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Legal Reconstruction in Indonesia Based on Human Rights

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

PROCEEDINGS

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Position Of Agreement On Land Acquisition For Development For Public Interest

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Abstract

The agreement through deliberation is a basis to determine the Land Acquisition for development for public interest. Furthermore, there is an argumentation that the agreement on Land Acquisition is similar to the agreement in a treaty as stated in the Civil Law Code. On the other hand, there is an opposite view disagreeing on it and stating that the agreement on the Land Acquisition is not the same as the agreement on our own argument as well. The result of this study shows that the agreement between the parties is done at the preparation of Land Acquisition and during the implementation of land procurement. As for the differences in views on the position of agreement on land procurement, there are also views agreeing on Land Acquisition is unequal to the agreement in the law as the Land Acquisition is neither civil relationship between the parties, nor the relationship between creditors and debtor, yet a government act to acquire land. The agreement on Land Acquisition is restricted – limited time, therefore, there is no freedom in determining the agreement.

Keywords: Agreement; Deliberation; Justice; Land; Indonesia.

1. Introduction

Land procurement, for development for public interest, always mentions the agreement as a basis to determine the location of the development plan, the compensation and the amount of the compensation. Land procurement, for the implementation of development for public interest, is carried out through deliberation in order to reach an agreement on the implementation of development for the public interest in the location, and the form as well as the amount of compensation.

One of the principles underlying the

Land Acquisition for development for the public interest is the principle of agreement – the process of Land Acquisition carried out through the deliberation of the parties without any compulsion to reach a mutual agreement.

Taking into account the definitions of the principle of agreement and the deliberation as mentioned above, there are elements as the main of the definitions – firstly, there should be no compulsion in reaching a mutual agreement. Secondly, it should be done voluntarily and equally by the parties. Subekti said that there would be no free will as the first requirement for a legitimate agreement if the agreement had been reached due to compulsion (Dwang).⁵⁸⁹ Whether the agreement mentioned under Law No. 2 of 2012 has the same meaning with the agreement referred to in the provisions

⁵⁸⁹ Subekti, *Pokok-Pokok Hukum Perdata*, PT Intermasa, Jakarta, 1992, p.135

of article 1320 of the Code of Civil Law.⁵⁹⁰ Thus, whether there are an agreement and an alliance in the Land Acquisition as mentioned in the article 1313 of the Civil Law Code.

The principle of agreement as the basis of Land Acquisition states that the process of Land Acquisition is done by the deliberation of the parties without any compulsion to reach a mutual agreement. It indicates that there is an agreement reached by the parties. Being done by the parties refers to the landowner and the party who needs the land. The agreed object is also clearly the land. A cause or *causa* (*Oorzaak*) that is halal (not forbidden) is also fulfilled by the intentions of both parties. The other party receives a certain amount of money as the compensation and the other one gets the intended land.

From this side, there is an argumentation that the agreement on Land Acquisition is similar to the agreement in a treaty as stated in the Civil Law Code. On the other hand, there is an opposite view disagreeing on it and stating that the agreement on the Land Acquisition is not the same as the agreement on our own argument as well.

II. The agreement on Land Procurement

An agreement is an aspect of the whole process of Land Acquisition for development for the public interest. Initially, it carries out the mandate of article 18 of the Agrarian Code (UUPA), stating that it is for the public interest, including the interests of the nation and the country as well as the public interests and the society and the interests for development. Therefore, the president, in a state of force after hearing the Minister of Agrarian, the Minister of

Justice and the minister related, can revoke the rights to the land and the objects on it.

The revocation of land rights for the public interest is a “final way” to obtain the land that is indispensable for certain purposes for the public interest, after attempting various ways through the deliberation with which the landowner is deadlocked and does not obtain the expected results, while the requisite for the land use is urgent.⁵⁹¹

As the institution of revocation of this right, in reality, is difficult to realize⁵⁹², while the demand for land retrieval is increasing. The Land Acquisition for the implementation of development for public interest is done through deliberation in order to reach an agreement on the implementation of development for public interest in such locations, forms and the amount of compensation.

