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## Pragmatic and Progressive Legal Practice: Ethnographic Case Study of Jatigede Reservoir\*

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### Abstract

This study reveals the legal method in the process of land compensation in the Jatigede reservoir, and focuses on: the existence and application of pragmatic law by rural farming communities; and the government's use of progressive law. By using a combination of case study and micro-ethnographic methods, the answers are obtained, first, the pragmatic legal character is relatively in line with speculative cognition and defensive principles; its adaptive application is to resist the law silently, and the aggressive one is to violate the law openly. Second, the government understands the manipulation of compensation as a reflection of the accumulated injustice and economic difficulties of the citizens, therefore the government makes regulations that prioritize the restoration of people's welfare rather than fulfilling the requirements of legal logic.

**Keywords:** people's welfare; speculative cognition; compensation manipulation; defensive principle; micro-ethnographic-case study

### Abstrak

Penelitian ini mengungkap cara ber hukum dalam proses ganti kerugian tanah di waduk Jatigede, dan berfokus ke ihwal: eksistensi dan aplikasi hukum pragmatis oleh masyarakat petani pedesaan; dan penggunaan hukum progresif oleh pemerintah. Dengan menggunakan metode kombinasi studi kasus dan mini-etnografik diperoleh jawaban, pertama, karakter hukum pragmatis relatif selaras dengan kognisi spekulatif dan prinsip defensif; aplikasinya yang adaptif ialah menolak hukum secara diam-diam, dan yang agresif ialah melanggar hukum secara terang-terangan. Kedua, pemerintah memahami manipulasi RH sebagai refleksi akumulasi ketidakadilan dan kesulitan ekonomi warga, karena itu pemerintah membuat regulasi yang mengutamakan pemulihan kesejahteraan rakyat daripada memenuhi persyaratan logika hukum.

**Kata kunci:** kesejahteraan rakyat; kognisi spekulatif; manipulasi kompensasi; prinsip defensif; mini-ethnographic case study.

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## Introduction

The application of repressive laws by the government and the effects of injustice on society (Kotawela, 2020; Moita, 2020; Suntoro, 2019; Wahidah, 2019; Dewi, 2017; Roestami, 2017; Rachmawan, 2016; and Zarkasih, 2015) are generic topics in process studies land acquisition for public purposes. Under the shadow of this general description, the story of land acquisition for the Jatigede dam construction project in Sumedang contains a unique episode of legal procedures. There, rural farming communities seem to have lost their minds because they massively and openly commit acts that have the potential to violate

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criminal law. Meanwhile, the government is even persuasive, as if it is reluctant to run the criminal justice system. So, there is a phenomenon that indicates a distinctive legal method, namely that the community and the government have never practiced it in the process of land acquisition for the public interest, and in particular it takes place simultaneously.

Such legal method is in line with the perspective of the perpetrator regarding the law which is in the context of himself and the situation he faces. From the community's perspective, for example, in order to realize their expectation of receiving compensation, residents deal with the fulfillment of the procedures and requirements for compensation for buildings by proposing a '*Rumah Hantu*' (henceforth: RH) or equivalent as haunted house in English as the object. RH is a house building that was made suddenly, carelessly, and not to be used, because its purpose is only to obtain compensation. Referring to the literature, such a legal method can be analogous to legal pragmatism, namely an instrumentalistic method of law because it is oriented to the achievement of results so that it often ignores and even tends to violate the logic of formal law (Barzun, 2018; Ogien, 2015; and Lind, 2012).

In the discourse of legal theory, pragmatic law takes its place of study in court and focuses on the judicial behavior of judges (Cantu, 2012), with the mission of making empirically based decisions (Song, 2019). Now and here, we will divert to the social realm of rural farming communities by highlighting how they make decisions to take action in dealing with the law. The reason is not merely following its relatives, namely new legal realism whose studies move outward looking for its relationship with wider social and/or cultural structures (Macaulay, 2013); not rejecting the perspectives and methods of social science towards law (Garth, 2016); and examine the law in the daily lives of citizens (Leeuw, 2017), also because they see pragmatic law in its entity as cognition. Thus, it is assumed as a cognitive justification in choosing legal actions that are in accordance with the objectives to be achieved. In other words, what a villager does in a land compensation setting is essentially a legal action.

Meanwhile, bureaucratic stakeholders, especially law enforcers, do not use repressive laws as they have done when forcing community members to agree to accept the price of compensation and intimidating those who refuse (Tempo, 2006). Even though tens of thousands of RH units are clearly a violation of the law and have the potential to waste state spending, the response of the Minister of Public Works prioritizes a dialogical approach rather than a legalistic approach (Merdeka, 2013), and then the government involves citizens in re-collecting data (Rachmawan, 2016). Meanwhile, during that period, Herdiana, a government employee, was accused of corruption for making fictitious data on the area of land to be acquired (Detik News, 2012). It is natural that positive suspicions arise or vice versa, because investigators and/or public prosecutors are not as legalistic as they usually are in running the criminal justice system.

