

## **Optimizing The Deliberation Process To Reach An Agreement In The Procurement Of Land For Public Interest**

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**Abstract :** Land availability has always been an important thing in infrastructure development in Indonesia, so that communities affected by land procurement for the benefit of toll road development and other infrastructure development must also be protected by its rights. This research on how to optimize the deliberation process to reach an agreement in the procurement of land for the public interest. The research method used in this research is a normative juridical legal research method. Assessment results involving the magnitude of the indemnity value are final, there is only option to agree or disagree, so that there is no process of hearing each other, giving each other an opinion on the basis of volunteering and equality. Even the deliberation process is reduced to the agreed or disagreed process and the result of the agreement is determined by calculating the most number (majority). Thus in the application of LAW No. 2/2012 has violated the principle of deliberation and consensus in reaching an agreement as part of the legal system in the procurement of land for the implementation of development for the public interest. In order to centralization and effective deliberation process to reach an agreement in the procurement of land for the public interest, in this case the need to be established a special institution of mediation that is independent, professional and impartial integrated with the state court system, or can also be established mediation institution dispute resolution outside the court.

**Keywords:** Deliberation, Agreement, Public Interest.

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### **I. INTRODUCTION**

Infrastructure development such as toll roads in Indonesia is highly dependent on land availability, most of the lands affected by the land procurement object is the land of the community that has been granted the right base for the most part either certified or uncertified. Land availability has always been an important thing in the development of infrastructure in Indonesia, so that people affected by land procurement for the benefit of toll road development should also be protected by its rights.

Act No. 2 of 2012, in consideration mentioned, the procurement of land for public interest is implemented by promoting the principles of humanity, democratic, and fair. Thus, the law is drafted as the basis for the law of Land acquisition for development for the public interest, which can provide a balance between the interests of the rights holders of the land as the right party in the process of land procurement with Interest in this government as a land procurement executor for the public interest.

In article 2 of Law No. 2 of 2012 stipulates one of the principles that become the basis in the implementation of land procurement for the public interest is the principle of agreement, which in the explanation of the article is confirmed that the meaning of "the principle of Agreement" Is that the process of land procurement is done with the deliberation of the parties without any element of compulsion to get a mutual agreement.

The basis of the agreement of these parties is both in the preparatory phase and in the implementation of land procurement. In the preparation phase of land procurement, the agreement is conducted in public consultation activities. At the implementation stage of land procurement, in the event of indemnity is determined by deliberation activities to determine the form and/or the amount of damages. The result of the agreement in this deliberation is the basis for the compensation.

In the process of land liberation for the development of public interest, clearly visible is the position of the dominant government, because in order to implement development for the public interest, the government has the authority to do Land rights exemption. Government care and discretion is required to prevent misuse of authority, especially in interpreting and implementing statutory regulations. When examined article by article Law No. 2 of 2012 on land procurement for development for public interest, especially in the deliberation

process and the implementation of the payment for the compensation of land rights, buildings and plants, the government in This is the party that needs a very strong land position with provisions for the public interest, its position is not balanced with the party rights to the land so that the substance of deliberation process for consensus is not achieved.

Act No. 2 of 2012 does not give an understanding of deliberation. The definition of deliberation is in article 1 Figure 10 Presidential Decree 36 year 2005 which formulates the notion of deliberation is an activity that contains the process of hearing each other, giving each other and receiving opinions, and the desire to reach the agreement Regarding the form and magnitude of damages and other problems relating to land procurement activities on the basis of voluntariness and equality between the parties having land, buildings, plants, and other objects related to land with the parties that requires land.

Based on the basic understanding of the agreement as in the explanation of article 2 of Law No. 2 of 2012 and the notion of deliberation contained in the Presidential Decree 36 year 2005, it is essentially the procurement of land is done by deliberation process to Reached an agreement between the land rights holders and the authorities requiring the land. From the sense of deliberation can be withdrawn its elements namely: first, the existence of the element of equality or equivalent; Second, the element of voluntariness; Third, the element of mutual hearing, giving, and accepting opinions; Fourth, an element of desire to reach an agreement on the form and magnitude of damages (Gozali, 2018: 23).

