



**JURIDICAL ANALYSIS ON THE EVICTION OF  
KAMPUNG LUAR BATANG JAKARTA IN  
RELATION WITH STATE RIGHT TO CONTROL  
(HAK MENGUASAI NEGARA)**

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## **THESIS ADVISOR RECOMMENDATION LETTER**

This thesis entitled “***JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATION WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)***” prepared and submitted by Ade Kuswara Kunang in partial fulfillment of requirements for the degree of Bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for Oral Defense.

Cikarang, Indonesia, February 13<sup>th</sup>, 2017

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## **PANEL OF EXAMINER APPROVAL SHEET**

The panel of examiners declares that the thesis entitled “***JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATION WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)***” that was submitted by Ade Kuswara Kunang majoring in Law from the Faculty of Humanities was assessed and approved to have passed the Oral Examination on Cikarang, Indonesia, February 13<sup>th</sup>, 2017.

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## **DECLARATION OF ORIGINALITY**

I declare that this thesis, entitled “***JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATION WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)***” is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, Indonesia, February 13<sup>th</sup>, 2017

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## **ABSTRACT**

### **JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATION WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)**

Force eviction are evictions either directly or indirectly conducted by the government against the local population to use the land for residential and business purposes. Eviction usually occurs in urban region, this happens because of limited land and high cost of land for residence and place of stay to work. Eviction causes violations and the right to have a livelihood. Local governments and municipal authorities introduced a policy in each region with a specific purpose.

Eviction becomes a problem that is phenomenal in major cities in Indonesia such as Jakarta. Increasingly limited land in urban Jakarta caused the government must destroy the settlements are not appropriate. Evictions in Jakarta is a way of structuring the government of the city in order to bring the city to be a comfortable and livable. However, this arrangement must attempt to follow the legal analysis in protecting the rights of citizens.

In this case the context of the state land are used as a prerequisite for the government to acquire ownership of a land that is currently occupied by residents actually totally unknown in the land law regarding the state right to control (Hak Menguasai Negara) for entire implementation in various provisions legislation in the agrarian field. However, the country does not have an absolute right to claim land without legal procedures and consequently the country not welfare the citizens of eviction. Because of these problems the study that discusses how the analysis of the legal and human rights protection in evictions of Kampung Luar Batang and how the eviction implies the state right to control (Hak Menguasai Negara).

*Keywords: eviction, Kampung Luar Batang, human rights, state rights, HMN*

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## **APPENDICES**

Data Interview with citizens in Kampung Luar Batang when the Eviction occurred in Kampung Luar Batang Jakarta Utara.

1. Daeng Mansur Amin as secretary of Mosque Jami Kampung Luar Batang address Jl. Luar Batang 8 002 Rt 02 Rw no. 19 Village Networking
2. Abdul Talib as a public figure in Kampung Luar Batang
3. Ahmad Junaidi as citizen in RT 01 of Kampung Luar Batang
4. Asep Saepuloh as citizen in Kampung Luar Batang
5. Muhammad Taufik as citizen in Kampung Luar Batang Rt 15 Rw 03 Kel Penjaringan
6. Haji Mat Johan as a public figure in Kampung Luar Batang Rt 04 Rw 03 no. 18 Kel Penjaringan

# CHAPTER 1

## BACKGROUND

Home is one of the most important part of life in living creatures, especially humans. Home cannot be separated in human life because the home is attached to the cultural and social dimensions, thus meaning the home cannot be defined only as a shelter that has a roof over your head but the home could be interpreted as human should also be appreciated and respected. Increasing human population and the amount of labor that is not balanced with employment led to rising unemployment. These factors have an impact on human life that residence, where a man cannot buy a home and live in settlements of urban areas that do not have a certificate of land and home. Township located in the city has a significant contribution to the development of big cities in Indonesia. Eviction occurred in a residential area in the city because the development of the region's economic development is more advanced with business functions, offices, and other services in the city that has an effect on decreasing the hometown of the residential area.<sup>1</sup>

### **The uniqueness of the Urban Village**

The uniqueness of the urban village is shown by a number of research results. According to Rimadewi (2004), through her research in the area of Ampel Surabaya, get the finding that value and quality of space in the region is determined by the historical journey in a climate of social, cultural and economic dynamic city. Suastiwi (2010) through his research Kampung Kauman Yogyakarta, concludes that the flow of the teachings of Islam Muhammadiyah determine the types of activities that impact on the purity of their religion desecration space on certain land in the village. Other findings by the study Somantri (2007) in the village of Lower-Jakarta is that the change in

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<sup>1</sup>Popi Puspitasari. Dinamika Pemanfaatan Lahan Kampung Bersejarah 'Luar Batang' - Jakarta Utara. (<https://jurnal.ugm.ac.id/mft/article/download/2041/1843>)> Diakses pada 2011

land use from residential of village change to business functions leads to change the value of the land well change the way of life of its inhabitants. This finding are reinforced by Dermawati (2007) who explain that an element within the urban center of business activities affect how the occupants of a room change and land that has economic value. Thus it can be said that the occupants treat and give the value of the land determined by the historical background, religion, customs, and attitudes of residents in maintaining life so that land can be economic for the people living in these locations.<sup>2</sup>

### **Eviction**

Eviction has the basic word; evic. According to Indonesian dictionary meaning which makes (make, telling) moved, shifting the place, so the eviction are make the process (create, send) moved, shifting the place.<sup>3</sup> Eviction could mean the expulsion either directly or indirectly by the government against the residents' use of local land resources for both residential and business purposes. Eviction can happen in rural and urban areas. Eviction is happening in rural areas, evictions normally occur in the name of development of infrastructure projects that require substantial or extensive land, such as dams and other public infrastructure. Instead, the evictions in urban areas are generally caused by the limitations and the high cost of land. This effort led to the removal residential neighborhood residents who usually are not in place, for instance slum.

Before we talk about slum further, it helps us understand the two terms are almost meaningless, but have different restrictions, the slum and squatter (illegal settlements). Targeted slum evictions tend to lead to squatter settlements are illegal. Thus, the use of the term slums in this paper is meaningful settlements. Eviction phenomenon closely related to space limitations in the city to make room for residential and business premises.

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<sup>2</sup> Achmad Djunaedi. Pengertian Desa dan Kota.<https://subiantogeografi.wordpress.com/pengertian-desa-dan-kota/>

<sup>3</sup> Nadya Dermadevina. <http://bahasa.kemdiknas.go.id/kbbi/index.php>> Diakses pada (06 Juli 2014, pukul 14.00)

Driving factors behind this phenomenon include, first, the population explosion of the capital. Secondly, there are a lot of unused land that is not clear status and designation in Jakarta. The vagueness of this status further exploited by certain circles to regulate land tenure. This gradually led to illegal land tenure occurred that led to the eviction. Third, the government's ability provides low-cost homes and businesses eligible for low-income people. Limited access to housing and a decent effort is exactly what cause they were forced to occupy the territory riverbanks or vacant land illegally.

Eviction exposes the public at two opposite positions, the pros and cons. For the cons, eviction causes damage to neighbors and family social network, damage the stability of daily life such as work and school, as well as eliminate the residential assets. For some, the eviction is a violation of the right of residence and the right to a livelihood that can be categorized as an act of senseless, even considered as a crime against human rights. Instead, the pro believes that evictions should be carried out as a result of the eviction is the creation of a city atmosphere comfortable and livable. Eviction is believed to be another form of public service to the city and the rule of law with the aim of restoring the rights of citizens who have been deprived of public space. Although some cases, evictions carried out with the aim of restoring the rights of the legitimate land owners on land conflicts often occur in urban areas, not only related to public lands. In addition, many people living in bed or vacant land is not inhabited Jakarta so that their presence is not the responsibility of the city government.<sup>4</sup>

In this case the context of the state land are used as a prerequisite for the government to acquire ownership of a land that is currently occupied by residents actually totally unknown in the land law regarding the state right to control (Hak Menguasai Negara) for entire implementation in various provisions legislation in the agrarian field. However, the country does not have an absolute right to claim land without legal procedures and consequently the

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<sup>4</sup> Puput AdyvSukarno. <http://jakarta.bisnis.com/read/20150218/386/404280/pembangunan-waduk-muara-kamal-dekati-kenyataan> > Diakses pada (18 Februari 2015)

country not welfare the citizens of eviction. According Article 33 paragraph (3) of the Constituion 1945 states:

*“Bahwa Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat.”*

*“That the earth and water and natural resources contained in it are controlled by the state and used for the people's welfare”*

State right to control (Hak Menguasai Negara) referred to in the UUPA (article 2, paragraph 1) authorizes the state for:

*a. Mengatur dan menyelenggarakan peruntukan, penggunaan, persediaan dan pemeliharaan bumi, air dan ruang angkasa tersebut; Arranging and conducting allocation, usage, inventory and pemeliharaan earth, water and the space;*

*b. Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang dengan bumi, air dan ruang angkasa; Befine and regulate legal relations between people with the earth, water and air space;*

*c. Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang dan perbuatan-perbuatan hukum yang mengenai bumi, air dan ruang angkasa. Define and regulate legal relations between the people and the legal acts which the earth, water and space.*

And according UUPA article 4, paragraph 1:

*“Atas dasar hak menguasai dari Negara sebagai yang dimaksud dalam pasal 2 ditentukan adanya macam-macam hak atas permukaan bumi, yang disebut tanah, yang dapat diberikan kepada dan dipunyai oleh orang-orang baik*

*sendiri maupun bersama-sama dengan orang lain serta badan-badan hukum.”*

*“On the basis of the rights of control of the State, as referred to in Article 2 determined the existence of a variety of rights to the earth's surface, called the land, which can be provided to and owned by people either alone or together with other people and entities.”*

According to Vera Soemantri one of lecture faculty of law in Tarumanagara University and attorney of citizens Bukit Duri said the three reasons that are often used by the government in evicting a residential area:<sup>5</sup>

1. Evictions caused by disputes over land ownership rights as well as the home.

The parties to the dispute settlement case brought to court. After a court ruled the land and the house were won by one of the parties and the decision was already legally binding then the winner is given the right to appeal the execution. The petition contains a request to the head of the district court, clerk, bailiff, and asked for help from the local mayor or regent, municipal police, the police and the military to execute or forcibly expel the party that controls the house and land. All the costs incurred for displacing the execution will be charged to the applicant.

2. Evictions caused by changes in the layout.

The government often uses the reason. The citizens feel the impact: First, residents alleged offenders layout. Secondly, it is alleged squatters or illegal residents or occupants / looters of state land. Negative stigma can have dire consequences for the citizens. Residents will lose their eligibility for compensation and insults made against the citizens of other parties such as the public and media. UU on Spatial Planning (UU No. 26/2007) regulates some rights of citizens affected. Rights such as:

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<sup>5</sup>Analisis Hukum Kasus Penggusuran. <http://wartakampusparepare.co.id/2015/08/analisis-hukum-kasus-penggusuran.html> > Diakses pada (Agustus 2015)



1. Article 60 letter a:

*“mengetahui rencana tata ruang”*

*“knowing the spatial plan.”*

2. Article 65 paragraph (1) and (2):

*“Berpartisipasi dalam penyusunan rencana tata ruang; pemanfaatan ruang; dan pengendalian pemanfaatan ruang.”*

*“Participating in the preparation of spatial plans; utilization of space; and control of space utilization.”*

3. [PP 15/2010 about Spatial Planning Implementation of article 7 (4), article 20, and article 27 (1)]:

*“Masyarakat berperan aktif dalam perumusan konsepsi rencana konsepsi rencana tata ruang termasuk dalam prosedur penyusunan rencana tata ruang”*

*“The community plays an active role in the formulation of the conception of the plan's conception of spatial planning procedures including spatial planning”*

4. Law on spatial planning article 66 (1):

*“Masyarakat berhak untuk mendapatkan ganti rugi bila di lokasi tanah dan rumahnya ada perubahan penataan ruang.”*

*“Communities have the right to seek compensation when the location of the land and the house is no change in the arrangement of space.”*

Briefly concluded that if the government is going to change the layout in a region according to Law on Spatial Planning, the government is required to seek approval from the residents affected. If the residents agree to change the room the government should reimburse reasonable profit for the residents as the owner of the land. The obligation buys land and homes of its citizens often

ignored by the government in changing the spatial region. Some cases show this: Kalijodo, Aquarium or Pasar Ikan, and Klender.

3. Eviction due to the construction of highways, toll roads, normalization, construction of reservoirs, or airports.

The development in the language of the legislation is often called development for the public interest. The development activities in the public interest carried out in accordance UU with the Land Acquisition (UU No. 2/2012). Implementation of land acquisition and building for the implementation of the project should be based on Presidential Decree No. 71/2012. The stages are:

1. Before the construction of the project by the government must consult with landowners and home.

2. When the residents refused, the government could not continue the project.

3. If the residents agree it was determined how much profit a decent replacement value for land and building residents. Both parties must approve this pricing. If people do not agree with the price set by the committee setting prices, the residents were given the opportunity to file an objection to the district court pricing. When the price mismatch protracted government may entrust land prices to the court (often referred to as consignment).

4. Prior to the agreed value it received in the account of citizens, the government cannot displace people from their homes and land.

In many evictions many homes are evicted, many people take home for many people is not a sacred word. However, for more people, the word 'home' into a word that is very expensive. In fact, the home is a building basic, fundamental and also a prerequisite for everyone to survive and live and enjoy life dignified, peaceful, secure and comfortable. In other words, the negative impact even threats to life both physically and mentally open to individuals who have no home. Furthermore, without having (access) housing, personal life, and social will be difficult to achieve. No exaggeration, the right to housing becomes an

important variable and become an independent right or the rights of a stand-alone in measuring whether a person enjoys the right to a standard of living. People's right to housing in the discipline of human rights are often equated with people's right to a place to live. Because this right with regard to a person's life, then the house in this sense includes the meaning of adequate housing. The word 'adequate' is important to distinguish between the definition of the word 'home' becomes not merely a form of rectangular building that has a roof.<sup>6</sup>

Eviction is often seen as the process of moving for the people who do not follow government regulations. Through this perspective, residents of squatter settlements are lawbreakers and landowners are the victims. In many countries, forced evictions contrary to the applicable law, except when in actual follow a number of rules, policies, procedures and guidelines are strict. However, legal and political systems in various cities despite accessible for the poor still trying to avoid the law, and continue to put private property rights on the right to a decent house, so the eviction express against the population, which according to them, hinder the development activities or security. Evictions by government officials who do not heed the humanitarian values and the rights of citizens who have been guaranteed by the Act, causing some negative effects that result in ever increasing poor people and thus creating a homeless-homeless new, the insecurity of the future include the absence safety on land, homeless and isolated from the community, family and friends, the suffering economy, job loss or employment opportunities, violence against women, a sense of distrust by the government and the increasing hatred and revenge against harsh treatment by officials in the field.<sup>7</sup>

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<sup>6</sup>Asraf Assegaf. Penggusuran. <http://www.hukumonline.com/berita/baca/lt50408111efe27/ahli-uu-pengadaan-tanah-berorientasi-penggusuran>> Dikases pada Jumat (31 Agustus 2012)

<sup>7</sup>Penggusuran dan Penataan Kota. <http://www.hukumpedia.com/angara/tentang-penggusuran-dan-penataan-kota> > Diakses pada (4 Oktober 2016)

Residents who feel unfairly forcibly evicted eviction in their place of residence; the residents wanted the government to act fair to help citizens in the welfare of his life. Citizens have the protection of the law by government Legislation and Human Rights Instruments Governing the Right to Housing on Article 28H paragraph (1) of the UUD 1945 that reads;

*“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan. Article 5 paragraph (1) UU No.1 year 2011;*

*“Negara bertanggung jawab atas penyelenggaraan perumahan dan kawasan permukiman yang pembinaannya dilaksanakan oleh pemerintah’.*

In the news the city government on the 5th of november 2016 CNN Indonesia has leveled the Fish Market area in Penjaringan, North Jakarta. Hundreds of residents in the area were forced to leave. They were returning to their hometown or register as citizens of the towers. Hundreds of residents in the area had to leave. Some of them were relocated to flats provided by the government, some chose to return home. A total of 396 families in the area affected revitalization in Pasar Ikan. This the picture of eviction in Kampung Luar Batang:



Pasar Ikan Luar Batang, Penjaringan, Jakarta Utara digusur. (Ilustrasi/dok. Sindophoto)

At the time of the DKI Jakarta eviction Pasar Ikan, Penjaringan, North Jakarta, but was delayed because of a posse formed mothers. They block the rate of demolition. A total of five Dozens of Motherhood sit and chant prayers. Not a few of them were moved to tears in seconds that the destruction of their homes. They assume it is a eviction as actions that move or expel any person or group from their homes or land that is contrary to their own wishes and without providing appropriate protection. Evictions have consequences so broad as to cause people to become homeless, loss of sense of security, isolated from the community and the family, the loss of the right to social security, the loss of the right to identity, the loss of the right to access to health, the loss of children's right to education because of the high cost of moving home, economic losses, material and psychological harm also very profound form of trauma. In fact, some cases leading to loss of life. It is contained in General comment No. 7 (1997) on the Right to Decent Housing, Forced Expulsion: Article 16, which reads;

"Evictions should not render individuals homeless or vulnerable to the violation of human rights of others. Where those affected are unable to provide a variety of their own needs, the state must provide all the right size, in order to maximize the resources available, to ensure that housing, resettlement or access to productive land alternative, depending on the case, available ".<sup>8</sup>

After seeing the instrument above, then we can interpret that the right to housing the inherent right of every person to get a house or a place to stay and live in a place with a secure, peaceful and dignified. The right to housing is a right main in the fulfillment of economic, social and cultural. That is because in the right to housing is also related to other rights, such as the right to life, the right to live a peaceful, secure, peaceful, happy and prosperous, the right to a good environment, the right to identity related to the right to health care and

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<sup>8</sup>General comment No. 7 Tahun 1997 tentang Hak atas Tempat Tinggal yang Layak: Pengusiran Paksa: Pasal 16

also the right to social security and the rights of others. If the right to housing is violated, then there are many other rights that are threatened violated.<sup>9</sup>

One of the issues that is very familiar today is the evictions in DKI Jakarta. One of the cases in the eviction occurred in Kampung Luar Batang Jakarta on 11 April 2016. The reason chose Kampung Luar Batang because the government really eradicate their social economic and cultural rights . Such as homes and jobs were lost and the place has a lot of history in which there in Kampung Luar Batang and cultural heritage is mosque of Kampung Luar batang will be evicted by the government. Eviction of kampung Luar Batang by the government of DKI Jakarta not fullfill its obligations the State against its people, the government treat the evictions are not in accordance with the basic law on human rights. Tragedy of eviction has affect to the psychological condition of the victim of the eviction. Government requires a solution-based measures in order to normalize the psychological state of the citizens of at least back to the condition before the eviction.