It is an unfounded assumption that law enforcement is technically constrained by the large number of perpetrators or the small amount of loss, because in their experience

they do not hesitate to prosecute acts of mass corruption (Mapuasari, 2018), nor do they hesitate to prosecute acts of corruption whose losses are very small (Asmara, 2012). The other remaining allegations, but perhaps more reasonable, are therefore considered as assumptions, that they are practicing progressive legal ideas, which according to Sidharta (2020) are currently being imitated by many academics and practitioners. The basic ideas of progressive law from Satjipto Rahardjo include: seeing law for humans and non-humans for law; substantially more meaning to the law than its artificial entities, for all that progressive law must be open to public participation; and willing to reject the status quo and then make a replacement that sided with justice, welfare, and other people's interests (Rahardjo, 2010a; 2010b; and 2009).

The theoretical feasibility to examine the empirical truth of the assumptions above is related to the novelty of the substance and methodology. In research on the process of land acquisition for the public interest, no one has explicitly addressed the topic of pragmatic and progressive law and the interaction between the two. Dewi's research (2017) does use progressive law as its theoretical basis, but its meaning is nullified by the ambiguity of its analytical reasoning. He put forward the argument that essentially the injustice was at the implementation stage of determining the amount of compensation, but instead the legal regulations had to be reconstructed.

Regarding research methodology, this study uses an ethnographic-case study approach, so it is different from Dewi's (2017) study which uses a sociolegal approach, and Roestami (2017) which uses participatory methods and a sociological perspective. Both studies have very dominant exposure and prescriptive analysis, or what Schrama says is still studying from an internal perspective (Schrama, 2017), because the non-doctrinal approach is positioned as a complement and functioned for legal reform (Argyrou, 2017). Meanwhile, Moita's research (2020) uses a case study with a questionable research design because: there are no research questions; data validity and quantitative analysis is sufficient with a sample of n-15; and arbitrarily combines quantitative and qualitative analysis so that the relationship between the two is not clear, whether it is convergent, sequential, or transformative (Creswell, 2014).

Based on the explanation above, this study aims to understand the basic idea of understanding the farming community in using pragmatic law, and its empirical applicability when interacting with progressive law practiced by the government. Also, this study is intended to describe the government's motivation in using progressive law. The urgency is to map out the theorization of legal methods, that what has been conceptualized scientifically has actually been recognized and practiced by and in everyday people's lives, even though in its entity as cognition and is latent.

## **Research Problems**

The search for cultural legitimacy on the empirical applicability of pragmatic law in the cognitive map of society, and the motivations that underlie the government's use of progressive law will be traced through the following research questions: first, why

pragmatic law can exist in the social life of rural farming communities and how it is applied to the procurement compensation process of soil? Second, why does the government tend to use a progressive legal approach to the perpetrators of RH manipulation, and how is it implemented into the compensation policy for land acquisition?

## Research Method

This sociolegal research combines case studies and ethnographic or micro-ethnographic case studies, and the case studies here have nothing to do with the word 'why' in the research questions referred to by Yin (2018) and Webley (2016) which emphasize more on quantitative methods. On the other hand, consistent with the inductive and emergent design approaches in qualitative research (Creswell, 2016), the research questions were actually adopted from developments in the field. The reason is that the citizens' way of ruling indicates collective cognition, so for depth of analysis, another technique is needed (Stepien, 2019), namely ethnography. The choice of micro or mini-ethnography is not solely due to technical reasons due to limited funds and time (Fusch, 2017; and Spradley, 2016), but more principally regarding the events being studied have occurred or have ex post facto status.

Although they can only use in-depth interviews to dig up primary data, because the event has already happened, this is done when the participants are carrying out the final part of the event. They are still involved in a simple lawsuit as a technical implementation of compensation for the version of Presidential Regulation No. 1 of 2015 (Perpres 1/2015). In other words, even the absence of participatory observation is considered adequate because the data is their own experience. Thus, information about cultural values and norms related to the actions that have been taken is still stored in the memory of the participants, it is also relatively easy for the informants to remember.

Adjusting to the conditions of the Covid-19 pandemic, interviews were held virtually and telephone conversations. The interviews with other participants and informants were carried out informally due to their negative attitude of being interviewed and inadequate internet network disturbance. Therefore, it is more intensive to conduct natural interviews face-to-face in coffee shops, mosques, houses of community group leaders, and tobacco burning places. All of this worked effectively because people in rural areas were not at all disturbed by the health procedures that I displayed by wearing masks and keeping a distance. There is no change in their communication activities and behavior related to the Covid-19 pandemic, perhaps enough for the ethical answer of researchers.

