

## Compensation For Land Procurement For Klonengan Fly Over (FO) Development Project

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**Abstract.** *Compensation for land acquisition has often been found in various areas where land has been affected by development projects for the public interest. One of the cases that occurred was in the Margasari area, Tegal Regency. The construction of the Fly Over project with Decision Number 05/Pdt.G/2017/PN.SLW which occurred on the Tegal-Pemalang-Pekalongan road section caused several problems, one of which was where the profit compensation was deemed unfair, so a lawsuit was filed in court. This study used a Juridical Empirical approach, by comparing the laws and regulations relating to disputes related to land acquisition for the public interest with practices that occur in the field through Decision Number 05/Pdt.G/2017/PN.SLW. Based on the results of research and discussion: 1) The land acquisition process carried out by the land acquisition committee in resolving disputes; 2) Achievement of the value of justice for communities affected by the Fly Over development project by comparing it with existing theories; 3) Implementation of compensation for land acquisition in accordance with the value of justice by comparing it with the principles contained in Act No. 2 of 2012. The conclusion from the writing of this law is that the compensation provided by the Government is fair and in accordance with existing and applicable regulations.*

**Keywords:** *Acquisition; Dispute; Interest; Resolution; Public.*

## 1. Introduction

The increase in population in Indonesia has led to an increase in the need for public facilities, one of which is in the field of transportation. The need for public facilities can be in the form of public roads, toll<sup>1</sup> roads, flyovers, ports, terminals, airports, and so on. The increase in public facilities causes the Indonesian government to build infrastructure which requires land or land in its construction. Land is an important factor in people's lives who generally depend on land for their lives, which means that land is a basic need for humans, besides the basic needs of land having an eternal relationship with the State and the people.<sup>2</sup>

According to Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that:

*"The earth, water and natural resources contained therein whose control is assigned to the Republic of Indonesia must be used as much as possible for the prosperity of the people."*

In the article it is explained that the earth, water and natural resources contained therein are controlled by the state. The definition of "controlled" means that the state has the power to make regulations that are beneficial to the people of Indonesia.

Land which is the basic capital in development is a very important role, even determining the success or failure of a development.<sup>3</sup> With the increase in development for the public interest that requires land in Indonesia, the procurement needs to be carried out in an appropriate and transparent manner while still taking into account the principle of respect for legal rights to land. Therefore, in order to facilitate the interests of the people, the government in terms of Land Procurement for the Implementation of Development in the Public Interest, must form a Land Procurement Committee.

Land acquisition is aimed at the development of the public interest, so there must be definite criteria regarding the meaning of the public interest itself. John Salihendo argues that the public interest includes the interests of the nation and state as well as the interests of the people, taking into account the social, political, psychological and defense aspects (national defense and security) on the basis of the principle of national development by taking into account national resilience and insight into the archipelago.<sup>4</sup>

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<sup>1</sup> Ong Argo Victoria, Ade Riusma Ariyana. 2020. *Policy Analysis Study Of The Traffic Accident Of Criminal System Which Make Loss Of Life*, International Journal of Law Reconstruction, Vol. 4 No. 2, p. 136-144, <http://jurnal.unissula.ac.id/index.php/lawreconstruction/article/view/11382>

<sup>2</sup>Harsono, Boedi. (2008), *Hukum Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Jakarta: Djambatan, p. 549.

<sup>3</sup>Joni. (1982), *Pertanahan Dalam Pembangunan Indonesia*, Departemen Penerangan Republik Indonesia, p. 165.

<sup>4</sup>Widya Muliawan, Jarot. (2016), *Cara Mudah Pengadaan Tanah Untuk Pembangunan*, Yogyakarta: Buku Litera, p. 3

Currently, Indonesia has almost partially relied on toll roads as transportation routes between regions. The strategy of equitable distribution of toll road development in various parts of Indonesia is one of the government's chosen efforts in order to improve social welfare and benefit the wider community. Not only toll roads, the Government is also building flyovers to overcome congestion due to the use of motorized vehicles.

The fly over or it can be called an overpass is a construction crossing a river, valley, railroad line or crossing other roads with different surface elevations. Fly over as a useful facility to support human life and its activities as well as a benchmark for the development of a region. Flyovers are built to facilitate traffic in areas that have developed and improve services for the distribution of goods and services to support increased economic growth.

In order to avoid negative impacts and still provide benefits to the community in the construction of the flyover, the government provides a form of compensation for the people whose areas are affected by this project. The issue of compensation is the most sensitive component in the land acquisition process. Negotiations regarding the form and amount of compensation are often the most lengthy and protracted process due to the absence of a common ground agreed upon by the parties concerned<sup>5</sup>.

In the process of developing the Klonengan fly over, based on a survey that the author has done, there are several disputes related to compensation at the Slawi District Court. One of them is Decision Number 05/Pdt.G/2017/PN.Slawi.