According to Gunanegara, normative indemnity pattern is set based on deliberation which is the institutionalization of indigenous institutions that grow and thrive in Indonesian society. He further said that: the essence of deliberation is a unanimous agreement between land owners and the country regarding the value of damages (Gunanegara, 2008: 239). Koentjoro Poerbopranoto suggests, deliberation is a certain system by counseling and counseling until obtaining the said agreement (Poerbopranoto, 1975: 100).

If there has been no agreement but the damages are set and deposited in the court, it can be said, other than erroneous, it is the coercion of one's will and ignore the principle of equality between the land rights holders and the parties Need land (Sumardjono, 2005: 105). Boedi Harsono stated that by the consignment (indemnity money), the party that needs the land considers that he has fulfilled his obligations to pay damages. It is up to the landlord to pick it up. Furthermore, he is no longer dealing with landowners, until the land in question can be taken and used. Landowners are welcome to relate to the Chairman of the District Court (Harsono, 1990: 168).

Whereas the consignment known in article 1404 BW must begin with the agreement of the parties underlying the relationship between the parties. If one party submits an appeal lawsuit to the Supreme Court and the previous verdict is not yet unnecessarily, the government cannot perform the consignment of indemnity care in the District court.

Consignment can be done if one of the parties is not willing to accept payment for an agreed obligation and has the legal force remain, not. Thus according to Eman Ramelan, the consignment arrangement is contrary to the principles stipulated in the Law No. 2/2012, particularly the principle of humanity, justice, agreement, participation and welfare.

Land procurement for public interest for the public interest by the State must be done with a fair and reasonable indemnity, and should be obtained by agreement through the deliberation process, then the liberation of land rights Public interest, should be accepted and obeyed by the public, so the dispute will be relatively rare. But in fact, the procurement of land for the public interest, it turns out a lot of disputes between Governments and holders of land rights. The policy issued by the Government should answer two interests, both for society and the country. It is especially concerned with development issues for public interest policy. With this policy principle must not contradict the principles of law, as well as the rules of the foundation itself so that no policy deviation occurs.

In article 1 the Figure 2 of Law 2/2012 defines that "land procurement is the activity of providing land in a way to compensate worthy and fair losses to the right party". Then article 42 of Law 2/2012 determines that "if there is no agreement in the deliberation in determining the form and the magnitude of the damages then the Land Procurement Committee can deposit damages in the district court in the area of development location for the public interest".

Reviewed from the meaning of the provision can be said there is an element of compulsion from the government to obtain the land, while in the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as "Constitution 1945"), Amendment IV, Prohibit the act of arbitrariness, as contained in the provisions of article 28 letter h paragraph (4) which determines that "everyone has the right to own rights and property shall not be taken over arbitrarily by anyone".

Accordingly, if consequent to the principle of agreement, and place customary law as the basis of the agrarian law as mentioned in article 5 UUPA, and realize that the procurement of land is part of the implementation of the UUPA, then it should be in Land procurement is pursued by means of release or exemption of land rights with the principle of deliberation to reach an agreement. The principle of deliberation

to achieve this agreement in accordance with the personality of Indonesia as stated above. The essence of deliberation is a unanimous agreement between land rights holders and a land-requiring party.

In terms of the value of this indemnity becomes a very sensitive component in the land procurement process. Negotiations on the form and magnitude of the indemnity value are often a lengthy process due to the absence of agreement obtained by the parties concerned. The protracted process is very detrimental to the parties. On one side of the government's plan to construct public facilities became hampered, on the other hand the public losses due to uncertainty over their land were affected by land acquisition. The procurement of land for development for public interest raises volatility in practice, where the Government's determination of the price of unilateral indemnification as well as the property rights holder on land demands the price deemed By an unreasonable price government.

Deliberation done is not to seek agreement of form and the change of losses but the form and the size of the damages have been set before and deliberation only to request a deal from the appropriate party to approve the form and the damages. In fact, deliberation is actually a process or activity of hearing between the party rights holders on land and the party that needs land by means of interactive dialogue between the parties by placing an equal position or equivalent. Setting up of the form and the amount of indemnity also shows the limited freedom of the party rights holders in reaching the agreement on the form and magnitude of the damages.