The search for theorization of legal methods practiced by the community is by selecting recurring themes through thematic analysis built by constant interrelationships between collection, interpretation, analysis, and data representation (Beans & Vettors, 2018). Meanwhile, the search for legal methods that are practiced by the government is enough with narrative analysis. The reason is that one of the participants turned out to be a legal expert who has reflective and theoretical abilities in narrating his experiences (Saibih, 2019) working in the field and drafting Presidential Regulation No.1/2015. The two

analyzes basically use an emic-ethical-reference dialogical technique or triangulation dialogue (Thohir, 2019). In the thematic one, it is to find the basic idea that is referred to by the people's way of law, and in the narrative one to find significant and interesting expressions of analogy (Creutzfeldt, 2016) or synchronization with the way the law is carried out by the government.

## **Discussion**

### **Government breaks the law, society adapts**

The prolonged conflict in land acquisition for the construction of the *Jatigede* dam initially stemmed from the problem of compensation, both in determining the amount and implementation of payments, and the problem of new settlements for residents who had relinquished their land rights. For example, Darman and Sukatma look back to their experience in 1984 when they and their fellow villagers could not refuse their land to be handed over for the sake of building a reservoir. Darman has not received any payment at all, and Sukatma has only received part of what is listed on the list of indemnity recipients. Meanwhile, Ateng and Entjep shared their respective experiences with their fathers, that their parents interpreted the attitude of the police and military officers in the price deliberations as an order to agree on the explanation of the land acquisition officers.

In the payment of compensation for the period 1982-1984, the government determined the land price per meter at Rp. 300,000.00, while the market price was Rp. 5,000,000.00. In the minds of the people, what is called a deliberation according to Minister of Home Affairs Regulations (Peraturan Menteri Dalam Negeri/Permendagri No. 15/1975, in practice it means intimidation. Apart from not being able to refuse the land price determined by the government, they also do not have the courage to file objections about: they have surrendered the land but have not been registered as recipients of compensation; the amount of compensation received is only partially; or assets are exchanged for those of others. However, their collective memory holds information that rejection of government projects risked becoming the target of the popular stigmatization at the time, namely anti-development or being suspected of being a member of the Communist Party of Indonesia (Partai Komuni Indonesia/PKI).

Undeniably, the provisions of the Decree of the Governor of West Java No. 181.1/sk-1267/Pem.Um/1981 prohibits residents from carrying out activities on land whose rights have been relinquished for the construction of the *Jatigede* dam. However, some residents still live, either on the grounds that their compensation matters have not been completed or that they have not found a place to live that suits them. In the following years they carried on with their normal lives because the Central Government had delayed project work on the pretext of financial difficulties, while the Sumedang Regional Government allowed residents to continue their activities in the project area. Such a situation aroused the interest of residents who had moved to another place, returned to live and cultivated the land in their original place.

Almost similar to the previous period, in the compensation payments for the period 1994-1997 there was non-transparent asset data collection and inaccurate data collection, mainly errors in measuring the area, land qualifications, and recipients of payment rights. Likewise, some residents continue to live and work on land in the project area, and some who have moved, one by one, returned to their original villages, building houses and working the land on land that had been handed over to the government. They do so based on reasoning built by the convergence of instincts to defend life and the lessons from their experience that the legal consequences of these actions do not occur.

The possibility that residents will have difficulty finding settlements has actually been anticipated by Article 13 of Permendagri No. 15/1975, namely at the time of granting a land acquisition permit, the applicant must provide land for new settlements. However, the Ministry of Public Works as the applicant for land acquisition is required to provide new residential land, and the Sumedang Regional Government which is tasked with carrying out population relocation has instead worked around this by integrating it into the transmigration program. This policy turned out to be ineffective or tended to fail, as said by Saefudin, the former Head of Cibogo Village: "Many residents have returned and returned to live here. For example, Sukinta only lasted about four years in Jambi, and Nana for about two years in Cianjur." Other former village heads, namely Dadan, Wahyudin, and Kosasih, shared a similar situation. They also add to the psychological effect of information about the failure of the transmigrants, which in essence weakens the discourse of moving to new settlements and strengthens the desire to remain in the project area.

When asked to talk about plans for new settlements, the answers are: (1) well just look later what it looks like (translated from Sundanese: *'kumaha behna bae'*); (2) I have no idea at all (translated from Sundanese: *'duka the teuing'*); and (3) I'm tired about all these (translated from Sundanese: *'kacape-cape hate'*), which expresses disappointment in the past and frustration in the future. Learning from the failure of the transmigrants, the settlements are not limited to the availability of locations to be occupied but also need geographic support that is in accordance with the farming life that has been inherited from their ancestors. From the demographic oriented perspective of transmigration, it is certain that residents around Jatigede dam are not typical pioneers, because they are used to getting convenience from fertile plantation land and productive agriculture.

Residents continue to burden the economy and psychologically as a result of successive government actions, ranging from law violations to individual mistakes. The government as a request for land does not provide land for new settlements for residents, and the government as the grantor of the request for permission. The Land Acquisition Committee acted repressively, deviating from the principle of deliberation and closing access for residents to raise objections to the price. The data collection officers made a lot of errors in measuring the area, land cluster, and ownership. Brokers and unscrupulous officers offer collusive invitations. The only opportunity for residents to explore their defensive rationality is to pragmatically perceive the justification, that as long as there is

no prohibition from the officers, as long as they are allowed to live and work on the land. Justification is basically as tacit to the law, namely by adapting to law enforcement which is interpreted as permissive.

