of provision of land for development. So, the absence of a certificate as proof of possession rights over land, as a result of still growing habit of people to trust the evidence of possession based on customary law, including natural markers such as tree/plant (banana, mango, sago, walnut, bamboo, and so on). There are also tendencies/habits of the community land pinjam-meminjam transaction without any clear evidence giving rise to the problems behind the day.

The tendency of others, is reluctance the community land certificate to avoid taxes. On the other hand, the manajemen procedure certificates and the fees set for it, it is still perceived by the community. A clear indication of that, is not yet a successful land registry program as expected and land in General has not been certified (unfortunate that there has been no definite data on the BPN about it).

By implication, is the rise of the dispute between society and the Government (areas) with regard to the determination of the amount and the manner of execution of the awarding of damages on land pengadaaan programs for the benefit of development, and usually the authorities often impose land acquisition. Often, it is difficult to distinguish between the liberation/release/delivery of land rights with the disenfranchisement of the spectacles of the law can be interpreted as a tort by the ruler (onrechtmatige daad overheids) (Arie s. Hutagalung: 2005).

Any land acquisition practices have become a means of rulers to gain ground with ease, and ultimately put the community on a position "'s choice"; take it or leave it (accepting indemnity or not at all) that clearly do not comply with the principle of deliberation for consensus, and in the condition in which the community retaining its rights, then usually the ditempuhlah efforts for the removal of land rights as aforesaid.

II. ON THE CERTAINTY OF LAND RIGHTS AND THE CONNECTION WITH THE LAND PROCUREMENT PROGRAM FOR THE BENEFIT OF DEVELOPMENT

The land has become the object of the dispute's potential everywhere, and the main cause is the lack of possession of land (Baro, 1996:13), whereas the obligation for it has been confirmed in 19 Agrarian Law Staple Act.

The obligation to register the land intended to guarantee legal certainty and the certainty of land rights, since the parties (concerned) will be able to easily know the status/standing of the law of the land; its location, extent, and its boundaries, its owners, including loads attached to the ground. In the context of a more broadly, land register, in addition to providing information on a plot of land covering usage/it is used, as well as information about of land, including the potential contained in it, building on it, the price of buildings and land, so any tax which is set over land/building.

The main functions of the land register, is as strong evidence of legitimate legal deeds over the land in question. In addition, it also serves to determine the legal deeds, legitimately in the sense that, without doing the registration, then deeds the law of the land is not legally valid. On the registration for mortgages for example, then before you enroll in the OPT, then mortgages do not have the force of law that are binding.

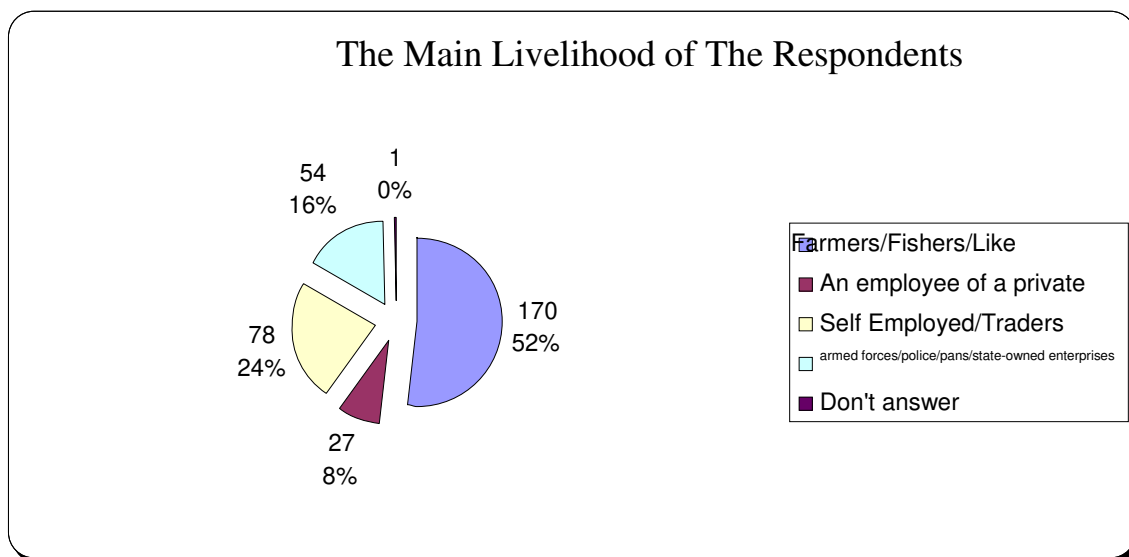
Based on BAL, then in order to create legal certainty regarding land rights, then the registration of land rights is an absolute requirement, which will be a reference about how far the rights of an individual or a legal entity over a piece of land can be guaranteed, including things that may be doing with regard to these rights. Therefore, BAL (article 23 joes 38), specifying the rights over the land must be registered include: property rights, use rights, Business Rights To buildings, each transition of land rights, and delete rights and his load with other rights. Then, based on the regulation of the Minister of agrarian number 1 in 1966, set also the obligation to register: usage rights (the ground state), and rights management.