Based on the preliminary explanation that has been proposed above, it can be formulated the following problems, How to optimize the deliberation process to reach an agreement in the procurement of land for the public interest.

The research methods used in this study are normative juridical law research methods, the normative legal research method essentially examines the rules of law and principles of law, analysts of the legal issues expressed by Refers to secondary data: primary, secondary and tertiary legal materials. The object of this research is the concept of deliberation to reach an agreement in the procurement of land for the public interest. The data collected above is derived from secondary data, search of scientific journals, and others, and analysis using qualitative analysis method.

The approach used in this journal is with a statue approach, analytical approach, to analyse understanding, principles, rules, systems, and juridical concepts, and a case approach (case). approach), to learn the application of the norm or the rule of law in the practice of law.

## **II. LITERATURE REVIEW**

Implementation of national development and in this area in the field of land must be in accordance with what is mentioned in article 33 paragraph (3) of the Constitution 1945, namely: "Earth and water and natural riches contained therein are mastered By the state and used for people's prosperity ". With a decent and equitable relief of losses expected land procurement for development for public interest can be held more democratic and respect for human rights relating to land.

According to Gunanegara, "the procurement of land is a process of waiver of the land of the possession of persons or land and/or objects thereon which are made voluntarily for the public interest". Legal land procurement will be more intact understood when sticking to the conception of the national Land Law. The conception of the national Land Law is taken from customary law, which is the conception of a religious communalistic that allows the possession of the land individually, with the rights of the land that are private, while containing elements of togetherness (Olan Sitorus, 1995).

Based on the above definitions, land procurement consists of the following elements:

- a. Legal action in the form of land waiver to land country,
- b. Waiver of land for public interest,
- c. Legal acts are based on deliberations and volunteeration,
- d. With fair and reasonable damages.

In 2012 the government imposed Law No. 2 of 2012 on land procurement for development for public interest and President regulation of the Republic of Indonesia number 99 year 2014 on the Second amendment of the Presidential regulation of the Republic of Indonesia Number 71 year 2012 about land procurement for development in public interest.

In article 1 digit 2 of the Law No. 2 of 2012 on land procurement for Development for the public interest stated that the procurement of land is the activity of providing land in a way to compensate worthy and fair losses to the right. The appropriate party is a controlling or owning land procurement object.

Legal land procurement will be more intact understood when sticking to the conception of the national Land Law. The conception of the national Land Law was taken from customary law, believed to be the conception: "Religious communalistic that allows the possession of the land individually, with the rights of private land, while containing elements of togetherness".

According to Maria Sumardjono, in the land procurement activities, the interests of two parties, namely government agencies that require land and community whose soil is needed for development activities. Because the land as a basic human need is a manifestation of the rights, social and cultural, the procurement of land must be done through a process that guarantees the absence of the "will coercion" one party to the other.

In addition, given that the community must serve the land for a development activity, it must be guaranteed that the socio-economic welfare will not be worse than the original, at least must be equal to the circumstances Before its land is used by other parties, therefore the procurement of soil must be done in accordance with the principles as in article 2 of Law No. 2 of 2012 on land Development for construction for the following public interest (Soemardjono, 2009):