### **Society's Legal Practice: Pragmatic**

The consequence of staying in the project area is the increase in the number of houses built along with the increase in the number of heads of families due to marriage. The data collection officer referred to it as a 'growing house' to distinguish it from a house that was already standing and recorded when the land was designated as a project area. This situation was exploited by unscrupulous officers in collusion with village heads, group leaders, community leaders, and residents, so that the 'growing house' was recorded as the object of compensation. This collusive practice eventually involved speculators as investors building houses in the project area, so the name was changed to a '*rumah hantu*' or equivalent with '*haunted house*' in English, meaning the word 'ghost' is an acronym for 'cash hope'.

To anticipate the population growth rate of RH, the Sumedang Regency issued the Regent's Decree No. 590/Lep.109-Huk/2006 dated April 19<sup>th</sup>, 2006 which prohibits building construction, and acknowledgment of buildings that will be verified to receive compensation are those that have been in existence for at least one year. Residents rejected the decision by holding demonstrations in several related agencies. The rejection grew stronger after the issue of compensation for RH was manipulated by political actors in the context of the succession of regional head elections (Rachmawan, 2015). Meanwhile, residents of Cibogo Village separately and for their own interests advocated to the court. In the mediation session the parties agreed that the Sumedang local government must pay compensation for the 226 problematic buildings in Cibogo Village which were carried out later in 2008.

Other villagers perceive the execution of the court's decision as legitimizing the existence of Haunted House (*Rumah Hantu*), so that when they demonstrate they no longer voice the rhetoric of justice and humanity, but firmly demand payment for Haunted House (*Rumah Hantu*). The demand was rejected by the Jatigede Work Unit on the grounds that it had no legal basis. Then the work unit asked Financial and Development Supervisory Agency to conduct an investigative audit, checking the suitability of administrative data on land area, number and building area with existing conditions in the field. Because investigations in several villages were comprehensively carried out by gathering residents in one place, the inspection event became noisy due to residents' protests and many complaints including complaints about payments to Haunted House (*Rumah Hantu*). The data collection officers were distressed by the situation, overwhelmed with having to accommodate 11,712 complaints, and among them were: 5,687 incorrect land measurements; 3,646 have not received compensation; and 2,024 land classification errors. The motivation of residents to file complaints with Haunted House (*Rumah Hantu*) can be seen from the interview below.

- R : why did you propose?
- I : who knows it works like the others.
- R : the government has rejected. They are not going to pay the compensation surely.
- I : Many of them were paid. Mr. Mumuh had even got a couple of houses.
- R : It is in the past. That's totally different.
- I : that's what makes me upset. Most of them are specially treated. Meanwhile, I'm originally using my own capital on my own land.

In order to get compensation and express their disappointment as well as resistance to injustice, they reconstruct justifications based on their interpretation of: 1) government actions; 2) the actions of individual officers; 3) the success of the Cibogo lawsuit; 4) provocation of group leaders and accompanying activists; and 5) successful action of speculators and brokers. The method of achieving the desired goal and its justification, which contrasts with the logic of formal law, theoretically approaches the character of pragmatic law, namely in terms of: instrumentalistic because it is oriented to reasonable results (Luban in Lind, 2012); acceptance of legitimacy based on practical benefits (Song, 2019); ignoring the legitimacy of formal legal logic while using other legal logics of his choice (Pinkard in Ogien, 2015; and Cohen, 2009); and its philosophical focus is not on the correspondence between results and truth but refers to its function to obtain the expected results (Haack, 2018; and Cantu, 2012). How the cultural legitimacy of pragmatic law practiced by the community is mapped by thematic analysis in Illustration 1.

In fact, residents of the community around Jatigede understand that manipulation of Haunted House's (*Rumah Hantu*) claim for compensation is a crime, or at least despicable. However, they deliberately do so with the speculation that they will get compensation as well so that the government will understand their feelings. There are motives for the rejection of the legitimacy of the criminal justice system as intended by Tyler, namely regarding public distrust and disobedience (Noyon, 2020). Although the use of this pragmatic law as an accumulation of economic motives to get compensation, and emotive to show that they are fighting injustice, all of them are speculatively reasoned or in their vocabulary is *mamanawian* or equal with 'who knows' in English.

**Illustration 1.** Residents' Understanding towards the use of Pragmatic Law

	Actor	Social Relation	Meaning	Idea	Value
Living in the Project Area	Residents and officers	Assymetric patron-client	The economic benefits of silently resisting the law	<b>Adaptive Pragmatic.</b> Following available opportunities	<b>Survival</b>  - Principle: <i>Sabisa-bisa kudu bisa</i> (Very convinced to do things as much as possible)
Manipulating the Complaints of Haunted House ( <i>Rumah</i> )	Residents and Community Leader	Symmetric social-bond	The economic benefits and unlawful motives	<b>Aggressive Pragmatic</b>	- Strategi:
	Residents, unscrupulous officer, and speculators	Assymetric Transactional		Creating opportunities at all costs	



	Symbolic pattern and meaning of denial (logic) of formal law – criminal justice		Mamanawian (Who knows)
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(Source: Field Data Analysis, 2020-2021)

They speculate *mamanawian* or equal with ‘who knows’ as a strategy to achieve goals in an asymmetric interaction scheme such as the inequality of social capital between them and government officials. Whether this speculative thought is motivated by or has socio-cultural aspects such as Pierre Bourdieu's concept of habitus, which is sourced from culture and practice in their social life (Mautner, 2011), can be traced to patron-client relations in the socio-economic reality of rural farmers. For land owners, the opportunity for profit and loss transactions follows fluctuations in the price of grain from middlemen, while for farm workers the opportunity to work and the amount of income is parallel to how generous the employer is. No matter how difficult it is to be positioned as a client, they must carry out their role. In principle, very convinced to do things as much as possible (*sabisa bisa kudu bisa*).

The jargon ‘*sabisa bisa kudu bisa*’ (very convinced to do things as much as possible) contains philosophical assumptions that function as a spirit to survive in conditions of capital inequality, so the strategy is speculative when it comes to logically the chosen course of action is in accordance with the goals to be achieved. Because this speculative mind is a kind of guideline about what should or cannot be done, it is conceptually a legal habitus (Mautner, 2011). In accordance with the conception of habitus, law or doctrine here in the sense of social practice as it reflects on the behavior, attitudes, and ways of thinking that have been socialized into individuals as part of social groups (Boulanger, 2020). In other words, even though it is not a guideline in the form of formal legal rules, it is the reality of the defensive commitments practiced by them when interacting with an audience whose socio-economic capital is much higher. Therefore, in the cognition category, the survival spirit and speculative reasoning are products of reasoned experience, so that the pragmatic laws practiced by the community are essentially justification techniques that are born in the social reality of their lives.

The function of speculative reasoning in pragmatism gets a philosophical justification from Glavotti's (2019) idea about the conceptual relation between subjective probability and pragmatism. Speculative thought as an analogy of subjective probability is a commonly used interpretation in pragmatic action. Such prevalence is based on two assumptions. First, from the perspective of subjectivism, speculative thinking is the degree of belief (read: expectations) that a person has in conditions of uncertainty about an event. Finally, from the perspective of pragmatism, which places human centralism as an agent in the world of action, and human action is guided by a belief which in this context is the principle of survival.

Based on the explanation above, the existence of pragmatic law in the social life of the people around Jatigede refers to the speculative habitus (*mamanawian* or equal with ‘who knows’) as cognition and a defensive strategy based on the principle of ‘*sabisa bisa*

*kudu bisa*' (very convinced to do things as much as possible). Its application is based on a speculative fit between the means to achieve the expected goals with the context and conditions encountered. Therefore, when the goal is to make economic sense and law is interpreted as permissive, it is adaptive, i.e., rejecting the law secretly (living in the project area). Meanwhile, when economic reasoning accumulates with emotive reasoning and the law is interpreted as restrictive, it is aggressive, i.e., openly violating criminal law (manipulation of Haunted House or '*Rumah Hantu*' compensation claims).

The description of the operationalization of pragmatic law here is different from that in the United States, where the theme is centered on judicial behavior with a mission so that judges can maximize welfare and efficiency, solve completely new cases, and explain legislative deficiencies (Song, 2019). Meaning that judges with authority and independence are relatively free from external factors in applying judicial pragmatism. Meanwhile, how the common people can make judgments by ignoring, rejecting or going against the logic of formal law. Moreover, all of this is done massively and transparently, the discussion needs to be linked to the actualization of the implementation of social control, especially its interaction with criminal law enforcement. Therefore, the next section will describe how the response of the criminal justice system to residents involved in filing for Haunted House or '*Rumah Hantu*'s compensation claims.

### **The Government's Way of Ruling: Progressive**

Residents who had not received compensation were envious after hearing the news that many of the haunted house or '*rumah hantu*'s fraudulent activities had succeeded during the implementation of compensation for the 2005-2010 period. The jealousy included, among other things, haunted house or '*rumah hantu*'s compensation money was paid to other people who were not land owners. Expressions of jealousy and cheating which were initially just individual chats with fellow citizens, slowly spread to the community, then emerged as discussions in meetings between residents, group leaders and government officials. The issue of the relationship between jealousy and cheating began to be explored by investigators by investigating several people. Subsequently, on November 12, 2012, the public prosecutor named Herdiana, an employee of the Sumedang Government, as a defendant in a corruption crime.

The emergence of the case could not be separated from the 'investigation' of three group leaders, Dadan, Kosasih, and Wahyudin. They are known to be consistent in the sense of having different opinions with other group leaders who conspired with unscrupulous officers, especially regarding the claim for haunted house or '*rumah hantu*'s compensation money. Inevitably, the group leaders who joined the Jatigede Forum decreased their solidity, and finally they acted in their own way. Dadan and Kosasih chose to partner with legal defence fund Bandung and government officials who were considered to have integrity and professionalism. Meanwhile, Wahyudin partnered with consultants from universities. However, they are not able to deter their members who are interested in offers from brokers.

Dadan became the head of the group because he was elected as village head in 2007 to replace the previous village head, who residents considered unable to work or tended to be passive in managing compensation. Thanks to his experience working while migrating to Jakarta and Medan, as well as having studied in Bandung, he was able to understand the concerns and needs of residents regarding residential relocation, and convey them logically to the work unit. The logic of the argument, according to Arman, an officer from Financial and Development Supervisory Agency, also acknowledged by Rukhimat, is that in determining the subject of the recipient of the rights based on factual data and the amount of compensation is relatively reasonable.

The government responded to the rising demands of the community for relocation of settlements by providing land and housing in the areas of Conggeang Kulon, Ujung Jaya, and Jati Nunggal. The housing development which was carried out in 2013-2014 was considered hasty considering that it only focused on providing housing and was not based on a feasibility study on the socio-economic life of the prospective occupants. Most of the residents refused, and a small part, no more than forty heads of families who had lived in it for several months, turned out to return to their original places. Hundreds of housing units have been abandoned, relocation projects have become redundant, and residents have resumed active demonstrations about settlements. This disobedience of the lawful citizens who are full of enthusiasm may be a common symptom in the context of vulnerable communities, as in the study of the legal disobedience of street vendors in Bogota (Vargas, 2015), that this is the strategy of the marginalized to voice their thoughts and opinions on injustice. and distrust of a government policy.

Rukhimat, a member of the Jatigede Task Force Team from the prosecutor's office, was the first person from the bureaucracy to explicitly state in his study report that the government had not implemented the provisions for providing land for new settlements. Then he found that:

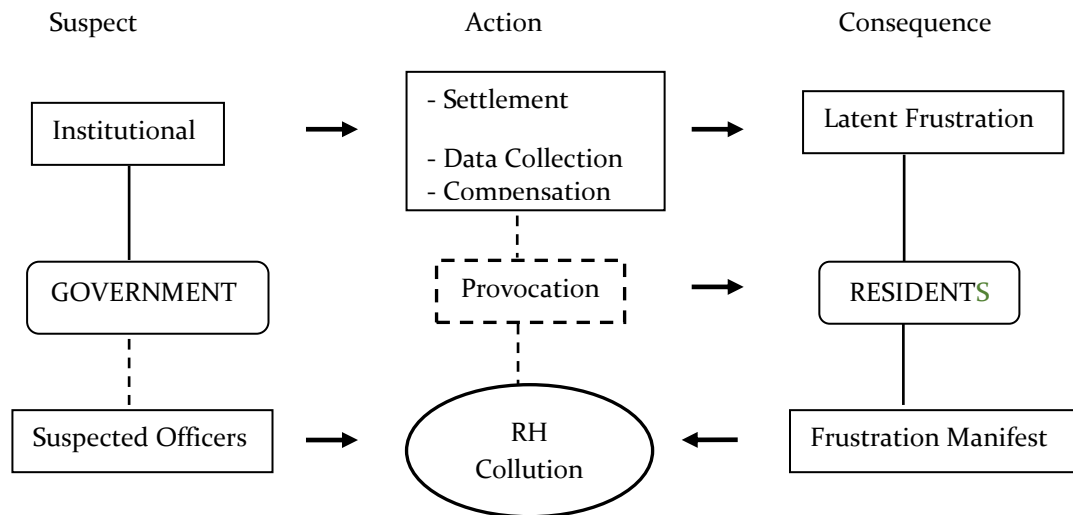
"So far there has been a misinterpretation on the part of the government, namely identifying the provision of settlements with transmigration. So that by including the community in the transmigration program as has been done several years ago, the government assumes that it has carried out its obligations. Obviously, this is very wrong. Transmigration of a different project is regulated by a separate regulation and cannot be used for purposes of or replace the implementation of the provisions of Article 13 of Permendagri Number 15/1975. If we refer to the New Order's practice habits, it seems like they are deliberately supporting the transmigration project. In fact, the passing of the Reform Order was the right moment to conduct a legal review of the error, but all of this was not done by the previous team, especially the legal department.

In carrying out his duties, Rukhimat reviews documents, looks for facts on the ground, and engages in intensive dialogue with the community. The results are then presented at the provincial and central levels. At every opportunity he tries to reassure decision makers that citizens are still suffering the consequences of: past government mistakes; unprofessional performance of data collectors; and the behavior of the officers. For a dozen years, residents have been frustrated looking for housing and waiting for compensation. This condition, which is exploited by a third party, provokes residents to

demonstrate and act in a deviant, even criminal nature, in the process of applying for Haunted House or 'Rumah Hantu's compensation claims.

The schematic of his thoughts on the story of citizen deviation is as shown in Exhibit 2 below.

**Illustration 2.** Schematic of the relationship between government errors and deviant residents' behavior



(Source: Field Interview, 2020-2021)

The head of the group, who is also the village head and activist accompanying the group, has intensively discussed issues of settlement, the amount of compensation, data collection errors, and other errors in an agitative style in every group meeting, especially before demonstrations. Iing and Riswandi, for example, straightforwardly told how group leaders and activists repeated the words: injustice, tyranny and/or the government's indifference, and all of this was always characterized by the spirit of resistance which they interpreted as struggle. The participation of citizens in doing collusive actions is not a manifestation of the stimulation-response relationship in the concept of a behavioral approach, nor is it merely an impulsive reflection instead of experiencing prolonged frustration. Actions that appear in the empirical reality are connected with the thought processes that take place or process in symbolic reality. Residents process their thoughts by interpreting their words and actions: group leaders, officers, brokers, and speculators as symbols of denial of criminal justice.

At the same time, although not as intensive as the group leader, the brokers secretly offer financial facilities for the construction of haunted house or *rumah hantu*, land purchases, or other cooperation with speculators. There are two reasons why brokers carry out their actions selectively, namely in terms of choosing target citizens, time and place. First, so that the identity of speculators as citizens from outside Sumedang or as government officials is not known by the public. Second, to avoid contra with group leaders who disagree in ways that have the potential to violate the law, and are reluctant

to compete with group leaders who actually also act as brokers, both regarding haunted house or *rumah hantu* and other compensation arrangements.

With the crime story above, we can understand the perspective of anthropological criminology from Malinowski (Sausdal, 2019) that crime is not a phenomenon in or of itself, but depends on the social world that surrounds and interprets the criminal act. Therefore, crime and criminalization cannot simply be read as a tautological dialectic. Rukhimat applies the theorization by using the facts of past government mistakes, the frustrations of citizens in the present, and the mistakes of citizens who are trapped by brokers' tactics, as keywords for solving problems. He understands that the behavior of residents in the compensation process for RH can qualify as a criminal act of corruption. With a legal perspective constructed with these keywords, the way to understand criminal behavior is similar to the results of Munyo's (2013) study that frustrated conditions have a significant effect on violent property crimes. Furthermore, Rukhimat stated:

“Under these conditions, solutions must be found to improve their welfare, at least as before the project. Punishing citizens will only prolong their suffering. But if the naughty ones are government officials, I will drag them like Herdiana.”

Rukhimat's statement really wanted to emphasize that what the residents were doing was still psychologically reasonable, and the next form of action was like practicing progressive law, namely prioritizing an approach of conscience or no longer based on law based on legal texts but rather using common sense. Technically, fraud committed before 2010 does not need to be disclosed, because in addition to being paid for, in essence there is a contribution from inappropriate government policies. Meanwhile, cheating in the following year does not need to be investigated as long as the act is a probationary crime. How to deal with citizens by leaving the doctrine of due process of law is also implied in his notes below.

R : You've built the house but not occupying it. Why?

I : Yes sir. The house will be registered.

R : It's against the law if your intention is merely to get compensation. You know it right?

I : I do know, sir. But who knows (*mamanawian*)? I've got to move and I have no money left.

R : All right then. The government must have been aware of residents' worries. They are now working on the solution.

I : Yes, sir. I'm sure about that.

R : Okay then, just take your files back as soon as possible, the ones you handed over to the officers.

I : Yes, sir. Thank you.

The sentence “the government are now working on the solution...” (“*pemerintah sedang mencari solusi*”) means the Task Force Team, Financial and Development Supervisory Agency, and representatives from the community are organizing data and formulating the type and amount of appropriate compensation. Contrasting with the previous attitude, the government is now trying its best to meet the expectations of people's justice. For example, the Governor advised Rukhimat: “Our intention is for the welfare of the people. Anyway, make as much compensation as possible and look for a

legal umbrella.” His way of thinking is like or closer to adherents of legal realism, if solving problems does not start with and end in law (Leeuw, 2017). Meanwhile, to involve public participation, one of the community representatives, Wahyudin, was appointed as an honorary staff at the budget office and the law bureau of the West Java Provincial Government, to receive teachings and references in designing the proposed type and amount of compensation.

The idea that underlies the government's legal system, both manifested in actions in the field and in symmetrical policies with progressive legal theorizing from Rahardjo (2010a, 2010b, and 2009). The analogy matrix with narrative analysis is as in Exhibit 3. The accuracy of analogical suitability of elements and their substance may overlap considering that all elements of action and policy are one unit, and each element can be interpreted as having multiple or multi-meaningful substances.

The idea of progressive law was applied by Presidential Decree 1/2015 by giving cash to residents in the project area with categories: A, those who have acquired land and/or buildings but have not yet received residential shelters, and category B, which is not included in category A. Category A is given a replacement house in the form of cash, and category B is given compensation. Efforts to optimize the amount of welfare are circumvented by increasing the number of payment items. Cash for building replacement (category A) is for payment of: building replacement, land acquisition replacement, and loss of income allowance. The compensation (category B) is for the payment of costs: house demolition, mobilization, house rent, and loss of income allowance.