A public interest is the interests of the nation, country, and society that must be realized by the government and used maximally for people’s prosperity. Land Acquisition is the land-provision activities by giving appropriate and equitable compensation to the right party. In the Land Acquisition activities for the public interest must be implemented on the basis of the principle of agreement, that is done through deliberation of the parties without any compulsion to reach a mutual agreement. The mutual agreement covers the location, shape, and the amount of compensation.

Land Acquisition for public interest, carried out based on the principle of agreement, means that the process of Land Acquisition is done through the deliberation of the parties without any compulsion to reach a mutual agreement.

⁵⁹⁰ Article 1313 of the Civic Law Code (translated by Subekti and Tjitrosudibio), an agreement is an action done by a person or more with another person or more.

⁵⁹¹ Abdurrahman, *A half Century of Diversity regulating about “procurement” of the soociety’s land (from revoking rights to realeasing the land to the Land Acquisition for the development for public interest)*, a paper from the delopment of the law book in Indonesia, for 70 years. Mieke Komar, p. 2.

⁵⁹² The law No. 20 Year 1961 only once applied in the case “Yen Pin” in Jakarta (appointed by a president’s decision on 6 June 1970 No.2 Year 1970)

The form of compensation “resettlement” is the process of providing substitute land to the right party to another location in accordance with the agreement on the Land Acquisition process, while “the form of compensation through shares ownership” is the inclusion of investment in the development activities for the public interest and/or management based on the agreement from both parties.

III. Types of agreements on Land Procurement

The implementation of the Land Acquisition is based on the principle of agreement – the Land Acquisition process is deliberated by the parties without any compulsion to reach a mutual agreement. Meanwhile, the definition of deliberation in the presidential regulation No. 36 year 2005, is activities that cover the process of hearing, sharing, and receiving opinions, and the willingness to reach an agreement on the form and the amount of compensation and other issues relating to Land Acquisition on the basis of volunteeration and equality between the landowner who owns buildings, plants, and other objects belonging to the land with the party who needs the land.

By noticing the definition of land procurement, the principle of agreement and deliberation above, there are elements as the main of the definitions – firstly, there should be no compulsion in reaching a mutual agreement. Secondly, it should be done voluntarily and equally by the parties.

There are parties in Land Acquisition – First, the party or institution that requires land, and the second is the landowner. The parties or agencies that require this land are State institutions, ministries and non-ministerial government institutions, provincial governments, Regency/city governments, and state-owned legal entities/state-owned enterprises that have been

assigned a special assignment Government, and business entities that has an authority based on agreements from state institutions, ministries, non-ministerial government agencies, provincial governments, Regency/city governments, and state-owned legal entities/state-owned enterprises that has a special government assignment in order to provide infrastructure for the public. While the landowners or the parties who have rights to obtain compensation are:

- a. Land rights holders;
- b. Management rights holders;
- c. Nadzir, for endowment land;
- d. The landowners whose land previously belonged to a custom;
- e. Indigenous legal communities;
- f. The parties that have control over the state-owned land in good faith;
- g. The base holders who have an authority of the land; and/or
- h. The owners of buildings, plants, or other objects belong to the land.

According to Bernhard Limbong, deliberation in the implementation of Land Acquisition for public interest has two important meanings. First, determining whether or not the Land Acquisition can be implemented for the public interest and the second, determining the form and the amount of the compensation that will be received by the land rights holders.⁵⁹³ He further said that deliberation in Land Acquisition for the public interest should be understood and referred to the agreement as one of the legal terms of the agreement as stated in the article 1320 of the Book of Civil Law (civil law). The word “agreed” as one of the legal terms of the agreement means that both parties must have free will.⁵⁹⁴

⁵⁹³ Bernhard Limbong, *Pengadaan Tanah Untuk Pembangunan*, Margareta Pustaka, Jakarta, p. 176.