The obligation to register the seventh type of those rights, aims so that created legal certainty regarding land rights, and can be a powerful of proof tool, so it can be a guarantee of the smooth running of government programmers, particularly with regard to the procurement of land for the public interest.

Conception and perception of society against his property, typically, would have an effect on the quality of their support towards the development programs, especially when such support is needed in the form of readiness (readiness) they "Donate" land for it. It is associated with the "status" of the land as a source of livelihood of the community, so a willingness to let go of the land should be counterbalanced (given that) in the form of existence of alternative job opportunities, after the land concerned has redirected its functions in accordance with the objectives of the program development are concerned.

The results showed that the main sources of livelihood of the community at the site of the research is as a farmer, which of course could not be removed from the availability of agricultural land.

Diagram 1



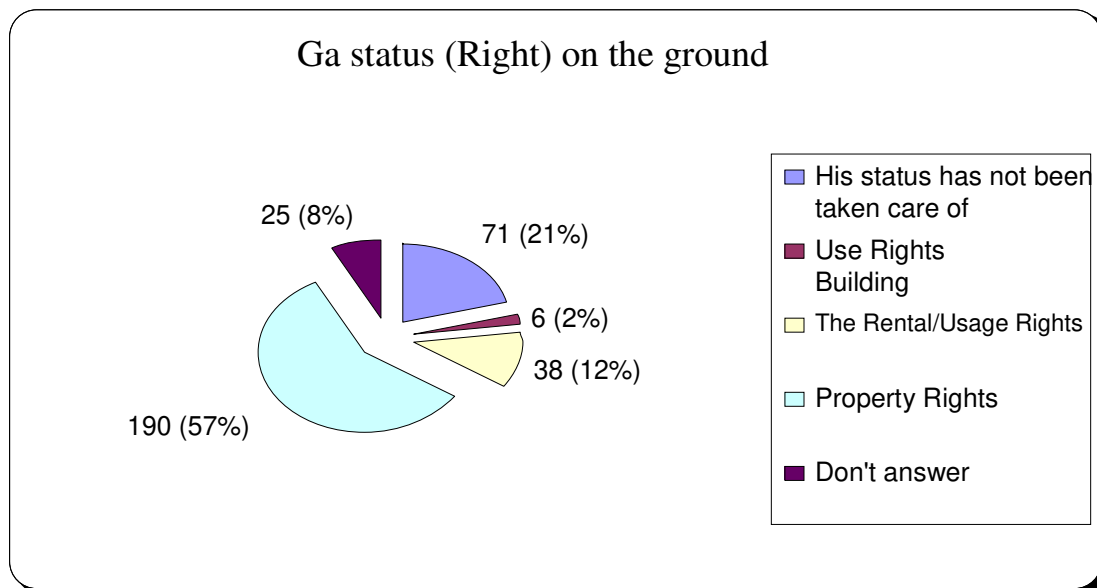
The majority of respondents (51,51%) work as farmers or fishermen and the like, and if it is associated with the procurement of land programs for the public interest, on the other hand will be a big problem for the farming community, and if such event occurs, the need for new sources of livelihood, an absolute existence. Any development programmer, should be able to improve the living standard of farmers and fishermen, at least maintain the condition before, so it does not become a source of new social problems, after their areas were converted into urban areas because they are not necessarily able to adapt to city life.

