

Legal Policy in the Regulations for the Sale of State Houses Class III (Idle State Property) Without Auction to Occupants/State Servants Reviewed From the Perspective of “The Theory of Justice” From John Rawls

Hermansyah CS Sudira¹, Suhariningsih², Moh. Fadli³, Iwan Permadi⁴

^{1,2,3,4}University of Brawijaya, Indonesia

hermansyahsudira@gmail.com

Abstract

Auctions are universally believed to be the most accountable and fair trading system. This is also recognized by the Republic of Indonesia in administering the state treasury and the Management of State Property, where all sales of State Property must be carried out through auctions. The problem is, there is a legal Politics (legal policy) of differential treatment ("discrimination") for residents/civil servants in the regulation that the sale of Class III State Houses (Idle State Property) is carried out without having to go through an auction and even with a price of 50% of the fair market price assessment. The difference in treatment raises legal (juridical) issues. The juridical problem that arises is the existence of a conflict of norms between what should be (das sollen) in the constitution contrary to the norms written in the laws and regulations (das sein). Between Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "all citizens have the same status in law and government....." is contrary to statutory regulations which is below that relates to the sale of State Houses to occupants/civil servants without an auction. From the juridical problems mentioned above, the "question" is: how is the legal politics that provides differential treatment to residents/public servants seen from the perspective of the philosophy of social justice that is in line with the goals of the Indonesian nation, namely realizing Social Justice for All Indonesian People? From the results of the analysis carried out using the evaluative-deductive analysis method, the results of the research are that legal politics that apply differential treatment of occupants/civil servants in the arrangement of selling Class III State Houses (Idle State Property) without auction are not in accordance with the meaning of "Justice of Fairness" as meant by John Rawls

Keywords

Differential treatment of civil servants, State Housing, Theory of justice, discrimination, State Property, Justice of Fairness



I. Introduction

Talking about positive law, statutory regulations are made with specific objectives and reasons by those who have the authority to do so. The purposes and reasons for forming statutory regulations may vary. The various purposes and reasons for the formation of a law or legislation are referred to as legal policy (legal politics).

According to Hikmahanto Juwana, there are two things how important legal policy is in making statutory regulations. First, as a reason why it is necessary to establish a statutory regulation; Second, to determine what is to be applied and translated into legal sentences and into the formulation of articles. These two things are important because the existence of

statutory regulations and the formulation of articles is a related relationship between the legal policy that is determined and its implementation in statutory regulations as a form of implementation of the legal policy. Implementation in the application of laws and regulations is a form of achieving what is endeavored in the legal policy that has been determined.

Hikmahanto Juwana further explained that there are two dimensions of understanding of legal policy. The first dimension is legal policy which is the basic reason for making and enacting a statutory regulation. Legal policy in this dimension is referred to as "basic policy". The second dimension of legal politics is the purpose or reason behind the enactment of a statutory regulation. In this case legal politics in this dimension is referred to as "enactment policy".

The existence of enforcement policies really needs to be controlled and criticized, because laws and regulations are often used as political instruments by the authorities (the government), both for positive and negative purposes. In this context, it is nothing new for the Unitary State of the Republic of Indonesia. Since the era of colonialism and imperialism until now, laws and regulations have often been supplemented by the ruling government with policies that lead to certain interests of the ruling regime.

Realizing just laws and regulations in the Unitary State of the Republic of Indonesia will only be realized through the development of national laws that serve the interests of the people and the nation. Legal development in the form of just laws and regulations must be supported by legal policy that are based on state objectives based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The problem is that there are many irregularities in the application of legal policy to the dimensions of enforcement policies which give rise to juridical, philosophical and sociological problems. in the articles in the legislation.

One of the "deviations" of legal policy that applies differential treatment to occupants/civil servants is what happened to the arrangement for the sale of Class III State Houses (Idle State Property) without auction at half price (50%). Legal policy that apply differential treatment to occupant/civil servants are contained in Article 46 and Article 48 of the Law of the Republic of Indonesia No. 1 of 2004 concerning the state treasury in conjunction with Article 61 (and its explanation) Government Regulation No. 27 of 2014 concerning Management of State Property (and also Article 16 paragraph (2) Government Regulation No. 40 of 1994 which has been amended by Government Regulation No. 31 of 2005 concerning State Houses). Where in this case, the policy of applying differential treatment ("discrimination") to civil servants is contrary to the principle of equality before law and government as stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. above, then the "question" is: "how is the legal policy that applies differential treatment to civil servants reviewed from the perspective of social justice in accordance with the principles and goals of the Indonesian nation, namely realizing "Social Justice for All Indonesian People"? This question also becomes a statement in the research and the purpose of this writing.