Therefore the writer wanted to know how the evictions were carried out, the eviction implies state right to control ( Hak Menguasai Negara) and violations of the law by the government against the eviction and legal analysis in the protection of human rights of the citizen of Kampung Luar Batang So the authors wrote a thesis entitled **"JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATION WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)"**

## **1.2 Research Problem**

1. How did the eviction occur in Kampung Luar Batang?

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<sup>9</sup>Lembaga Bantuan Hukum.Pentingnya mengenal hak ekonomi, social, dan budaya. 2016. <http://www.bantuanhukum.or.id/web/pentingnya-mengenal-hak-ekonomi-sosial-dan-budaya/> > Diakses pada ( 14 April 2016)

2. How is the eviction implies with state rights to control (Hak Menguasai Negara)?

### **1.3 Research Objectives**

1. To find out the reasons of the government in doing the eviction of Kampung Luar Batang

2. To find out the eviction implies with state right to control (Hak Menguasai Negara)?

3. To determine if any laws were violated by the government during the eviction

### **1.4 Research Benefits**

The benefits of research in this thesis:

1. This research is expected to be useful for the university for the next student knowledge.

2. This research is expected to be a useful knowledge to readers and provide information to be able to open the horizons of students, and legal practitioners to understand the rules of protection of the rights of social, economic, and cultural in Indonesia as a suggestion to the government to pay attention on human rights for the citizens of Indonesia.

## **1.5 METHOD AND DATA COLLECTION**

### **1.5.1 Research method**

The method used in this research is a normative-empiric legal research. Normative legal research is a type of research which done through assessment of legislation which applied to certain legal issues and research that use comprehension from secondary data or literature study. This method also uses empirical legal research starting from the dotted primary/basic data, i.e. data obtained directly from the community as the source of the first through field

research. Legal research as a sociological research (empirical) can be realized to the research on the effectiveness of the applicable legal or research on the identification of the law in this case is about eviction in DKI Jakarta.

### **1.5.2 Legal Approach**

Here the author uses the approach of legislation (the Statute Approach) approach Method used in this research is the approach of legislation (the statute approach) by way of reviewing legislation related to eviction in Indonesia<sup>10</sup>

Then the author's Legal Approach is qualitative research. That is to provide research data by describing the phenomenon that occurs when this related eviction through interviews directly in field. Qualitative research according to Moleong (2007: 6) is a research that aims to understand the phenomenon of what is experienced by the subject of the study such behavior, perception, motivation, action, etc. Holistically, and by way of description in the form of words and language, in a specific context that is naturally and by utilizing a variety of natural methods.

### **1.5.3 Source of Data**

The data used in this study are primary data and secondary data. Primary data were obtained from field research (field research) and secondary data obtained from the research literature. Secondary data were divided into three legal materials, namely:

- a. Primary legal materials is legally binding material, consisting of legal, official records, and the draft law.
- b. Secondary law consists of the law book that explains the main legal materials including theses, dissertations, and law journals.

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<sup>10</sup> Lihat Dr. Johnny Ibrahim, S.H., M.Hum., *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007), hlm. 301



c. Tertiary legal materials is a source of guidance or explanation to explain the law of the primary and secondary legal materials such as dictionaries, encyclopedias, etc.

#### **1.5.4 Data Collection Techniques**

Data collection techniques in this study are:

##### a) Literature Study

Ahead of secondary data will be collected using literature study, the authors collected and search for related regulations, jurisdiction and articles or journals associated with this research.

##### b) Interview

The collection of data through a very important interview where the writer will immediately meet with the people interviewed in this study:

1. Daeng Mansur Amin as secretary smosque jami Kampung Luar Batang Rt 002 Rw 02 no. 19 Kel Penjaringan
2. Abdul Talib as a public figure in Kampung Luar Batang
3. Ahmad Junaidi as citizen in RT 01 Kampung Luar Batang
4. Asep Saepuloh as citizen in Kampung Luar Batang
5. Muhammad Taufik as citizen in Kampung Luar Batang Rt 15 Rw 03 Kel Penjaringan
6. Haji Mat Lohan as a public figure in Kampung Luar Batang Rt 04 Rw 03 no. 18 Kel Penjaringan

##### c) Observation

Observation is a data collection technique, which the researchers make observations directly to the object of study for a close look at what it does (Riduwan, 2004: 104). Observation technique used to view and observe the

changes in social phenomena that grow and develop which can then be to amend that assessment, for implementing observaser to see objects specific moment, so as to separate the necessary with unneeded. An observation method is often defined as the systematic observation and recording of the symptoms seen in the study subjects. Observation techniques as the systematic observation and recording should be conducted in subjects who are actively react to the object.<sup>11</sup>

### **1.5.5 Data Analysis Techniques**

Data obtained from this study will be analyzed using normative. Normative is legal research conducted by examining the literature or secondary data as a basis for analysis with the observations of the applicable law and literature related to the object being studied. Legal research juridical means that the study refers to the study of the existing literature or secondary data, while the normative legal research means legal research aims to gain knowledge about the relationship between the normative regulations with other regulations and implementation in practice.<sup>12</sup>

### **1.5.6 Location**

To obtain the necessary data and information related to the study according to the title of research in Kampung Luar Batang District of penjaringan Jakarta Utara.

### **1.5.7 Population**

Total locations affected by evictions are 396 families in the area-affected revitalization in Pasar Ikan. They were divided into 3 zones. First includes RT 011 RW 04 that is inhabited 136 households. Zone 2, namely in RT 01 RW 04

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<sup>11</sup>Dhiki Kurnia. Metode Penelitian Hukum. [http://dhikikurnia.penelitian.hukum.co.id/2013/07/bahan-kuliah-metode-penelitian-hukum\\_8094.html](http://dhikikurnia.penelitian.hukum.co.id/2013/07/bahan-kuliah-metode-penelitian-hukum_8094.html). > Diakses pada Kamis ( 11 Juli 2013)

<sup>12</sup>Soekanto, Soerjono. 1983. Pengantar Penelitian Hukum. Rineka Cipta. Jakarta. Hal:14

012 202 KK inhabited and zone 3 covers RT 02 RW 04 and RT 07 RW 01 to  
58 households

## **CHAPTER II**

### **LITERATURE REVIEW**

#### **2.1 Definition of Eviction**

Eviction are carried out directly or indirectly conducted by local authorities on residents who use the resources of the land for residential and business purposes. Eviction usually occurs urban region, this happens because of limited land and high cost of land for residence and business premises. Eviction occurs in urban areas because of the limitations and the high cost of land.<sup>13</sup> In big cities, the eviction of poor villages resulted in the destruction of social networks between neighbors and families destroy the stability of daily life such as work and school as well as eliminating the asset residence. Eviction is a violation of the right of residence and the right to a livelihood.

##### **2.1.1 Violations Due to Eviction**

Eviction region poor people in big cities is causing damage to social networks household and family, destroy the stability of their daily lives. But eviction is also an absolute must to cope with the squatters.<sup>14</sup> This often happens because they do not have formal legal rights over the land they inhabit. Related to the above, then in the event of eviction cases there are two violations that occur are:<sup>15</sup>

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<sup>13</sup>Hamzahsy. Penggusuran. <http://www.hamzahsy.com/2011/10/penggusuran.html> > Diakses pada (17 Oktober)

<sup>14</sup>Boedi Harsono. 19711. Sejarah Undang Undang Pokok Agraria. Jambatan. Jakarta. Hal. 34

<sup>15</sup>Dewi Nova Wahyuni. 2011. Penggusuran Paksa. <http://indonesia-for.penggusuran.co.id/2011/07/penggusuran-paksa-dan-dampaknya.html>> Diakses pada minggu ( 10 Juli 2011)

1. Violations of civil and political rights.
2. Violations of the economic, social and cultural

Land acquisition itself is set in accordance with the Circular of the National Land Agency No. 508.2-5568-D.III dated December 6, 1990 and the Decree of the Minister of Agrarian / Head of BPN No. 22 of 1993 dated December 4, 1993, which stipulates that the acquisition of land rights for the sake of private interests can be made directly with the public consultation, as well as engage the BPN. However, the decree of the minister, are often ignored, so that the private sector is more often the path using the services of a third party, such as sub-district heads, village heads, and thugs to intimidate landowners into accepting the compensation is smaller than it should be , or even very small. Suppression and intimidation is usually met with resistance from the landowners so frequent turmoil and deadly violence, as often happens lately. As we have seen, some of these end residential eviction phenomenon increasingly rife in Indonesia, especially in big cities. Eviction cases in Indonesia have become a national phenomenon. In many cases the evictions, often tension, protest, and even scorn and sobs from poor families were displaced. Unloading cases of forced businesses and homes that dramatic progress is happening in many major cities.

### **2.1.2 The Causes of Evictions**

The reason that the cause of evictions due to various factors, namely<sup>16</sup>:

1. The level of urbanization increased

The high level of urbanization is also increasing population and capital investment into the city increasing population and capital investment into

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<sup>16</sup>Tegar Firman Abadi. 2011. Penggusuran.

<http://tegarfirmanabadi.penggusuran.co.id/2011/08/penggusuran.html> > Diakses pada Rabu (17 Agustus 2011)

the city. Such growth requires space land for development, so that informal settlements are no longer tolerable existence for land that they use are needed to support these developments.

## 2. The large-scale infrastructure projects

The majority of Asian cities race to be capital investment from the host activities. To attract investors, needed a complete urban infrastructure, including their transportation lines lightning, sewerage, water supply, electricity grids and mass transit systems. Actually, the city infrastructure needs mentioned above can be understood, but often in the planning and implementation, these projects displacing the poor on a large scale and the number continues to increase.

## 3. Market forces

In the city, the market determines the strength of the utilization of land. The government also began to adopt a mindset like this and eventually more and more state-owned land that is used to capture profits, and not for social purposes. As a result, poor people displaced by the land used to build the mall or the mall or condominium. In the past, the eviction occurred in an irregular pattern, but lately, with the increasing speculation of land and the formation of networks of economic activity on an international scale, frequency and scale evictions continue to rise.

## 4. Efforts to beautify the city

To attract investors, the city tried to organize the city's face to match the standard world-class level. The existence of slums and informal settlements and poor contrary to the impression you want to display. Thus, efforts to beautify the city are often the cause of evictions.

## 5. Regulation ineffective

Rules and procedures that protect people from eviction or to provide land tenure security are difficult to find in the cities of Asia. If while, easily

broken because the game forces are not balanced between the poor and the government and developers. There is also an institution that opposes evictions and resettlement have guides were excellent for projects that impact the eviction. However, these guidelines are often forgotten in the field.

## **2.2 Definition of Forced Eviction**

Forced evictions is defined as the transfer of individuals, families and / or communities forcibly (involuntarily) from their homes and land which they occupy, permanently or temporarily, without the provision of, or access to the correct legal procedures and protection required.<sup>17</sup> Forced eviction is the removal of a person or family from the land he was occupying, either permanently or temporarily, outside his personal whim without being protected by adequate legal provisions and does not violate their rights as human beings.<sup>18</sup> Forced evictions directly violate the right of all to adequate housing and the rights covered by the Covenant on Economic social and cultural. But considering human rights are interrelated, then the forced evictions also violate the rights of others, which also include civil rights and politics. Those rights include the right to life, the right to security of person, the right not to be interfered personal affairs, family and home, and the right to enjoy their property. Following the patterns of forced evictions that often occurs, among others<sup>19</sup>:

1. Violence and the use of urban groups and youth organizations by the government. In this case citizens will usually survive if happen

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<sup>17</sup> Pratama Abad. Penggusuran dan Tawuran. <http://pratamaabad21.penggusuran.dan.tawuran.co.id/2012/09/makalah-penggusuran-dan-tawuran.html> > Diakses pada ( Oktober 2012)

<sup>18</sup> Alghiffari. Penggusuran Paksa. <https://alghif.wordpress.com/2012/05/09/penggusuran-paksa-dan-hak-atas-perumahan/> > Diakses pada ( 5 Oktober 2012)

<sup>19</sup>Notaris Sidoarjo. Penggusuran. <http://notaris-sidoarjo.penggusuran.co.id/2012/11/penggusuran-lahan.html>> Diakses pada ( Oktober 2012)

eviction, physical clash between the parties to displace and residents often occurs and results in physical and mental casualties. Hence the frequent apparatus such as the police and military are usually assisted by groups of thugs, then forcing people to survive to engage in violence;

2. Eviction and criminalization. In this case the eviction may lead to the criminalization, one example in the case of eviction, after the eviction there will be fencing in a location to be disciplined. And residents responded with virgin damaging the fence followed by criminalization;
3. Corruption and eviction cyclical project. In this case the eviction closely associated with the use of basic budget expenditure allocated area for curbing costs. This situation makes the eviction by the government was not in accordance with his desire to curb illegal settlements, but to pay for power that displace.

### **2.2.1 The Cause of The Conflict Forced Evictions**

Forced evictions to make their housing conflict or displacement caused by some of the following<sup>20</sup>:

#### 1) Concentration of assets mastery

Such as land or a house by the owners of capital / authorities or assigning rights to a handful of people we can see that on the one hand there are many people who have large land and homes that are not only used as a residence, but also used as an investment instrument. Property tycoons who provide housing to upper-middle dominated housing construction. Housing cannot meet the demand for housing for the poor. Finally, on the other hand more than 13 million people have no home in Indonesia.

#### 2) Structuring space, such as a change / transfer function space

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<sup>20</sup>Aswan Ras. Penggusuran. <http://aswanrass4.penggusuran.co.id/2014/04/analisis-hukum-kasus-penggusuran.html>> Diakses pada Senin (21 April 2014)



The existence of political space that eventually gets rid of the people, especially the vulnerable and poor. Urban space is preferred for highway construction, green open spaces, industrial areas, shopping centers and elite housing. Poor people will live in slums, restricted areas, or living in the suburbs far from work and take a long time to travel.

### 3) Order and beauty

The grounds of order and beauty, many forced evictions occur validated by several legislations. For example Jakarta local regulation No. 8 of 2007 which is a revision of Regulation 11 of 1988 on Public Order in Jakarta. Many poor people are forced to build houses on abandoned land, green land, riverbanks, under bridges, under a toll, and the other banned because it is not filled with the right to housing by the government. Based on Regulation No. 8 In 2007, they were threatened with imprisonment for a minimum of 30 days up to 180 days for misusing function green belt, parks and public places to Article 12, paragraph d explain banned build and reside under the overpass, under the highway, the green line, parks and public places.

### 4) The use in the public interest

The use of land for public purposes often a reason for the government to displace people. But often it is only as a strategy to support the interests of others. For example eviction of residents of Rawa Sari reasons for building a green open space, this is precisely the moment the land is used as an apartment. Another example eviction of residents of Taman BMW with green open space reasons in 2008, until now there is no any development on the land and it is planned to build a world-class stadium.

### 5) Land Neglect

The amount of land abandonment National Land Agency noted that there is 7 million hectares of land were abandoned in Indonesia. Size does not include wasted land owned by individuals in an amount of less than 5

hectares. Eventually land to be used as housing more expensive because their numbers are declining. The Government has issued Government Regulation No. 11 of 2010 on Control and Utilization of Abandoned Land, but not implemented by the firm. Seeing the number of abandoned land that is certainly natural that many people then occupied land to build a house that is a basic human need.

#### 6) Government Inconsistency Running Basic Agrarian Law

The inconsistency is seen in examples such as the provision of Article 15 BAL, which reads: "Maintaining the land, including adding fertility and prevent the damage is the duty of every person, legal entity or agency that has a legal relationship with the land, with due regard to the economically weak. "in Article 52 of the BAL said" Whoever willfully violates the provisions of article 15 shall be punished with imprisonment for a maximum 3 months and / or a maximum fine of Rp. 10.000, - "Supposedly if such provisions were implemented, then the abandonment of land could be subject to criminal. Additionally Under Article 6 of Law No. 5 of 1960 on the Basic Regulation of Agrarian stating "All of the land rights with social functions". Then the land should be for social interests or the interests of society. More-over Explanation of the article that "not only property but all land rights have social function" This means that not only ownership priority to the public but the land is also prioritized function for society.

