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# Building a Theoretical Framework from Weber's Theory for Legal Scientific Research

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### ABSTRACT

Scientific work in the field of legal science in Indonesia often differs from the criteria for empirical scientific research at the level of modern science. The results of thesis and dissertation-level scientific research at law faculties have so far emphasized technical-juridical analysis for the needs of legal practice rather than academic research that criticizes and creates new scientific theories in the field of law. Dogmatic legal analysis, it seems, takes precedence over academic legal analysis that allows researchers to fulfill the critical scientific need for the renewal of legal dogmatics by the development of Society. The framework section is usually narrated without construction in the form of a 'theoretical framework' or 'analytical model' which often shows confusion in legal research. Legal dogmatic research focuses on evaluating the structure (language) of law and legal practice, i.e. how far the elements of the article as evaluation indicators are used with the resolution of the particular legal event being studied. Scholarly legal research often uses theory in presenting the framework for its theses and dissertations, and more than one theory is even related to the various narratives and descriptions of the proposed research. In addition, legal researchers present major frameworks in 'grand theory', 'middle-range theory', and applied theory' for research typically conducted in the field of pure science (pure social and human sciences).

**Keywords:** Theoretical Framework, Social Action, Legal Scientific research.

### ABSTRAK

Pekerjaan ilmiah bidang ilmu hukum di Indonesia sering berbeda dari kriteria penelitian ilmiah secara empiris di tingkat sains modern. Hasil tesis dan penelitian ilmiah tingkat disertasi di fakultas hukum sejauh ini menekankan analisis teknis-Juridical untuk kebutuhan praktik hukum daripada penelitian akademik yang mengkritik dan menciptakan teori ilmiah baru di bidang hukum. Analisis hukum dogmatis, tampaknya, lebih diutamakan daripada analisis hukum akademik yang memungkinkan peneliti untuk memenuhi kebutuhan ilmiah kritis untuk pembaruan dogmatika hukum oleh perkembangan Masyarakat. Bagian kerangka kerja biasanya diwujudkan tanpa konstruksi dalam bentuk 'kerangka teori' atau 'model analisis' yang sering menunjukkan kebingungan dalam penelitian hukum. Penelitian dogmatis hukum fokus pada mengevaluasi struktur (bahasa) hukum dan praktik hukum, yaitu seberapa jauh unsur-unsur artikel sebagai indikator evaluasi yang digunakan dengan resolusi dari peristiwa hukum tertentu yang sedang dipelajari. Penelitian hukum ilmiah sering menggunakan teori dalam menyajikan kerangka kerja untuk tesis dan disertasinya, dan lebih dari satu teori bahkan terkait berbagai narasi dan deskripsi penelitian yang diajukan. Selain itu, peneliti hukum menyajikan kerangka pemikiran besar dalam 'teori besar', 'teori jarak menengah', dan teori terapan 'untuk penelitian yang biasanya dilakukan di bidang sains murni (ilmu sosial dan manusia murni).

**Kata kunci:** Kerangka Teori, Aksi Sosial, Penelitian Ilmiah Hukum.



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## **1. Introduction**

The writing of scientific papers in several legal higher education institutions in Indonesia often differs from the criteria for scientific research at the level of modern science after the 19<sup>th</sup> century, which relied on empirical tests. Writing carried out by legal researchers, especially research at the thesis level for master's degrees and dissertations for philosophical doctoral degrees (equivalent to Ph.D.), has so far prioritized dogmatic technical-juridical analysis for the needs of legal practice in the justice system. Dogmatic-prescriptive legal analysis is preferred by legal researchers in universities over academic-descriptive legal analysis for scientific-critical purposes for the sake of updating legal dogma by societal developments.

Descriptive-academic legal research tends to be seen as a threat to the normative character of law. There is a possibility of misunderstanding among legal researchers regarding the normative concept (normativity) as if there is a type of legal (research) that is not normative. This misunderstanding, among other things, can be seen in their interpretative expression, namely the binary of "normative legal research" and "empirical legal research". Normative legal research is seen as if it is not based on empirical a posteriori knowledge, and conversely, empirical and descriptive legal research seems to be unrelated to the normative nature of law. Normative concepts tend to be seen as a monopoly in the field of law, even though theology and ethics are also part of the normative sciences. The essence of normative understanding is not in secondary data as superficially understood by Indonesian legal researchers so far, but rather lies in depth in normative language, thought in normative thinking, and normative discourse, as stated by Wedgwood (Ralph, 2007).