- a. The principle of humanity, is the procurement of land must provide protection and respect for human rights, dignity, and dignified every citizen and resident of Indonesia proportionately.
- b. The principle of the agreement, namely that all land procurement activities are carried out based on agreements between parties requiring land and land rights holders. The physical activity of new development can be implemented if there is agreement between the parties and the damages have been handed over.
- c. Principle of benefit, land procurement is expected to bring positive impact to the people who need land, affected communities and the wider community. The benefits of the results of development activities must be perceived by the community as a whole.
- d. The principle of justice, to affected communities is given a compensation that can restore its economic social condition, at a minimum equivalent to the original state, by calculating losses against physical and nonphysical factors.
- e. The principle of certainty, procurement of land is done according to the ordinances governed by legislation, so that the parties know the rights and obligations of each.
- f. The principle of openness, in the process of land procurement, the affected community is entitled to obtain information about the project and its impacts, indemnity policy, development schedule, resettlement plan and location of substitute (if any), and the right of society to convey its own
- g. The principle of participation/participation, all stakeholders in each stage of land procurement (planning, implementation, evaluation) is necessary to cause a sense of participation and can minimize the rejection of people in the activities concerned.
- h. Equality principle, this principle is intended to place the position of the party that needs the land and the affected Party in parallel in the land procurement process. Minimalisair impacts and sustainability of socio-economic wellbeing. The negative impacts of land procurement can be minimized, accompanied by efforts to improve the living standards of affected communities so that the economic social activities do not decline.
- i. The principle of welfare, is that the procurement of land for development can be an additional value for the survival of the right party and society broadly.
- j. The principle of sustainability, is that development activities can take place continuously, continuously to achieve the expected objectives.

### **III. DELIBERATION PROCESS TO REACH AN AGREEMENT IN THE PROCUREMENT OF LAND FOR THE PUBLIC INTEREST**

Law No. 2 of 2012 is in article 2 stipulates one of the principles as the basis for the implementation of land procurement for the public interest is the principle of agreement, which in the explanation of the article is explained, the principle of the agreement is that the process of land procurement is carried out with the deliberation of the parties without any force to get a mutual agreement In article 37 Act number 2 year 2012 mentioned the basis of indemnity is the result of agreement in deliberation that stipulates the form and/the amount of damages.

In principle without the deliberation process between rights holders and government agencies that require land, the procurement of land for the implementation of development for the public interest will never occur. The meaning of deliberation in the procurement of land is in accordance with the jurisprudence of the Supreme Court of Indonesia number: 2263/PDT/1993 formulates deliberation as a will between the parties who need land with the land without fear and compulsion. In the jurisprudence, the prerequisite of deliberation is the existence of the will between the rights holders of land and government istance in need of land and the guarantee for the parties involved in the deliberation of fear, depressed due to intimidation, compulsion, terror let alone violence. According to the Assembly of the judges said the agreement and deliberation must be completely and reflect justice and material truth.

The deal in land procurement is limited by time. In Law 2/2012 The consultation time of deliberation to obtain the Agreement form/amount of damages set forth in article 37 and article 38, that determines the deliberation with the entitled to include the institution that requires the land to be carried out by the land

procurement executor within 30 (thirty) working days since the result of the assessment of the appraiser received by the Land Procurement Executive Chairman to establish the form and/or the amount of damages based on the result of the change assessment Loss. In the event of no agreement regarding the form and the amount of damages, the right party may object to the local district Court within 14 (fourteen) days after the deliberation process of indemnity. The District Court severs the form and or the amount of damages within 30 (thirty) working days from the time of receipt of the appeal.

If you still object to the decision of the state court, may submit a cassation to the Supreme Court of the Republic of Indonesia within 14 (fourteen) working days, and the Supreme Court shall award within a period of 30 (thirty) working days since the cassation request is received. The ruling of the District Court/Supreme Court that has acquired the legal force remains or has become the basis of a compensation payment to the objection party. In article 39 also mentioned, if the right party rejects the form and/or the amount of damages, but does not appealed in the prescribed time, because the law of the Right Party shall be deemed to accept the form and magnitude of damages.

In Perma number 3 year 2016 on procedures for filing for objections and indemnity of care to the District Court in the procurement of land for development for the public interest, in article 14, the examination of the trial is conducted without The mediation procedures in the courts as stipulated in the rules of the Supreme Court Regulation No. 1 of 2016 on the mediation procedure in court, but the judge continues to seek peace in the parties until before the pronouncement of the verdict. Whereas the Supreme Court Regulation No. 1 year 2016 in consideration mentions that the procedure of mediation in the courts to be a part of civil program law can strengthen and optimize the function of the judicial institution in the resolution of disputes.