Forced evictions have consequences so broad as to cause people to become homeless, loss of sense of security, isolated from the community and the family, the loss of the right to social security, the loss of the right to identity, the loss of the right to access to health, the loss of children's right to education because of the high cost of moving home, economic losses, material and

psychological harm also very profound form of trauma. In fact, some cases leading to loss of life.<sup>21</sup>

### **2.3 International Legal instruments on Human Rights Related to Eviction**

Humans have a fundamental right, which was awarded the Lord and is a fundamental right that must be maintained to be human, or so-called human rights. Human rights are the foundation for freedom, justice, and peace of humans, in terms of civil, political, economic, social, and cultural. Human rights in a general sense is the basic rights of every human person as a gift from god inborn. Human rights are the basic rights of every human person by nature as a gift from god, covers the right to life, freedom or freedom and the right to have something. Human rights are a set of rights attached to nature and human existence as a creature of God the Almighty and is His grace that must be respected, upheld and protected by the state, law, government, and everyone, for the respect and protection of the dignity and human dignity (article 1 paragraph 1 of Law No. 39 of 1999 on human rights and Law No. 26 of 2000 on human rights court). While the instrument is a tool used to assist in an activity. And international human rights instrument is a tool used to assist in a reaches or having the necessities of basic rights possessed by every human person by nature as a gift from god, covers the right to life, freedom or freedom and the right to have something in the international.<sup>22</sup>

Eviction is not new for the news and views of the Indonesian people, especially the citizens of Jakarta. This problem is no longer just raised awareness of various social groups in the country, but has been in the spotlight internationally. In 2003 Indonesia included in the list of third countries which received an award as the "champion of the evicted house throughout the year 2003". The selection was based on various violations of housing rights carried out continuously planned and could not be justified legally. Indonesia is also

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<sup>21</sup> Aldo Felix Januarydy. Penggusuran Paksa. <http://jurnal.selasar.com/politik/penggusuran-paksa-adalah-pelanggaran-ham> > Diakse pada Selasa (28 Juni 2016)

<sup>22</sup> Kan, van dan J.H. Beekhuis. 1972. Pengantar Ilmu Hukum Pembangunan. Jakarta. Hal. 67

considered unsuccessful implement national and international human rights rules applicable. The award was given by COHRE on November 5, 2003. For the two countries that the winner are Guatemala and Serbia Montenegro. In a report delivered Indonesia COHRE housing rights violations in three ways:

- (1) Eviction forced large scale in cities with how violence.
- (2) Violation of the right to housing is done in relation to the conflict in Aceh and West Papua.
- (3) Continually fails to provide compensation for violations of housing rights accomplishments in East Timor.<sup>23</sup>

Explicitly, the UN Commission on Human Rights stated that the practice of forced evictions constitute gross human rights violations. A study on forced evictions carried out by COHRE (Center on Housing Rights and Eviction) identifies four main reasons to do so<sup>24</sup>:

1. The development and construction of infrastructure projects (such as occurs in Kenya and Guatemala)
2. The presence of international events, such as conferences or international sporting events (such as occurs in Beijing, China)
3. The existence of rearrangement and efforts to beautify urban areas (such as occurs in Jakarta, Indonesia and Bangkok, Thailand)
4. The existence of political infighting that resulted in the ethnic cleansing of entire communities / groups (eg number of people who lost their homes as a result of Israeli military attacks on Palestine)

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<sup>23</sup>Masalah Hukum Penggusuran. <https://medium.com/forumkampungkota/faq-masalah-hukum-penggusuran-dda003d430ea#.m59xbs3wg>> Diakses pada ( 13 Oktober )

<sup>24</sup>Reviza Thieta. Instrument Hukum Internasional. <http://revizarthieta.instrument.hukum.co.id/2012/11/instrumen-hukum-internasional.html> > Diakses pada Kamis (8 November 2012)

The standards set by the UN General Opinion No. 7 of 1997 on Forced Evictions are<sup>25</sup>:

1. There is a genuine consensus for the people affected;
2. Decent and reasonable notice for affected residents to schedule the eviction will be carried out;
3. The complete and transparent information about the land use after the eviction is done for the citizens affected;
4. If it involves a group of residents, the presence of government or their representatives must be present during the eviction carried out;
5. The disclosure of information about executing eviction;
6. The eviction was not carried out when it rains or night, unless otherwise agreed by the affected citizens;
7. The provision of recovery under the law; and
8. Assistance or legal aid for those who would seek redress through the courts.

Legal instruments of human rights in the Charter of the United Nations (UN), the commitment to fulfill, protect human rights and respect basic human freedom universally affirmed repeatedly, including in Article 1, paragraph 3:

*”Untuk memajukan kerjasama internasional dalam memecahkan masalah-masalah internasional dibidang ekonomi, sosial, budaya dan kemanusiaan, dan menggalakan serta meningkatkan penghormatan bagi hak asasi manusia dan kebebasan fundamental bagi semua orang tanpa pembedaan ras, jenis kelamin, bahasa atau agama ...”*

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<sup>25</sup>Urip Santoso. 2005. Hukum Agraria dan Hak- Hak Atas tanah. Jakarta: Kencana Prenada Group. Hal. 87

*"To promote international cooperation in solving international problems in economic, social, cultural and humanitarian, and promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion ..."*

This commitment was followed up by the United Nations through the establishment of legal instruments regulating the rights pertaining to eviction as follows<sup>26</sup>:

### **2.3.1 Binding Legal Instruments**

#### **1. The Universal Declaration of Human Rights (Universal Declaration of Human Rights)**

The Universal Declaration of Human Rights (UDHR) is a major step taken by the international community in 1948. The norms contained in the UDHR are internationally agreed norms and accepted by the countries of the world through the United Nations. Universal Declaration of Human Rights is an objective framework that is designed in the form of common and is the main source of the establishment of two human rights instruments, namely: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The rights contained in the UDHR are the realization of basic rights contained in the Charter of the United Nations, for example (which is associated with law enforcement) Articles 3, 5, 9, 10 and 11. These articles are successively establishes the right to life; the right to liberty and security of person; prohibition of torture-treatment-other acts of cruel, inhuman, and degrading; prohibition of arbitrary arrest; right to justice; the right to be presumed innocent until proven guilty; and the prohibition of retroactive punishment. Overall, the UDHR is a guideline for law enforcement to do its work.

The Universal Declaration of Human Rights Article 25 paragraph (1):

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<sup>26</sup>AE Widiarto. Instrumen HAM. <http://widiarto.lecture.ub.ac.id/2009/10/instrumen-ham/> > Diakses pada (7 oktober 2009 )

*“Setiap orang berhak atas tingkat hidup yang memadai untuk kesehatan dan kesejahteraan dirinya dan keluarganya, termasuk hak atas pangan, pakaian, perumahan dan perawatan kesehatan serta pelayanan sosial yang diperlukan, dan berhak atas jaminan pada saat menganggur, menderita sakit, cacat, menjadi janda/duda, mencapai usia lanjut atau keadaan lainnya yang mengakibatkan kekurangan nafkah, yang berada di luar kekuasaannya .”*

*"Everyone is entitled to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, illness, disability, widow/ duda, reach old age or other circumstances which led to shortage of living, which are beyond his control."<sup>27</sup> "*

## 2. International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights)

Rights in the UDHR arranged more clearly and in detail in the International Covenant on Civil and Political Rights, which came into force internationally since March 1976. This Covenant set about<sup>28</sup>:

- The right to life;
- The right not to be tortured, treated or punished in a cruel, inhuman or demeaned the dignity;
- The right to liberty and security of person;

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<sup>27</sup>Ahmad Syfiie. Instrumen HAM. <http://syafiie.instrumen-ham.co.id/2011/04/otonomi-daerah-instrumentasi-ham-dan.html> > Diakse pada senin (11 april 2011)

<sup>28</sup>Winanda Kusuma. Ratifikasi Kovenant. <http://winandakusuma.pengurusan.co.id/2011/07/konsekuensi-ratifikasi-covenant.html> > Diakses pada ( 7Agustus 2011)

- Right not to be imprisoned merely on the ground of inability to fulfill a contractual obligation;
- The right to equality before the courts and the judiciary; and
- The right not to be punished by the retroactive application of criminal law.

More than 100 countries worldwide have ratified covenant. Indonesia has also acceded to or ratification by Law No. 11 in 2005, so that it binds the government and its agents. The Human Rights Committee monitors implementation of the Covenant.

### 3. International Covenant on Economic, Social and Cultural

This Covenant entered into force in January 1976. Indonesia through Law No. 11 2005 authenticates. Reasons for the need to consider the rights in this Covenant is<sup>29</sup>:

- The law does not apply in a vacuum. Law enforcement officers in performing their duties can not be separated from economic, social, and cultural communities.
- The assumption that economic rights and social rights are not important to be applied in everyday work is not true, because the economic rights there is the principle of non-discrimination and protection against enforced disappearances.
- The rights protected by the two Covenants are universally recognized as being related to each other.

UU no. 11 Year 2005 on Economic Social and Cultural Rights (Ratification of the International Covenant On Economic Social and Cultural Rights) Article 11 (1):

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<sup>29</sup>HGU & HAM Land Use Rights and Human Rights. National Commission Human Rights and Sawit Watch. Hal 34-35



*"Negara mengakui hak setiap orang atas standar kehidupan yang layak bagi keluarganya, termasuk cukup pangan, sandang dan papan yang layak, dan atas perbaikan kondisi yang berkelanjutan"*

*"The State recognizes the right of everyone to an adequate standard of living for his family, including adequate food, clothing and housing, and to the continuous improvement"*

4. Convention Against Torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

### **2.3.2 Non- Binding Legal Instruments**

1. Code of Conduct for Law Enforcement

UN General Assembly in 1979 passed Resolution 34/169 on Guidelines For Law Enforcement. These guidelines provide direction for law enforcement in their duties. There are eight chapters concerning the responsibility of law enforcement, namely, the protection of human rights, the use of violence, the handling of confidential information, the prohibition of torture-treatment-other acts of cruel, inhuman and degrading human dignity, health protection of prisoners, combating corruption, and respect for law and legislation.

2. Declaration on Human Rights Defenders (Declaration on Human Rights Defender)

This declaration was adopted by the UN General Assembly in 1998. Deklarasi HRDs provide protection for human rights defenders in conducting out their activities. This declaration not establishes new rights but rather to provide guidance for the defenders associated with their employment. Underlined tasks of the state in the fulfillment of human rights, and responsibilities that must be carried out by human rights defenders, while also explaining the relationship between human rights and national laws of a country. Affirmed that human rights defenders carry out their activities with peaceful means.

The occurrence of eviction to make their meaning housing rights after seeing the various instruments of the above, then we can interpret that the right to housing the inherent right of every person to get a home / shelter and live in a place with a secure, peaceful and dignified. The right to housing is a right main in the fulfillment of economic, social and cultural. That is because in the right to housing is also related to other rights, such as the right to life, the right to live a peaceful, secure, peaceful, happy and prosperous, the right to a good environment, the right to identity related to the right to health care and also the right to social security and the rights of others. If the right to housing is violated, then there are many other rights that are threatened violated.<sup>30</sup>

#### **2.4 National Legal Instruments on Human Rights Related to Eviction**

Countries (including the government and other state institutions) in carrying out its actions should be guided by the rule of law so that the law can justify it. The state is responsible for the security, public order, and protection of the rights, welfare and intelligence of all its citizens. The nature of a constitutional state is where the tools fixtures countries act in accordance with applicable laws. State law has the following characteristics<sup>31</sup>:

1. Recognition and protection of human rights;
2. Justice is independent and impartial;
3. Based on the rule of law.

In a state of law must be guaranteed and the protection of human rights based on the legal provisions and not by personal whim or group. Indonesia as a legal state has an obligation to protect the human rights of its citizens; this is contained in the 1945 Constitution of the original. Although not directly are the

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<sup>30</sup>Halim Karsa. Perlindungan Hak Atas Perumahan yang Layak.<http://rumahkampungkota.penggusuran.co.id/2011/05/refleksi-gersos-di-indonesia.html> > Diakses pada ( 30 Mei 2011)

<sup>31</sup>Djoko Kirmanto.[http://www.pu.go.id/uploads/media/majalah\\_kiprah20120316133705.pdf](http://www.pu.go.id/uploads/media/majalah_kiprah20120316133705.pdf) > Dikases oleh Majalah Kiprah pada ( 3 desember 2008)

words of human rights but of some sections in both the opening and the torso stated that the human rights guaranteed in the 1945 Constitution of the New Order Government since 1993 is starting to look concerned about human rights.

Among them is through the Guidelines and the institutionalization of human rights through the National Commission on Human Rights established by Presidential Decree No. 50 in 1993. In 1998 the National Action Plan on Human Rights (RAN HAM) declared by Presidential Decree No. 129 of 1998, which was amended by Presidential Decree No. 40 in 2004. These steps are then followed by the ratification of the Convention against Torture by Law No. 5 of 1998 and the Convention against Racial Discrimination through Law No. 29 years 1999. Langkah-steps that have been taken are reinforced with<sup>32</sup>:

1. TAP MPR No. XVII / MPR / 1998 dated 13 November 1998, followed by the enactment
2. Law No. 39 of 1999 on Human Rights by the President and Parliament as legislation "umbrella" for all legislation existing or legislation that will be formed later. Enforcement of some legislation and ratification several international conventions on human rights shows that the de jure government has recognized that human rights are universal.
3. The next development was the enactment of Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights contained in the State Gazette of the Republic of Indonesia Year 2005 Number 118, and the Gazette of the Republic of Indonesia Number 4557, as well as

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<sup>32</sup>LBH Jakarta, Diskusi Publik: Ke Mana Arah Kebijakan Perumahan Kita, materi oleh Alghiffari Aqsa. Diakses pada tanggal (15 Juli 2014 ).

4. Law Number 11 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights contained in the State Gazette of the Republic of Indonesia Year 2005 Number 119, and the Gazette of the Republic of Indonesia Number 4558. It provides legal certainty for people who crave rights enforcement their human.

5. Law No. 39 of 1999 on Human Rights provide the principles on state recognition of human rights, that every individual is born free with equal dignity, endowed with reason and conscience to live in a society, nation and state.

Evictions should not result in a person is in a state do not have a house at all or decreased quality of life and dignity in the new location. The UN General Opinion No. 7 of 1997 on Forced Evictions, in one of its provisions, stipulates that evictions that meets human rights standards is their sincere deliberation between the parties will carry out evictions and citizens affected. Deliberation sincere, of course, also must be accompanied by the provision of sufficient information for the citizens affected by the misuse of the land they are occupying.<sup>33</sup>The agency said UN Basic Principles and Guidelines on Development-Based Evictions and Displacement; the government must perform the following steps before it can carry out the eviction<sup>34</sup>:

1. Explore all possible alternatives eviction;
2. The consultations and hearings to the public along with the people who will be affected;
3. Assess the impact of evictions holistically and comprehensively, and take into account the impact of Petition and immaterial losses;

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<sup>33</sup>Dewi Nova Wahyuni. <http://indonesia-for.penggusuran.co.id/2011/07/penggusuran-paksaan-dampaknya.html> > Diakses pada Minggu ( 10 Juli 2011)

<sup>34</sup>Ruchyat Deni Djakapermana, DR, Ir., M.Eng adalah pengamat penataan ruang dan pengembangan wilayah, saat ini menjabat sebagai Sekretaris Direktorat Jenderal Penataan Ruang, Kementerian PU

4. Indicates that the mechanism of eviction is not inevitable;
5. Provide notification in writing;
6. Ensure that no one is going to lose a place to stay; and
7. Ensuring alternative adequate shelter that is, a place to stay that is close to the environment in which they work.

Be aware, the victims of forced evictions are not always a residential home, but it can also be a business unit. As a result the government officials who arbitrarily on the poor. Enforcement Regulations Regional Regulations involving the government or police officers, the Police Civil Service and the problem of land disputes involving the interpreter seized. But in fact the field more active role precisely Municipal Police officers. We'll see in the handling of various cases, the ways undertaken by police officers of the Civil Service is very arrogant, where the violence took precedence over action that is more persuasive is by way of kinship or approach, in its action Municipal Police have been widely violated rights civilians, especially on the poor.<sup>35</sup> Rights are clearly stated in the Act of 1945 on the right to the feasibility of residence<sup>36</sup>:

1. The Constitution of 1945 NRI Article 28H paragraph (1),

*“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.”*

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<sup>35</sup>Masalah Hukum Penggusuran. <https://medium.com/forumkampunkota/faq-masalah-hukum-penggusuran-dda003d430ea#.m59xbs3wg>> Diakses pada ( 13 Oktober )

<sup>36</sup> Imam Koeswahyono. 2010. Konsepsi Hak Milik Atas Satuan Rumah Susun dalam Hukum Agraria. Malang : Setara Press. Hal. 52

*"Every person has the right to live physical and spiritual prosperity, reside, and get a good environment and healthy and receive medical care."*

2. Law No. 1 Year 2011 on Housing and Settlement Region Article 5 (1):

*"Negara bertanggung jawab atas penyelenggaraan perumahan dan kawasan permukiman yang pembinaannya dilaksanakan oleh pemerintah".*

*"The State is responsible for implementing housing and settlements fostering implemented by the government".*

3. Law No. 39 of 1999 on Human Rights Article 40:

*"Setiap orang berhak untuk bertempat tinggal serta berkehidupan yang layak"*

*"Everyone has the right to reside and lives viable".*

Eviction caused by changing the spatial often used by the government. The citizens feel the impact: First, residents alleged offenders layout. Secondly, it is alleged squatters or illegal residents or occupants / looters of state land. Residents will lose their eligibility for compensation and insults made against the citizens of other parties such as community and media. This Spatial Planning law (Law No. 26/2007) set some rights of citizens such as<sup>37</sup>:

1. Article 60 letter a:

*"mengetahui rencana tata ruang"*

*"Knowing the spatial plan"*

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<sup>37</sup>Konsep Dasar Hukum Tata Ruang. <http://trtb.pemkomedan.go.id/artikel-744-konsep-dasar-hukum-tata-ruang.html> > Diakses pada Senin ( 25 april 2016, pukul 09:25:35 WIB)

2. Article 65 paragraph 1 and 2:

*“berpartisipasi dalam penyusunan rencana tata ruang; pemanfaatan ruang; dan pengendalian pemanfaatan”*

*“Participates in the preparation of spatial plans; utilization of space; and control land use”*

3. PP 15/2010 on Spatial Planning Implementation Article 7 paragraph 4, Article 20, and Article 27 paragraph 1:

*“masyarakat berperan aktif dalam perumusan konsepsi rencana konsepsi rencana tata ruang termasuk dalam prosedur penyusunan rencana tata ruang”*

*“ the community plays an active role in the formulation of the conception of the plan's conception of spatial planning procedures including spatial planning”*

4. The Law on Spatial Planning Article 66 paragraph 1:

*“Masyarakat yang dirugikan akibat penyelenggaraan penataan ruang dapat mengajukan gugatan melalui pengadilan, Masyarakat berhak untuk mendapatkan ganti rugi bila di lokasi tanah dan rumahnya ada perubahan penataan ruang”*

*“People who are disadvantaged as a result of spatial planning can file a lawsuit through the courts, the Society has the right to seek compensation when the location of the land and the house is no change in the arrangement of space”*

If the eviction because of the construction of highways, toll roads, normalization, construction of reservoirs, or airports, and the development in the language of the legislation is often called development for the public interest.<sup>38</sup> The development activities in the public interest carried out in accordance with the Land Acquisition Law (Law No. 2/2012). Implementation of land acquisition and building for the implementation of the project should be based on Presidential Decree No. 71/2012. The stages are<sup>39</sup>:

1. Before the construction of the project by the government must consult with landowners and home.
2. When the residents refused, the government could not continue the project.
3. If the residents agree it was determined how much profit a decent replacement value for land and building residents. Both parties must approve this pricing. If people do not agree with the price set by the committee setting prices, the residents were given the opportunity to file an objection to the district court pricing. When the price mismatch protracted government may entrust to the court in land prices.
4. Prior to the agreed value it received in the account of citizens, the government cannot displace people from their homes and land.

The state should distribute and provide land rights to the people. The purpose of giving the right to control over land to the public so that people can prosper, and prosper in the land use. As far as land use is not contrary to the Act and the

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<sup>38</sup>Aldo Felix Januarydy. Penggusuran Paksa adalah Pelanggaran HAM. <https://www.selasar.com/politik/penggusuran-paksa-pelanggaran-ham>> Diakses pada selasa (28 Juni 2016)

<sup>39</sup> Ibid



public interest. Listed in the Basic Agrarian Law Article 2, paragraph 2, the right to master the state gives the authority to<sup>40</sup>:

1. Set up and organize allocation, use, supply and maintenance of the earth, the water and the space.
2. Determine and regulate legal relations between people with the earth, air and space-space.
3. Determine and regulate legal relations between the people and the legal acts which the earth, water and space.