II. Research Method

2.1 Types of Research

This type of dissertation research is categorized as legal research (legal research) or normative research. Where this legal research is a series of actions or processes that aim to find the law caused by the problematic conflict of norms. The purpose of this research is directed to find the truth of *coherence*, namely the suitability between ideal principles or rules (*das sollen*) which are then used as a reference with the reality of something to be studied (*das sein*). This legal research is built based on the methods and workings of legal science whose object is law or statutory regulations.

2.2 Research Approach

The research approaches in this study include the statutory approach and the conceptual approach. The statutory approach is to examine all positive legal regulations relating to and related to the regulation of the sale of State Houses. The conceptual approach is carried out by looking for the most suitable concept of social justice to answer the research problem.

2.3 Types of Legal

Legal materials consist of: Primary legal materials consisting of laws and regulations relating to the regulation of the sale of State Houses both as residences and as State Property, and other supporting laws and regulations; secondary legal materials in the form of: text books written by legal experts, legal journals, articles, the internet, and sources that have a correlation with research studies; tertiary or non-legal legal materials, namely those from encyclopedias and legal dictionaries.

2.4 Types of Legal Materials

Legal materials consist of: Primary legal materials consisting of laws and regulations relating to the regulation of the sale of State Houses both as residences and as State Property, and other supporting laws and regulations; secondary legal materials in the form of: text books written by legal experts, legal journals, articles, the internet, and sources that have a correlation with research studies; tertiary or non-legal legal materials, namely those from encyclopedias and legal dictionaries.

2.5 Legal Substance Tracing Techniques

The technique of collecting and tracing legal material is carried out using the method of studying literature, literature, documents, as well as research results and journals.

2.6 Legal Material Analysis Techniques

Operationally, existing legal materials are grouped and systematically arranged. After being compiled, it is analyzed by abstracting the existing laws and regulations in order to be able to find various legal issues that are juridical, philosophical and theoretical in nature related to various aspects of the State House both as a residence and as State Property (BMN). To understand it, this study uses the method of "grammatical interpretation" and "systematic interpretation" in an effort to understand the meaning contained in laws and regulations. While in terms of conducting discussion analysis, the author uses evaluative analysis using deductive thinking methods,

III. Results and Discussion

Conceptual Framework

3.1 The Concept of Difference in Treatment (“Discrimination”)

In general, the meaning of discrimination is considered as a negative attitude/action. However, before discussing this understanding, we should first examine the meaning of the concept. Lexically, the verb to discriminate means “*be, make, see a difference between; treat differently; make distinction.*” Meanwhile, the noun discrimination is the *ability to discriminate*. These limits at least show that there are several keywords for the concept of discrimination, namely difference or comparison. There is more than one condition that is different or considered to have a different impression. The conditions were then compared. The results of this comparison give rise to reasons to behave or behave in a certain way which is called discrimination.

The target triggers of discrimination are humans and non-humans. Discrimination against humans is related to two target characteristics, which in this case can be distinguished

in two criteria. Namely humans on (1) *primordial measurements*, and (2) or *meritocratic measurements*. Generally, refusal with the first indicator is considered against the law, while a warning with the second indicator is relatively justifiable legally. Discrimination on the basis of race is an example of discrimination on a primordial basis, whereas discrimination on the basis of meritocracy is still possible as long as it is carried out openly and based on good faith.

Functionally, the law has another function as a social engineering tool. In carrying out social engineering functions, law is perceived as having the power of energy to change circumstances. Of course, the situation you want to change must depart from a bad condition to a better one. *Affirmative action* is defined as an effort to increase rights and opportunities for people/or groups of people who were previously disadvantaged so they can progress within a certain period of time. This means that at certain times the law must function in a discriminatory manner to help certain weak groups in society (social-economic-political) so that their life or position can be elevated.