Development of the region, should not be merely "frees" the land of the people by giving compensation, because in many cases, the compensation money is rapidly running out for purposes which are not productive, and after that the people that used to live from farming, then lose a source of livelihood. The concept of development of the region should develop also the livelihood of the Community (especially the original land owner) directly, so the extent of his life come into

"developed", and automatic public participation will grow and become an important part in any retrieval policy and development.

The status of the possession of land, has also been a consideration in the procurement of land, especially in relation to the subject is entitled to a plot of land, including the big compensation will be agreed upon.

Diagram 2



In General, (57,58%) respondents acknowledge that the status of possession over land is property rights, but this does not mean that there has been a certainty on land rights is, therefore, not always can be proven with valid evidence in the form of a certificate (unfortunately not obtained data certainly from the BPN about it). There is a tendency of landowners who have yet to register (certificate) the soil because of the base's-any particular reason.

Recognition of natural markers as proof of possession rights over land, such as *Leucaena leucocephala*, bamboo plants, jackfruit, distance fences, coconut, former high fells, and so forth,

have participated and customize the amount of land that is not registered (certified). In addition, because in general they felt had lived long enough in the same community, then it is seen unlikely to happen, because every land aggravated trespass residents will strive to maintain harmony in.

North Maluku community get to know various forms/types of evidence on a recognized land rights according to the law individually decorated living (living law), i.e.:

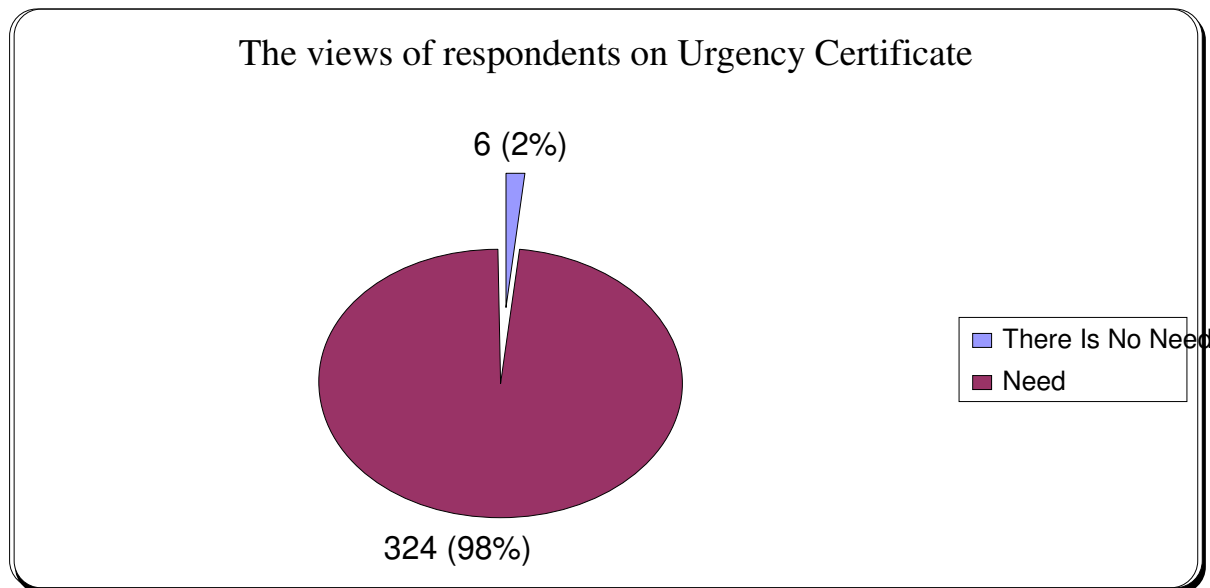
- a. *Cocato*, that is a piece of land that is controlled by a person and derivatives based on the grant by the Sultan (prior to 1912) because of his services to the Empire. This type of soil can be maintained by the transfer of status of his possessions to the rights civil law according to the legislation, with the proviso that a letter from the Sultanate is given before the official stand SO.
- b. *Jurame-Tolagumi*, land controlled by a group of community members and worked as farm/plantation, based on permission from the.
- c. *Tomakomace*, a former piece of axe on trees, which, according to customary law, possession is evidence someone (the cut down), and quite appreciated by the public as a sign of possession rights over land (garden/fields).