## **2.5 The Responsibility of the State Towards its Citizens in General**

Citizens are a group of people who have residence status in a country with a constitution that regulates the state of life between people and ideology. Establish a legal order, economic, social and cultural. Citizens are the ones who have the official position as a member of a country.<sup>41</sup> Thus has a legal relationship, namely in the form of rights and obligations, which has a reciprocal nature with that country. According to Law 62 of 1958 states that;

*“Warga negara republik Indonesia adalah orang – orang yang berdasarkan undang – undang dan atau perjanjian – perjanjian dan atau peraturan – peraturan yang berlaku sejak proklamasi 17 agustus 1945 sudah menjadi warga negara republik Indonesia’.*

*"The citizens of the republic of Indonesia are people - people who by law - and the law or treaties - treaties or regulations - the regulations in*

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<sup>40</sup>Farisasyarie. <https://farisasyarie.wordpress.com/2014/10/07/persamaan-kedudukan-warga-negara-indonesia-dalam-kehidupan-bermasyarakatberbangsadan-bernegara/> > Diakses pada ( 7 oktober 2014

<sup>41</sup>Srijanti. 2008. Etika Berwarga Negara Edisi 2: Pendidikan Kewarganegaraan untuk Perguruan Tinggi. Jakarta: Penerbit Salemba Empat

*force since the proclamation of 17 August 1945 have become citizens of the republic of Indonesia '.*<sup>42</sup>

State responsibility contained in the rights of citizens and of all things that must be obtained citizens of the state (government). Rights of Indonesian citizens against the state has been regulated in the Act of 1945 and other legal rules that are derived from the general rights outlined in the 1945 Constitution the rights of citizens this is something that can be owned by citizens of the country. The rights of citizens from the state such as the right to live decent and secure, service, and other matters stipulated in the law. The responsibilities of the state towards its citizens in general are<sup>43</sup>:

1. The task of non-discrimination means treating everyone is equal before the law and in practice. Laws and government policies must not discriminate against a person with another person on the basis of race, color, sex, age, language, religion, politics, and others, tribes or regions, property, birth, disability or mental, health (including HIV / AIDS), sexual orientation, or status of residence, political, social or other.
2. The duty to respect means to refrain from disturbing the existing public access to the residence. One obvious way to respect the right to shelter is not doing forced evictions.
3. The duty to protect means that the government should protect people from abuses by others, such as corporations and landlords. For example, let companies pollute water sources used for drinking is a violation of the right to housing and the right to water. Governments also have to protect people from forced evictions.

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<sup>42</sup>Destiana Ayu Anggraini. [http://destianayuanggraini.pengurusan.co.id/2014/10/negara-dan-warga-negara\\_20.html](http://destianayuanggraini.pengurusan.co.id/2014/10/negara-dan-warga-negara_20.html)> Diakses pada( Senin, 20 Oktober 2014).

<sup>43</sup>Padli Suudi. Pengurusan. <http://www.perkapalan.net/2014/11/pengertian-dan-tujuan-pengurusan-untuk.html> > Diakses pada ( Oktober 2014, pukul 00.32 WIB )

4. The duty to fulfill means taking steps to ensure that everyone will realize their right to adequate shelter gradually. The first step must include a plan of action nationally and locally with the full involvement of the local population, including women and those living in informal settlements. In a sufficient period of time, there must be measurable progress in improving access to shelter.

State responsibility to its citizens provide a guarantee for citizens to have a decent place to live, the carrying capacity of a good environment, free of discrimination, and are protected from forced evictions. The government must meet implementation of these guarantees. Therefore, the government must protect its citizens from acts of forced evictions. In providing protection of the rights of citizens not to be arbitrarily evicted, the Government has the responsibility to<sup>44</sup>:

1. Review existing regulations to conform to international standards. States should ensure that existing regulations adequate to prevent eviction force and punishment for the perpetrators. Such regulations should provide security guarantees to occupy the house and land, in accordance with the provisions of the Covenant on Economic, social and cultural, and may serve to control the situation when the forced evictions
2. Implement procedures. Evictions should be avoided wherever possible. If forced to do, evictions should implement procedural safeguards for residents displaced, which provides an opportunity to conduct public deliberations displaced, provide adequate information and sensible for any displaced people as well as providing sufficient time reasonable before the eviction is scheduled, do not do evictions without showing a clear identity (government official responsible for the eviction

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<sup>44</sup>sri suci ningtyasardi. Kewajiban Warga Negara.

<http://srisuciningtyasardi.pengurusan.co.id/2014/06/kewajiban-warga-negara-indonesia.html>> Diakses pada (sabtu 7 juni 2014)

to be present at the eviction, so that the perpetrators are clearly identified), no evictions in bad weather or at night, provide a recovery mechanism in the law, and provides legal assistance for displaced residents need to seek redress in court

3. Prevent homelessness. Evictions should not cause a person or a family becomes homeless (homeless). If those affected by evictions are unable to meet their own needs, government officials must take all appropriate steps to ensure the availability of adequate alternative.

## **2.6 The Responsibility of the State Towards Citizens in the Enjoyment of Human Rights Relating to Economic, Social, Cultural**

Human rights are a set of rights attached to nature and human existence as a creature of God Almighty and the grace that must be respected, upheld and protected by the state, law, government, and anyone for the respect and protection of human dignity.<sup>45</sup> Apart from the concept of human rights that are universal, but the application must take into account local cultures and traditions of the country, economic factors or social welfare may be appointed as the holder of the important role that ultimately will determine the quality of the enforcement of human rights in a country. So it can be interpreted that the better the quality of welfare in a country, the higher the ability to advance the protection of human right.<sup>46</sup> State obligation in advancing the rights of economic, social and cultural rights not only in the form of obligation of result, but at the same time in the form of obligation of conduct, In the concept of this responsibility, the state policy in promoting economic, social, cultural rights should be able to demonstrate the fulfillment of the obligations of countries to design it's policies. Mean when the right to adequate housing to the citizens, the state must have been weighing results can guarantee the fulfillment of the

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<sup>45</sup>Pasal 1 (1) Undang - Undang Nomor 39 Tahun 1999

<sup>46</sup> Ifdhal Kasim ,“ Prolog : Pelanggaran Hak – Hak Ekonomi, Sosial dan Budaya “ dalam Buku : Majda El Muhtaj , Dimensi – Dimensi HAM : Mengurai hak ekonomi, sosial dan budaya , Jakarta, 2008 , hal xxx

right to adequate housing that. Citizens also state shall provide a means to provide access to the people if the right is not fulfillment. According that, the definitions used is based on the definitions in the discipline of human rights law.

The right to adequate housing: is a derivative of the right to a decent life under Article 11 paragraph (1) International Covenant on economic, social, cultural.

*“Hak atas perumahan yang layak merupakan hak yang bersifat pokok dalam rangka mewujudkan seluruh hak-hak ekonomi, sosial, dan budaya”.*

*“The right to adequate housing is a right that is fundamental in order to realize its full economic rights, social and cultural rights ”.*

As seen implemented by the current administration, the state continues to bear the obligation to realize economic, social, and cultural rights of citizens within the framework of the economic system. However, if the country's economic policy a failure to provide guarantees of the fulfillment of economic, social, and cultural rights of its citizens, then the country can be said to violate the rights contained in the International Covenant on Economic, social and cultural. In its development, human rights are divided into three generations of human rights, namely the first generation of civil and political rights, the second generation includes the economic, social and cultural, and the third generation includes the right to development. <sup>47</sup> If talking about the economic, social, culture cannot be separated from the long history of struggle for human right world. Economic, social and cultural rights can be formulated based on various provisions of international, particularly Covenant international economic rights, social and cultural, as a basic human right in the economic, social, and culture that must be protected and fulfilled so that people protected the dignity and well-being , Ratification of the Covenant on economic, social, and culture itself has been ratified by Indonesia on October 28, 2005 with the

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<sup>47</sup> Jimly Asshidiqie. 2007. Pokok-Pokok Hukum Tata Negara Indonesia. PT Bhuana Ilmu Populer, Jakarta. Hal. 621

publication of the law No. 11 of 2005 on the ratification of the international covenant on Economic, social, cultural. Economic, social, cultural rights are fully recognized throughout the international community and international law regarding human rights even though these rights received less attention than civil and political rights, this right has now gained the attention of a much more serious than before. Moreover, in practice, especially in third world countries as economic, social, and cultural usually ignored. Indonesia, in this context, is one part of a country that has not maximized themselves guarantee economic rights, social, and cultural.<sup>48</sup>

Economic, social, cultural and designed to ensure the protection of human and entirely based on a view that the human family are entitled to enjoy the rights, freedoms and social justice simultaneously. However, it should be noted that, preambuler paragraph 3 of the Covenant is an assertion of a link between the rights of economic, social and cultural. Preambuler 3rd paragraph states:

*“Mengakui bahwa sesuai dengan Deklarasi Universal Hak Asasi Manusia, keadaan ideal dari manusia yang bebas dari penikmatan kebebasan dari ketakutan dan kemiskinan, hanya dapat dicapai apabila diciptakan kondisi di mana semua orang dapat menikmati hak-hak ekonomi, sosial dan budaya, juga hak-hak sipil dan politiknya.”*

*"Recognizing that in accordance with the Universal Declaration of Human Rights, the ideal state of a man who is free from the enjoyment of freedom from fear and want can only be achieved if conditions are created where everyone can enjoy the rights of economic, social and cultural, as well as the rights civil and political. "*

The struggle to uphold human rights is actually a part of the historical and cultural demands of the world, including Indonesia. Therefore, between humans and humanity throughout the world equal. Cultural form of reflections reason is maintained and continuously developed by subsequent generations

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<sup>48</sup> Prasetyo, Yoseph Adi, "Jurnal HAM 2007 pdf", 2007. Penerbit Komisi Nasional Hak Asasi Manusia. Hal. 7

will increasingly wealthy and developed in accordance with the rhythm of his day. Judging from these aspects, as well as views of history, customs, laws, and ordinances relationships and lifestyles Indonesian people in general, there is a strong enough indication that the Indonesian nation has had and recognizes ideas, even values related to human rights. Ratification by Indonesia against the ratification of the Covenant on Economic, social and cultural impact can be felt in the community. People are starting to realize their human right has. This is the formulation in the International covenant on Economic, Social and Cultural Rights, "undertakes to take Step to the maximum of its available resources, with a view to Achieving progressively the full realization of the rights Recognized in the present covenant" That means "attempt to take steps, maximize resources with a view to accelerating achievement of the full realization of the rights contained in the Covenant ". The formula gives an indication that the economic, social and cultural right is positive (positive rights). As a positive right, the right of economic, social and cultural rights cannot be prosecuted in court.<sup>49</sup>

Rights Committee on Economic, Social and Cultural Rights United Nations issued General Comment No. 4 (1997) on the Right to Decent Housing. In General Comment is said that the house or decent housing must contain seven elements as follows<sup>50</sup>:

1. Guarantee legal protection.

Protection law takes many forms, including rental accommodation (public and private), collective housing, credit, emergency housing, informal settlements, including land tenure and property. Although there are various types of legal protection, everyone should have a degree of legal protection that guarantees

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<sup>49</sup>International Covenant on Economic Social and Cultural Rights. (nonjusticiable) (4:2004)

<sup>50</sup>Urban Poor Consortium. Keluarga Kehilangan Tempat Tinggal Karena Digusur. <http://www.urbanpoor.or.id/berita-kampung-kota/73- keluarga-kehilangan-tempat-tinggal-karena-digusur> > Diakses pada tanggal 20 Agustus 2015 pukul 11.55 WIB

legal protection against forced eviction, harassment, and other threats. State Party shall be responsible, immediately take measures aimed at providing legal protection against people the household and who currently do not have protection, through proper consultation with the people or groups affected.

2. The availability of services, raw materials, facilities, and infrastructure.

A decent home must have certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural resources and the public, safe drinking water, energy for cooking, temperature and light, the tools for storing food, garbage disposal, drains, emergency services ,

3) Affordability.

Costs incurred a person / household for housing needs should be at a level that does not threaten and aligned with the achievement and fulfillment of other basic needs. Measures must be taken by the State party to ensure that the percentage of the costs associated with residence, generally commensurate with income levels. State party should provide subsidies to stay for those who can not afford to have a place to stay, in the form and level of housing loans which fairly reflects the needs of a place to stay. In relation to the principle of affordability, the occupants must be protected with the proper equipment when dealing with a rental rate that is unreasonable or rent increase. In the community, where the raw material is the main resource of natural raw materials for the house, the State party should take steps to ensure the availability of raw materials.

4) Livable.

Adequate housing must be habitable, meaning that it can provide adequate space for the occupants and to protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease factors. Physical safety of occupants must be guaranteed. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by



WHO which view housing as the environmental factor most frequently associated with conditions that cause disease in epidemiological analyzes; namely, shelter and living conditions were inadequate and deficient invariably associated with higher mortality and morbidity rates.

#### 5) Accessibility.

Adequate housing must be accessible to all those entitled to it. Groups disadvantaged such as the elderly, children, the physically disabled, the terminally ill, HIV-positive patients with chronic illness, people with mental disabilities, victims of natural disasters, residents of disaster-prone areas, and others should be convinced of the standard priorities for their neighborhoods.

#### 6) Location.

Adequate housing must be in a location that allows access to employment, health services, schools, child-care centers and other public facilities. In addition, the house should not be built in locations that have been or will soon be polluted or that threaten the right to health of the inhabitants.

#### 7) Feasibility culture.

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, are also ensured properly.

### **2.7 Fulfillment of Human Rights in the context of Economic, Social and Cultural in Indonesia**

Long before Indonesia ratified the Covenant on Economic, social, and cultural No. 11 In 2005, Indonesia has been included in the constitution in 1945 many other laws concerning the rights set forth in the covenant of economic, social,

and cultural rights.<sup>51</sup> But as usual, the number of statute or regulation does not in itself the rights set forth that can be automatically realized. Similarly, a social and political right, the fulfillment of the rights of economy, social and cultural rights is a form of respect to the existence of any human being. Rights these rights is inherent in humans and can not be taken because this right is not a gift from anyone, including the provision of state or the government, but a natural right derived from birth. Accommodations provisions of the Covenant international about the economic, social and cultural rights as rights constitutional in the constitution in 1945, the fulfillment of the rights of the need to develop, jobs such as trade properly is a fundamental right of the people of Indonesia can not be denied to be met by the state and the government, which in this case the responsibility of the Indonesian republic government. The fulfillment of all economic, social, and culture is a duty of the state includes respect, protect, fulfill, to uphold and promote human rights. There are four reasons Economic, social and cultural rights of great importance, namely<sup>52</sup>;

1. The right to economic, social, cultural and covers most major problems that people experience daily, adequate food, health care, and housing worth like between basic needs (basic necessities) for all of humanity. Hundreds of millions of people worldwide do not have access to basic necessities to their basic needs, let alone influence the policy of the authority of the brand daily survival.

2. The right to economic, social, and culture cannot be separated by other right human rights, as human interdependence is a reality that cannot be avoided at this time. For example, the right to vote and freedom of

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<sup>51</sup> Mochtar Kusumaatmadja. 2006. *Konsep-Konsep Hukum Dalam Pembangunan*. Bandung: PT Alumni. Hal. 44

<sup>52</sup> Marco Kusumawijaya *Hak Ekonomi, Sosial dan Budaya*.  
[http://hakekosob.bpn.go.id/bulletin/upload/data\\_buletin/butaru4a.pdf](http://hakekosob.bpn.go.id/bulletin/upload/data_buletin/butaru4a.pdf)

expression would not make much sense for those who are less educated because their income is not enough to pay for school.

3. Economic, social and cultural change needs the rights on the basis of justice and human dignity, economic, social, and cultural rights allow people to make their basic needs as a right that must be claimed (rights to claim) rather than donations obtained (charity to receive).

Economic, social, and culture is a basic human right that must be protected and fulfilled that protected human dignity and well being. Economic, social, and culture among others include regulated, among others, the right to work, the right to comfort and good working conditions, the right to form a bundle of labor, the right to enjoy social security, including social insurance, the right to enjoy the protection during and after childbirth, the right to adequate standard of living, including adequate food, clothing, and housing, the right to be free from hunger, the right to enjoy a standard of physical and mental health are high, right to education, including basic education, the right to participate in cultural life to enjoy the benefits of scientific progress and applications. Amid the turmoil of the global life erratic.<sup>53</sup>

## **2.8 Legal Instruments on the Eviction in Relation with State Right to Control (Hak Menguasai Negara)**

Land is a source of life that is very important to people, both in its function as a means to make a living (supporting livelihoods) in various fields such as agriculture, plantation, animal husbandry, fisheries, industry, and used as a place to settle with the establishment of housing as residence. Conditions juridical governing the existence of land that is contained in Law No. 5 of 1960 on the Basic Regulation of Agrarian, which is the implementation of the provisions of Article 33 paragraph (3) of 1945 which states that,

*“Bahwa bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh Negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat”*

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<sup>53</sup>Ibid

*“The earth and water and natural resources contained in it are controlled by the State and used for the people's welfare.”*

State right to control (Hak Menguasai Negara) is a right that belongs to the state is absolutely in control of something. State right to control (Hak Menguasai Negara) referred to in the UUPA (article 2, paragraph 1) authorizes the state for:

*a. Mengatur dan menyelenggarakan peruntukan, penggunaan, persediaan dan pemeliharaan bumi, air dan ruang angkasa tersebut; Arranging and conducting allocation, usage, inventory and pemeliharaan earth, water and the space;*

*b. Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang dengan bumi, air dan ruang angkasa; Define and regulate legal relations between people with the earth, water and air space;*

*c. Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang dan perbuatan-perbuatan hukum yang mengenai bumi, air dan ruang angkasa.*

*Define and regulate legal relations between the people and the legal acts which the earth, water and space*

Article 2 paragraph (2) UUPA states,

*a. “Memberi wewenang pada Negara untuk mengatur bahwa tanah-tanah didaerah tertentu diperuntukkan untuk keperluan tertentu, atau apakah orang boleh mendirikan pabrik diatas tanah miliknya atau tidak, bahkan untuk menentukan bahwa daerah tertentu akan digunakan sebagai hutan kota, dan sebagainya.”*

*“That authorized the State to regulate that lands certain areas earmarked for specific purposes, or whether one should set up the*

*factory on his property or not, even to specify that certain areas will be used as an urban forest , etc.”*

- b. *“Memberi wewenang kepada Negara untuk mengatur mengenai hak apa saja yang boleh dipunyai orang atas tanah, sifat hak tersebut, siapa yang bisa mempunyai tanah dengan hak tertentu, dan sebagainya”.*

*“It authorizes the State to regulate the rights of any person who may be possessed of land, the nature of those rights, who can have the soil with certain rights, and so forth.”*

- c. *“Memberi wewenang kepada Negara untuk mengatur apakah suatu hak boleh dialihkan pada pihak lain, apa syarat pengalihannya, apakah suatu hak boleh digunakan sebagai jaminan hutang, apakah orang boleh membiarkan saja hak atas tanahnya tanpa digunakan sama sekali, dan sebagainya.”*

*“Authorizes the State to regulate whether a right to be transferred to other parties, on what terms the transfer, whether a right to be used as collateral to secure loans, whether people should just leave their land rights without any use at all, and so forth.”*

Within the scope of agrarian, land is part of the Earth called the Earth's surface. Land is meant here is not set the ground in all its aspects, but only regulate one aspect of earth in terms of juridical called rights.<sup>54</sup> Land as part of the earth is mentioned in Article 4 paragraph (1) UUPA is,

*“Atas dasar hak menguasai dari negara sebagai yang dimaksud dalam Pasal 2 ditentukan adanya macam-macam hak atas permukaan bumi yang disebut*

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<sup>54</sup> Adrian Sutedi, *Peralihan Hak atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2008, hlm8-9.