In the process of deliberation to reach an agreement in the procurement of land limited by the time specified, arrangement of the establishment and the magnitude of the damages also shows the limited freedom of the party rights holders in reaching the agreement on the form and magnitude of the damages. The limited nature of the agreement in the procurement of land can also be found in the provision of consignment of land procurement losses. In LAW 2/2012 the provisions on the money deposit of consignment losses are regulated in articles 42 and 43, and spelled out in the implementation regulation of Presidential decree number 71 year 2012.

This is contrary to the principle of agreement in the procurement of land for the public interest, the consignment of money-loss compensation in the court conducted by the Government prior to the agreement between the parties and has not had a fixed legal force or has been inconciliated, is an unauthorized act and contrary to the consignment principle itself or can be qualified as unlawful deeds. The consignment arrangement is contrary to the principles used in LAW No. 2/2012, particularly the principles of humanity, justice, agreement, participation and welfare.

Law No. 2 of 2012 stipulates that the land Agency conducts deliberations with the appropriate parties to establish the form and/or the magnitude of the damages based on the results of the assessment of indemnity assessments. LAW No. 2/2012, or regulation of the implementation, i.e. Presidential Decree 71/2012 Ministerial Regulation No. 5 year 2012 does not determine the standards of judgment in the legal regulations used by land assessment (Gozali, 2018: 116).

In order to have a balance on the determination of the form and the amount of damages in the procurement of land for the development of public interest should include 2 (two) aspects of the physical and nonphysical aspects. Non-physical aspects tend to mean a form of compensation that is economical, especially in relation to land and objects that exist on the ground such as houses/buildings and plants. While the non-physical aspects of damages include sociological and philosophical matters.

In LAW No. 2/2012 or its implementation rules are not explained the position of the results of the assessment by the valuation of this land, whether it is a result that has been fixed can not change or still be changed when deliberation with the right party. On this matter Eman Ramelan argued that if the results of the assessment by the land appraisal is final then the deliberation process is merely a legitamasi process only without considering the opinions and interests of the rights holders of the land. This should involve the role of the rights holder on the land because of the fate and future of the rights holder to the land. This means that deliberations are performed only formalities to meet the land procurement Posedur for the public interest, not the fundamental substance of deliberation.

Hyronimus Rhiti argues, social justice does not mean the sake of "social justice" hence the dignity of the individual is lowered. Social justice continues to reward individuals. The value of justice should not be ditawar-tawar and should be brought into society without sacrificing the interests of other communities. If associated with land procurement activities, then any land procurement activities should not sacrifice other people's interests.

In practice, when the problem of compensation is still problematic in the process of procurement of land for infrastructure development, the Government or the author of the project continues the procurement process by conducting substitute money deposit in court. This situation occurs throughout the province which is used as the location of research. Special in the development of NYIA, based on the government of Wates court

data since 2016 has been carried out substitute money (consignment) by PT. Angkasa Pura I as many as 6 cases. In 2017 the number jumped to 259 things, while the year 2018 a total of 26 cases. Until now the people who have taken the money reimbursement as much as 125 people and the remaining 121 still hanging (communication with J Umar, 26 July 2018, in Kulonprogo). For the working area of infrastructure development in West Java, the problem of indemnity that leads to court money-care (consignment) in data on agrarian office and Spatial/National Land Agency (BPN) West Java is found in several projects, among them PLTU Indramayu, toll Cipali, and Tol Cinere Jagorawi (communication with Herizal Syafri and Medi, 9 August 2018, in Bandung).

In the determination of Kayuagung District Court number; 84/PDT. P/2013/PN. KAG and the establishment of Kayuagung District Court number: 3/PDT. P/2015/PN. KAG. Both cases are essentially the right party (the applicant) feels there is never a deliberation about the magnitude of the value of damages. On the basis of such facts, the right party or the applicant argues that the Land Procurement Committee does not carry out the land procurement procedures based on the provisions of LAW No. 2 Tahun2012. According to the right party, the value of the damages submitted in the enclosed envelope is never discussed together and can not be used as the basis of compensation for never through the deliberation process as it should (Gozali, 2018:158).