⁵⁹⁴ *Ibid*, p. 177

The same opinion is conveyed by Gunanegara, who said that: “The deliberation is similar to the agreement in a business contract – at least two parties or more agree, one party offers the agreement and the other party receives it.”⁵⁹⁵ He also said: “As with the general agreement, deliberation must also be an agreement that should not contain any deception, compulsion, and mistake.”⁵⁹⁶

In the Grand Master’s inaugural speech, Y. Sogar Simamora asserted that the contract included the pledge, and the promise created obligations. He thinks this is rooted in the principle of the *pacta sunt servanda*.⁵⁹⁷ He further says that this principle only applies to contracts that have valid legal power, and no promises are binding and no obligation can be claimed if the contract is cancelled.⁵⁹⁸

The principle of Agreement as the basis of Land Acquisition states that the process of Land Acquisition is done through deliberation of the parties without any compulsion to reach a mutual agreement. It indicates the parties have made an agreement – the landowner and the party who needs the land. In terms of the counteractualisation as a government action (*bestuurhandeling*) on the Land Acquisition process, whether the compensation assessed by the land assessor is a procedure in making an agreement.⁵⁹⁹ According to C. Asser’s characterization, the main point of the alliance is a relationship between the people, with the relationship where a person has the right to request an accomplishment from others, and the last person is responsible for it. An alliance manifests a right to a party and the other party has a responsibility in

accordance with the right. The alliance, a relationship recognized and governed by the law, is a legal relationship.⁶⁰⁰

According to Bernhard Limbong, in terms of compensation as a result of the achievement that is proportionate to the consequences of a deed that causes detriments suffered by one of the parties who makes a deal/consensus.⁶⁰¹

By noticing the opinions from Bernhard Limbong and Gunanegara, it indicates that those two opinions are likely to see the relationship of the parties in the Land Acquisition as a treaty or contract as stipulated in the Civil Code, and more specifically equate the concept of agreement in the law of the Agreement as stipulated in the Civil Law Code with the concept of agreement set in the land procurement.

If the procurement of land for development for the public is a treaty, but so what is the form of the agreement. Law No. 2 of 2012 only mentions that the result of agreement either agreement in the preparation phase of Land Acquisition as well as in the implementation phase of Land Acquisition poured or contained in the news event agreement.⁶⁰²

The obligations of a person in Land Acquisition for the public interest stipulated in Law No. 2 of 2012 and presidential Regulation No. 71 Year 2012 are⁶⁰³:

- a. Obeying the regulation on Land Acquisition for public interest;

⁵⁹⁵ Gunanegara, *Masyarakat dan Negara dalam Pengadaan Tanah Untuk Pembangunan*, Tatanusa, Jakarta, 2008, p. 216.

⁵⁹⁶ *Ibid.*, p. 215.

⁵⁹⁷ Y. Sogar Simamora, *Prinsip Transparansi dan Akuntabilitas dalam Kontrak Pemerintah di Indonesia*, In the grand master’s inaugural speech from the Faculty of Law, Airlangga University, Surabaya 8 November 2008, p. 10.

⁵⁹⁸ *Ibid.*

⁵⁹⁹ *Ibid.*

⁶⁰⁰ C. Asser’s, *The analysis of Civic Law in Netherlands*, Dian Rakyat, Jakarta, p. 5.

⁶⁰¹ Bernhard Limbong, *Op Cit*, p. 173.

⁶⁰² Article 19 verse (4) and Article 37 verse (2) Law Number 2, year 2012, about Land Acquisition on Development for Public Interest.

⁶⁰³ *Ibid.*, p. 42-43.

- b. Attending a socialization or face-to-front invitation regarding the development site plan for the public interest conducted by the Land Acquisition preparation team;
- c. Attending a public consultation development plan for public interest conducted by the Land Acquisition preparation team;
- d. Attending a deliberation held by the Land Acquisition Implementation (PPT) to establish the form and/or the amount of compensation;
- e. Signing the released object letter of Land Acquisition and news of the released object of land procurement;
- f. Submitting the proof of owning the land released for Land Acquisition for the public interest.

What if there is no agreement? As stated in the previous section that the agreement between the parties is done at the preparation of Land Acquisition and during the implementation of land procurement. During preparation, public consultation is conducted to get the location agreement on the development plan of the right party. The agreement is outlined in the news of agreement. On the basis of this agreement, the institution requiring land proposes the request of location appointed to the governor.