## 2. Research Methods

The method used in this study was an empirical juridical approach. This research method was carried out by combining primary data in the form of interviews (interviews) with secondary data in order to identify problems and seek legal basis related to solving these problems. The juridical approach was used as a reference material in analyzing the legal aspects currently in force, while the empirical approach is used to analyze the law as seen from people's behavior in people's lives.

The research specification used in this research was descriptive analytical, namely solving the problem investigated by describing the current state of the research object, based on the facts that appear or as they are. In this study, the author intends to describe and report in detail and systematically about everything related to the process of implementing land acquisition compensation, especially regarding the construction of the Klonengan Fly Over, how the dispute resolution process in Decision Number 05/Pdt.G/2017/PN.Slawi, whether the decision is in accordance with Act No. 2 of 2012.

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<sup>5</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

### 3. Result and Discussion

#### 3.1. Land Procurement Process by the Land Procurement Committee in the Case regarding the Construction of Fly Over (FO) Klonengan, Margasari District

- Preparation

The implementation of land acquisition is carried out by the Head of the Regional Office of the National Land Agency (Kanwil BPN) as the head of the implementation of land acquisition. Based on the determination of the location of development for the public interest at the stage of preparation for land acquisition, the agency that requires land submits the implementation of land acquisition to the chairman of the implementation of land acquisition.<sup>6</sup>

In December 2016, Government Agencies including the Ministry of Public Works and Public Housing, the Directorate General of Highways and the Commitment Making Officer (PPK) of Central Java Highways submitted an application for the determination of the location of the fly over construction to the Regent of Tegal for the Tegal Regency area with a copy submitted to the Head Tegal Regency Land Office.

The planned fly over construction process is targeted to start from December 29, 2016. On January 24, 2017, a lawsuit was registered at the Registrar's Office of the Slawi District Court under register Number: 05/Pdt.G/2017/PN.Slw. Rohadiyanto as the Plaintiff, expressed his objection to the form and/or amount of compensation in the Implementation of Land Procurement for Development in the Public Interest.

The Plaintiff filed this lawsuit because of the Plaintiff's position as the party who still refuses to release or surrender his right of control over his land. The Plaintiff refused because the compensation offered by the Government was considered unfair and inappropriate because it was not calculated according to the methods regulated in the provisions of the legislation.

- Implementation

- Inventory and identification of land tenure, use and utilization.

This implementation is carried out within a period of 30 working days and the activities carried out consist of 2 types, namely field measurement and mapping and data collection of entitled parties and objects of land acquisition.

- Compensation assessment

According to Article 31 to Article 36, the party authorized to determine the assessment of the object of land acquisition is the Land Agency, which is then formed by the Land Procurement Committee (P2T), which in this case is carried out by the Appraisal Team.

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<sup>6</sup>Ibrahim, Wahyu. (2019), "Konsinyasi Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum", *USU Jurnal Law*, Vol. 7 No. 2, p. 7 accessed on 20 October 2021 at 09.30 WIB.

The determination of the compensation value is announced at the same time as the announcement of the determination of the construction location. This assessment must be submitted by P2T to the Land Agency in the Minutes and must be accountable because the results of this assessment will serve as a guide at the time of deliberation to determine compensation.

- Deliberation on the determination of compensation

P2T conducts deliberation with holders of land rights and owners of buildings, plants and/or other objects related to the land in question in order to determine the form and amount of compensation that is appropriate and fair, taking into account the land value based on the real/appraisal value and the value of the land. Selling Land and Building Tax Objects (NJOP).<sup>7</sup>Deliberations are held within 30 working days from the announcement of the results of the assessment.

The results of the deliberation that have reached consensus will be recorded in the Minutes of Agreement. However, in the event that there is no agreement, the entitled party may file an objection no later than 14 working days after the deliberation is carried out in the form of an application for a lawsuit to the local District Court.

- Giving compensation

The form of compensation given can be in the form of:

- ❖ Money
- ❖ Substitute land
- ❖ Resettlement
- ❖ Shareholding
- ❖ Other forms agreed by both parties.

In the fly over project for the Tegal-Pemalang-Pekalongan road section, all forms of compensation are given in the form of money. The money is given through a passbook account. One plot of land is given a savings book account.

- Release of agency land

The release is controlled by the Government or State-Owned Enterprises (BUMN)/Regional Owned Enterprises (BUMD) and in its implementation is carried out by authorized officials or officials who are given the delegation of authority. The release is carried out a maximum of 60 days from the determination of the construction location for the public interest.

### **3.2. Achieving the Value of Justice for Communities Affected by the Klonengan Margasari Fly Over (FO) Development Project**

The values of justice are also reflected in the fifth principle of Pancasila, namely the precepts of social justice for all Indonesian people. Where the fifth principle of Pancasila is imbued with the first, second, third and fourth precepts. Justice

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<sup>7</sup>Istijono, Bambang. (2014), "Lahan Menjadi Faktor Penghambat dalam Pelaksanaan Pembangunan untuk Kepentingan Umum", *Jurnal Rekayasa Sipil Vol. 10 No.2*, Fakultas Teknik Universitas Andalas, Padang, p. 52, p. 52

for all Indonesian people in the fifth precept means that every Indonesian people receive fair treatment in all fields, social, political, legal, economic and cultural.