*tanah, yang dapat diberikan kepada dan dipunyai oleh orang-orang baik sendiri maupun bersama-sama dengan orang lain serta badan-badan hukum.”*

*"On the basis of the controlling right of the state as defined in Article 2 determined the existence of a variety of rights to the earth's surface is called the land, which can be provided to and owned by people either alone or jointly with others as well as legal bodies.”*

The three types of authority of that State is really a reasonable arrangement authority owned by the State, although it may result of restrictions on people who hold certain rights over land. The restrictions specified by the State must be based on the interests of the Indonesian people for the greater prosperity of the people. Thus, land rights in Indonesia, including property rights is not an absolute right, which gives authority to the right holder to perform any action on the ground at will their rights.

According to Van Vollenhoven state as the supreme organization of the nation given the power to regulate everything and the state based on its position has the authority to rule of law. In this case the power of the state is always associated with the theory of sovereignty (sovereignty or souverenitet). Meanwhile, according to J.J. Rousseau says that the power of the state as an entity or organization folk sourced from the public agreement (contract social) which is essentially a form of unity to defend and protect the shared power, personal power and property of each individual. In this case essentially not a sovereign power, but the power of the state that is also no power without limit, because there are some laws that bind him like a law of nature and the law of God and the law common to all nations called imperii certification fee.<sup>55</sup>

In line with the above theory, it is t state control over natural resources sourced from the people known as the right of the people. The Right Nation is a right that has an element of belonging and authority to organize and lead the acquisition and use. Thus, all of the authority at the right of the people

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<sup>55</sup> Hak Menguasai Negara. <https://hukum.wordpress.com/2012/04/17/dasar-hak-menguasai-negara-atas-tanah/> . Diakses pada ( 17 Juli 2012)

delegated to the state. To that end, the subject of the right of nations can mean all the people of Indonesia of all time are united as a nation of Indonesia from previous generations, present and future. As mentioned above, the right of an element belongs to and the authority delegated to the implementation of the state as well known as state right to control (Hak Menguasai Negara).

## **CHAPTER III**

### **RESULT OF THE RESEARCH**

This chapter describes the results of a study to determine the profile rods Outside the village, the background of the implementation of the eviction by the government of Jakarta, the fulfillment of the right to housing katas committed by the government against evictions, human rights protection to the Kampung Luar Batang.

#### **3.1 Background of the Implementation of the Eviction in Kampung Luar Batang by the Government of DKI Jakarta**

##### **3.1.1 Profile of Kampung Luar Batang**

Kampung Luar Batang is a fishing village that is location in Penjaringan, North Jakarta. Kampung Luar Batang consists of 3 (Three) RW 1 consists of 11 households with an area of approximately 4, 25 HA, RW 2 consists of 12 RT with an area of about 3, 5 HA and RW 3 consists of 14 RT with an area of 8 HA, This region in fact become the region one of the 12 Gaza Coastal Tourism Destinations in North Jakarta. Location of Kampung Luar Batang close to the sea coast of Java that influenced the climate and environment of life in society. In the old days the natural state of the village is still a sea of swampy bush and swamps is then backfilled to be used as residences. Soil is formed from silt at the mouth of the river so it was not crowded. The groundwater contains salts that can not be used for drinking water. The villagers made up of native Betawi people and migrants from West Java, Madura, Central Java, Bugis and Makassar. Migrants from South Sulawesi generally work in the timber industry. Being the Javanese, Madurese, Sundanese and Betawi mostly become a longshoreman or industry. Villagers residing in these locations do not accept on the eviction because Kampung Luar batang one type of hometown that still survive because its existence is important to be conserved is the hometown of the historic city.



Luar Batang name itself has two versions of the story. The first version of the policy that was confirmed about the Netherlands. This version says that the Luar Batang region is outside the separation barrier in the form of a stick that made the Netherlands at the mouth of the Ciliwung River. These logs are made to cut Dutch trading activity in Sunda Kelapa harbor with the fishermen. Fishing boats must be anchored outside a log, in the west so this area then called Luar Batang. According to the book *Oud Batavia* written Frederik de Haan reveals, this area is called Luar Batang because it lies outside the barrier rod that is placed across the mouth of the Ciliwung. The barrier is made of logs and reinforced with iron. In Dutch wooden rod called a boom. Said boom is already listed on the map, which were made in 1623. If the boat wanted to cross the barrier, they are obliged to pay customs duties. The area outside the barrier is then called by Luar Batang or in Dutch called *buiten de boom*.

Both versions came from the tomb of Habib Husein bin Abubakar Alaydrus. Habib Husein was a propagator of Islam is highly knowledgeable. Cleric whose full SayidHusein bin Abubakar bin Abdullah al-Aydris is also believed most people as the descendants of the Prophet Muhammad. Decades Sayid Hussein preach in the cities of the north coast of Java, from Batavia to Surabaya. He died around 1796, and was buried outside the mosque which was built in the same year. Luar Batang Mosque is currently undergoing renovations and expanded in 1827, the shrine became Sayid Hussein mosque were in the room. The name "Luar Batang" itself cannot be separated from the miraculous events that occurred on the bodies of Sayid Hussein. When coffin, or a rod brackets in terms Betawi, where the bodies of Sayid Hussein opened, his body disappeared from the rod brackets without being seen by anyone.<sup>56</sup>

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<sup>56</sup>Ari Sandita. *Sejarah Kampung Luar Batang*. <http://www.tandapagar.com/sejarah-panjang-kampung-luar-batang-yang-ikut-tergusur/> Diakses pada Sabtu ( 7 Mei 2016)

Kampung Luar Batang is geographically adjacent to the port of Sunda Kelapa. A villager outside the rod is a private warehouse area and the village serves as a transit point for migrants, a place of pilgrimage and a rental residence. Their place of pilgrimage can improve the economy of the local community for its survival, because the shrine is the tomb of one of Hadramaut Muslim missionaries called Al-Habib Husein bin Abubakar bin Al-Aydrus become part of the history of the village Luar Batang. Until now maqom Al-Habib Husein be the object of pilgrimage. Maqom terms associated with the notion of 'high degrees somebody for science or closeness to God or Allah Wali, while the tomb is a tomb.<sup>57</sup>(Informant interviews locals, 2008).

From the above it can be concluded that the impact on the pilgrimage tradition placement legitimacy of land around the mosque. Placement of the land around the mosque associated with kinship and residence status, and this determines the distance of the location of the maqom as an economic resource. Based on these identified three layers status: (1) activity and commercial religions and traditions in the mosque courtyard dominated by trader's natives, and (3) commercial activity along the streets around the mosque dominated immigrant merchants.

### **3.1.2 The Background of the Eviction in Kampung Luar Batang by the Government of DKI Jakarta**

An eviction in Jakarta is associated with various problems. Among them, the population explosion and lack of residential land for the citizens. Data from local government DKI Jakarta shows every year raided 250 thousand newcomers from different regions and other regions.<sup>58</sup> This is due to the concept of development that puts Jakarta as the center of economic and

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<sup>57</sup>Kampung Luar Batang. <http://rumahkampungkota.co.id/2011/05/refleksi-gersos-di-indonesia.html> > Diakses pada 30 AGUSTUS 2014

<sup>58</sup>Muslim AR. 4 Fakta penggusuran kawasan Ikan Penjaringan. <http://news.liputan6.com/read/2480797/4-fakta-penggusuran-kawasan-pasar-ikan-penjaringan> > Diakses pada 11 April 2016 )

political activity. Besides in Jakarta a lot of unused land that is not clear status and designation. Obscurity is exploited certain circles that could regulate land tenure. The mechanism of the free market seems to have overcome the sense of justice and the rights of public services for the citizens (public services).

The eviction problem stems from many factors, but there is one reason that makes illegal land occupation in Jakarta seemed to be legal. The reason was the Jakarta Governor Decree No. 184 of 1998 which essentially allowed residents utilize idle land or vacant land are unclear designation. In the days of the governor Sutiyoso time it is to help people become victims of the financial crisis so that it can conduct business such as agricultural land use in the city slept. But as the economy grows and the needs of residents, coupled with weak supervision DKI provincial government officials, idle land that changed the functions of vegetable land into settlements.<sup>59</sup>

The evictees in general and is almost entirely the lower classes of society in the sense of community with low economic level. With relatively little income they have built shacks on vacant land owned by others because of their own to buy the land they could not afford. At first, the shed is a simple building made of wood and zinc scrap, but over time along with the increase of their income to build it into a semi-permanent buildings, even up into a permanent building. It continues until some time, there has been going on for months and some have already yearly, causing them to forget that the land they occupy is not theirs but belonged to someone else. They behave as if the land belongs to them, and some even bought and sold or rented out amongst the community. Such irregularities persist over time, so that when the government of DKI carry out their policing startled and react. Based on the interview one of the people in Kampung Luar Batang, they live from small even a mother who met with Prabowo said he lived since he was a child and his parents are still young, suddenly the government's claim that the State land but they could not prove this State land , they are here to have ID card, pay the UN, and has a letter

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<sup>59</sup> Ibid

home to their offers to the bank. But why the government treats him like this without any socialization.

At the time of Jakarta Governor Basuki Tjahaja Purnama (Ahok) do a lot of areas affected by the eviction, including eviction in Pasar Ikan Luar Batang, Penjaringan, North Jakarta. According to the interview in a news Jakarta governor told him, "Now we ask, this land has anyone? Certificate market has PD Pasar Jaya.<sup>60</sup> If you live in the sea, from where it can be certified? I have said, if the flat is ready, we will moved," said Ahok at City Hall Jakarta, Central Jakarta, on Monday April 11 2016 and Governor of DKI also claims Kampung Luar Batang displacing reasons for wanting to clean all Pluit reservoir which includes a fish market and think about the health of people around the Pasar Ikan Luar Batang , Due to the spread of tuberculosis (TB) is spread freely in the region. "Do not violate the human rights of children infected with TB? One person can infect 10 people," he said. Ahok will make Muara Baru to be built levee 5 meters, the embankment 3.8 meters above sea level, well below the five meters. And want to continue to harbor Nizam Zachman. It is approximately 10-12 hectares of land. Dike was closed because it is dry, and will wake up as Green Bay, fishermen, small people, and street vendors, he said.

Based on the interview one of the villagers Kampung Luar Batang named Abdul Talib said they felt not fulfilled their rights after this eviction, Although the city government has set up house flat against evictees and fish traders to continue to sell to move to Muara Baru but still the evictees are still disadvantaged in terms of economic, social, and cultural and evictions to its hometown no socializing and meetings are first.

Based on an interview one resident Kampung Luar Batang named Muhammad Taufik said, flats always as a primary solution for victims of forced evictions

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<sup>60</sup>Yuanita. Ini alas an Ahok gusur pasar ikan Luar Batang.

<http://metro.sindonews.com/read/1099954/171/ini-alasan-ahok-gusur-pasar-ikan-luar-batang-1460346854> > Dikases pada Senin ( 11 April 2016)

since the era of Jakarta Governor Basuki Tjahaja Purnama Sutiyoso up. Jakarta governor always promised that the victims of forced evictions who moved to the apartment will become more prosperous since gained a lot of social security assistance from the government. However, there are symptoms that the promises were not fulfilled its the fact that the victims of forced evictions who moved into the apartment it difficult to meet the needs of daily life and forced delinquent rent.

### **3.1.3 Data of Eviction of Villagers in Jakarta Utara Written LBH Jakarta 2015**

Based on the findings of Jakarta Legal Aid Institute, there are 23 cases of evictions that occurred in North Jakarta during the month of January until December 2015. The location and timing of the eviction cases include<sup>61</sup>:

<b>No</b>	<b>Lokasi</b>	<b>Waktu</b>
<b>1</b>	RT 16 dan RT 19 / RW 17, Kelurahan Penjaringan, Kecamatan Penjaringan, Jakarta Utara	10/01/15
<b>2</b>	Kelurahan Penjaringan, Kecamatan Penjaringan, Jakarta Utara.	17/01/15
<b>3</b>	RT 16, RW 17, Kelurahan Penjaringan, Jakarta Utara	23/02/15
<b>4</b>	Jl Jalan Gedung Pompa RT 020 RW 017, Kelurahan Penjaringan, Kecamatan	23/03/15

<sup>61</sup>Alghiffari Aqsa. Laporan Penggusuran Paksa di Wilayah DKI Jakarta Tahun 2015. Lwmbaga Bantuan Hukum Jakarta. <https://www.selasar.com/politik/penggusuran-paksa-adalah-pelanggaran-ham>> Diakses pada (22 Februari 2016)

	Penjaringan, Jakarta Utara	
<b>5</b>	RT 22/08, Bantaran Kali Karang dan Jl. Pluit Karya Timur, Penjaringan, Jakarta Utara	12/03/15
<b>6</b>	Bantaran Kali Benyamin Sueb, Pademangan I, Pademangan Timur, Jakarta Utara	07/04/15
<b>7</b>	Jalan Ancol Barat I, RW 01 dan 02, Kelurahan Ancol, Kecamatan Pademangan, Jakarta Utara	08/04/15
<b>8</b>	.Sisi Timur Bantaran Waduk Pluit, Bagian Selatan Kali Gendong, RT19 dan RT20/RW17, Kelurahan Penjaringan, Kecamatan Penjaringan, Jakarta Utara	21/04/15
<b>9</b>	Jalan Gaya Motor I dan III, RW 09, Sungai Bambu, Tanjung Priok, Jakarta Utara	27/04/15
<b>10</b>	Bantaran Kali Duri, Jalan Bidara Raya, RW 04 & 05, Kelurahan Pejagalan, Kecamatan Penjaringan, Jakarta Utara	29/04/15
<b>11</b>	Atas Kali Gendong, Sisi Timur Waduk Pluit, Penjaringan	04/05/15
<b>12</b>	Jalan Pluit II, RT06/RW08, Kelurahan Penjaringan, Kecamatan Penjaringan, Jakarta Utara	22/05/15
<b>13</b>	Sepanjang Anak Kali Ciliwung, Jalan Kencur, RT 07,9/01, RT 04/08, RT 13/04, Kelurahan Ancol, Kecamatan Pademangan, Jakarta Utara	12/08/15
<b>14</b>	Pasar Ikan Penjaringan Jakarta Utara	16/09/15
<b>15</b>	Di samping Rusun Sukapura, Jalan Manunggal Juang, RT 02/07, Kelurahan	17/09/15

	Sukupura, Kecamatan Cilincing, Jakarta Utara	
<b>16</b>	Kali Gendong Waduk Pluit, Jalan Kebun Tebu, RT19/RW17, Kelurahan Penjaringan, Kecamatan Penjaringan, Jakarta Utara	29/09/15
<b>17</b>	Jl Mawar dan Jl Manggar, Koja, Jakarta Utara	05/10/15
<b>18</b>	Kampung Luar Batang Penjaringan Jakarta Utara	15/10/15
<b>19</b>	Ancol, Jakarta Utara	09/11/15
<b>20</b>	Penjaringan Jakarta Utara	10/11/15
<b>21</b>	Kelurahan Rawa Badak Utara, Jakarta Utara	15/12/15
<b>22</b>	Jalan TanaH Pasir, RW 07, Penjaringan, Jakarta Utara	17/12/15
<b>23</b>	Jalan Warakas Raya, Warakas, Tanjung Priok, Jakarta Utara	22/12/15

Based on the data above evictions that occurred in Jakarta, the highest eviction goal is to curb the use of land in order to implement the Regulation of DKI Jakarta no.8 of 2007 on Public Order. In the eviction procedure under general comments economic, social and cultural rights No. 7 of 1997 on Forced Eviction provides that evictions that meets human rights standards is their sincere deliberation between the parties will carry out evictions and citizens affected. Deliberation sincere, of course, also must be accompanied by the provision of sufficient information for the people affected by the land being move they inhabit. Ironically, based on research conducted, almost all cases of forced evictions that occurred in Jakarta not through consultation procedures before carrying out the eviction. Any cases that often occur between the city government and residents affected by the eviction disparate as any cases of forced evictions that have a variety of processes, for example there is no

alternative, no deliberation, is there any reasonable compensation which can guarantee rights economic, social, and cultural.

As described the results of a study of LBH Jakarta explain the difference eviction Jakarta like Kampung Luar Batang and Kampung Aquarium namely Kampung Aquarium evicted because the government wants to improve slum area was due to many immigrants who live in the village and can not protect the cleanliness of the place, and Kampung Luar Batang rod evicted because the government wants to beautify one or pilgrimage sites for Kampung Luar Batang including marine tourism roadmap to be developed by the government of DKI Jakarta government and improve the lives of local people to be cleaner and healthier. If treated any differently from eviction cases in Kampung Pulo, government displacing the area due to normalize the Ciliwung River, and the government also wants to move the residents argued that flooded each time the Ciliwung River overflowed.<sup>62</sup>

Based on interviews one community leader in Kampung Luar Batang named Haji Mat Johan said Luar Batang residential location was once a swamp. Eventually the swamp of the Ciliwung River silted up and became the residence and the livelihoods of villagers outside the rod, the government is now evicting where they lived, how the public can accept, while the government cannot provide a decent living.