After appointing the development site, there are still objections, the party who has the right to appointed location may propose a lawsuit to the local administrative Court (PTUN). PTUN decides whether the lawsuit is accepted or rejected. Parties who object to the PTUN may submit a cassation to the Supreme Court (MA). The MA must bring in a verdict. A court ruling, possessing a permanent legal force, remains the basis whether or not the Land Acquisition for development

⁶⁰⁴ Adrian Sutedi, *Implementasi Asas Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan*, Sinar Grafika, Jakarta, 2006, p. 175.

⁶⁰⁵ Eman Ramelan, *Hukum Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Di Indonesia*, Airlangga University Press cooperated with LP3 Unair, Surabaya, 2014, p.71.

for the public interest will be continued.

In the implementation process of land procurement, the land agency deliberates with the party who has an authority to reach an agreement on the form and/or the amount of compensation based on the outcome of the compensation assessed by the appraiser. The result of agreement in this deliberation is outlined in the news of agreement and remains the basis for the compensation to the right party.

If an agreement on the form and/or the amount of compensation cannot be reached, the right party may object to the nearest Local Court (PN) after deliberation of indemnity. PN decides the form and/or the amount of compensation. Parties who object to the PN may submit a cassation to the Supreme Court (MA). MA must bring in a verdict. The PN/MA's verdict which has obtained the legal force remains the basis of the compensation payment to the objection party.

If the right party refuses the form and/or the amount of compensation based on the outcome of the deliberation or the decision of the PN/MA, the indemnification is deposited in the local district court. Regarding money-loss compensation through this court, there are opinions that object to applying the consignment system.

Adrian Sutedi stated that: "... Money deposited by the government in the District Court for compensation must be rejected by the District Court, since consignment is not a relationship between creditors and debtor in terms of civil law. It means that there is no party acting as debtor and creditor regarding land waiver."⁶⁰⁴

A similar opinion on the consignment is also stated by Eman Ramelan as follows:⁶⁰⁵

Consignment can only be done if there has been a legal relationship between the parties. Without this legal relationship, the

implementation of consignment could not be implemented. This consignment, if still done, causes the consignment to be invalid and is an act that can remain an unlawful act. Thus, the implementation of the indemnity custody in the courts conducted without reason in accordance with article 1404 BW, in addition to contrary to the principle of consignment, also has no validity. This consignment is an arbitrary act, repression and imposition of will to the rights holders of the land.

In another part of his writing, Eman Ramelan stated that the agreement on Land Acquisition differed from the law agreement. In the law agreement, if one party disagrees, he/she can be free and not related to the material discussed, but the agreement on the Land Acquisition is restricted – limited time.⁶⁰⁶

According to Maria Sumardjono, it is wrong to apply the concept of indemnity care in a court that is anodized with the concept of care related to debt mentioned on the article 1404 BW, as the Land Acquisition is a government act to acquire and is non-civil relations between the parties.⁶⁰⁷ He further said that the Land Acquisition is a government act which is included in the realm of administrative law, while the institution offering the payment governs the legal relationship between the parties.⁶⁰⁸ Meanwhile Gunanegara argued that there is improper use of article 1404 and article 1405 BW for indemnity payment, because first, both of the articles are arranged for debt receivables and not for the compensation payment in land procurement. The second, indemnification process is not set out beforehand in the written agreement, but using a deliberation mechanism, if there is an agreement, is established in the news of the indemnification.⁶⁰⁹

Taking into account the opinions of

⁶⁰⁶ *Ibid*, p.79.

⁶⁰⁷ Maria Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, Buku Kompas, Jakarta, 2008, p. 275.

⁶⁰⁸ Bernhard Limbong, *Op.Cit.* p. 36

⁶⁰⁹ Gunanegara, *Op. Cit.*

⁶¹⁰ Djoni Sumardi Gozali, *Hukum Pengadaan Tanah Asas Kesepakatan dalam Pengadaan Tanah bagi Pembangunan Untuk Kepentingan Umum*, UII Press, Yogyakarta, 2018, p. 121.