Understanding normative concepts is still somewhat confusing in legal education and research in Indonesia. However, researchers using more than one theory without construction in the form of theoretical frameworks or analytical models often show confusion in legal research. This means that researchers use several theories in legal research more as concepts or propositions to support opinions that tend to be common sense, rather than to operationalize these concepts to be used as analytical tools to dissect legal practice problems, for example referring to studies of various previous studies and/or theories of knowledge. The understanding of the theory that appears in the writing tends to be a partial piece of opinion (opinion) of certain scholars or legal experts in the form of concepts or propositions that are separated from the theoretical series. For example, some researchers say they use Kelsen's theory of legal certainty, but it is not clearly explained whether what is meant by legal certainty theory is their interpretation of Kelsen's pure legal theory or it is just one concept or proposition from Hans Kelsen's entire pure legal theory (Hans, n.d.).

So far no conceptual definition or operationalization of research variables has been obtained which comes from the theory used by researchers in the work concerned. In other words, it is impossible to know certain indicators or measures resulting from theoretical criticism from academic legal researchers used in their research. If only they followed the legal research model offered by Peter Mahmud, of course, they would give rational reasons for choosing or using one of the two options, namely (1) research for legal practice purposes, and (2) research for academic purposes (Mahmud, 2017). Academic research is a variety

of investigations that use scientific theories as a result of studies based on philosophical thinking, rationalism, and empiricism.

## **2. Method**

This writing is based on documenting information, and various data from secondhand involvement, as a study to understand the nature of legal research based on a scientific framework with a foundation in the philosophy of science and philosophy of law. Even though the law is classified as a dogmatic science that is *sui-generis*, its practical use has brought this discipline to the category of applied science. Law is, perhaps, not an empirical science, but only because its use for the needs in empirical practice of legal science requires the support of other empirical sciences. If legal research focuses solely on the dogmatic dimension, of course, legal research is more in touch with the philosophical dimension, relying on scientific and hermeneutic methods related to the structure and meaning of language that apply in academic legal normative texts and legal interpretative practices in court. For both needs, this article will try to present theoretical construction as a scientific framework in exploring the results of legal practice and academically propose (draft) a new juridical-dogmatic building that is conducive to the formation of legal institutions and law enforcement.

This study attempts to obtain a constructive overview of a theoretical framework in legal research by utilizing socio-cultural and philosophical scientific bases. Weber's theory is used to interpret the meaning of the sociolegal actions of individual actors involved in social events that lead to legal consequences of land acquisition. To understand the form of academic use of legal research in social practice, it is important to use theoretical frameworks not only to understand and evaluate how the law works through its enforcement agents but also to first examine certain scientific theories that are used to provide critical notes to suit the context. Space and time, part or all of the propositions and theoretical concepts related to the scientific framework in the context of developing the science being studied.

## **3. Result and Discussion**

### **3.1 Building Theoretical Framework**

Ritzer (Ritzer, 1980) has mapped the sociological paradigm into various categories, namely social facts, social definitions, and social behavior. Perdue (Perdue, 1986) named these categories as order paradigms for social facts, pluralist paradigms for social definitions, and conflict paradigms for social behavior. This formal framework or perspective is a derivation of the social definition paradigm as a basic reference for Weber's sociological thinking. The focus of this research is the subjective dimension and intersubjectivity in the life of a particular society, namely efforts to understand how individuals define social reality (Ritzer, 1985: 43-97).

Weber's explanation of (definition of) social action can be seen in his work "Economy and Society" edited by Roth and Wittich (Roth, Guenther dan Wittich, 1978), where he says that social action includes failures to act and tacit agreements that actors may orient themselves to over time. Past, present, or future behavior directed at another person. Social action may be driven by revenge for attacks, defense, defense of

the past, and defense for the future (Weber, 1978:22-26; 1971; 1962;(Eldridge, 1971). An action is social insofar as it is based on the subjective meaning placed on it by the acting agent. This action takes into account the behavior of other people because in this way it can be directed. Social action, thus, is something more than just the similarity of the behavior of many people, although it does not need to contain mutual awareness because one person can behave consciously towards another person without the person concerned being aware of that fact (Campbell, 1994), (Schwartz, Howard dan Jacobs, 1979), Little, 1991:74). Social action is classified into four characteristics according to the way an agent orients it (Weber, 1978; Eldridge, 1971; Johnson, 1988; Lash and Whimster, 1987), namely: The first category is traditional action, namely behavior determined by habits that arise from established practices and respect for existing authority. This type of action cannot be considered simply as 'intended' behavior and therefore 'true action', but Weber considers intentionality to be something implicit and relatively subconscious, and from this point of view traditional action is not the same as effective action (see Campbell, 1994; 209).

Kalberg (Kalberg, 1980) calls traditional actions formal rationality because this type involves means-end calculations (Cockherham, Abel, and Luschen, 1993). If in practical rationality the calculation refers to pragmatic self-interest, then in formal rationality the calculation refers to "customs, laws, and regulations that are universally applied". As Brubaker (Brubaker, 1984) places these actions "usually in the rationality of industrial capitalism, in which formal law and bureaucratic administration are targeted, institutionalized, as supra-individual forms; where in every environment, this type is integrated into the social structure and faces the individual as someone external to him (Ritzer George, 1996)As Turner (Turner, 1993) states, traditional actions are dictated by custom and habits. Second, Weber described an ideal type of effectual (especially emotional) action, namely an actor's behavior that is under or determined by the direct domination of his feelings. An actor's specific circumstances and feelings encourage him to take social action. Kalberg calls substantive rationality for effectual action, where this type directly organizes the actor's actions into patterns. This arrangement is not based on a pure means-end calculation of solutions to routine problems. However, it is only a single value, such as a positive evaluation of wealth or fulfillment of obligations, a postulate that has implications for a whole group of different values as a whole, consistent in-depth, and satisfaction (content). This ideal type exists as value-rational action. Friendship, for example, sometimes involves adherence to these values in the form of loyalty, feelings of compassion, and mutual assistance, which determines substantive rationality.

Third, rational value actions (wertrational), or rational value actions (Zeitlin: wertrationales handeln) are determined by a conscious belief (conscious belief) in values for ethical, aesthetic, religious or other forms of behavior, regardless of (independently) expectations. Hope of success (Weber, 1978: 24). According to this model, the actor's behavior is involved in an absolute important value or value of the activity in question. In this model actors pursue values rather than calculating means in an evaluatively neutral way. Here calculative rationality appears only in the choice of the most effective means for the goal which is assessed as determining the choice of means and ends, so that morally good goals must be achieved with morally good means (Campbell, 1994). Kalberg uses theoretical rationality as a value-oriented action. This type of rationality according to Karlberg involves conscious efforts to master reality through abstract

concepts that rise above actions. In other words, this involves abstract awareness processes, such as logical deduction, induction, causality (attribution of causality) and so on. This type was originally perfected in history by sorcerers and ritualistic priests, and finally philosophers, judges, and scientists. Fourth, instrumental rational action (*zweckrational*) or following Zeitlin (Zeitlin, 1995) as action with rational aims (*Zweckrationales Handeln*) is determined by expectations regarding the behavior of objects in the environment and of other humans. Expectations are used as “conditions” or “tools” for achieving goals that are planned (pursued) and calculated by actors rationally (Weber, 1978:24). This method of orientation contains precise estimates and the adoption of very effective means for a chosen and clearly considered goal, including the targets and side effects of the means related to other goals of the actor concerned.

Weber’s explanation of the types of rational action does not imply that people always act rationally. However, to the extent that actual behavior approaches the rational ideal type, it is immediately understandable (and, given knowledge of the goals and available means, predictable), however actual behavior often deviates from the rational model. This view is a very instrumentalist, logical, scientific and economic reference (Campbell, 1994: 208). Kalberg (1980: 1150-1154; see also in Ritzer, 1996a: 243-244) calls practical rationality for instrumental action. According to him, Weber designated practical rationality as a way of life that views and evaluates worldly activities in relation to purely individual pragmatic-egoistic interests. In fact, this pattern of action actively manipulates certain habits of the actor’s daily life for the benefit of an absolute value system. A practical rational view of life that accepts certain realities and takes into account the tools best suited to the difficulties faced.

### **3.2 Weber’s Rationality**

In the discussion of Weber’s rationalization, especially according to Ritzer’s (1983, 1996a) views, a number of main components were found to be used to understand the characteristics of rationality. In Arnold Eisen’s essay (1978, in (Ritzer, 1983) and other works (Antonio, 1979; Kalberg, 1980) it is said that rationality is characterized by main components which include efficiency, calculability, demystification, and dehumanization. In other words, rationalization is understood as a process in which society is bound to be dominated by the norms and values of the components of efficiency, calculation, demystification, and dehumanization. These various components are contained in the formal rationality measures reviewed by Kalberg (1980).

In another part, Ritzer (1983, 1993, 1996a: 246) reiterates the 6 (six) basic characteristics of formal rationality, namely (1) formally rational structures and institutions emphasize calculability, or things that can be calculated or added up; (2) is a focus on efficiency, on finding the best means to achieve certain goals; (3) namely great attention to ensuring predictability, or things to occur in the same way from one time or place to another; (4) a rational system that formally reduces human technology over time and ultimately replaces human technology with non-human technology. Non-human technology (e.g. computer systems) is seen as more likely to be calculated, more efficient, and more likely to be predicted than human technology. (5) rational systems formally try to gain control over a rule of uncertainty, especially the uncertainty of the people who work for or are served by them. In the end, rational systems tend to experience a series of

irrational consequences for the people involved with them and for the system itself, as well as for society at large (Sica, 1988). An irrationality of rationality, according to Weber's view, is that the world becomes less attractive, less magical, and ultimately less meaningful for people (Schneider, 1993). To differentiate practical and formal rationality, Ritzer (1996a: 244) provides an important note, namely that practical rational action involves calculating means and ends of pragmatic self-interest. Meanwhile, in formal rationality, these calculations occur about customs, laws, and regulations that are applied universally.

When discussing technology and science as ideologies, Habermas (Habermas, 1971) said that Weber introduced the concept of rationality in his efforts to define capitalist forms of economic activity, bourgeois private law, and bureaucratic authority. The concept of rationalization is given the meaning, first: as the expansion of areas of society that are subject to rational decision criteria. Second, social work is organized industrially, and industrialized, with the inherent result that the criteria of industrial mental action permeate other areas of life (including urbanization of the way of life, technification, transportation, and communication). These two tendencies show a type of purposive rational action or choice between various alternatives. Planning is considered a purposive rational action according to the second meaning because it aims at the formation, improvement, or expansion of rational action systems themselves. According to Habermas, the progressive rationalization of society is related to the institutionalization of scientific and technical development. Technology and science absorb institutions, thereby transforming them so that old legitimacy is destroyed. In this way, secularization occurs and the disenchantment of worldview-oriented actions, of cultural traditions as a whole, is seen as the growth of the rationality of social action.

Habermas (in Lash and Whimster, 1987: 166) divides the rationalization process into three levels, namely society, culture, and personality. (1) at the level of societal modernization the process involves the independent development of a capitalist economy and a modern state. (2) At the cultural level rationalization includes the growth and application of knowledge, but also autonomous development guided by the principles of art, law, and their morality. (3) At the individual level, rationality is characterized by a methodical lifestyle whose origins are found in Protestant religious beliefs becoming dominant. Habermas proposed 5 (five) steps towards Weber's practical rationality, namely: (1) rational technique: the use of tools or means that have been calculated; (2) technical progress: more effective use of tools; (3) rational choice of goals: choices based on knowledge and accurate calculations (as calculations in formal rational economic activities); (4) guided life principles: actions are guided by general value principles; and (5) a rational methodical lifestyle: the integration of the four previous rational steps in a level of balance and successful cooperation is guaranteed.

### **3.3 Operationalization of Weber's Social Action**

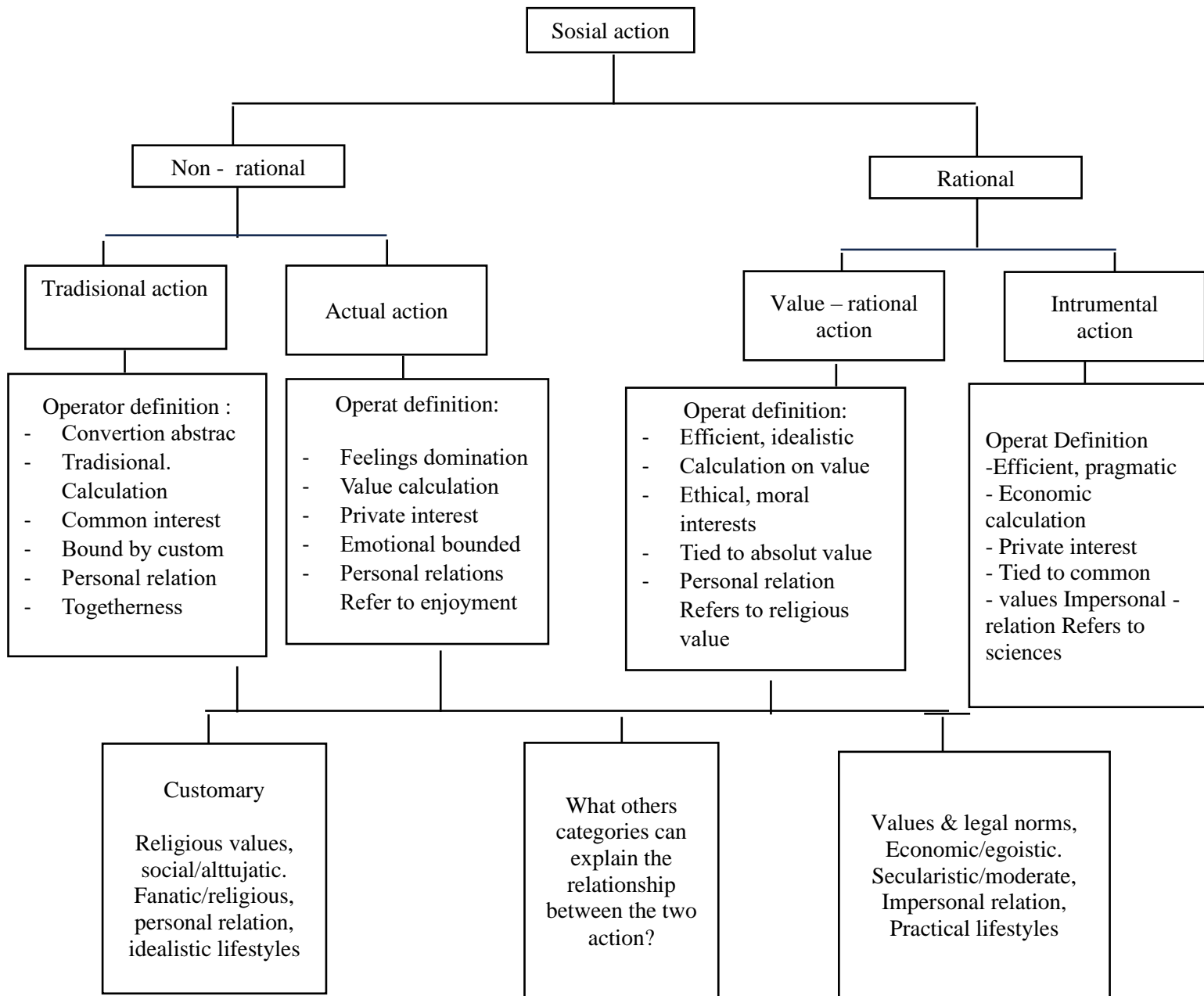
Based on the description presented in the section above, it can be seen that the completeness of the characteristics of social action categories (properties of categories) is as follows. The traditional type of action has the characteristic that actors refer their actions more to the motivation of convention, tradition, and religious values which uphold methods and practices that are very specific, inherent, and habitual so that the actor is not entirely oriented towards meaningful action. This type includes several actions that range from

self-awareness which is habitual to quasi-automatic (pseudo-automatic) which is repetitive (Zeitlin, 1995):257). An idealistic attitude, namely upholding the values held by one's ancestors, tends to be oriented towards moments in the past. In this type, actors calculate the means of achieving goals with the socio-economic reference of their community which shows attitudes and actions that are uniform (homogeneous), interdependent, and have no striking differences apart from supporting balance and avoiding conflict.

The affectual type has the characteristic that the actor does it with feeling, the product of emotional reactions, such as concern, ambition, enthusiasm, pride, revenge, loyalty, and so on (Zeitlin, 1995: 257). Awareness of acting cannot be accounted for in a concrete scientific way, but its emergence is very dependent on the actor's feelings which cannot be vented on objects other than what the person concerned thinks or feels. This action is more personal and temporary, it cannot be measured repeatedly. Value-rational action is characterized by an actor's commitment to addressing final goals or values, which the actor uses without considering the "costs" that must be paid because this is the only goal that must be achieved (Zeitlin, 1995). Actors are willing to sacrifice anything as long as they can achieve certain goals or values to satisfy themselves. The effort used by the actor is a belief that is full of consideration and conscious calculation. In this type, the relationship between actors is still relatively personal according to the situation, ethics, and morality supporting the culture.

Then, the instrumental rational type is characterized by the question: what actions are most rational for the actor in his particular environment, and by knowing the goals and means being used. Finally, by examining the consequences of the action, researchers can evaluate the actor's level of bias from the norm (Zeitlin, 1995: 256). Actors in achieving their goals use efficient and effective means as a product of technical operational or conceptual thinking. Actors prioritize pragmatic personal interests, act freely, and independently, and carry out social relations impersonally. Ways of thinking and standards of action that tend to refer to the (practical) knowledge they have, for example, viewing land objects as a means of production that has more practical economic value. The facilities and facilities used by actors lead to efficient ways of living.

**3.4 Theoretical Framework**



**3.5 Analysis and Discussion**

Even though the subjective meaning given by actors agrees that it is more directed towards land from an economic perspective, their methods of achieving the goal of obtaining economic rewards for their land tend to be irrational. Actors' agreeing actions refer more to methods based on: (1) local Islamic customs and religious values, (2) taking into account the interests of togetherness (socialism) and other people (altruism), (3) their behavior is more fanatical (often no longer using common sense) and religious (Saleh: lots of grants), (4) motivation to maintain personal relationships with citizens and leaders, and (5) adopting an idealistic lifestyle. These methods follow the opinion of Koentjaraningrat (1974:64) where in the socio-cultural environment of society in Indonesia, more or less individuals tend to emphasize (1) living together without conflict, (2) everyone is part of an interdependent group, (3) people try to maintain good relationships, share the same destiny and share the same burden, and (4) relationships between people are



compromise and have the same spirit as high and low. Meanwhile, actors carry out acts of protest because they give meaning to land more as a commodity to fulfill economic functions, taking into account its existence and capabilities in society. They tend to refer their actions to (1) general values and modern legal norms, (2) taking into account pragmatic (egoistic) economic self-interest, (3) measuring social actions more with the benchmark of science and general religious (secularist) values as well as thinking and act logically-scientifically (rationally), (4) relationships with other people are impersonal, and (5) tend to follow a pragmatic lifestyle.

After the data was analyzed and checked continuously, one category was found which was the cause of the land owners' agreement and protest, namely the method or approach used by the committee or village head in the land acquisition protest. It turns out that each group of actors has a certain method that is by the values and norms they use as a reference. When asked why the actor brought the village head before the court, the actor's answer was because the method used by the village leader was more "arrogant", he wanted to show his power to us. The village head should have given us time to prepare ourselves with a "contract" to accept the land acquisition first. The actor said: "Wasn't the expanded road also a gift from us?" Why are we not appreciated now, we are considered people who have never given anything to this village. So the approach to the village which was hasty and without a concrete agreement gave rise to protests from the actors to court. Moreover, for other landowners, the method used by the village head is acceptable because it is more in line with the values and norms that they live by, they are easily approached by the village head and are willing to give their land without many problems because the village head is part of their reference group. Thus, it can be said that actors' agreeing actions are a function of the approach that is by their socio-cultural values. Actors' protest actions are a consequence of methods that are not conducive to the socio-cultural values they live by.

#### **4. Conclusion**

Finally, it can be said that protest actors give meaning to land as an asset that can bring convenience in the form of economic value. This subjective meaning is supported by the actions of protest actors who tend to be oriented towards personal (end) goals to obtain economic needs from their land. Actors have pursued this goal using efficient means (in terms of cost), using professional services, and with modern laws through formal procedures. The actors' way of life and socio-cultural environment at least characterize them economically as members of the middle group who can act independently and freely express their thoughts and opinions, not depending on personal relationships with other people. All these characteristics lead to Weber's ideal type of instrumentally rational action.

Thus, this finding (1) rejects the sequence of Rahardjo and Soekanto's thesis regarding factors that influence law enforcement, into two sequences that the effectiveness of law enforcement in the field of land acquisition for public purposes without compensation is largely determined by (1) historical conditions. Social and cultural aspects of the target group, (2) suitability of the method or approach used by the authorities, (3) supporting facilities, (4) personal integrity of the officers, and (5) applicable rules (law). Social and cultural-historical factors or conditions are findings obtained from this case research. Among all

these factors, conduciveness between the first and second points determines the success of the land acquisition program for the public interest. It can be said that the actor's protest action is a consequence of the method or approach used by the village head as a committee that does not meet the "smooth" requirements, following the law-based method of land acquisition in the country. Actors' knowledge and experience regarding this method are obtained from social and cultural history (stratification). This is further supported by education, economic capabilities, and the globalization of information. All of these things shape the attitudes, perceptions, and practical actions of the actors concerned in a modern form. Thus, it is possible that the more modern the attitudes and perceptions of land owners in Acehese society, the more they tend to be oriented towards rational action, following Max Weber's historical process of rationalization.

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