### **3.2 Human Rights Violations Against Evictees Kampung Luar Batang of the Right of Housing**

Forced eviction is defined as actions that remove or expel any person or group from their homes or land against the will of their own and without providing appropriate protection. The international community has long recognized that forced evictions is a serious issue. In 1976, the United Nations Conference on

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<sup>62</sup>Febriana Firdaus. Apa rencana pemerintah paska pengusuran.  
[http://www.rappler.com/indonesia/129056-roadmap-pasar-ikan-pemprov-dki-jakarta?cp\\_rap\\_source=yml#cxrecs\\_s](http://www.rappler.com/indonesia/129056-roadmap-pasar-ikan-pemprov-dki-jakarta?cp_rap_source=yml#cxrecs_s) > Diakses pada ( 11 April 2016)



Human Settlements noted the need for special attention to "implementing major cleanup operations to be when conservation and rehabilitation are not feasible and relocation measures had been determined" .In 1988, the Global Strategy for Shelter to the Year 2000, which was passed by the General Assembly in its resolution 43/181, "fundamental obligation (government) to protect and improve houses and neighborhoods, rather than damage or destroy them" was recognized. Agenda 21 stated that "people should be protected by law against forced evictions from their homes or land." In the Habitat Agenda Governments declare themselves "protecting all people from, and providing protection and recovery by the law of forced evictions that contrary to the law, to make human rights considerations; (And) if the expulsion is unavoidable, ensure carefully that solutions suitable alternatives have been provided. "The Commission on Human Rights has also indicated that" forced evictions are a gross violation of human rights.<sup>63</sup>

It is natural that forced eviction is considered an egregious violation of human rights because the right to housing to various other related rights, so that the dignity and worth as a human being can be lost with forced eviction. However in Indonesia forced evictions has not been considered a serious violation of human rights. This is because the Act No. 26 of 2000 on Human Rights Court on Article 7 simply categorize human rights violations are severe form of the crime of genocide and crimes against humanity.<sup>64</sup>

In the interview one resident named Ahmad Junaidi resident of RT 01 Pasar Ikan Kampung Luar Batang saying "they occurred during his eviction in the former rubble, as other citizens. Children also sleep there, and they claimed to have received rental flats that have been prepared by the city government to the citizens affected by the eviction Fish Market. He had ID and family cards as citizens of Jakarta, and had lived here more than 20 years. Want to get the flats

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<sup>63</sup>Rhona KM dkk,(2008). *Hukum Hak Asasi Manusia*.Yogyakarta:PUSHAMUII

<sup>64</sup>Pengurusan. <http://nasional.republika.co.id/berita/nasional/hukum/16/09/27/oe5vfz388-uu-soal-pengurusan-akan-diuji-materi>> Diakses pada Selasa ( 27 September 2016)

they pay's all very difficult, even the city government provides for such compensation does not comply with social disadvantage. Instead, residents who have Jakarta ID card will be relocated to the flat. But they admitted difficulty taking care eligibility requirements for residential units in the towers. They just asked for a place to stay alone in the flat, complicated once care of it, do not ask others, especially for food, are also baseball. Please help humanize them, "said Ahmad Junaidi citizen of Kampung Luar Batang.

The local regulations of DKI Jakarta Violate Rights of Citizens. Countries and governments have an obligation to respect, protect and fulfill the human rights of its citizens. Article 8 of Law No. 39 of 1999 on Human Rights mentions the protection, promotion, enforcement and fulfillment of human rights is primarily the responsibility of the Government. However, with the enactment of legislation Tibum, local governments violate the human rights of its citizens. The rights of citizens are violated by the enactment of legislation Tibum are as follows:<sup>65</sup>

#### 1. The Right of Housing

Bylaw violate the right to housing by the provisions regarding the prohibition to reside in an open space, on the platform, under a toll bridge, green lanes, parks and public places. The ban became one of the basic local government to evict people who have resorted to building homes that are prohibited place for the right to housing is not met by the state. In 2008-2009 alone, the Urban Poor Consortium (UPC) noted that there are at least 30 the number of evictions by the number of 6109 houses and 24 436 inhabitants. While LBH Jakarta recorded in the year 2008 there were 21 cases of complaints regarding the right to housing by the number of victims affected around 5104 inhabitants. LBH Jakarta observes that the city budget in 2011 for pre and when the eviction, either home or place of business is Rp. 45,836,400,000.00. So, DKI Jakarta has

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<sup>65</sup>pengusuran di Zaman Jokowi”, [https:// id.berita.yahoo.com/16-pengusuran-dizaman-jokowi-073546985.html](https://id.berita.yahoo.com/16-pengusuran-dizaman-jokowi-073546985.html)> Diakses pada (8 September 2014)

a lot of funds to enforce legislation and carry out evictions. The prohibition in the legislation and the eviction contradictory to:

1. Article 28H paragraph (1) NRI 1945 Constitution

*“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan”*

*"Everyone has the right to live physical and spiritual prosperity, reside and earn a good living environment and healthy and receive medical care"*

2. Article 40 paragraph (1) of Law No. 39 of 1999 on Human Rights

*“Setiap orang berhak untuk bertempat tinggal serta berkehidupan yang layak”*

*"Everyone has the right to reside and lives viable"*

3. Article 11 (1) of Law No. 11 Year 2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights.

According to a report from LBH Jakarta in 2015, the majority of evictions conducted by Jakarta Provincial Government significantly violate these requirements because it is not done by consensus (84%), involving officers from unauthorized as the military (67%), and does not provide any solutions to the people affected (67%). Evictees were accused of being "illegal" and "cause flooding" is actually the real victims of injustice layout in the capital. Treat

them with inhuman, such as using forced evictions approach, is a reflection of policies that are not pro-poor city.<sup>66</sup>

### **3.2.1 The Rights of the People are Violated by the Government**

As the constitutional basis for the organization of the country, 1945 is the source of law for all the laws and regulations in the hierarchy below him and plays provide guiding rules for all aspects of the life of society, nation and state. 1945 opening even express national goals to be realized the Indonesian nation, which is to protect the people and the country of Indonesia, promote the general welfare, the intellectual life of the nation, as well as participate in the establishment of world order based on freedom, lasting peace and social justice.<sup>67</sup> Rights were violated by the government in providing services, in accordance with the right to housing is the state's responsibility for compliance, the state is obliged to respect, to fulfill, and to protects.

### **3.2.2 State Obligations are Breached**

According to international human rights law, everyone has the right to adequate housing as a component of the right to adequate standard of living. The right to adequate housing includes, among others, the right to protection against interference arbitrary or unlawful to privacy, family, home and property laws guarantee. Under international law, states must ensure that the protection of citizens, and human rights to adequate housing and property safety is guaranteed without any discrimination on grounds of race, color, sex, language, religion or belief, political or other opinion, national origin, ethnic or social, legal or social status, age, disability, property, birth or other status.<sup>68</sup> States must ensure equal rights for women and men for protection and equal enjoyment of human rights to adequate housing and security of tenure, as

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<sup>66</sup> Analisis Hukum Kasus Penggusuran.

<http://wartakampusparepare.yahoo.co.id/2015/08/analisis-hukum-kasus-penggusuran.html>>  
Diakses pada (Agustus 2015)

<sup>67</sup> Ibid

<sup>68</sup> Ibid

reflected in these guidelines. All persons, groups and communities have the right to resettlement, which includes the right to alternative land better or equal quality and housing that must meet the criteria are eligible to the following: accessibility, affordability, decent housing, security of tenure, the adequacy of the culture, suitability of location and access to essential services such as health and education.<sup>69</sup>

States must ensure that adequate and effective legal or other appropriate improvements available to any person claiming that his right to protection against housing has been violated or is under threat of violation. Countries should refrain from any retreat filed an action with respect to the protection of de jure or de facto on the fulfillment of the rights of citizens to live in prosperity and a decent life. State should formulate and implement policies and international activities in accordance with their human rights obligations, including through the pursuit and regulation of international development assistance.<sup>70</sup>

### **3.3 Protection of Human Rights of the People in Kampung Luar Batang**

Each local government must follow and comply with the regulations state that the constitution in which the state is responsible for providing protection, nurturing, and caring for the poor. The government is obliged to carry out the mandate of the constitution of 1945, which maintains the poor and abandoned. The residents affected by evictions are part of the citizens who have the same rights as other citizens. The Constitution guarantees and providing shelter for its citizens. So evictions should not be carried out. Government authorities are looking for alternative solutions to the villagers Kampung Luar Batang through

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<sup>69</sup>Nowak Manfred,(2003).*Pengantar Pada Rezim HAM Internasional*.Wina:Brill Academic Publisher

<sup>70</sup>Aida zahro. Instrumen Hukum. <http://aidazahro.instrumen-hukum.co.id/2011/08/instrumen-hukum-dan-peradilan.html> > Diakses pada ( 2 Agustus 2013)

dialogue similar way. Many buildings citizens and the poor people in the streets because the government failed to implement the mandate of the state. Although in Regulation eviction regions not allocation, but the government should be able to ensure the protection and meet the economic rights of the residents of Kampung Luar Batang. Some of that may be invoked protection that meets the rights for the citizens of Kampung Luar Batang are:

- a. Constitution year 1945 No.27 article 2:

*“Tiap-tiap warga Negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan.”*

*“Every citizen is entitled to work and a decent living for humanity.”*

- b. NRI Constitution year 1945 Article 28H paragraph (1),

*“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan.”*

*“Every person has the right to live physical and spiritual prosperity, reside, and get a good environment and healthy and receive medical care.”*

- c. Law No. 1 year 2011 Article 5, paragraph 1 of the Housing and Settlement Region:

*“Negara bertanggung jawab atas penyelenggaraan perumahan dan kawasan permukiman yang pembinaannya dilaksanakan oleh pemerintah”*

*“The State is responsible for implementing housing and settlements fostering implemented by the government”*

Usually in urban spatial arrangement of each area Municipal Government held frequent forced evictions. Usually in the eviction of poor people stay committed by government officials, as if they do not have human rights in economic, social and cultural fields. The government always uses the word demolition in doing demolition. In doing policing is often the case things did not reflect the order of the words themselves. If we interpret the word policing is a process and make something of it be neat and orderly, without causing

chaos or a new issue. In any demolition or eviction rights being violated is the right to a decent job and a decent life.<sup>71</sup> Any cases that often occur between the city government and residents affected by the eviction disparate as any cases of forced evictions that have a variety of processes, for example there is no alternative, no deliberation, is there any reasonable compensation which can guarantee rights economic, social, and cultural. To determine abuse or failure of the government in the situation or arrangement against eviction, we have seen how the process, whether the government held a consultation or not, then the process of moving the residents of Kampung Luar Batang feasible or not, is there any warning letters before demolition or whether removal or whether at the time of demolition or eviction was carried out during bad weather or rain. So, be added again infraction.

Is it after the eviction was no compensation by the government and how the solution. According LBH (Legal Aid) Of the 30 cases of forced evictions that occurred in the city of Jakarta, throughout 2015, there was only one (1) case of evictions carried out by residents with a voluntary way. The rest, done in various ways, at the same time, potentially repressive and the resulting threat to the citizens, namely the spread of threats with heavy equipment (25 cases), involvement of municipal police (26 cases), involvement of personnel of the National Police and the TNI (each 19 cases). Based on these data, the perpetrators forced evictions are still used in ways that lead to acts of threats and potential violence because of resistance citizen against such treatment. Keep in mind, the involvement of Police and military officers, in addition incompatible with their duties and powers under the provisions of the legislation, also has the potential to result in negative impacts on the psychological condition of people under pressure, especially women and children.

Based on interviews with one of the villagers in Kampung Luar Batang named Asep Saepuloh A reason for those who choose to stay in the area due to the

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<sup>71</sup>Mr. Edi Saidi.Kordinator Urban Poor Consotium (UPC). Diakses pada hari kamis (29 Maret 2016)

low economic and employment so that they can not be able to buy a house. In the application of the Regulation in Indonesia through the Control and evictions were carried Government of Jakarta, Kampung Luar Batang hope Government of Jakarta provide any solution Control and Evictions because although the Government did evictions Forced without providing a solution, it still affected residents eviction back into place considered strategic to reside. Of the total 30 cases of evictions that occurred during the period January to August 2015, there were 26 cases of forced evictions in Jakarta only be decided unilaterally by the parties who forced eviction.<sup>72</sup>

Residents were not given adequate information and are given only a narrow time limit and the compensation and rehabilitation provided unilaterally by the perpetrator. The condition is contrary to human rights standards, namely Article 15 (a) of the UN General Opinion No. 7 of 1997 on Forced Evictions - also 7 other requirements as set in the same terms. As a result, in addition to the residents do not get proper compensation and rehabilitation; residents also do not have an understanding of the importance of land use by parties who forced eviction. In addition, allowing a violation of greater rights for the citizens affected, for example, do not have a decent place to live after the evictions, the condition of children who were in the middle of the school year and must move to a location away from the school, the conditions in the new place is not have a good quality of life, and so forth. In other words, a decline in the quality of life for residents who suffered forced evictions and violations of human rights in layers

In the application of Regional Regulation in a manner detrimental to the citizens of Control already Kampung Luar Batang, due to the demolition, the residents of Kampung Luar Batang experience.

#### 1) Loss of shelter

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<sup>72</sup>LBH Jakarta. Warga Duren Sawit Mendapatkan Haknya Atas Perumahan.<sup>34</sup>  
<http://www.bantuanhukum.or.id/web/wargaduren-sawit-mendapatkan-haknya-atas-perumahan/>  
>Diakses pada tanggal (20 Agustus 2015 pukul 11.20 WIB)



2) Loss of their businesses as a result of their lack of income per day for living expenses

3) Demolition trade places

According to the results of interviews with one of the people in Kampung Luar Batang named Daeng Mansur Amin worked as a secretary mosque jami Affairs sacred rod if indeed there should be controlling and structuring by the city government, residents hope laid out by the government humanely. There should not be with a brute force approach. Order in the city can be reached by any means invite consultation or discussion throughout the villagers in Kampung Luar Batang.

As for the rights of villagers Kampung Luar Batang when unloaded. The Constitution 45 and Law No.39 of 1999 on the human rights of which reads guarantee property rights as follows;

According to the constitution of 1945, reads as follows:

- a. Article 28 G paragraph (1) of the Constitution of 1945, explaining  
*“Setiap orang berhak atas perlindungan diri pribadi; keluarga; kehormatan; martabat; dan harta benda yang dibawah kekuasaannya, serta berhak atas rasa aman dan perlindungan dari ancaman ketakutan untuk berbuat atau tidak berbuat sesuatu yang merupakan hak asasi.”*

*"Everyone has the right of self-protection; family; honor; dignity; and property under his control, and has the right to feel secure and protected from the threat of fear to do or not to do something that is a human right. "*

- b. Article 28 H paragraph (4) of the Constitution of 1945, explaining  
*“Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang.”*

*"Every person has the right to have private property rights and property rights must not be taken over arbitrarily."*

- c. Article 28 first paragraph (4) of the Constitution of 1945, explaining  
*"Perlindungan; pemajuan; penegakan; dan pemenuhan hak asasi manusia adalah tanggung jawab Negara terutama pemerintah"*  
*"Protection; promotion; enforcement; and fulfillment of human rights is the responsibility of the State, especially the government."*

In accordance with Act No. 39/1999 on Human Rights reads as follows:

- a. Article 36 paragraph (2) states,  
*"Tidak seorang pun boleh dirampas hak miliknya dengan sewenang-wenang."*  
*"No one may be deprived of his property arbitrarily."*
- b. Article 37 paragraph (1) describes the  
*"Pencabutan hak milik atas sesuatu benda demi kepentingan umum; hanya dapat diperbolehkan dengan mengganti kerugian yang wajar dan segera diperbolehkan dengan mengganti kerugian yang wajar dan serta pelaksanaannya sesuai dengan peraturan perundang-undangan yang ada"*  
*"Dispossession on some object in the public interest; only be allowed to indemnify reasonable and immediately allowed to indemnify reasonable and well as implementation in accordance with the legislation that exists"*
- c. Article 37 paragraph (2) states,  
  
*"Apabila ada sesuatu benda berdasarkan ketentuan hukum demi kepentingan umum harus dimusnahkan atau tidak diberdayakan baik itu untuk selama-lamanya maupun untuk sementara waktu, maka hal itu dilakukan dengan mengganti kerugian"*

*"If there is some object based on the provisions of the law in the public interest must be destroyed or not empowered either forever or for a while, then it doing to replace the loss"*

d. Article 40 explains

*"Setiap orang berhak untuk bertempat tinggal serta berkehidupan yang layak."*

*"Every person has the right to reside and livers viable."*

Their fulfillment of economic, social, and cultural by the government against the residents of Kampung Luar Batang, the Government provides the facilities provided for residents of Kampung Luar Batang eviction. Post-eviction by the government at the fish market including Luar Batang village on 11 April 2016, the government provided some of the facilities that house has been destroyed. Although affected by forced, DKI Jakarta provincial government has provided the necessary facilities such as:

1. Flats ( rusun) Rawa Bebek in Cakung, East Jakarta
2. Flats ( rusun) Marunda in cilincing
3. Flats ( rusun) Kapuk Muara in penjaringan

For flats Rawa Bebek, the government provides education post that has opened it's registering since April 11, 2016. Registration is open at the level of early childhood education up to high school / vocational school. Not only is it for those who wish to pursue a package A, B, and C made easy with just a family card to register free of charge. other than that the school is prepared to accommodate the residents are also provided as seven SD, eight junior high schools, four high school, six vocational education as well as four community learning (CLC). Rusun Kapuk Muara government provides health services, school buses, free and Trans Jakarta bus feeder free for residents of towers

Kapuk Muara. Rusun Marunda also provided feeder Trans Jakarta bus free, school buses, clinics, early childhood education and open spaces. As for the facilities in each unit itself is available two bedrooms, bathroom, kitchen, living room and drying room. All the flats have been provided had the facilities habitable. Although there is some people who often complain would shelter them now, there are still people who have received their new home state. Ironically, however, as a condition for staying in flats list is to have identity cards (KTP) Jakarta. So the people that had KTP other areas or who do not have ID cards, can not occupy the flat and ordered to return to their original areas.