Adrian Sutedi, Eman Ramelan, Gunanegara, and Maria Sumardjono, with each argument, it can be concluded that they argue that the agreement in Land Acquisition is different from the agreement in the law Agreement as set forth in the Civil Law Code.

Regardless of whether the agreement in this Land Acquisition is equal or unequal to the agreement in the agreement law as stated in the Civil Code. The important thing to be noticed is that it is different from the agreement in the law agreements based on a principle of contractual freedom that emphasizes private interest, the agreement in Land Acquisition for public interest is restricted as there is public interest, therefore, the agreement in Land Acquisition for the public interest cannot be seen as an agreement reached by the parties in a private civil relationship. This can be seen in the explanation of Law No. 2 of 2012 in the general section mentioned that: “The law of the National land recognizes and respects the rights of society on land and objects belonging to the land, as well as giving a public authority to the country for regulating, making policies, conducting management, and supervising that is stated in the fundamentals of land procurement.”⁶¹⁰

IV. Conclusion

Land procurement, for development for public interest, always mentions deliberation and agreement as a basis to determine the location of development plan, the form and the amount of compensation. The principle of agreement is even appointed as one of the principles underlying the Land Acquisition for development for public interest.

The agreement between the parties is done at the preparation of Land Acquisition and during the implementation of land

procurement. During preparation, public consultation is conducted to get the location agreement on the development plan of the right party. The agreement is outlined in the news of agreement. If an agreement on the form and/or the amount of compensation cannot be reached, the right party may object to the nearest Local Court (PN) and a cassation to the Supreme Court (MA). As for the determination of the form and/or the amount of compensation, the authority may object to the District Court and the cassation to the Supreme Court. The right party who has an authority to refuse the form and/or the amount of compensation, therefore, can deposit the compensation in the District Court.

There are differences in views on the position of agreement on land procurement. There is a view stating that the agreement in Land Acquisition is equal to the agreement in law as stipulated in the Civil Law Code, based on the provision of article 1313 and article 1320 of the Civil Law Code. However, there are also views agreeing on Land Acquisition is unequal to the agreement in the law as the Land Acquisition is neither civil relationship between the parties, nor the relationship between creditors and debtor, yet a government act to acquire land. The agreement on Land Acquisition is restricted – limited time, therefore, there is no freedom in determining the agreement.

REFERENCES

- Abdurrahman, *A half decade of diverse Law about “revocation” Society’s law (from revoking land to the land liberation until the Land Acquisition for development for public interest)*, a paper in the book of law development in Indonesia celebrating 70 years, Mieke Komar.
- Asser’s, C., *The Analysis of Civil Law in Netherlands*, Dian Rakyat, Jakarta.
- Gozali, Djoni Sumardi, *Hukum Pengadaan Tanah Asas Kesepakatan dalam Pengadaan Tanah bagi Pembangunan Untuk Kepentingan Umum*, UII Press, Yogyakarta, 2018.
- Gunanegara, *Pengadaan Tanah Untuk Pembangunan*, Tatanusa, Jakarta, 2008.
- Limbong, Bernhard, *Pengadaan Tanah Untuk Pembangunan*, Margareta Pustaka, Jakarta.
- Ramelan, Eman, *Hukum Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Di Indonesia*, Airlangga University Press cooperated with LP3 Unair, Surabaya, 2014.
- Santoso, Urip, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Airlangga University Press, Surabaya.
- Simamora, Y. Sogar, *Prinsip Transparansi dan Akuntabilitas dalam Kontrak Pemerintah di Indonesia*, In the grand master’s inaugural speech from the Faculty of Law, Airlangga University, Surabaya 8 November 2008.
- Subekti, *Pokok-Pokok Hukum Perdata*, PT Intermasa, Jakarta, 1992.
- Sumardjono, Maria, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, Buku Kompas, Jakarta, 2008.
- Sutedi, Adrian, *Implementasi Asas Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan*, Sinar Grafika, Jakarta, 2006.