**Illustration 3.** Analogy of government actions and policies with progressive law

Action and Policy Elements	The Basic Ideas of Progressive Law
The economic and settlement difficulties experienced by the community are understood as a result of past mistakes in government policies and legal behavior, and now is the time for the government to pay attention to and resolve the needs of the citizens.	The law is for humans, not <i>vice versa</i> .
Empathy for the suffering of citizens is actualized by understanding that citizens' mistakes do not need to be criminally processed, and seeking legal solutions that are felt to be fair by the community and can be fulfilled by the government.	Progressive law builds a conscientious rule of law.
Community representatives are given the task of designing a proposal for the type and amount of compensation, which is then discussed with the government.	The progressive law must encourage the role of the public.
Formulate the type and amount of compensation rationally and proportionally.	Progressive law aims to deliver humans to prosperity and justice.
In order to provide justice and welfare to the people, Presidential Regulation 1/2015 was made without heeding the procedures for establishing regulations.	Rejecting the status <i>quo</i> : breaking down, replacing and liberating.

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The Ministry of Public Works and Public Housing, the National Land Agency, the Regional Government, the prosecutor's office, and the court discussed the technical implementation of Perpres1/2015. It was agreed that the application for compensation would go through a simple lawsuit procedure in court.	The law must be pro-people and pro-justice.
Giving directions so that residents who have not received compensation immediately file a simple lawsuit to the court to determine the rights and objects of compensation. The court facilitates the filing of a lawsuit.	Progressive law has a responsive type.

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(Source: Field Data Analysis, 2020-2021)

By carrying out the spirit of running, Perpres 1/2015 violates, enforces the law, or applies the applicable laws and regulations. The legal basis of the regulation only refers to the presidential regulatory resources, and does not at all refer to the substantive resources of the law that orders or allows the president to regulate the determination of compensation. As a legal expert and involved in the process of making Presidential Regulation 1/2015, Rukhimat acknowledged his role in denying internal legal logic for the welfare and benefit of the community. His inner reason is related to the hadith: *Innamal a'malu binniyat* meaning that it all depends on the intention.

The analytical-positivistic legal tradition thought or *rechtsdogmatiek*, which in its work relies on the validity of regulations and logic, will certainly reject or at least find it difficult to understand the ways in which the government has handled the Jatigede case. The results of the internal logic analysis will conclude that the government has made constructions and/or legal actions that are illogical, consistent, and systematic. This is more or less a picture of a legal audit of actions that intentionally provide welfare to the people, and just ignore the evil deeds of speculators, brokers, and other parties involved. Surprisingly, all components of society understand it, no one criticizes and reports. This kind of phenomenon is expressed by Mertz in his words, "almost everyone admits that the laws that apply in society, in real life, cannot be understood only by reading legal texts" (Mertz, 2016). This does not mean that analytical thinking is unnecessary, only that if it is applied to this case, it will lose its empirical legitimacy, because it does not receive confirmation from the justice and welfare needed by society at that time.

What the government does by means of progressive law is not really the result of bureaucratic thinking *per se*, but is more determined by the people who run it. Why is that, because according to Weber's view, bureaucracy is a typical form of rational legal domination (Ferreira, 2019), so as a product and at the same time implementing formal law, the government bureaucracy works only based on its own legal system. While working outside the scheme depends on the contribution of the mind and conscience of the implementers, which in this context the empathy and concern of the officials have motivated the relaxation of criminal justice and irregular regulations.

## Conclusion

The generic finding from this research is that the empirical validity of the legal method (legal theory) or its application is always conditional on assumptions that are at least related to aspects of actus, objectus, locus and tempus, or the essence of the truth is contextual and spiritual. As for the specifics; *first*, pragmatic legal methods can exist in the socio-economic life of rural farming communities because their characters are relatively in harmony with the speculative habitus ('*mamanawian*': who knows) as cognition and defensive strategies based on the principle of *sabisa bisa kudu bisa* (very convinced to do things as much as possible). The application, when motivated by economic interests, he silently rejects the law by adapting to law enforcement which is interpreted as permissive, and when economic motivations accumulate with emotive, he aggressively rejects the law which is interpreted as restrictive.

*Second*, the government applies a progressive legal approach based on its concern and apprehension for the community's difficulties, by not using criminal justice instruments. This approach is also implemented in the compensation policy by making regulations that prioritize the restoration of people's welfare rather than fulfilling the requirements of legal logic.

## Suggestion

This brief ethnographic research still needs further research and should be carried out with conventional ethnographic methods. However, for the sake of practice, it is not premature to immediately start a discussion about how the law might recognize itself as an unfinished regulatory text, and how it is possible that in its application it is willing to accept contextual thoughts as an effort to improve it.

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