



Concept of land acquisition for public interest with a fair consignment mechanism (case study of land acquisition for the construction of the cinere-jagorawi cijago toll road)

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Abstract

Indonesia as a legal state is clearly guided by existing rules in policies relating to the rights of its citizens. This research covers the process of land acquisition for the public interest according to Law Number 2 of 2012, as well as to find out the procedures for depositing compensation (Consignment) for the public interest in court in the context of land acquisition. In the Public Interest, it is stated that the government transfers ownership rights to land by providing fair compensation to the previous owner. If there is a rejection from the owner of land rights, the legal instrument regulates a consignment mechanism to provide compensation through the courts. In the practice of Toll-Cijago City-Depok deliberation, the community considers that there has been no deliberation to reach a consensus, the land acquisition process must be carried out by deliberation to determine the form and the amount of compensation. Deliberations to determine compensation are held for a maximum of 120 days, if within this time period an agreement cannot be reached regarding the form and amount of compensation and the project for the public interest cannot be moved to another location, the compensation money (consignment) is deposited in the regional district court. the location of the land.

Keywords: Consignment, deliberation, compensation

Introduction

Land disputes seem to never be resolved, this is indicated by the increasing number of cases relating to land that are increasingly emerging, especially disputes over land that will be used as land for land development purposes for the sake of progress, welfare and prosperity of the community and the general interest.

Because of the importance of land in human life, land can also be used as a means to achieve the prosperity of the nation's life, because land has two dual functions, namely as a social asset and a capital asset. As a social asset, land is a means of binding social unity among Indonesian people for life and existence., whereas as a capital asset, land is a capital factor in development (Hermayulis, 2000: 49).

Article 6 of the Basic Agrarian Law shows that the Basic Agrarian Law shows that the 1945 Constitution which states "earth (land), water and natural resources should be used for the prosperity of the people, used for the greatest prosperity of the people in article 2 paragraph (3) Basic Agrarian Law Number 5 of 1960 is interpreted as the interests of nationality, welfare and independence in society and an Indonesian legal state that is independent, sovereign, just and prosperous (Boedi Harsono, Basic Agrarian Law Law No. 5 of 1960). 1960.)

Development by the government, especially physical development, absolutely requires land. The land required can be land that is controlled directly by the state or land that is already owned with rights by a legal subject. Regarding the land needed for development in the form of state land, land procurement is not difficult, namely the government can directly apply for rights to the land to be used for development, but due to limited land owned by the government, land is needed from community to facilitate the course of development in the public interest. Land that will be used by the government for development purposes must not harm the rights of the land owner. Therefore, to regulate this

It is necessary to have legal regulations that can provide legal protection to land rights holders.

The state's right to control land and what is contained therein includes the procurement of land to be used for public purposes. Land procurement for public purposes aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state and society while still guaranteeing the legal interests of the entitled parties. (Badriyah Harun, 2013) Land procurement aims to build public interest facilities, so there must be criteria which is certain about the meaning or category of the public interest itself.

In the Depok – Jagorawi Toll Road project, there are still a number of problems. In particular, the issue of compensation money for land that is not visited is clear. In this case, the land was acquired without deliberation, the Plaintiffs were the legal owners of the plots of land, buildings, plants and other objects on the plot of land affected by the construction of the Cinere-Jagorawi Toll Road. The Plaintiffs do not feel that they have ever carried out a deliberation process, and object to the Appraisal mechanism because the Appraisal is correct and not in accordance with the wishes of the residents of Kukusan Village, especially the Plaintiffs whose land and property are affected by the Cijago Toll Road Construction, namely the Highest Price Appraisal mechanism and using the Flatt scheme.

In most of the land that is acquired, the amount of compensation given by the government which is claimed by the government is greater than the Tax Object Sales Value of the land. Apart from that, the Kulonprogo Regency government has also prepared replacement land as an effort to relocate residents, but many residents chose not to occupy it.

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Research Methods

This research is normative research, namely the research process of researching and studying law as norms, rules, legal principles, legal principles, legal doctrine, legal theory and other literature to answer the legal problems being studied. This research describes and explains what problems arise in the implementation of land acquisition for development in Indonesia and what is the concept of land acquisition for public purposes with a fair consignment.

The interviews conducted were unstructured interviews, namely interviews conducted without being limited by time and a list of questions, but still sticking to the important main issues that were in accordance with the purpose of the interview. This unstructured interview is intended to obtain spontaneous answers and a broader picture of the problem being studied. (Soemitro, 2000) Secondary data is supporting data that provides provisions for conducting research in the field. Secondary data includes laws and regulations related to land acquisition, supporting literature.

Results and Discussion

There are 2 (two) forms of sources of National agrarian law, namely: (Arba; 2015) ^[3] Written agrarian law, which is stated in the form of statutory regulations; and unwritten agrarian law, in the form of customary law and new customary law that is not customary law. Apart from the above, the source of national land law is the agreement made by the parties which constitutes concrete law for those entering into legal relations. The source of contract law is used if there is a case between two parties who make a promise, then the legal rule used to resolve the problem is the law agreed upon when the sale and purchase occurred. Apart from that, the source of law is court decisions regarding land matters.

Meanwhile, the regulation of land procurement for development in the public interest in Indonesia refers to statutory regulations (Gozal, 2019), one of which is Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (State Gazette of the Republic of Indonesia of 2012 Number 22, Supplement to State Institutions of the Republic of Indonesia Number 5280), hereinafter referred to as Law Number 2 of 2012.

Land Acquisition Process for the Construction of the Cinere-Jagorawi Toll Road (Cijago), the community is the legal owner of plots of land, buildings, plants and other objects located on plots of land affected by the construction of the Cinere-Jagorawi Toll Road belonging to the entitled parties including the Plaintiffs. is based on the results of deliberation, so that the determination is legally flawed, and must be canceled or at least declared to have no legal force. In fact, the public not only rejects the price offer resulting from the Appraisal which has passed the validity period for Property Appraisal, namely 6 (six) months to 12 (twelve) months since the Appraisal was carried out, but also the Appraisal carried out did not go through a correct Appraisal process, because the plaintiff found irregularities. Highest Price Assessment mechanism and uses a Flatt scheme. In fact, the contractor who received the contract for the

physical construction of the Cinere - Jagorawi Toll Road has deliberately and unlawfully taken and damaged a number of properties belonging to the Plaintiffs even though there has been no Compensation settlement, turning a blind eye to the fact that there was no deliberation in the Land Acquisition process for the Construction of the Toll Road CiJago, and deliberately together with the community created the Minutes of Agreement dated 26 April 2017 which made it appear as if there had been a deliberation process, as well as designing it as if there had been a deliberation on 10 December 2015, but in fact the two deliberations did not exist.

Based on Law Number 2 of 2012, the considerations in forming this Law are as follows: (Article 2, Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest). That in order to create a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development

- a. that in order to guarantee the implementation of development for the public interest, land acquisition is needed which is carried out by prioritizing humanitarian, democratic and fair principles;
- b. that the laws and regulations in the field of land acquisition for development in the public interest have not been able to guarantee the acquisition of land for development implementation;
- c. that based on the considerations as intended in letters a, b, and c, it is necessary to establish a Law on Land Acquisition for Development in the Public Interest.

In the explanation of Law Number 2 of 2012, it is explained in general terms that in order to create a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development. One of the development efforts within the national development framework carried out by the Government is development for the Public Interest. Development for the Public Interest requires land whose procurement is carried out by prioritizing the principles contained in the 1945 Constitution of the Republic of Indonesia and national land law, including the principle of justice.

Some interpretations of 'public interest' are as follows

First, the concept of 'public interest' is defined as: 'public' is the target of development,

- a. the priority aspect is 'community use', and
- b. the project must be owned and operated by the government. However, in practice, the private sector runs the project and ignores the government as the holder of the right to control the state.

Both interpretations are based on Presidential Decree Number 55/1993 which states that 'public interest' activities must meet three requirements as follows: Activities owned by the government Activities run by the government Do not make a profit.

In this case, it can be identified that there are several problems or disputes whose resolution requires an evaluation regarding dispute resolution regarding: The consignment mechanism which resulted in cutting off electricity and limiting road access for residents who did not want their land measured, occupied their land or not.

Concept of Custody of Compensation

The application of the concept of safeguarding compensation in land acquisition for public purposes in Law Number 2 of 2012, is regulated in Articles 42 and 43. In Article 42 paragraph (1) it is stated, in the event that the Entitled Party refuses the form and/or amount of Compensation based on the results deliberation as referred to in Article 37, or the decision of the district court/Supreme Court as intended in Article 38, Compensation is entrusted to the local district court. Meanwhile, in paragraph (2) it is stated that compensation for damages is also carried out against

- a. The whereabouts of the party entitled to receive compensation are unknown; or
- b. Land Acquisition Objects for which Compensation will be provided:
 1. is the object of a court case;
 2. ownership is still disputed;
 3. placed confiscated by an authorized official; or
 4. Become collateral at the bank.

Deliberation Mechanism

Deliberation is a means used by the state to prove the state's good faith in respecting community property rights guaranteed by the constitution. In Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia that "property rights individuals cannot be confiscated arbitrarily by anyone." The protection provided by the constitution in land acquisition reflects the noble value of deliberation to avoid violations of the human rights of land rights holders.

The deliberation mechanism needs to be based on land acquisition principles that reflect the value of justice, in the form of the principle of respect for land rights owned by the people which are part of the human rights of citizens. Deliberation itself is an activity that involves listening to each other, giving and receiving opinions, as well as the desire to reach an agreement regarding the form and amount of compensation and other issues related to land acquisition on the basis of voluntariness and equality.

However, in practice, deliberations often cannot be carried out well, because the deliberating parties are not in the same position, so they tend to be more directive in nature.

According to Maria S.W. Sumardjono, although procedurally deliberation fulfills the requirements, if the resulting decision is based on pressure, then it cannot be said that an agreement has been reached because the pressure is a manifestation of forcing the will of one party to pressure the other party to follow his will. In other words, the agreement occurs under forced circumstances, besides that, the presence or involvement of people outside the official committee whose functions or responsibilities are not clear will further obscure the meaning of the deliberation substantially (Maria, 1994) ^[4]

All land acquisition activities are carried out based on an agreement between the party requiring the land and the land rights holder. Physical development activities can only be carried out if an agreement has been reached between the parties and compensation has been submitted. The principle of respect, especially the principle of agreement, is manifested in the form of deliberation. abuse of circumstances. Deliberation process is the same as the negotiation process in an agreement where the parties try to reconcile their respective desires to achieve justice.

In Law no. 2 of 2012 regulates that deliberations are carried out in two stages.

The first stage is a public consultation carried out to obtain agreement on the location of the development plan. Implementation is limited to a period of 90 days.

The second stage is deliberation on determining compensation. The deliberation was carried out between the National Land Agency (BPN) and the entitled parties

Compensation Mechanism

The issue of compensation is the central issue that is the most complicated to handle in the government's land acquisition efforts, almost always a feeling of dissatisfaction arises from the community whose land rights are affected by the project. The form of compensation for losses is regulated in Law no. 2 of 2012 in the form of: Money, replacement land, resettlement, share ownership, and other forms agreed by the parties concerned.

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In the event that there is no agreement regarding the form and/or amount of compensation based on Law no. 2 of 2012, the entitled party can submit an objection to the local district court no later than 14 (fourteen) working days after deliberations on determining Compensation. The district court decides on the form and/or amount of compensation within a maximum period of 30 (thirty) working days from the receipt of the objection. Parties who object to the district court's decision within a maximum period of 14 (fourteen) working days may submit an appeal to the Supreme Court. (MA) Republic employees can file a cassation with the Supreme Court (MA) of the Republic of Indonesia. the party filing the objection.

Compensation in Law no. 2 of 2012 stipulates in Article 1 number 10 that Compensation is appropriate and fair compensation to parties who are entitled to it in the land acquisition process. Thus, the emphasis on compensation is on aspects of feasibility and justice for land rights holders.

The compensation that must be given in land acquisition must be fair compensation,⁴ which means that providing compensation does not make someone richer or poorer than their original situation. Meanwhile, what is meant by reasonable and appropriate compensation is the amount of compensation sufficient to obtain land and/or buildings and plants in another place (Sutedi, 2006) ^[2].

1. Cost (kosten). Costs are all expenses that have actually been incurred by one party;
2. Loss (schaden). Loss is loss of damage to goods belonging to one party resulting from the negligence of the opposing party or default.
3. Interest (interesten). Interest is lost interest profits which are similar to verlies which are defined as losses in the form of lost profits that have been calculated by the creditor.

Values of Justice in Land Acquisition for Public Interest
Land procurement for public purposes often cannot go well, because land rights holders are reluctant to let go of their land, because they feel they have not received adequate compensation. Therefore, to realize the values of justice,

several means of resolution are needed, such as deliberation mechanisms and compensation mechanism.

D. Land Acquisition Process for Public Interest According to Uodang Law Number 2 of 2012

Planning Process

The land acquisition design process is based on the RTRW and prioritizes preparation that includes medium-term drafting plans, important designs and operational plans for related agencies. Regarding the design process, it is made in the form of a planning document which is then submitted by the agency that requires the land to the Governor in whose area the land is located, as stated in Article 14 paragraphs (1) and (2) of Law Number 2 of 2012.

Preparation Process

To form a preparation team within a maximum of 10 working days consisting of the Regent/Mayor, the tasks of this preparation include carrying out development plan notifications, carrying out initial data collection on procurement plan locations, carrying out public consultations on development plans, preparing development location determinations and announcing development location determinations. Regarding the preparation process, it is stated in Articles 17 to 26 of Law Number 2 of 2012.

Implementation Process

In general, the implementation process includes:

- a. recording and recognizing control, ownership, use and utilization of land;
- b. Interpretation of compensation;
- c. compensation agreement; And
- d. Delivery of compensation

Results Submission Process

the process of handing over the results of the Land Acquisition Management of the land system to workers providing land which is equipped with information on providing land within 7 days of the activity.

This land acquisition regulation only applies to land acquisition carried out by Government Agencies for the public interest. Therefore, consignment can only be applied for payment of compensation for land acquisition carried out by Government Agencies for the public interest, provided that there is an agreement between the two parties: the person who needs the land and the holder of the rights to the land and the owner of the building, plants and/or objects. existing on the land (Sitorus, 2004) ^[5].

Conclusion

In the case of the Land Procurement Process for the Depok – Cijago Toll Road, the implementation of deliberation in the Land (Procurement) activities that occurred in the case of the Cijago Toll Road in Depok City has formally been carried out but essentially it has not been fulfilled, this is marked by the rejection of compensation value from the affected residents. And the deliberation was not achieved because it was carried out only in a formal legal manner and did not meet the values of community, negotiation, media and consultation.

Determination of the amount of compensation Article 5 of the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2016 clearly states that objections as referred to in Article 3 are submitted no later than 14 (fourteen) days after the results of deliberations on

determining compensation, the entitled party can submit an objection to the District Court local area within a maximum period of 14 (fourteen) working days after deliberations on determining compensation

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