Bekas tebangan sebagai penanda batas kebun

In fact, the understanding of the people about the importance of certificate is very high (98,18%), but it still has not been implemented well in the community, in the form of animo to certificate their land.

Diagram 3

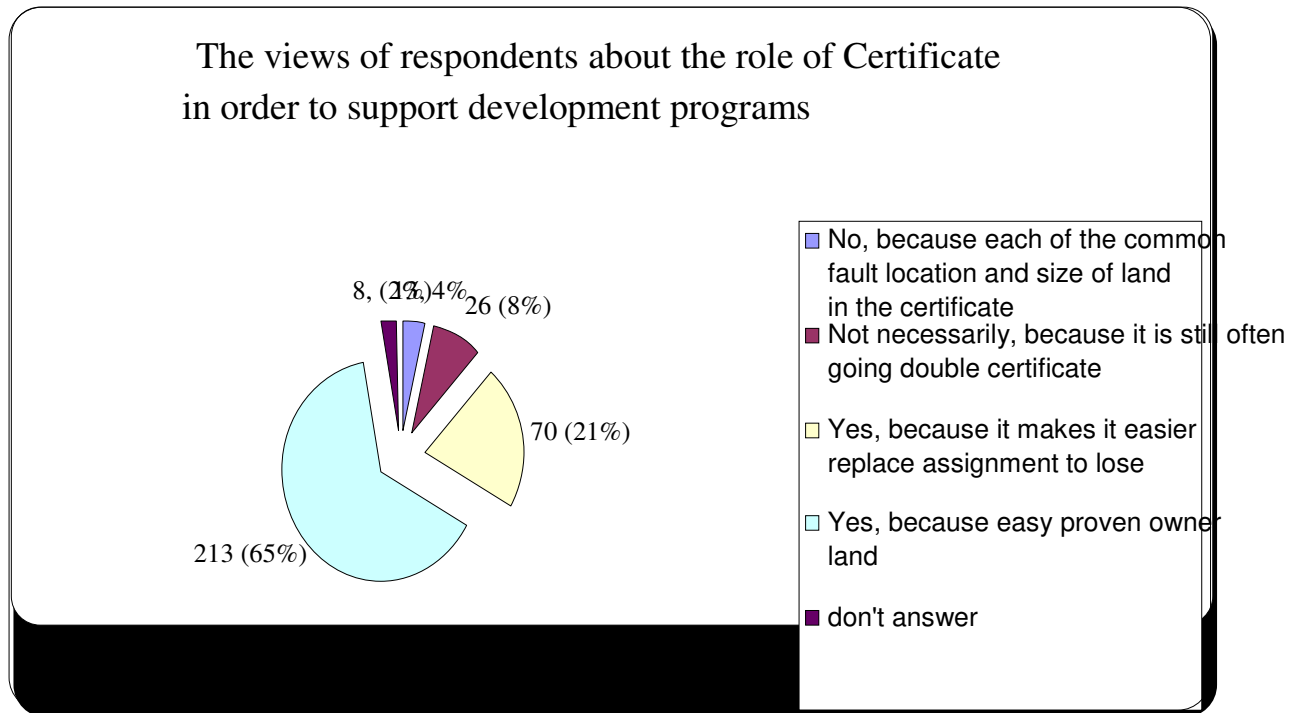


Data on the percentage of land registered in the North Maluku is currently still under 20%, except for the city of Ternate \pm 40%, and more still lower again (BPN North Maluku Province, 2009), due to several factors, namely:

- (1) Still adhered to the traditional institution-owned institution in the community, which tends to still admit possession of evidence other than a certificate
- (2) Among the community could not afford to tend to not want to register the land in order to be taxable, even free PRONA still avoided certain people because of it. Nationwide, land certificate and taxed is the selling value of Rp 60 million upwards, whereas in North Maluku varies between Rp 7,500,000 – Rp 15 million.
- (3) When doing research, Office of BPN in Kabupaten/Kota is a definitive new three (Ternate, Halmahera Barat, Halmahera and middle), so the range of control and quality of service has not been as expected.
- (4) There is still a group of people (for example in Ternate North part), who did not want to register the use of land as the land belongs to the Sultanate of Ternate, although there are PRONA.

In addition, the power law certificate, should be implemented in practice, so that the confidence of the community about the significance of the certificate may be established, and may encourage them to certificate their land. Of course, the question of costs and procedure that is still a constraint, as expressed before, should be able to look for the right solution and conducive.

Diagram 4



The existence of the certificate, will ease of proof regarding the land owners will be freed (64,55%), as well as the determination of the change to lose (21,21%), although a small percentage of the respondents still see the weaknesses in the form of the existence of a case of double certificate (7,88%), and common mistakes land size and location that is listed in the certificate with the real (3,94%).

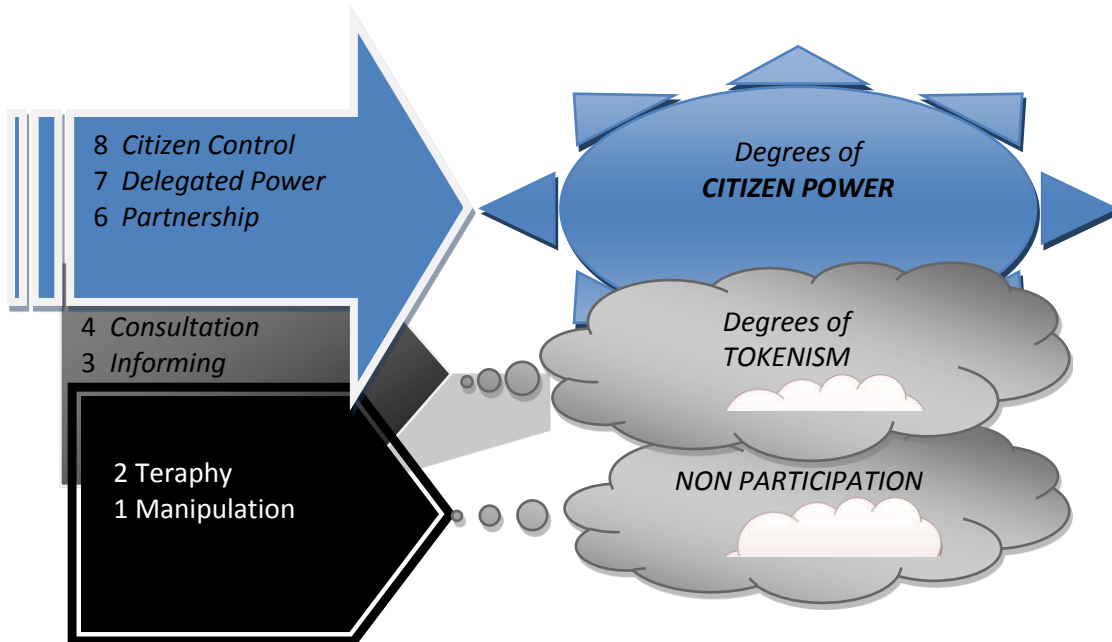
If the landowner easy note accompanied by clarity about the size and location of the land in the certificate, then of course the implementation of land acquisition would be easier to implement.

III. Community Participation

The success of all development programs, will always be influenced by factors within society, such as: legal awareness, cultural characteristics, the ability of the social economy, as well as the needs, aspirations and potential of communities (Baro, 2003:169). Who views, tend to see society as a "burden" in development, and on the side of the optimistik, tend to see the community as the "potential" in development.

In the typology of Arnstein (Baro, 2005:87), put forward Eight Rungs on the Ladder of Citizen Participation, the following:

Eight Rungs on the Ladder of Citizen Control



A typology of Arnstein showed a level of eight stairs community participation, in which the two bottom rungs are categorized as role as well as a non-participation, because both are more geared to "educate" and "treat" participants.

The third rung (information), fourth (consulting), and fifth (calming anger or muffle), are categorized as "tokenism", i.e., the level of participation in which the community is being heard and allowed to argue, but they don't have the ability to obtain assurance that the opinions of those who would be considered by decision makers.

Three of the top rung, namely partnership (partnership), the delegated power (delegation of powers), and citizen control (surveillance society), categorized as a power level of society (citizen power), where the community had influence in the decision-making process. On the sixth rung (partnership), the community had a "bargaining position" with the Government in the decision-making process, on the seventh rung (delegation of powers) and eighth (supervision community), the community already has a majority of votes in the decision-making process, even very likely have full authority in managing an object of wisdom.

Wengert (Baro, 2005:88-89), describing the various forms of community participation, as follows:

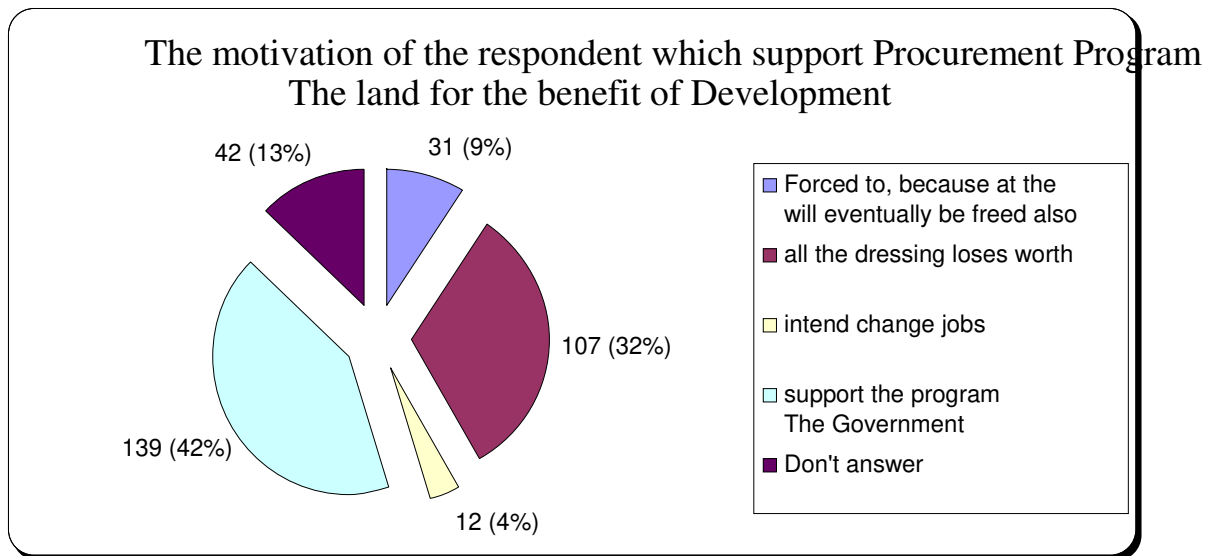
- (1) The role as a discretion, which enshrined the notion that society is very potential for the victim or sacrificed in a construction project, and have the right to consult.
- (2) Participation as a strategy, which is based on the assumption that if the community felt it had access to the decision-making process, and the concern of society at all levels of

- decision-making is documented well, then the credibility of the decisions taken will arise by itself.
- (3) Participation as a means of communication, based by the assumption that Government is designed to serve the community, so that the views and the input of the community is the pretension value in order to take and make decisions that are responsive.
 - (4) Participation as a means of dispute resolution, which is based on the assumption that the share and exchange ideas, as well as obtaining the views of the public, will be able to raise the level of understanding and tolerance, and can relieve/reduce the sense of distrust (mistrust) and confusion (biased).
 - (5) Role as well as therapy, done as an attempt to "treat" a wide range of psychological problems of society, such as feelings of helplessness (sense of powerlessness), no confidence and the feeling that they are not included in the component (important) within the community.

In order for the procurement of land for development, community participation landowners became so important because without it, the Government would have difficulty meeting the needs of the ground as the key ingredients that might not be neglected.

Therefore, it is always important to do careful analysis against the perception as well as the attitude of the society towards a plan/program development, in order to be proper implementation strategies drafted so that the program in question can be implemented and achieve the targets as expected. Specifically related to the willingness of the public support the procurement of land for development, there are still pros and cons to just happen, due to different perceptions and interests.

Diagram 5



The above data shows that the majority of respondents (42,12%) would support the Government's program, especially the procurement of land for the benefit of infrastructure development, especially if the indemnification set out quite decent (32,42%), then support/community participation will reach 74,54%. A high percentage of the number of communities that are willing to relinquish the land to support the procurement of land for the construction of this infrastructure, as well as demonstrate the high desires/needs of the community towards the advancement of the region and its environment.

Animo society to support development programs, especially in the infrastructure area, very large/positive, even some of them willing to give their land, though without compensation. It's just that, most residents still see the need for determining the priority of development are more closely, such as the construction of road infrastructure (land) and bridges cross the Halmahera is seen still more urgent at this time given the conditions of transportation are still very difficult, whereas transport of goods and the mobility of people in the region are already getting crowded.

The condition of ril in the field attest to how difficult it is to reach certain areas on Halmahera, East Halmahera in the region especially, so that data collection should be done in the middle of forced Wasile redirected to Mabapura due to its location almost not reachable in the rainy season. The journey from the Subaim to Sofifi "only" is 150 km away, forced to taken over CA. 4 hours, much less than Subaim to A just \pm 40 km should be reached within two hours, the fastest road to even the capital East Halmahera Regency or Halmahera (Maba) is so hard, it's a type of a vehicle with a particular specification.

Road Conditions The Shaft Subaim (Halmahera Timur) – A (Halmahera Barat)

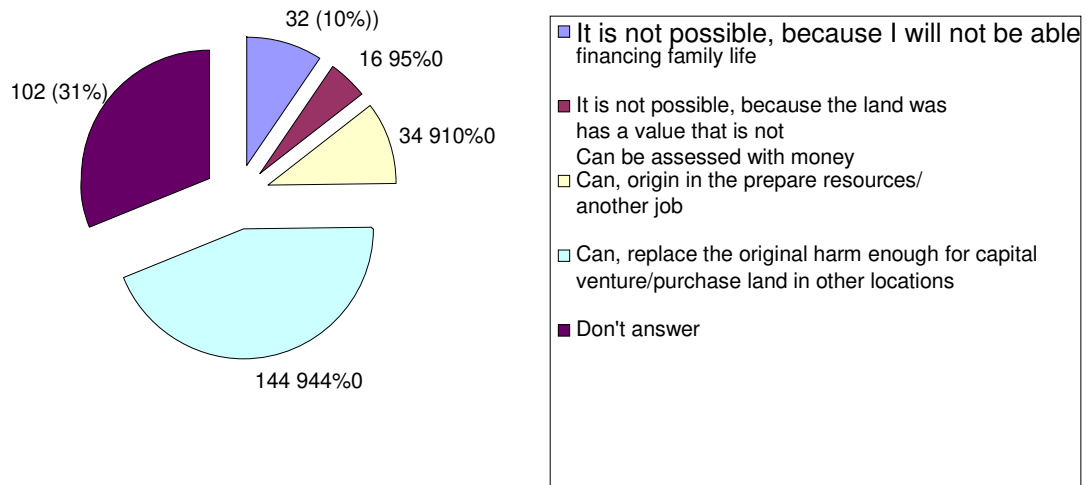


The image shows clearly the conditions of the road Subaim-A East Halmahera Regency, who is so difficult, especially in the rainy season, so the mobility of people and goods transport became so difficult and expensive. The axis of the main road linking East Halmahera Regency with other counties, was a dirt road, it must pass through several rivers that have not built bridge, so it is not only difficult, but also prone to accidents. Lucky there is A pioneer in airport that could be an alternative, although it is not only expensive, but also its flight schedule is not yet routine and is currently only served by airlines of Trigana Air.

Community support to the procurement of land for development, also associated with motives that are economically.

Diagram 6

The Motif of The Community Releasing Land



These data indicate the existence of two primary motivation community who are willing to relinquish their land, although the main source of family income, that is compensation enough (46,06%) and availability of alternative resources (13,33%). Even they are ready to switch jobs if the land was freed.

Thus, it can be noted that the procurement of land for the construction program will earn community support of landowners, in the form of a willingness to give up their land for infrastructure development for the sake of the progress of the region and its people. Implementers program will be able to run well, only the community can benefit from a clear development programmer is concerned, the good economic benefits, as well as benefits in the form of answer others, such as the harmony society. Reparation is sufficient, in terms of not causing the livelihood of the community decreased after the release, will further encourage the participation of the community in a significant way.

IV. Conclusion

- (1) Community/land owners strongly support infrastructure development in North Maluku, and is willing to participate actively because aware of the importance of infrastructure development for the progress and prosperity of their region. Some landowners, even willing to give their land without compensation, but the construction of road infrastructure, particularly in Halmahera, viewed the current most urgent.
- (2) Institution on the ground (traditional) no longer affects the smooth development, in particular in the framework of the provision of land for development, because society at large is willing

to relinquish their land, as long as replace harm decent, and they can join the growing hand in hand with the progress of his country.

- (3) The existence of the legal certainty of land rights in the form of possession certificates, will strongly support the program of provision of land for development, although in reality, the percentage of registered land is still very low. Certificate of land, automatically, will make it easier to identify the owner of the land that will be exempted, as well as for the setting change to lose.

V. Recommendations

- (1) Preparation of the Master Plan of North Maluku, especially cross-Bridge – Maitara – Ternate, Halmahera (TASTERA), should be compiled with integrated cross street/axis of Halmahera, because in addition to smoothen the flow of people and goods transport in North Maluku, improve the economic life of the community, also at once will increase the resilience region as well as strengthen the unity of the North Maluku community comprising diverse ethnicity that tend to conflict-prone.
- (2) The program of provision of land for the construction needs to be drafted and implemented in such a way, so that the local community participated and developed and developing along with the development of the area, due to the abandonment of the case, likely to give rise to problems.
- (3) In order to stimulate the interest of the community to register their land, still needs to be done systematic efforts and stimulus from the local government because the cost of maintaining the certificate is still perceived by society at large. At the same time, the national land Agency have to do intensive socialization on the management procedure certificates, especially to the area/rural areas while offering land registry programs that.
- (4) In order to implement the program of infrastructure development (the road) which crosses several regions.
- (5) Need a stimulus from the local Government to perform the acceleration program efforts land registry in order that the status of the land that would become the location of the project can be ensured, thereby facilitating program implementation, including procurement efforts against the tendency to anticipate the behavior of the community improve the selling price of the land in ways that are not healthy, such as planting (spreading) of the particular plant seed with the motivation to obtain indemnification.

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