The application of social justice values for all Indonesian people includes all efforts to develop economic growth that is linked to equitable distribution of development and development outcomes in the context of realizing equitable prosperity for all Indonesian people in the economic system.<sup>8</sup>

The achievement of the value of justice for the community in the Fly Over construction project of the Tegal-Pemalang-Pekalongan Road, according to the author, is in accordance with the value of justice. Even though at the beginning of the deliberation conducted by the Government, there was a rebuttal from the Plaintiff. But in the end it was resolved and the achievement of the value of justice for the people affected by the Fly Over development project was in accordance with Article 1 of Act No. 2 of 2012 concerning the provision of appropriate and fair compensation to parties entitled to the land acquisition process.

### **3.3. Implementation of Compensation for Land Procurement in accordance with the Value of Justice**

The application of the principle of justice in determining the value of compensation does not only look at the value of the land but also takes into account the economic value of the land. Because it is not uncommon for land to be the object of land acquisition, it is the object of community livelihood, so it is hoped that there will be an appropriate calculation of economic value so as not to make the community miserable.

In the author's opinion, the implementation of compensation for land acquisition in the Fly Over construction project on the Klonganan route to be in accordance with the value of justice must be in accordance with the principles. When viewed from the principle of Islamic justice, the provision of compensation is in accordance with the provisions. Namely, the holding of deliberation in making decisions and the economic assessment of land in accordance with public appraisal. Likewise, in accordance with the principles in Article 2 of Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest, the Fly Over construction in the Klonenangan latitude is very beneficial for the benefit of the community.

## **4. Conclusion**

The dispute resolution process between the Plaintiff and the Defendant in Decision Number 05/Pdt.G/2017/PN.Slawi prior to Litigation was a consensus deliberation between the Plaintiff and the Defendant, but did not find a common

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<sup>8</sup>Koeswadi Astuti, Nanin. (2020), *Penerapan Nilai-Nilai Keadilan Sosial dalam Konstitusi Ekonomi*. Studi terhadap pembatalan UU Sumber daya air oleh Mahkamah Konstitusi. Vol 6, No. 3, p. 337

ground regarding the compensation offered. The plaintiff then filed a lawsuit to the Slawi District Court. However, the lawsuit was later rejected because according to the Panel of Judges, the price proposed by the Plaintiff was not in accordance with the public appraisal. The achievement of the value of justice for the people affected by the Fly Over development project is appropriate. The compensation price for each land affected by the Fly Over construction is equalized to each other. Likewise for the Government, that the provision of compensation is in accordance with the price of a public consultant/appraisal so that it does not cause state losses. The implementation of compensation is in accordance with the value of justice in this case, it is in accordance with the value of justice in Islam. That is seen from the holding of deliberation first between the Plaintiff and the Defendant, then the provision of compensation in accordance with the economic value of the land. Likewise, in accordance with the principles contained in Article 2 of Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest.

## 5. References

### Journals:

- Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>
- Ibrahim, Wahyu. (2019), "Konsinyasi Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum", *USU Jurnal Law*, Vol. 7 No. 2, p. 7 accessed on 20 October 2021 at 09.30 WIB.
- Istijono, Bambang. (2014), "Lahan Menjadi Faktor Penghambat dalam Pelaksanaan Pembangunan untuk Kepentingan Umum", *Jurnal Rekayasa Sipil Vol. 10 No.2*, Fakultas Teknik Universitas Andalas, Padang, p. 52.
- Koeswadi Astuti, Nanin. (2020), *Penerapan Nilai-Nilai Keadilan Sosial dalam Konstitusi Ekonomi*. Studi terhadap pembatalan UU Sumber daya air oleh Mahkamah Konstitusi. Vol 6, No. 3.
- Ong Argo Victoria, Ade Riusma Ariyana. 2020. *Policy Analysis Study Of The Traffic Accident Of Criminal System Which Make Loss Of Life*, International Journal of Law Reconstruction, Vol. 4 No. 2, p. 136-144, <http://jurnal.unissula.ac.id/index.php/lawreconstruction/article/view/11382>

### Books:

- Harsono, Boedi. (2008), *Hukum Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksananya*, Jakarta: Djambatan
- Joni. (1982), *Pertanahan Dalam Pembangunan Indonesia*, Departemen Penerangan Republik Indonesia
- Soekanto, Soerjono. (1984), *Pengantar Penelitian Hukum*, Jakarta: UI Press

Widya Muliawan, Jarot. (2016), *Cara Mudah Pengadaan Tanah Untuk Pembangunan*, Yogyakarta: Buku Litera.

*Regulation:*

1945 Constitution of the Republic of Indonesia.

Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest.

Presidential Decree Number 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest.

Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest.

Presidential Regulation Number 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.

Presidential Regulation Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest.

Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects.