



Gaps in landowner participation in land acquisition compensation valuation in Indonesia

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Abstract

Compensation to landowners for land acquisition is often problematic. The nominal amount of compensation is based on an appraisal carried out by the Land Appraisal Team, which is final and binding. This shows that there is coercion in determining the nominal amount of compensation, which is done unilaterally. This type of research is library research. Literature research is research carried out using various references such as journals, books and previous research. The approach used is a normative legal approach. The results of this study indicate that there is no participation of the landowner community in the assessment of land acquisition compensation from the beginning of the assessment to the result of the assessment, which the landowner is forced to accept. This is certainly contrary to the principles of consent and participation. The legal remedy available to landowners against the rejection of the results of the land acquisition compensation assessment is to appeal to the court. This is certainly burdensome for people with limited access to information and economic constraints.

Keywords: Participation, landowners, compensation, land acquisition

Introduction

Infrastructure development for public interest facilities is a necessity for a country. With infrastructure development, it is easier to realize the fulfillment of the basic rights of the community and increase economic growth. (Fei, Wenmei, *et al.* 2021) ^[2]. Infrastructure development is related to land, because every infrastructure must be built on land. (Marquard, Elisabeth, *et al.* 2020) ^[9]. The availability of state land is limited, so in the development of infrastructure for the public interest, public land is taken by giving compensation (Dewi, I. Gusti Ayu Gangga Santi. 2017) ^[3].

Compensation is the most important element in land acquisition. This compensation is given to the landowners by the government or agencies that need the land. Compensation is said to be the most important element because it is directly related to the rights of the subjects on the released land, as land acquisition is an activity to release the legal relationship between the landowner and his land.

Compensation to landowners is often problematic. Law 2 of 2012 on the acquisition of land for development in the public interest explains that the amount of compensation will be based on an assessment carried out by the Appraisal Team, a professional and independent body. (Wahanisa, Rofi, *et al.* 2021) ^[12]. The assessment results of the Assessment Team are final and binding.

The final and binding nature of the valuation results shows that there is coercion in determining the nominal amount of compensation when the government unilaterally determines compensation. Landowners should have the right to participate in determining the compensation value of their land.

This article discusses how landowners can participate in the assessment of the compensation value of land acquisition, and the legal remedies available to landowners who reject the assessment team's findings.

Research Methods

This type of research is called library research. Library research is research carried out using various references

such as journals, books, the results of previous research. (Hamzani. 2015) ^[6]. The approach used is a normative legal approach. The normative juridical approach is an approach that analyses theories, concepts, legal foundations and laws and regulations. Data collection techniques include secondary data using primary legal materials, secondary legal materials and tertiary legal materials. Meanwhile, data analysis is descriptive. The method of descriptive analysis is to explain all problems precisely and as clearly as possible.

Discussion

Some discussion of the main issues of this research are:

1. Participation of Landowners in the Assessment of the Compensation Value of Land Acquisition

Land acquisition by taking ownership of community land rights often leads to agrarian disputes and conflicts. This is because the community must lose their assets and access to land. (Maria S.W Sumardjono. 2015) ^[8]. For the people, land is not only economically valuable, but also has religious, sociological and historical values. There is a Javanese cultural saying "Sadumuk Bathuk Sanyari Bumi Ditohi Pati", which means that the most fundamental issues in life are honour and land, which must be defended to the death.

Agrarian disputes and conflicts in land acquisition can occur because the community rejects it from the beginning, such as the agrarian conflicts in Rempang and Wadas Island. It can also happen when initially the community accepts the implementation of land acquisition for infrastructure development, but when compensation is given, the community rejects the nominal value. Rejection of the amount of compensation value is almost found in every land acquisition, including in the construction of Komodo Airport expansion infrastructure, in West Manggarai Regency and Temef Dam infrastructure development in South Central Timor Regency. (Interview with Wayan Bani, Head of the National Land Agency Department. 2024).

The provision of the nominal amount of compensation for land acquisition is based on the results of the assessment of

the Land Assessment Team based on the provisions in Article 31 of Law Number 2 of 2012. The land value assessment carried out by the Land Appraisal Team does not allow for the participation of the owner of the land rights in determining the price of the land. Based on the Regulation of the Minister of Finance Number 101/PMK.01/2014, the assessment in land acquisition activities is carried out with the Indonesian Assessment Standard ("SPI") 306, which uses the fair replacement value.

The main approach taken by the Land Appraisal Team in carrying out land valuations for land acquisition is to use the market value approach, where the value of the land is not based on the price that the seller wants, but rather the fair price that would be paid by a buyer who was keen to buy the land but who the seller was not keen to sell. (Dulmuzid, *et al.* 2019)^[4]. This is where the first problem arises, because the main approach comes from only one party. The landowners felt that the compensation they received did not meet their expectations because the price of the land was considered too low.

The assessment by the Land Appraisal Team based on Article 123 number 8 of Law Number 6 of 2003 which amends Article 34 of Law Number 2 of 2012, states that the nominal result of the amount of compensation by the Land Appraisal Team is final and binding. The final and binding nature of the assessment results of the Land Valuation Team closes the efforts of the land rights owners to participate in the determination of land price value.

The results of the Land Appraisal Team's assessment have been presented as part of the compensation consultation process. In the compensation consultation, the community hopes that there will be a forum for dialogue to determine the amount of compensation. However, the final and binding nature of the valuation results meant that there was no forum for dialogue to determine the value of the land price.

The implementation of the compensation deliberation forum only includes the submission of valuation results by the Land Appraisal Team. Landowners do not have the right to negotiate the price of the value. Landowners only have the opportunity to accept or reject. If they refuse, they are given the opportunity to file an objection to the Court. This is certainly not in line with the naming of the deliberation forum, which should have a forum for deliberation, dialogue, compromise and negotiation.

The determination of the amount of compensation in land acquisition is coercive, which is done unilaterally. The procedure of providing compensation based on the results of the valuation by the Land Appraisal Team without providing an opportunity for landowners to participate in determining the price, clearly violates the principle of agreement and the principle of participation. The principle of agreement requires that land acquisition activities must be carried out by deliberation of the parties without coercion to obtain mutual agreement. The principle of participation requires community participation, both directly and indirectly, from planning to development activities.

There is a view that in land acquisition with all its consequences, the government must be firm so as not to be hampered in its development, including against the rejection of compensation by the community. (Guild, James. 2019)^[5]. However, what needs to be considered is how the participation of landowners in determining the compensation value is considered. Landowners who have

given up their land should be the subject of land acquisition, not just an object that is forced to accept the compensation value assessed by the Land Appraisal Team. The concept of Islamic law does not justify depriving others of their property without the will of the owner. This is because private property rights are truly valued and respected in Islam. Therefore, the way to obtain property rights in Islam is such that it is not permissible to arbitrarily take away other people's rights. (Jamaluddin Mahasari. 2008)^[7].

2. Legal Remedies for Landowners in Rejection of the Assessment Results of the Appraisal Team

The fundamental thing in land acquisition activities is the existence of the public interest and protecting people's rights to their land. Public interest is an interest that relates to all elements of society and is related to the livelihood of all people, both living and dead. Because someone who has died still needs a burial place. (Rizkianti, W. 2023)^[10]. In addition to the public interest, the other most fundamental thing in land acquisition is the existence of community rights to land. In land acquisition that uses community land ownership, the land rights must be protected by the state by providing compensation (Tehupeiory, Aarce, *et al.* 2024)^[11].

The provision of compensation is carried out as a form of accountability for the taking of land rights for construction development in land acquisition whose nominal value is determined by the Land Appraisal Team. The compensation value is a single value for each parcel of land, final and binding. This final and binding nature provides a fundamental question regarding the legal remedies that can be taken by landowners, if they reject the results of the Land Appraisal Team's assessment.

The legal remedy provided by Law Number 2 of 2012 for landowners who do not agree with the amount of compensation is that the landowner can file an objection to the District Court and if it is rejected, he can file a legal remedy in the form of direct Cassation to the Supreme Court. This legal remedy is the only opportunity for the landowner to object, because at the deliberation on the determination of compensation, the landowner is not given the opportunity to express an opinion in determining the amount of compensation (Adhim, Nur. 2019)^[11].

For landowners, the legal effort of objection in court is a burdensome thing to do. Not all communities have the economic means to do so. The process of objection to the court is expensive, ranging from the cost of paying a lawyer, the cost of paying for the trial to accommodation in conducting court hearings. In addition to the high cost, the legal process of objection in court is also difficult for landowners who do not have an understanding of the court process. For people who do not have good access to information, going to court is a difficult activity to imagine, *let alone* understand and implement.

The time-consuming process of appealing to the courts can shape the opinions of those who reject the compensation value. Psychologically, people who object in court are seen as bad citizens because they are not seen as helping the development process to run smoothly. This is also part of what makes it psychologically difficult for landowners as citizens to object to the compensation value.

Legal action in the form of objection to the Court is considered to be a forced way to get landowners to accept the compensation value. This is because objection in court

burdens people who have limited access to information, economic limitations and complicated processes. As a form of legal protection, landowners should be given the opportunity to negotiate and compromise during compensation deliberations.

Conclusions

Compensation to landowners in land acquisition is the most important activity, because the community must give up the legal relationship of their land rights. A very careful approach to land rights owners is needed, so that agrarian problems do not occur. One of them is to accommodate the participation of landowners in determining the compensation value. From the outset, the Land Appraisal Team must consider the role of land rights owners. The price requested by the landowner must be one of the determinants of the value of the compensation price. In addition, the final result of the Land Appraisal Team's appraisal is not immediately final and binding. The community has the right to conduct prior deliberation and negotiation on the results of the Land Appraisal Team's assessment.

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