The definition of deliberation in the Regulation 36/2005 is: activities containing the process of hearing each other, giving and receiving each other's opinions, as well as the desire to reach an agreement on the form and the magnitude of damages and other problems relating to land procurement activities on the basis of voluntariness and equality between the parties who have land, buildings, plants, and other objects related to land with.

But the results of assessment assessments involving the value of indemnity are final, there is only option to agree or disagree, so that there is no process of hearing each other, giving each other and receiving opinions on the basis of voluntariness and equality. Even the deliberation process is reduced to the agreed or disagreed process and the result of the agreement is determined by calculating the most number (majority). Thus in the application of LAW No. 2/2012 has violated the principle of deliberation and consensus in reaching an agreement as part of the legal system in the procurement of land for the implementation of development for the public interest (Umar Said Sugiharto, 2015: 156).

Therefore, the most important element lies in how the deliberation so that there is a deal so that no party is harmed. Deliberation is done with the family and no one should be concerned about any party. Deliberation conducted by the parties related to Hasanudin is completely deliberation and not direction (especially compulsion), so that the activity process of hearing each other with the attitude of each other to receive opinions and desires that are based For voluntariness between the parties that are well-executed (Hasanudin, 1997: 41).

The Government with its authority and its dominant position needs a balance so as not to abuse the authority, especially in interpreting and implementing legislation. When examined article by article Law No. 2 of 2012 on land procurement for development for public interest, especially in the deliberation process and the implementation of the payment for the compensation of land rights, buildings and plants, the government in This is the party that needs the land, its position is not balanced with the party rights to the land so that the substance of the deliberation process for consensus is not achieved.

In fact, deliberation is actually a process or activity of hearing between the party rights holders on land and the party that needs land by means of interactive dialogue between the parties by placing an equal position or equivalent. And the assessment of appraisal services or public appraiser is only the benchmark/standard to be a reference for agencies that require land and implementing land procurement in negotiating with the right party. If in deliberation, the right to object to the form and the size of damages made by the judge can actually be carried out an agreement between the right party and the institution that needs the land, so long as the two do not feel harmed and agree to the agreement.

For the centralised and effective deliberation process to reach an agreement in the procurement of land for the public interest, in this case the need to be established a special institution of mediation that is independent, professional and impartial integrated with The state court system, or could also be established a mediation institution for dispute resolution outside the court. Perma Number 1 Year 2016 about the mediation procedure in the Court in consideration of mentioning that mediation is a peaceful, appropriate, effective way of resolving disputes, and can unlock broader access to the parties to obtain satisfactory completion and fairness. Mediation as an instrument to improve public access to justice as well as implementation of simple, fast, and low-cost judicial organizing principles. That the procedure of mediation in the court to be a part of civil proceedings can strengthen and optimize the function of judicial institutions in the resolution of disputes.

Mediation is an alternative form of dispute resolution that can be used by parties outside the courts and in the judicial system. The Institute gives the parties the opportunity to take part in taking the initiative, in order to resolve their disputes assisted by third parties as a mediator. The principle of mediation is equally victorious (win-win solution), so the parties involved the dispute feel the absence of the party wins and the party loses.

Mediation not only speeds up the dispute resolution process, but also eliminates revenge and reinforces relationships.

The Mediator is in a central and neutral position, between the parties to the dispute, and seeks to find a number of agreements to achieve the results that satisfy the parties in dispute. In mediation, the settlement of disputes or disputes arises more from the wishes and initiatives of the parties, so that the mediator plays a role to help them achieve the agreements. In assisting the disputing party, the mediator is impartial or unbiased. The position of the mediator is very important because it will foster trust that facilitates the mediator to conduct mediation activities. In mediation, a mediator plays a role in assisting the disputing parties by identifying disputed issues, developing options, and considering alternatives that can be offered to the parties to achieve Deal. Mediator in carrying out its role only has the authority to advise or determine the mediation process in seeking the resolution of disputes (Abbas, 2011: 7).

Although a mediator is involved in offering solutions and formulating agreements, it does not mean that it is the result of a deal. The final decision remains on the parties to the dispute. The Mediator only helps to make the way out, so the parties are willing to sit together to settle the disputes they are experiencing. The Mediator must have a number of requirements and expertise, which will help him run mediation activities. In principle the mediation in the court environment is conducted by a mediator originating from outside the court, but given the number of mediators very limited and not all the courts of the first level available mediator, then in the provisions of Perma The judge to be a mediator.

Mediation as one form of dispute resolution has the main scope of private/civil jurisdiction. Civil disputes of contractual disputes, business, banking and various other types of civil disputes may be resolved through the mediation pathway. Settlement of disputes through the mediation path can be pursued in court or out of court. The mediation carried out in court is part of a barrage of legal proceedings in the courts, whereas if mediation is carried out outside the courts, the mediation process is a part of which is independent of the court proceedings.

The process of deliberative in land procurement for public interest is done directly between the parties with the negotiation or direct negotiations between two parties or more disputes without assistance or involving the other party with The purpose of resolving disputes. When associated with mediation, mediation is an expanded negotiation because mediation is also based on the parties ' talks. The difference between the two is that in deliberation by negotiating only the parties who have disputes who negotiate without the participation of the other party, while in deliberation by means of mediation of neutral parties or third parties is involved on the request and Consent of the parties, but if mediation that is part of the judicial system does not require the consent of the parties to the mediation process.

In the process of negotiation if the parties can agree an or more settlement, means the dispute has ended with peace. Thus, as with mediation, negotiations are carried out on the basis of consensus approach or agreement of the parties. There is no settlement without agreement of the parties.

#### **IV. Conclusion**

Consignment contradicts the principle of agreement on land procurement for public interest, the consignment of indemnity in the courts conducted by the Government prior to the agreement between the parties and has not yet had a permanent or legal force, is an unauthorized act and contrary to the consignment principle itself or can be qualified as a unlawful act and contrary to the principles used in LAW No. 2 /2012, particularly the principle of humanity, justice and agreement.

The current criminal justice and pipetting systems in practice often pose problems and are judged ineffective. The Correctional Model procurement system (Law No. 12 of 1995 on Correctional Institution) is still deemed to be nothing more than the imprisonment for which the purpose is of revenge and suffering as a consequence His actions. The current prison system, a prominent approach to security approach. The concept of coaching that can be beneficial for the survival of children after the free, consequently, the negative stigma inherent in the children of ex-convicts will actually make it difficult for them to walk the next life. Imprisonment carries unfavorable consequences for inmates and their families, but it is also assessed as unsatisfactory or fulfilling the victim's sense of justice in addition to burdening high state budgets and long periods of time, and Self-correctional institutions that are generally over capacity. Indemnity in land procurement for public interest should include 2 (two) aspects of physical aspects and non-physical aspects. The physical aspect tends to mean a form of compensation that is economical, especially in relation to land and objects that exist on the ground such as houses/buildings and plants. While non-physical indemnification aspects include sociological and philosophical matters.

In practice when not reaching an agreement in the process of deliberation of land procurement for the public interest in some areas the government tends to conduct consignment by entrusted damages in the local district court. The rights holders of the land (applicant) felt there was never a deliberation about the value of damages. On the basis of such facts, the right party or the applicant argues that the Land Procurement

Committee does not carry out the land procurement procedures based on the provisions of LAW No. 2 Tahun 2012. Assessment results involving the magnitude of the indemnity value are final, there is only option to agree or disagree, so that there is no process of hearing each other, giving each other an opinion on the basis of volunteeration and equality. Even the deliberation process is reduced to the agreed or disagreed process and the result of the agreement is determined by calculating the most number (majority). Thus in the application of LAW No. 2/2012 has violated the principle of deliberation and consensus in reaching an agreement as part of the legal system in the procurement of land for the implementation of development for the public interest.

Mediation is an expanded negotiation because mediation is also based on the parties' talks. The difference between the two is that in deliberation by negotiating only the parties who have disputes who negotiate without the participation of the other party, while in deliberation by means of mediation of neutral parties or third parties is involved on the request and Consent of the parties, but if mediation that is part of the judicial system does not require the consent of the parties to the mediation process.

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