And the protection of their livelihood, The majority of the people displaced are fishermen. Evicted residence with them, inevitably they have to move, and of course the effect on their livelihoods. They lost their job as fishermen, because if they persisted with their previous livelihood was quite difficult. Because the shelter provided by the provincial government of Jakarta itself to the fish market located evictees in flats Swamp Marunda duck and towers, far enough away from the ship or boat leans so costly transportation. Not to mention that they think about the safety boat or ship them, because when they move to another place, who will look after the safety of the boat or ship them. This is the facility provided by the government so citizens can keep working eviction:

1. Facilities stalls to start a business

Jakarta government in addition to concern about a place to stay for the victims of evictions, also consider and take notice of how the fate of the livelihoods of residents displaced. In flats that has been provided actually the Jakarta Provincial Government has also provided stalls for people who occupy that place to do business.

2. Provide flats in Cilincing area that is also close to the location of fishermen

The city has had a dialogue with displaced people who work as fishermen to be transferred to a flat close also to the territorial waters so that they see

themselves could still work. But many of them were refused on the grounds of competition other fishermen who have been there before.

### **3.4 The Government Implements DKI Jakarta Regulation No. 8 year 2007 on the Eviction of Kampung Luar Batang**

Governments implement DKI Jakarta regulation to curb the city is based on the consideration that the intensity increasing lawlessness. One of the regulations adopted by the government of Jakarta in this case about the development of building. Development of building is one change that would create an orderly Jakarta, beautiful, safe, comfortable and friendly course. DKI Jakarta regulation implemented by the Jakarta administration wants to make society more orderly and regular development issues like building a house on a swamp and did not have a certificate of land and houses in the development. Government implements these regulations in order to Jakarta more organized and neat. Here's regulations relating to evictions that occurred in Kampung Luar Batang:

Chapter VII Conduct Building:

Law No. 8 of 2007 Article 36 paragraph (1) letter b. and c. states:

(1) Any person or entity shall:

*b. Mendirikan bangunan pada ruang milik jalan, ruang milik sungai, ruang milik setu , ruang milik waduk, ruang milik danau, taman dan jalur hijau, kecuali untuk kepentingan dinas;*

*b. Building on the right of way, the space belongs to the river, the room belonging to the Setu, belonging reservoir space, space that belonged to the lake, parks and green lanes, except for the interest of the service;*

*c. Mendirikan bangunan di pinggir rel kereta api dan di bawah jembatan kereta api.*

*c. Building on the edge of the railroad tracks and under the railway bridge.*

Implementation of the government of DKI Jakarta regulation No. 8 of 2007 is one of the commitments of Jakarta Governor in his efforts to realize the orderly Jakarta comfortable, secure and conducive. These regulations also serve as guidelines or basic in protecting citizens and infrastructure of the city along with the accessories with the object of the law is the urban poor (bum, rickshaws, beggars, street vendors, and others). The regulation of government also is one of the policies that could be a tool in attracting retribution from various sectors.

## CHAPTER IV

### ANALYSIS

#### **4.1 Law Enforcement of the DKI Jakarta Regulation No. 8 year 2007 which Violate Human Rights Law Against Eviction Kampung Luar Batang Jakarta**

Development is an effort to change that is based on a selection of certain views that are not independent of experience (history), the reality of the situation at hand, and the interests of the parties that make development decisions. Development implemented by the Provincial Government of DKI Jakarta (Jakarta Government) where the government does not pay attention to the different communities (various aspects) and the readiness of its own local government and the community to be built. to overcome the problems of the city of Jakarta, the Jakarta Regional Government issued a number of policies that subsequently poured in a regulation-regulation, such as economic policy, social, cultural, political, city planning, building construction, waste management, labor and others.<sup>73</sup> It all is to create an orderly Jakarta, beautiful, safe, comfortable and friendly course. However, some programs are implemented, it turns out there are some that do not solve the problem of the Jakarta city, but it was instead created new problems such as those contained in the Regional Regulation No. 8 of 2007 on Public Order. Recent legislation enacted to curb the city is based on the consideration that the intensity increasing lawlessness. However, when the three regulations that make society as an object that does not involve the public in its making or listening to the aspirations of the people, then of course it is getting a lot of objections, especially from the community itself. Here's regulations relating to evictions

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<sup>73</sup>Heryanto. Fenomena Perkampungan Kumuh di Tengah Perkotaan. [http://www.academia.edu/6189333/Fenomena\\_Perkampungan\\_Kumuh\\_di\\_Tengah\\_Perkotaan](http://www.academia.edu/6189333/Fenomena_Perkampungan_Kumuh_di_Tengah_Perkotaan). > Diakses pada (9 September 2014)

that occurred in Kampung Luar Batang and contrary to the 1945 Constitution:<sup>74</sup>

Chapter VII Conduct Building:

Law No. 8 of 2007 Article 36 paragraph (1) letter b. and c. states:

(1) Any person or entity shall:

*b. Mendirikan bangunan pada ruang milik jalan, ruang milik sungai, ruang milik setu , ruang milik waduk, ruang milik danau, taman dan jalur hijau, kecuali untuk kepentingan dinas;*

*b. Building on the right of way, the space belongs to the river, the room belonging to the Setu, belonging reservoir space, space that belonged to the lake, parks and green lanes, except for the interest of the service;*

*c. Mendirikan bangunan di pinggir rel kereta api dan di bawah jembatan kereta api.*

*c. Building on the edge of the railroad tracks and under the railway bridge.*

It is contrary to the 1945 Constitution:

Article 28H paragraph (1), which states:

*“Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup baik dan sehat serta berhak memperoleh pelayanan kesehatan.”*

*"Everyone has the right to live in welfare and spiritual birth, residence, and obtain environmental good and healthy and receive medical care."*

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<sup>74</sup>Yosep Prasetyo, Roichatul Aswidah, dan Asep Mulyana. *Kajian Komnas HAM terhadap Peraturan Daerah DKI Jakarta No. 8 Tahun 2007 tentang Ketertiban Umum*. Cet I. Jakarta: Komisi Nasional Hak Asasi Manusia, 2009, Hal 56.



In it to them (especially the poor) who cannot afford land in Jakarta to establish a dwelling / business in the public space, the Jakarta Government should provide a solution by providing a place to accommodate them. Since the "residence" is a right guaranteed in the 1945 Constitution, as mentioned above.

Law No. 8 of 2007 is one of the policies that do not see the reality that is happening in the community. In fact it appears that this policy includes the interests of a particular party because it does not accommodate the rights of little people. This policy is one of the tools in the effort to impoverish certain groups because of this rule contains a ban on small business people's economy and increasingly cornered and marginalize the small people of the city's development. Development policies that accommodate the interests of poor people are still a little, while the implementation of Regulation of DKI Jakarta No. 8 of 2007 on Public Order; it does not accommodate the interests of small people. The law also has been a lot of criticism and protests from various circles, especially public and non-governmental organizations in Jakarta because the law does violate the rules substantially higher and perpetuate crimes against humanity that have also been shown during the local government in the name of order in the city.<sup>75</sup> The contents of the regulation is also largely a prohibition for people to be in public places while the city government itself does not provide the amenities and facilities and infrastructure as a result of the implementation of the regulation. Therefore the repeal of the new law is something that can not bid again. And instead is made a new policy by involving all elements of society and make notes critics above as a reference in making new policy. Legal basis of this law should be criticized because besides clearly contrary to human rights. The law also violates other rules above it. As:<sup>76</sup>

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<sup>75</sup> Notonagoro. Politik Hukum dan Pembangunan Agraria di Indonesia. Jakarta : PT. Bina Aksara. Hal 21

<sup>76</sup> Hukum penggusuran. <https://medium.com/forumkampungkota/faq-masalah-hukum-penggusuran-dda003d430ea#.i4bqgzb80>> Diakses pada 13 Oktober 2016

1. The 1945 Constitution:

a. Article 27 (2):

*“Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan.”*

*“Every citizen has the right to work and a decent living for humanity.”*

b. Article 28A:

*“Setiap orang berhak untuk hidup serta berhak mempertahankan hidup dan kehidupannya.”*

*“Everyone has the right to live and to defend life and livelihood.”*

c. Article 28D (2):

*“Setiap orang berhak untuk bekerja serta mendapat imbalan dan perlakuan yang adil dan layak dalam hubungan kerja.”*

*“Everyone has the right to work and to receive remuneration and fair treatment and decent in the employment relationship.”*

d. Article 28H paragraph (1)

*Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup baik dan sehat serta berhak memperoleh pelayanan kesehatan.”*

*Everyone has the right to live in physical and spiritual prosperity, reside, and receive a good and healthy environment and receive medical care. ”*

e. Article 28H paragraph (2):

*“Setiap orang mendapat kemudahan dan perlakuan khusus untuk memperoleh kesempatan dan manfaat yang sama guna mencapai persamaan dan keadilan.”*

*"Everyone gets ease and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice."*

f. Article 34 paragraph (1):

*“Fakir miskin dan anak-anak terlantar dipelihara oleh negara.”*

*"The poor and abandoned children reared by the state."*

g. Article 34 paragraph (2):

*“Negara mengembangkan sistim jaminan sosial bagi seluruh rakyat dan memberdayakan masyarakat yang lemah dan tidak mampu sesuai dengan martabat kemanusiaan.”*

*"The State shall develop social security system for all citizens and empower the weak and underprivileged in accordance with human dignity."*

2. Act Number 39 of 1999 on Human Rights:

a. Article 5 (3):

*“Setiap orang yang termasuk kelompok masyarakat yang rentan berhak memperoleh perlakuan dan perlindungan lebih berkenaan dengan kekhususannya.”*

*"Every person belonging to vulnerable communities the right to obtain treatment and protection with regard to particulars."*

b. Article 9 paragraph (1):

*“Setiap orang berhak untuk hidup, mempertahankan hidup dan meningkatkan taraf kehidupannya.”*

*"Everyone has the right to life, survival and improve the standard of life."*

c. Article 9 (2) which states that

*“Setiap orang berhak hidup tentram, aman, damai, bahagia, sejahtera, lahir dan batin”*

*"everyone has the right to live a peaceful, secure, peaceful, happy, prosperous, inwardly and outwardly"*

d. Article 30 states that

*“setiap orang berhak atas rasa aman dan tentram serta perlindungan terhadap ancaman ketakutan untuk berbuat atau tidak berbuat sesuatu”*

*"Everyone has the right to feel safe and secure as well as protection against the threat of fear to do or not to do something"*

e. Article 36 paragraph (2):

*“Tidak seorangpun boleh merampas miliknya dengan sewenangwenang dan secara melawan hukum”.*

*"No one should seize his property with arbitrary and unlawful".*

f. Article 38 (1):

*“Setiap warga negara sesuai dengan bakat dan kecakapan dan kemampuan berhak atas pekerjaan yang layak”*

*"Every citizen according to their talents and skills and abilities are entitled to decent work"*

g. Article 38 paragraph (2)

*“setiap orang berhak dengan bebas memilih pekerjaan yang disukainya dan berhak pula atas syarat-syarat ketenaga kerjaan”*

*"everyone has the right to freely choose a job he likes and right, too, over the terms of his employment"*

3. Law Number 32 Year 2004 on Regional Government:

a. Article 28 A:

*“Kepala daerah dan wakil kepala daerah dilarang: membuat keputusan yang secara khusus memberikan keuntungan bagi diri, anggota keluarga, kroni, golongan tertentu, atau kelompok politiknya yang bertentangan dengan peraturan perundang-undangan, merugikan kepentingan umum, dan meresahkan sekelompok masyarakat, atau mendiskriminasikan warga negara dan/atau golongan masyarakat lain;”*

*"The regional head and deputy regional head are prohibited: making decisions that specifically provide benefits to themselves, family members, cronies, certain groups or political groups opposed to the legislation, harm the public interest, and troubling group public, or discriminate against citizens and / or other vulnerable groups; "*

b. Article 136 paragraph (4):

*“Perda sebagaimana dimaksud pada ayat (1) dilarang bertentangan dengan kepentingan umum dan/atau peraturan perundangundangan yang lebih tinggi.”*

*"Regulation referred to in paragraph (1) shall not be contrary to the public interest and / or laws and regulations are higher."*

c. Article 139, paragraph (1):

*“Masyarakat berhak memberikan masukan secara lisan atau tertulis, dalam rangka penyiapan atau pembahasan rancangan Perda.”*

*"The public has the right to provide input in writing or verbally, in the framework of preparation or discussion of the draft law."*

d. Article 145 paragraph (2):

*“Perda sebagaimana dimaksud pada ayat (1) yang bertentangan dengan kepentingan umum dan/atau peraturan perundangundangan yang lebih tinggi dapat dibatalkan oleh Pemerintah.”*

*"Regulation referred to in paragraph (1) is contrary to public interest and / or the higher laws and regulations can be canceled by the Government."*

4. Act Number 10 of 2004 on legal drafting - invitation: 8 Article 53:

*“Masyarakat berhak memberikan masukan secara lisan atau tertulis dalam rangka penyiapan atau pembahasan rancangan undang-undang dan rancangan peraturan daerah.”*

*"Citizens are entitled to provide input in writing or verbally in the framework of the preparation or discussion of draft laws and draft local regulations."*

Law No. 8 of 2007 on Public Order, it is the replacement of law No. 11 of 1988 on Public Order (which is also the replacement of Regulation No. 3 of 1972) that is no longer relevant to the conditions of the people of Jakarta right now. Implementation of the law No. 8 of 2007 is one of the commitments of Jakarta Governor in his efforts to realize the orderly Jakarta comfortable, secure and conducive. These regulations also serve as guidelines / basic in protecting citizens and infrastructure of the city along with the accessories with the object of the law is the urban poor (bum, rickshaws, beggars, street vendors, and other WTS). Enforcement The law also coincided with the spirit of regional autonomy, so inevitably, Jakarta as a limited area (do not even have) natural resources to find an alternative in efforts to increase its revenue. So, when seen further, this law is also one of the policies that could be a tool in attracting retribution from various sectors.<sup>77</sup>

#### **4.2 Implementation of Legal Instruments Against Eviction for the Fulfillment of Human Rights**

The right to adequate housing applies to everyone. This right is integrally linked to other human rights contained in the two international covenants; Convention on Civil and Political Rights, and the Convention on Economic, Social and Cultural Rights. Based on the legal instruments that have been recognized and ratified by the Indonesian government, as well as the applicable national law, states have an obligation to promote, respect, protect and fulfill the right to adequate housing for all.<sup>78</sup> Legal instruments that guarantee the right to housing as follows:

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<sup>77</sup>Tolak Penggusuran .peristiwa/ganti-rugi-tak-jelas-wargakampung-pulo-tolak-penggusuran.html. > Diakses (10 September 2014)

<sup>78</sup>Myesha. Instrumen hukum. <http://www.hukumonline.com/berita/baca/hol12101/instrumen-hukum-masih-sering-dijadikan-tameng-kejahatan> > Diakses pada Kamis (21 Januari 2005)

#### 4.2.1 International Instruments

The right to adequate housing recognized in international instruments that apply as national law in Indonesia because it has been ratified.

1. Universal Declaration of Human Rights, article 25 paragraph (1)

*“Setiap orang berhak atas suatu standar kehidupan yang memadai untuk kesehatan dan kesejahteraan dirinya serta keluarganya, termasuk makanan, pakaian, rumah, dan perawatan kesehatan serta pelayanan-pelayanan sosial yang diperlukan, dan hak atas keamanan pada masa menganggur, sakit, tidak mampu bekerja, menajanda, lanjut usia, atau kekurangan nafkah lainnya dalam keadaan-keadaan yang berada diluar kekuasaannya.”*

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, shelter, and medical care and social services are needed, and the right on security during unemployment, sickness, invalidity, widows, the elderly, or the lack of other livelihood in circumstances that are beyond his control.”*

2. The International Covenant on economy, social, and cultural, Article 11 paragraph (1):

*“Negara Pihak pada Kovenan ini mengakui hak setiap orang atas standar kehidupan yang layak baginya dan keluarganya, termasuk pangan, sandang dan perumahan, dan atas perbaikan kondisi hidup terus menerus. Negara Pihak akan mengambil langkah-langkah yang memadai untuk menjamin perwujudan hak ini dengan mengakui arti penting kerjasama internasional yang berdasarkan kesepakatan sukarela.”*



*“States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including food, clothing and housing, and to the continuous improvement of living conditions. States Parties will take appropriate steps to ensure the realization of this right, recognizing the importance of international co-operation based on free consent.”*

3. The Convention on the Elimination of All Forms of Discrimination against Women, article 14 paragraph (2):

*Negara-negara Pihak wajib membuat langkah-tindak yang tepat untuk menghapus diskriminasi terhadap perempuan di daerah pedesaan, dan menjamin bahwa mereka ikut serta dalam dan menikmati manfaat dari pembangunan pedesaan atas dasar persamaan antara laki-laki dan perempuan”*

*“States Parties shall take measures that the right to eliminate discrimination against women in rural areas, and ensure that they participate in and benefit from rural development on the basis of equality between men and women, in particular.”*

Shall ensure to women the right:

- (A) To participate in the elaboration and implementation of development planning at all levels;
- (B) To obtain facilities adequate health care, including information, counseling and services in family planning;
- (C) To benefit directly from social security programs;
- (D) To obtain all types of training and education, both formal and non-formal, including that relating to the eradication of functional illiteracy,

as well as the benefit of all community and extension services in order to improve their technical skills;

(E) To organize self-help groups and cooperatives in order to obtain the same opportunities to economic opportunities through employment and entrepreneurship;

(F) To participate in all community activities;

(G) To be able to obtain agricultural credit and loans, marketing facilities, appropriate technology-order, as well as equal treatment in land reform and land matters, including arrangements for settlement land;

(H) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

In addition, the right to adequate housing for workers is recognized in ILO recommendation No. 115 about housing for workers, as well as the ILO Covenant No. 117 on social policy (basic aims and standards). Several international standards also regulate the right to adequate housing for certain social groups such as migrant workers, the disabled, elderly and indigenous peoples. The right to adequate housing for migrant workers, for example, set forth in article 43, paragraph 1 (d), the international convention on the protection of all migrant workers and members of their families.<sup>79</sup>

#### **4.2.2 National Instruments**

1. Constitution year 1945, Article 28 H:

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<sup>79</sup>Syafiee. Instrumen Ham. <http://syafiee.instrumenham.co.id/2011/04/otonomi-daerah-instrumentasi-ham-dan.html> > Dikases pada Senin ( 11 April 2011)

*a. Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan*

*a. Everyone has the right to live physical and spiritual prosperity, reside, and get a good environment and healthy and receive medical care*

*b. Setiap orang berhak memperoleh kemudahan dan perlakuan khusus untuk memperoleh kesempatan dan manfaat yang sama guna mencapai persamaan dan keadilan*

*b. Everyone has the right to gain the ease and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice*

*c. Setiap orang berhak atas jaminan sosial yang memungkinkan pengembangan dirinya secara utuh sebagai manusia yang bermartabat*

*c. Everyone is entitled to social security that allows development of his or her self as a dignified human*

*d. Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapa pun*

*d. Everyone is entitled to have private property rights and property rights must not be taken over arbitrarily by anyone*

2. Law No. 4 Year 192 on Housing and Human Settlements, Article 5:

*a. Setiap warga negara mempunyai hak untuk menempati dan/atau menikmati dan/atau memiliki rumah yang layak dalam lingkungan yang sehat, aman, serasi dan teratur*

*a. Every citizen has the right to occupy and / or enjoying and / or have a decent house in a healthy environment, safe, harmonious and orderly*

*b. Setiap warga negara mempunyai kewajiban dan tanggung jawab untuk berperan serta dalam pembangunan perumahan dan pemukiman*

*b. Every citizen has the obligation and responsibility to participate in the development of housing and settlement*

3. Law No. 39 Year 1999 on Human Rights, Article 26:

*“Setiap orang berhak untuk bertempat tinggal serta berkehidupan yang layak”*

*“Everyone has the right to reside and a decent life”*

The obligation of States to implement the legal instrument of its citizens, namely:

1. The State shall give priority to communities that live in conditions of poverty. By him, the policies and legislation that are designed government cannot benefit communities economically and politically established. The UN Committee realizes that, where external factors resulting in decreased quality and living conditions. However, as noted by the Committee in its General Comment No. 2 (1990) (E / 1990/23, annex III), the obligation of States parties under the Convention shall remain in force and perhaps even more relevant in times of economic contraction since the 80s.<sup>80</sup> Thus the improvement of quality of life and housing conditions and the accompanying compensation should be directly linked to the policy and legislative decisions the State party, should be implemented in accordance consistent convention (paragraph 11 of General Comment 4).

2. Defining the purpose of residential development, the resources available, how effective financing, responsibilities and timeframes of implementation.

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<sup>80</sup>Musdianto. Instrumen Ham. <http://softwaregratismusdianto.co.id/2011/11/upaya-pemajuan-penghormatan-dan.html> > Selasa ( 15 November 2011)

For reasons of relevance, effectiveness, and to ensure respect for other human rights, such strategies should reflect the seriousness of extensive consultation with all the parties affected, including the homeless. In addition, the measures taken must ensure that there is coordination with relevant policy makers (economy, agriculture, environment, energy, etc.) with the obligations under article 11 and the Convention (paragraph 12 of General Comment 4).

3. For a State Party to the obligations of article 11 paragraph 1 must indicate, among other things, the steps taken by itself and international cooperation, which ensures protection against homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and content of the report adopted by the Committee (E / C.12 / 1991/1) emphasized the need to provide detailed information on the vulnerable and disadvantaged, homeless families, people without access to facilities principal, who lived in settlements 'illegal', and those who suffered forced evictions, as well as low-income groups.

4. Guarantee the right to housing in the constitution, the new legislation guarantees the right to adequate housing and measures - administrative measures.

5. Components of the right to adequate housing, which is consistent with this provision, including, but not limited to:

(A) Legal appeals aimed at preventing planned evictions or destruction as a result of enforcement decisions based on court order;

(B) Legal procedures seeking compensation following an illegal eviction;

(C) Complaints against illegal actions carried out or supported by public and private landowners in relation to rent levels, dwelling maintenance, and racial discrimination;

(D) Allegations of any form of discrimination in the allocation and availability of access to housing, and;

(E) Complaints against landlords concerning unhealthy housing conditions or improper. In some legal systems it also enables class-action claims.

6. The Committee considers that cases of forced evictions are prima facie incompatible with the requirements of the convention and can only be justified in the most exceptional circumstances, and in accordance with the principles of international law that are relevant (paragraph 18 of General Comment 4). For that countries must make a major effort to prevent forced evictions.

#### **4.3 Juridical Analysis on the Eviction in Relation with State Right to Control (Hak Menguasai Negara)**

The definition of "control" and "govern" can be used in a physical sense, also in the juridical sense. Control juridical based on rights, which are protected by law and generally authorizes the holder to physically dominate right of land. But there is also the mastery of juridical even gave authority to control the land which physically right, in fact the physical control carried out by others. In the law of the land we know also the mastery of juridical did not give authority to control the land in question physically. Creditors holders of security rights over land tenure have jurisdiction over land as collateral, but the control of physical remains in the owner of the land.<sup>81</sup>

State's right to control the state of an organization concept of power of all the people, so that the power in the hands of the State. So the state has the right to control the land through a function to control and manage. State right to control (Hak Menguasai Negara) is a right that belongs to the state is absolutely in control of something.

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<sup>81</sup> Supriadi, Hukum Agraria, Sinar Grafika, Jakarta, 2007, hlm 64.

Understanding the State's Rights of Land in 1945, State has jurisdiction as regulators, planners, managers sekaligus as supervisory management, use and exploitation of national natural resources. Then the Country and obliged to:

1. All forms of use of land and water and as well as the results obtained in [natural resources], should significantly improve the prosperity and welfare of the community.
2. Protect and guarantee all the rights of the people who are in or on the earth and water can be produced directly or enjoyed by the people.
3. Preventing people do not have the opportunity or the loss of rights contained in and on the earth and water.

Legal juridical of the state's rights of land The need for rules or laws governing the right to master the State on the ground that underlie the relationship thinking, soil, and the State within the State of Law. The competence, authority, or control which determine principles, regulatory, political and element - the element of non-law.<sup>82</sup>

Article 33, paragraph 2 and 3 of 1945, states,

*Paragraph 2: “cabang-cabang produksi yang penting bagi Negara dan yang menguasai hajat hidup orang banyak dikuasai Negara.”*

*“Production branches which are important for the State and who dominate the life of many controlled by the State.”*

*Paragraph 3: “bumi dan air dan kekayaan yang terkandung didalamnya dikuasai oleh Negara dan dipergunakan sebesar-sebesar kemakmuran rakyat.”*

*“Land and water and the riches contained therein controlled by the State and used as much as for the people's welfare.*

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<sup>82</sup> Ibid

The essence of the article is, the right to control the land is the nation's delegation of tasks to master and use of welfare of the people. The role of the State as the Organization of the highest authority, the Agency ruler that can be imposed on holders of tenure, Holder sovereignty over the entire territory ( It's nature of state).

Government used the name of ther state to doing the eviction but consequently government not make the people welfare. Law has granted authority to the state government and the public. The state should distribute and provide land rights to the people. The purpose of giving the right to control over land to the public so that people can prosper, and prosper in the land use. As far as land use is not contrary to the law and the public interest.

When people have control of the land for 20 years and the land is not in dispute (the ground in a free state) government is obliged to provide land rights to the people that [PP 24 of 1997 on Land Registration Article 24 paragraph 2]:

*“Dalam hal tidak atau tidak lagi tersedia secara lengkap alat-alat pembuktian sebagaimana dimaksud pada ayat (1), pembukuan hak dapat dilakukan berdasarkan kenyataan penguasaan fisik bidang tanah yang bersangkutan selama 20 (dua puluh) tahun atau lebih secara berturut-turut oleh pemohon pendaftaran dan pendahulu pendahulunya, dengan syarat :*

*"In no case or no longer available in full tools of evidence referred to in paragraph (1), bookkeeping rights can be done based on the fact physical custody of the plot in question for 20 (twenty) years or more in a row by the registrant and predecessor predecessor, provided that:*

- a. *“Penguasaan tersebut dilakukan dengan itikad baik dan secara terbuka oleh yang bersangkutan sebagai yang berhak atas tanah, serta diperkuat oleh kesaksian orang yang dapat dipercaya.”*

*“The control is done in good faith and openly by the person concerned as entitled to the land, and is reinforced by the testimony of people who can be trusted.”*



b. The control of both before and during the announcement as referred to in Article 26 is not disputed by customary law communities or villages / wards in question or the other. "

The government is not entitled to retain the entire land in Indonesia. Government Act, the operator must carry out the law. Government by law is obliged to provide land in Indonesia for the prosperity and welfare of the community.

## CHAPTER V

### CLOSING

#### 5.1 Conclusion

According to the research done, it can take the following conclusion:

The eviction became a classic problem faced by the government. Conflicts arising in any attempt to restructure the city are a reflection of the weakness of urban spatial planning. Eviction is the Kampung Luar Batang involuntary because the area is land owned by the State and the citizens residing in the Kampung Luar Batang not have certificates of land and the area will be made in nautical tourism by the Jakarta administration. In the government's eviction enforcing the law on the regulation of Jakarta in accordance with Chapter VII of the Building Code, namely: Law No. 8 of 2007 Article 36 paragraph (1) letter b and c.

Implementation of the law No. 8 of 2007 is one of the commitments of Jakarta Governor in his efforts to realize the orderly Jakarta comfortable, secure and conducive. This is one of the policies that do not see the reality that happened in the community. In fact it appears that this policy includes the interests of a particular party because it does not accommodate the rights of little people. This policy is one of the tools in the effort to impoverish certain groups because of this rule contains a ban on small business people's economy and increasingly cornered and marginalize the small people of the city's development.

In the implementation of the eviction of the Kampung Luar Batang, Residents evicted felt the government did not undertake an obligation of his to protect its citizens in the eviction, the government violates human rights in the context of the right to housing and the right to economic, social and cultural in accordance with the legal instruments in force at :

1. General comment No. 7 (1997) on the Right to Decent Housing, Forced Expulsion: Article 16
2. Universal Declaration of Human Rights, article 25 paragraph (1)
3. Law No. 11 Year 2005 on Economic Social and Cultural (ratification of International Covenant On Economic Social and Cultural) Article 11 (1)
4. The UN General Opinion No. 7 of 1997 on Forced Evictions, in one of its provisions
5. Law No. 39 of 1999 on Human Rights Article 40
6. Human Rights Instruments Governing the Right to Housing Article 28H paragraph (1) of the 1945 Constitution
7. Article 5 (1) of Act 1 of 2011

As a result, in the implementation of regional regulations violate human rights harm citizen of Kampung Luar Batang and absence of fulfillment of economic, social, cultural undertaken by the government. Due to the demolition, the residents of Kampung Luar Batang experience:

- 1) Loss of shelter
- 2) Loss of their businesses as a result of their lack of income per day for living expenses
- 3) Demolition trade places

The government has to protect against economic, social and cultural rights of residents of Kampung Luar Batang by providing facilities that make the flats in three collation:

1. Flat Rawa Bebek in Cakung, Jakarta Timur
2. Flat Marunda in Cilincing, Jakarta Utara
3. Flat Kapuk Muara in penjaringan

And provide facilities for the protection of people's livelihood Luar Batang kapung by providing stalls for businesses. But his conclusions residents still

feel that their rights have not been fulfilled on what has been done by the government. Dan analisis yuridis penggusuran memiliki hubungan dengan hak negara untuk mengontrol (Hak Menguasai Negara) menurut juridicial hukum. Dan negara hak untuk kontrol menyiratkan Mengelola dan mengatur penunjukan dan penggunaan benda-benda kepemilikan; Menentukan dan mengatur hubungan antara orang dengan objek kepemilikan; Menentukan dan mengatur hubungan antara orang dan perbuatan hukum atas kepemilikan objek. Atas dasar itu, negara hak untuk kontrol harus dilihat dalam konteks hak dan kewajiban negara sebagai pemilik, karena itu tema kesejahteraan bagi masyarakat adalah tujuan dari setiap pengelolaan dan penggunaan sumber daya alam nasional. Tujuan dipandang dari kepentingan yang tidak dapat diabaikan. Karena, selain menjadi 'sangat konstitusi' menjadi keinginan setiap warga negara dan tanggung jawab negara sebagai konsekuensi dari hak negara untuk mengontrol.

## **5.2 Suggestions**

Based on the study entitled Rights Law Review Case Against Eviction Houses In Kampung Luar Batang Jakarta Utara:

1. Eviction for reasons of development for a Capital of Jakarta cannot be avoided, but that does not mean that reason be a justification for the evictions that have an impact on human rights violations. For that we need rules governing the area in detail and clear about how and what is the appropriate mechanism for eviction in accordance with human rights standards so that no violations of human rights.
2. In the area of development should be gradual and tailored to the circumstances of a particular territory as well as adapted to the level of ability of its people. Government and residents of Kampung Luar Batang should cooperate in determining the policies of the beauty of city planning for

development that are expected to materialize in peace and both sides of both government and citizens displaced nobody feels aggrieved.

3. The government should carry out the mandate of the Constitution of 1945, which maintains the poor and helpless before enforcing policies such as regulations Jakarta area of Building Code that violate human rights.

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## **APPENDICES**

### **Data Interview with Citizens of Kampung Luar Batang:**

1. Daeng Mansur Amin as secretary mosque jami Kampung Luar Batang Rt 002 Rw 02 No. 19 Village Networking
2. Abdul Talib as a public figure in Kampung Luar Batang
3. Ahmad Junaidi as citizen in RT 01 Kampung Luar Batang
4. Asep Saepuloh as citizen in Kampung Luar Batang
5. Muhammad Taufik as citizen in Kampung Luar Batang Rt 15 Rw 03 Kel Penjaringan
6. Haji Mat Johan as a public figure in Kampung Luar Batang Rt 04 Rw 03 no. 18 Kel Penjaringan

### **Judul skripsi**

JURIDICAL ANALYSIS ON THE EVICTION OF KAMPUNG LUAR BATANG JAKARTA IN RELATON WITH STATE RIGHT TO CONTROL (HAK MENGUASAI NEGARA)

### **Latar belakang:**

Penegakan hukum yang dilakukan Pemprov DKI Jakarta terhadap penggusuran Kampung Luar Batang adanya pro dan kontra. Pemerintah merasa bahwa mereka sudah benar menjalankan ketertiban umum untuk membuat warga dapat merasakan perubahan yang lebih baik untuk kehidupannya. Tetapi Dalam masalah ini masyarakat merasa bahwa pemerintah melanggar hak asasi manusia dan tidak memenuhi hak ekonomi social, dan budaya mereka.

Dari hal tersebut di atas, saya memberikan beberapa pertanyaan terhadap warga yang terkena dampak nya langsung:

1. Bagaimana menurut anda tindakan yang dilakukan pemerintah terhadap pengrusakan Kampung Luar Batang?
2. Apakah hak anda sebagai warga yang terkena pengrusakan terpenuhi oleh pemerintah?
3. Dampak apa saja yang dialami warga paska pengrusakan?

Menjawab pertanyaan Ade Kuswara yang disampaikan secara langsung, dengan ini diberikan jawaban sebagai berikut:

1. Daeng Mansur Amin bekerja sebagai sekretaris masjid jami keramat Luar batang menjawab jika memang harus ada penertiban dan penataan oleh pemerintah kota Jakarta, warga berharap ditata oleh pemerintah secara manusiawi. Tak boleh dengan pendekatan kekerasan. Ketertiban kota bisa dicapai dengan cara apapun seperti mengajak musyawarah atau diskusi seluruh warga kampung Luar Batang. Pengrusakan yang dilakukan pemerintah membuat warga menderita, ganti rugi yang dilakukan pemerintah masih belum dapat memenuhi kebutuhan warga.
2. Abdul Thalib mengatakan, haknya merasa belum terpenuhi hak kita paska pengrusakan ini, Walaupun Pemprov DKI Jakarta telah menyiapkan rumah rusun terhadap korban pengrusakan dan pedagang ikan agar tetap bisa berjualan dengan berpindah ke Muara Baru tetapi tetap saja para korban pengrusakan masih dirugikan dalam segi ekonomi, social, dan budaya dan pengrusakan yang dilakukan kepada kampung nya tidak melakukan sosialisasi dan musyarawah terlebih dahulu.
3. Ahmad Junaediwarga RT 01 Pasar Ikan Kampung Luar Batang mengatakan kita sewaktu terjadi pengrusakan tidurnya di bekas puing-puing bangunan, sama warga lainnya. Anak-anak juga tidur di situ, dan saya belum mendapat rumah susun sewa yang telah disiapkan oleh

Pemprov DKI Jakarta untuk saya yang termasuk warga Pasar Ikan yang terdampak penggusuran. Saya punya KTP dan kartu keluarga sebagai warga Jakarta, dan sudah tinggal di sini lebih dari 20 tahun. Mau dapatkan rusun yang saya bayar saja kok susah amat, bahkan Pemprov DKI Jakarta memberikan uang pengganti tidak sesuai dengan kerugian masyarakat. Saya kesulitan mengurus persyaratan untuk memperoleh unit hunian di rusun. Saya cuma minta tempat tinggal saja di rusun, ribet sekali ngurusnya, tidak minta yang lain, apalagi minta makan, juga enggak. Tolonglah manusiakan kita.

4. Asep Saepuloh mengatakan saya memilih tinggal di daerah tersebut disebabkan karena rendahnya ekonomi dan pekerjaan yang mereka dapat sehingga tidak dapat membeli rumah. Sekarang pemerintah menggusurnya tetapi malah menambah beban untuk saya karena pemerintah tidak dapat memenuhi kebutuhan saya.
5. Muhammad Taufik mengatakan rumah susun selalu sebagai solusi utama bagi korban penggusuran paksa sejak era pemerintahan Gubernur DKI Jakarta Sutiyoso hingga Basuki Tjahaja Purnama. Gubernur DKI Jakarta selalu menjanjikan bahwa warga korban penggusuran paksa yang dipindahkan ke rumah susun akan menjadi lebih sejahtera karena memperoleh banyak bantuan jaminan sosial dari pemerintah. Namun, ada gejala bahwa janji tersebut tidak terpenuhi kenyataan nya bahwa saya warga korban penggusuran paksa yang dipindahkan ke rumah susun justru kesulitan memenuhi kebutuhan hidup sehari-hari dan terpaksa menunggal biaya sewa.

6. Haji Mat Johan mengatakan Lokasi pemukiman Luar Batang dulunya merupakan rawa-rawa. Lama kelamaan rawa-rawa itu tertimbun lumpur dari kali Ciliwung dan menjadi tempat tinggal dan tempat mata pencaharian warga kampung luar batang, sekarang pemerintah menggusur tempat tinggal kita, bagaimana masyarakat bisa menerimanya sedangkan pemerintah tidak dapat memberikan kehidupan yang layak.