Judging from the impact (*outcome*), the authors distinguish the meaning of discrimination into two, namely negative discrimination and positive discrimination. The first shows that the consequences of discriminatory actions are negative towards the principle of social justice, the second is the opposite,

3.2 Concept of Class III State House (Idle State Property)

A state house is a state-owned building and functions as a residence or place of residence and a family development facility as well as supporting the implementation of the duties of officials and/or civil servants. State houses consist of: first, Class I State Houses are state houses that are used by holders of certain positions and because of the nature of their position they must reside in that house; secondly, Class II State Houses are state houses which are only provided for active civil servants' residences and State Houses which are used as guest houses or temporary residences; third, Class III State Houses are State Property which are no longer used to support the implementation of direct government duties (Idle State Property).

The essence of a State House is State Property in the form of a building and land or not. In the Law of the Republic of Indonesia No. 1 of 2003 concerning the State Treasury jucto Government Regulation No. 27 of 2014 concerning Management of State Property, state houses are categorized as special State Property. Apart from being specifically State Property which can be transferred without the approval of the House of Representatives.

3.3 The concept of Occupants and Civil Servants

Regarding the occupants of the State House, Government Regulation No. 40 of 1994 concerning State Houses, which was amended by Government Regulation no. 31 of 2005 stipulates that people who can live in a state house are: civil servants; state officials or government officials, who are appointed to occupy certain positions; and TNI-Polri. Meanwhile, the occupants of class III houses, apart from those mentioned above, also include retirees and all their heirs who still pay rent to the state. The occupant who occupies a Class III house is acting as the holder of the House Placement Letter and the tenant of the State House.

Social Contract of the Unitary State of the Republic of Indonesia based on Pancasila Values

Justice can only be understood if it is promised as a state to be realized by law. Efforts to realize justice in the law is a process that requires a lot of time. This effort is often colored by the forces that fight in the political arena to actualize it.

People can think of justice as a hope expected of humans who are expected to benefit themselves. The reality of absolute justice is suggested as a universal problem that applies to all humans, nature and the environment, there should be no monopoly by a handful of people or a group of people. Likewise, people consider justice as an individual view that upholds the maximum benefit for himself.

If so, what is the view of justice according to generally accepted rules or regulations governing human relations in a society like Indonesia. Concretely, law is a set of principles and rules governing relations between humans in society, whether constituting kinship or kinship, within a country's territory. And the legal community regulates its life according to the same values in the community itself (shared values) or both have certain goals. In its development as an independent country, positive law in Indonesia is a form of social contract for the Indonesian nation.

National law regulates justice for all parties, therefore justice in the perspective of national law is justice that harmonizes general justices, among some of individual justices. In this case, justice is more focused on the balance between individual rights and shared rights (social rights). The balance described above is another meaning of the fifth precept of Pancasila, namely "*Social Justice for All Indonesian People*".

In Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia it is stated that "*All citizens have the same position in law and government, and uphold law and government without exception*" This article indicates that all citizens and groups of citizens must be treated equally. before the law. However, it turns out that the meaning does not mean that every citizen is the same in all respects. In fact, all citizens are born in unequal conditions. In this case, our constitution teaches us that there is a difference in treatment for citizens who have different conditions. An example of the existence of legal norms in the 1945 Constitution of the Republic of Indonesia, which applies "*difference in treatment*" to citizens is in Article 28H paragraph (2) "*Everyone has the right to receive convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice*". If we explore the meaning contained in the Article, we will find that there is an element of "*providing convenience and special treatment*" (difference in treatment) to citizens of certain countries. So it can be concluded that the state will apply "*difference in treatment*" to citizens whose position is in a "*different*" position. So the next question is What is justice?

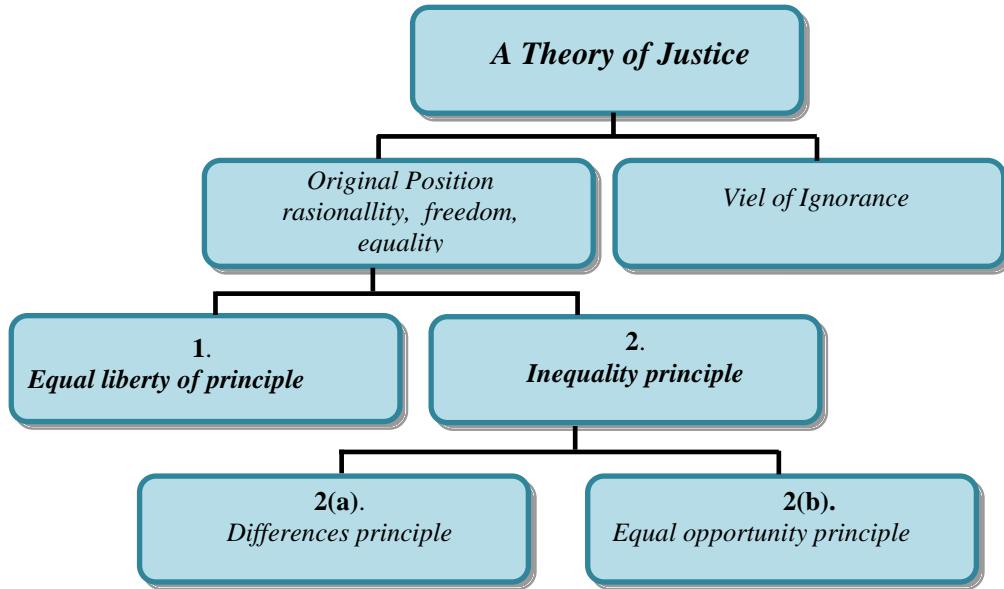
“Theory of Justice:” from John Rawls

In his book entitled *A Theory of Justice*, John Rawls begins his discussion by revealing that justice is the main virtue in social institutions (including the state). According to him, even though laws are made with good intentions, they still have to be reformed and abolished if they are unfair. All people have honor which is based on justice, so the whole society cannot set it aside. It is not justice if the loss of freedom of some people can be justified by the greater gain of others. Justice does not allow the sacrifices imposed on the few to be compounded by the great proportion of the benefits enjoyed by the many. Therefore, in a just society, the freedom of citizens is considered to be well-established; rights guaranteed by justice are not subject to political bargaining or calculation of social interests. According to his analogy, Injustice can be tolerated or tolerated only when one needs to avoid greater injustice. As the main virtues, truth and justice are absolute for mankind.

The main ideas of John Rawls's theory of justice as fairness, begin with an understanding of an ordered society. According to him, a well-ordered society is if it is not only planned to improve the welfare of its members, but is effectively governed by public conceptions of justice, namely:

1. Where everyone accepts and knows that other people adhere to the same principles of justice;
2. Basic social institutions are generally in line with these principles. In this respect institutions are considered only when there are no arbitrary distinctions between people in assigning rights and duties and when rules determine the right balance between conflicting claims for the benefits of social life;
3. The existence of the principle of balance and feasibility in the distribution of benefits in social life. Social justice here involves issues of efficiency, coordination and stability. In this case, John Rawls talks a lot about justice in the economic field.

Specifically, John Rawls developed the idea of the principles of justice by making full use of his creation concept known as the "original position" and "veil of ignorance". To facilitate understanding, his ideas can be described as can be seen in Figure 1 about John Rawls's Description of Justice below. For this reason, the following discussion will refer to Figure 1 below.



Sources compiled from the book "A Theory of Justice"

Figure 1. John Rawls's Picture of Justice

Justice is Honesty (*Justice as Fairness*). Society is a collection of individuals who, on the one hand, want to unite because of ties to fulfill a group of individuals – but on the other hand – each individual has different traits and rights, all of which cannot be merged in social life. Therefore, Rawls tries to provide an answer to the question, how to bring together different rights and traits on the one hand with the desire to be together for the sake of fulfilling common needs?

Rawls's view positions the existence of an equal and equal situation between each individual in society. There is no distinction of status, position or having a higher position between one another, so that one party with another can make a balanced agreement, that is Rawls's view as an "original position" which rests on the notion of reflective equilibrium based on the characteristics of *rationality*, *freedom*, and *equality* in order to regulate the basic structure of society.

While the concept of "veil of ignorance" is translated by John Rawls that every person is faced with closing all facts and circumstances about himself, including certain social positions and doctrines, thus blinding any developing concept or knowledge of justice. With that concept, Rawls led the public to obtain the principle of fair equality with his theory called "*Justice as fairness*". In John Rawls's view of the concept of "original position" there are the main principles of justice, including the principle of equality, that is, everyone is equal to freedoms that are universal, essential and compatible and dissimilar to the social and economic needs of each individually.

The first principle is stated as the equal liberty principle, such as freedom of religion, political independence, freedom of opinion and expression, while the second principle is expressed as the principle of difference, which hypothesizes on the principle of equal opportunity.

The difference principle in 2(a) departs from the principle of inequality which can be justified through controlled policies as long as it benefits weak groups of people. Whereas the principle of equality of opportunity contained in article 2(b) not only requires the principle of

quality of ability, but also the existence of a basic will and need for that quality. So in other words, inequality of opportunities due to differences in the qualities of ability, will, and needs can be seen as fair values based on Rawls's perspective. In addition, the first precept requires equal basic rights and obligations, while the second precept rests on the existence of conditions of social and economic inequality which then achieves the values of justice if it can be justified if it provides benefits for everyone.

In relation to these principles, Rawls emphasized that there are priority rules when one principle meets another. If there is a conflict between the principles, the first principle shall take precedence over the second principle, while the second principle of section 2(b) shall take precedence over the second principle of section 2(a). Thus, to create a just society, Rawls seeks to position freedom of basic rights as the highest value and must be followed by guarantees of equal opportunity for everyone to occupy certain positions or positions. In the end, Rawls also emphasizes that certain distinctions are also acceptable as long as these differences increase or bring the greatest benefit to the most disadvantaged people.

Based on the complexity of the main ideas about justice as fairness, it can be concluded that: The principle of justice as fairness consists of 2 parts:

- a. Interpretation of the initial situation/original position on the existing choice issues. The original position is the initial status quo which asserts that the fundamental agreement reached is fair. In this case there is no discrimination against the basic rights of individuals in society;
- b. There is a set of principles to be agreed upon. Justice as fairness is a deontological moral theory that does not interpret rights as maximizing benefits. Rational understanding here is how most effective way to achieve goals. In this case, it is not a goal that justifies any means, as is the view of morality according to utilitarianism. There are similarities and differences between the principles of justice as fairness and the principles of intuitionism about morals. Intuitionism accepts the pluralism of the various principles of justice. On the other hand, justice as fairness without considering intuitionism, the various principles of justice are already plural, it's just that each principle of justice emphasizes certain priorities.

For John Rawls,

John Rawls further emphasized his views on justice that efforts/programs to uphold justice with a populist dimension must pay attention to two principles of justice, namely, *first*, giving equal rights and opportunities to the broadest basic freedoms covering equal freedoms for everyone. *Second*, being able to rearrange the socio-economic disparities that occur so that they can provide reciprocal benefits.

Thus, the principle of difference requires that the basic structure of society (including the state) be regulated in such a way that the gaps in prospects for obtaining welfare, income, authority are for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: *First*, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic and political institutions. *Second*, each regulation must position itself as a guide for developing policies to correct injustices experienced by the weak or marginalized.

John Rawls emphasized that justice enforcement programs with a populist dimension must pay attention to two principles of justice, namely: first, giving equal rights and opportunities to the broadest basic freedoms covering the same freedoms for everyone; second, being able to rearrange existing socio-economic disparities so that they can provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups.

Arrangements for the Sale of Class III State Houses without an Auction to Occupants / Civil Servants Reviewed from the Perspective of “*Justice of Fairness*”

According to John Rawls, “*the subject of justice*”, among others, are:

1. Laws, institutions, social systems, certain acts, including: decisions, judgments and accusations;

2. The main subject of justice is the basic structure of society or the way social institutions distribute fundamental rights and obligations and determine the distribution of benefits from social cooperation. One of the basic structures of society or social institutions is the state.

In line with John Rawls's thinking, the conception of justice is a conception that provides a standard for how aspects of the basic structure of society should be measured. This is important in relation to social justice in Indonesia. In the Indonesian context, the subject of justice includes positive law (eg laws with articles and government regulations) that regulate various aspects of life. The main subject of justice is the basic structure of society or the way social institutions (including the state) distribute fundamental rights and obligations and determine the division or distribution of benefits from social cooperation. In this case the existing socio-economic institutions set the rules of the game in social cooperation relations based on the principles of humanity and justice or an agreement between the parties involved.

In order to test whether rationally the application of differential treatment to residents/civil servants is in line with the principles of social justice, the authors divide the testing process into two, namely: *First*, that whether the differential treatment of civil servants fulfills the first the principle of inequality as meant by Rawls. In other words, is the socio-political position of the occupants/civil servants included in the groups that are currently disadvantaged, weak or marginalized?; *Second*, does the socio-economic-political position of civil servants not have the same opportunities as other citizens in obtaining economic resources?

For the first question, the author looks at it from the point of view of the socio-economic-political conditions of civil servants in their actual lives in today's society. In this case, we know that most of the occupants of the State House are citizens who have permanent jobs which, of course, are not a marginalized and weak social group. In general, the socio-economic position of civil servants is better than citizens in general. Even if there were, maybe only a few were still less fortunate in their social life, but even that could be said to be no worse than the average living conditions of citizens in general.

In the current condition, the social position of civil servants can be said to be a social group that is considered more established than citizens in general. Especially after the enactment of Law of the Republic of Indonesia No. 5 of 2014 concerning State Civil Apparatuses that have implemented policies that benefit civil servants. The law has placed civil servants as professionals and bureaucrats who have a social position as respectable citizens. Many state programs provide facilities for civil servants, an example of which is the ease of obtaining housing. The government has programmed subsidized interest on low-cost loans and down payment assistance for civil servants. The policy is taken through the *State/Regional Revenue and Expenditure Budget (APBN/D)* mechanism which can be legally justified. This means that civil servants are not people who are marginalized,

So with no proof of the socio-economic position of civil servants as a disadvantaged group, the policy of differentiating treatment of occupants/civil servants can be said to be unfair legal policy. In other words, giving discrimination to occupants/civil servants in the sale of state houses without an auction can be said to be a policy that applies "*negative discrimination*" and is not like a policy that applies "*affirmative action*".

Affirmative action is defined as an effort to increase rights and opportunities for people/or groups of people who were previously disadvantaged so that they can progress within a certain time frame. This means, for the time being the law must function in a discriminatory manner to help this group of people so that their life or position (especially socio-economically) can be further elevated.

For the second principle of inequality (difference in treatment) from Rawls, a decision can be said to be fair if discrimination is carried out to support everyone to get equal opportunities in obtaining social, economic and political resources. So to assess the fairness of the policy of differentiating treatment of occupants/civil servants in the sale of Class III State Houses without an auction, it is necessary to answer this second question, namely: does the

socio-economic-political position of civil servants not have the same opportunities as other citizens in obtaining economic resources. To answer this question, the author looks at it from the point of view of the condition of civil servants in socio-economic life, and politics in their position as citizens. in this case, we know that the issuance of the 2014 Law on State Civil Apparatus which implements a meritocratic system has opened up equal opportunities for all civil servants according to their respective fields and abilities. So at the very least, all civil servants have the same opportunity to obtain economic resources, especially salaries and the acquisition of other facilities.

Auction as the fairest way in the buying and selling process, does not limit anyone from participating in the auction. In principle, laws and regulations, as well as general regulations regarding auctions, do not restrict civil servants from participating in any auctions, including auctions of State Property. Civil servants also have the same opportunities to obtain social, economic and political rights as other citizens. So looking at the position of civil servants who have equal opportunities in terms of social, economic and political life, civil servants can be classified as citizens who have good access to obtain economic resources.

In terms of obtaining housing, as previously stated, civil servants have also received priority from the state. There are many programs to get decent housing for civil servants through various programs related to down payment assistance, special interest loans for civil servants, to a special salary/income component to support civil servant housing problems. These housing programs are made every year in the form of a Law on the *State Revenue and Expenditure Budget* (APBN).

So if civil servants in general belong to a group that is not restricted and actually has great opportunities in obtaining opportunities and access to economic, social, and political resources, then it would be unfair if special privileges were given in the arrangement for the sale of State Houses. What this means is that laws and regulations that apply differential treatment to residents/civil servants are policies that fall into the category of "negative discrimination". which in this case is not in line with the meaning of awarding or compensation as in the "merit" system which is the system used in Law No. 5 of 2014 concerning the State Civil Apparatus.

Unlike the granting of privileges to civil servants in terms of selling Class III State Houses without an auction, the differential treatment of civil servants in the "*absentee*" land regulations can be said to be a policy of positive discrimination (at least when the policy was issued). In this case the social position of civil servants is a fair consideration, because the position of civil servants does not allow them to work on their own land because there is already a burden of work assigned to them as supporting workers for the implementation of the state and government tasks. In addition, civil servants do not always work permanently in a particular place. In this case civil servants are given the same opportunity to acquire agricultural land which they might cultivate themselves when they retire. However, with the issuance of Law no. 5 of 2014 concerning the State Civil Apparatus, exceptions to civil servants regarding the prohibition of owning absentee land also need to be reviewed because they need to be adjusted to the development of people's lives today.

To get simpler clarity, the application of legal politics in the sale of Class III State Houses to residents/public servants without an auction, the main idea of John Rawls's theory of justice about justice as "fairness" can be used as a basis for assessing whether or not the arrangement is fair in the context of justice. broader social. The application of the principle of justice as "fairness" can be explained more or less as follows:

First, justice in the basic structure of society according to John Rawls is the result of an agreement/deliberation which is the goal and principle of Pancasila democracy. Although in this case social interests must take precedence, they do not eliminate individual "freedom" and "rationality" in social life. In this idea the meaning of justice as "fairness" is closer to the

original meaning of the words "fair" which means "*free*", but John Rawls interprets justice as "*fairness*" metaphorically, not justice in the freest sense, but also within certain limits;

Second, in the second idea it can be explained that the original position is related to natural conditions in the traditional social contract theory, namely a hypothetical situation that leads to a certain conception of justice. This John Rawls is based on human rights in which every individual has the same rights to obtain the results of the distribution of natural assets and forces. In the Indonesian context, the meaning of the original position relates to a certain conception of justice, meaning that the justice in question is "*social justice for all Indonesian people*". In this sense of justice, every Indonesian people has the right to obtain/enjoy the prosperity of the country's wealth originating from the distribution of Indonesia's assets and natural forces.

Third, in the third idea it can be explained that justice is the result of fair agreements and bargains between those who are in their original position (which are rational and equally neutral). This idea contains the meaning and implication that Indonesian social justice is the result of the implementation of Pancasila democracy which must treat every individual in society without discrimination, including in policies and public services. In this case, special rights (both individuals and groups) in the public service system should not apply which often appear in the form of collusion and nepotism. If it is associated with the arrangement of selling state houses to "*the occupants*" (a small part of civil servants), then this shows injustice. Selling State Houses only to residents is contrary to the principle of non-discrimination and the principle of equality of justice as stipulated in Article 2 letters *j* and letters *l* of the Law of the Republic of Indonesia Number 5 of 2014 concerning State Civil Apparatuses.

Fourth, the fourth idea about justice as "*fairness*" can be emphasized that John Rawls's moral view is to follow a deontological ethical view that sees moral goodness from the nature of the act itself. Thus the principle of Indonesian social justice must still be in accordance with the principle of "*just and civilized humanity*". When it comes to selling country houses, the auction principle (which reflects the values of: *openness*; *certainty*; *competition*; *efficiency*; *accountability*; and *fairness*) is a basic principle that is in accordance with the concept of fairness. If referring to the deontological concept of fairness which sees moral goodness from the nature of the act itself, the policy of differentiating treatment of civil servants without an auction shows the disuse of the function of the existing law.

Fifth. From the four ideas described above, it can be explained that social cooperation must be able to guarantee life satisfaction, including in terms of profit sharing for the most disadvantaged groups/groups of society. In this case, if there is legal policy that applies differential treatment to groups of people who are able to compete for access to social-economic-political resources such as civil servants, then it can be said to be a policy that is not in accordance with the principle of "*justice of fairness*" as referred to by John Rawls. In this case rationally it can be considered as an obstacle to the realization of social justice.

IV. Conclusion

From the results of the analysis carried out, the legal policy that applies *different treatment* (discrimination) to occupants/civil servants in the regulation of selling the Class III State Houses (Idle State Property) without auction is not in accordance with the meaning of "*Justice of Fairness*" as meant by John Rawls. In this case it can be said as a policy in the category of "*negative discrimination*". This is said because: *first*, the legal policy does not include policies that benefit those who are weak or disadvantaged; *second*, the policy of differential treatment is not intended to support everyone to have equal opportunities in obtaining the social, economic and political resources that should be their right, but on the contrary, namely to provide opportunities only to residents/public servants whose socio-economic position and conditions are their politics does not include weak and marginalized

groups in society. In this case, the method used in legal policies that apply different treatment to citizens/civil servants is different from the principle of "affirmative action" which is in line with the meaning of social justice and is also not an attempt to reward certain achievements as referred to in the "merit" system.

References

Hikmahanto Juwana, 2005, *Legal Politics of Law in the Economic Sector in Indonesia*, Online, *Journal of Law Vol.01, No.1 of 2005*, <Https:/adoc.pub/politik- Hukum-UU- in the field of economics- in-Indonesia, Hikmahanto Juwana> , downloaded 11-16-2020, p: 24

Moh. Mahfud MD, 2010, *Building Legal Politics, Upholding the Constitution*, PT. Raja Grafindo Persada, Jakarta.

Rawls, John, 2011, *Theory of Justice: Fundamentals of Political Philosophy to Realize Social Welfare in the Country*, A Theory of Justice, Oxford University press, London, 1995, which has been translated by Uzair Fauzan and Heru Prasetyo print II, Yogyakarta: Student Libraries, 2011.

Shidarta Sakirno, 2008, *The Concept of Discrimination in the Perspective of Legal Philosophy*, One of the articles in Sri Rahayu Oktoberina and Niken Safitri, Points of Thought in Law, Bandung: Graphic Aditama

Hornby, USA, 1973, *The Advanced Learner's Dictionary of Current English*. London: Oxford University Press, p. 281

Friedrich, Carl Joachim, 1969, *The Philosophy of Law in Historical Perspective, Legal Philosophy of Historical Perspective*, Translation Oleh Raisul Mutaqin, 2010, Cet. III, Bandung: Nusa Media,

Peter Mahmud Marzuki, 2007, *Legal Research*, Jakarta: Kencana Prenada Media Group.

Mochtar Kusumaatmadja and B. Arief Sidharta, 2000, *Introduction to Law, A First Introduction to the Scope of Applicability of Law*, Bandung: Alumni, Indonesia, 1945, the 1945 *Constitution of the Republic of Indonesia* (Amendment IV)

Indonesia, 2003, Law of the Republic of Indonesia No. 17 of 2003 concerning *State Finance* (LN 2003 No 47, TLN 4286, LL SETNEG;20 PAGE)

Indonesia, 1957, Law of the Republic of Indonesia No. 72 of 1957 concerning the Stipulation and Amendments to the Emergency Law No. 19 of 1955 concerning *Sales of State Houses to Civil Servants* as Law (LN 1957 Number 158)

Indonesia, 1960, Law of the Republic of Indonesia No. 5 of 1960 concerning *Basic Agrarian Regulations*, (LN of 1960 Number 104, TLN Number 2043)

Indonesia, 2011, Law of the Republic of Indonesia No. 1 of 2011 concerning *Housing and Settlements* (LN.2011/N0.7, TLN No. 5188, LL SETNEG: 89 PAGE)

Indonesia, 2004, Law of the Republic of Indonesia No. 1 of 2004 concerning *the State Treasury* (LN. 2004/No. 5, TLN RI No. 4355, LL SETKAB: 87 PAGE)

Indonesia, 2014, Law of the Republic of Indonesia No. 5 OF 2014 concerning *State Civil Apparatus* (LN. 2014/N0.6, TLN No. 5495. LL SETNEG: 179 PAGE)

Indonesia, 2011, RI Law No. 12 of 2011 concerning *the Establishment of Laws and Regulations* (RI 2011 LN No: 82, TLN No 5235, LL SETNEG: 51 PAGE).

Indonesia, 1994, Government Regulation No. 40 of 1994 concerning *State Houses* (RI RI 1994 Number: 69; TLN Number: 3573) which has been amended by PP No. 31 of 2005 concerning Amendments to Government Regulation No. 40 of 1994 concerning State Houses (LN. 2005 No. 64, TLN No. 4515, LL SETNEG: 10 PAGE)

Indonesia, 2014, Government Regulation No. 27 of 2014 concerning *the Management of State Property* (LN RI 2014 No. 92; TLN RI Number 5533) which has been amended by PP Number 28 of 2020 concerning *Amendments to PP Number 27 of 2014* concerning *Management of State Property* (TLN. 2014 No. 92 TLN No. 5533, LL State Secretariat: 77 PAGE).