

The Legal Analysis Related to Compensation in Land Procurement for the Construction of the Semarang-Demak Toll Road

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Abstract. *The land has a vital function in this country, this is because in one dimension land has the function of fulfilling the needs of human life personally and in another dimension land also has a social function to meet the needs of national development. The social dimension of land creates a system of compensation for every individual in society whose land is affected by land acquisition for development in the public interest. The implementation of compensation within the framework of land acquisition for development for the public interest has in fact not met the expectations of the community, especially in the Semarang-Demak toll road construction project. This article examines the issue of compensation in the procurement of land for the construction of the Semarang-Demak toll road, which is still far from the expectations of the community. The method used in this paper is normative juridical.*

Keywords: Acquisition; Compensation; Land.

1. Introduction

Indonesia is a democratic country that guarantees the realization of social welfare for all its people, this view is then realized through a national development mechanism. The implementation of national development requires land as a means of carrying out this development. This implies that land has an important function in various dimensions of human life. Because land is the basic medium that supports the activities of meeting the needs of human life.

Land acquisition is an act of the government to acquire land for various development purposes, especially for the public interest. In principle, land acquisition is carried out by way of deliberation between parties who need land and holders of land rights whose land is required for development

activities.¹ However, in the Government's efforts to acquire land, it is not uncommon for disputes to occur between the government and the community or with the private sector.

Regarding the many land cases that occur in the community, it is necessary to find a solution that is very beneficial for both parties. For this reason, the settlement of civil disputes relating to land outside the judiciary is ideal for the settlement of land disputes. Because if it is pursued through legal channels or judicial institutions, it often does not only involve legal aspects, tenure rights, economic calculations, but not least touches on the socio-cultural side. Settlements through court institutions that are more win-lose patterns often trigger protracted non-legal conflicts. Especially if the legal issues raised only focus on one cause. The emergence of dissatisfaction with court decisions that accumulates with various aspects of land issues that cannot be resolved through the courts, in fact, can develop into physical violence. Seen from a juridical perspective, the land problem alone is not a simple solution. Similarity to the concept is needed so that there is a common perception that will result in a solid and fair decision for those who ask for justice.

In its development, industrialization requires the state to continue to develop facilities and infrastructure to support economic progress, which has brought a new paradigm in the culture of land use. Yusriyadi stated that:²

However, "developmentalism" or "developmentalism" is always based on its ethical nature, so that it often sidelines marginal landowners such as small farmers for the benefit of industrialization development.

In line with Yusriyadi's explanation regarding the industrialization paradigm which has an impact on land tenure of the marginalized. Raymond Aron stated clearly that:³

industrialization has six characteristics, namely:

- a. Is a rationalization of work processes;

¹Maria SW Sumardjono, 2008, Land in the Perspective of Economic, Social and Cultural Rights, Kompas, Jakarta, p. 280.

²Yusriyadi, 2010, Industrialization and Changes in the Social Function of Land Ownership Rights, Genta Publishing, Yogyakarta, p. 62

³*ibid.*, p. 62-64.

- b. Discoveries in the field of natural sciences that are developed in the work process so as to enable and give birth to the ability to master and utilize natural resources;
- c. The birth of industry in the era of industrialization has changed the form of society which was originally farmers into factory workers;
- d. The shift in the form of the profession of society as explained in point three ultimately gave birth to conflict between the workers who are proletarians and those who own capital;
- e. The existence of a work process in the era of industrialization resulted in wealth for those with capital and also poverty for marginal groups without capital;
- f. The work process in industrialization gave birth to economic, socio-cultural, political and legal liberalization which is based on the principles of *laissez faire*, *laissez aller* which requires free competition without government interference which often leads to marginalization of the weak.

The social changes born as a result of industrialization as explained above also occur in the issue of compensation in the construction of public facilities and infrastructure. The existence of compensation in the construction of public facilities and infrastructure has resulted in landowners who are affected by the development plan having to move to a place because the land where they live must be sold for the benefit of the development of public facilities and infrastructure. This becomes a problem in itself when people do not have a suitable place to live. In addition, residents of a place whose land is subject to land acquisition for the construction of facilities and infrastructure do not always have land for replacement settlements.

Furthermore, the relocation of residential areas for community members with low human resources will marginalize the community. Resettlement of residents who are land owners who are subject to compensation for benefits in order to acquire land for the construction of public facilities and infrastructure, even though it is for the benefit of industrial development, in the end will make the culture of society live on the principle of *laissez faire*, *laissez aller* so that the main goal of life becomes competition to get maximum economic profit. Magnis Suseno stated that "simply put, the goal of economic capitalism is money and market domination for its own sake."⁴

⁴*ibid.*,p. 118

This can clearly be observed in the construction of the Semarang-Demak toll road. The implementation of compensation in land acquisition for the construction of the Semarang-Demak toll road is still far from the expectations of the affected communities. Samsyuri, one of the affected communities, explained that the compensation was still not in accordance with the amount of the land price and the loss of the business he owned in the Sidogemah area, Sayung.⁵

2. Research Methods

The method used in this paper is the normative juridical method, in which the law is studied from the aspect of the rules that apply as a state positive law system that is implemented by all Indonesian citizens.

3. Result and Discussion

3.1. Compensation for the Procurement of Land for Development in the Public Interest in the Construction of the Semarang-Demak Toll Road

a. Compensation for Land Acquisition for Development for Public Interest in the Construction of the Semarang-Demak Toll Road in Sidogemah Village, Demak Regency

Then after it was known that the Presidential Regulation of the Republic of Indonesia Number 99 of 2014 on the second amendment to the Regulation of the President of the Republic of Indonesia Number 71 of 2012 was then replaced by Presidential Regulation Number 148 of 2015. In Article 1 of Presidential Regulation Number 148 of 2015 it is stated that:

In this Presidential Regulation what is meant by:

(1) Agencies requiring land are state agencies, ministries, non-ministerial government agencies, provincial governments, district/city governments, and State-Owned Legal Entities/State-Owned Enterprises that receive special assignments from the Government or Business Entities that obtain power of attorney based on agreements from state agencies, ministries, non-ministerial government agencies, provincial governments, district/city governments, and State-Owned Legal Entities/State-Owned Enterprises that receive special assignments from the Government in the context of providing infrastructure for the public interest.

(2) Land Acquisition is the activity of providing land by providing proper and fair Compensation to Entitled Parties.

⁵Personal interview with Samsyuri as the affected community on December 12, 2022.

(3) The Entitled Party is the party that controls or owns the Land Procurement Object.

(4) Objects of Land Procurement are land, aboveground and underground space, buildings, plants, objects related to land, or other things that can be appraised.

(5) Land rights are land rights as referred to in Law Number 5 of 1960 concerning Basic Agrarian Regulations and other rights to be stipulated by law.

(6) Public interest is the interest of the nation, state and society which must be realized by the government and used as much as possible for the prosperity of the people.

(7) Management Right is the right to control from the state whose implementation authority is partly delegated to the holder.

(8) Public Consultation is a process of dialogical communication or deliberation between interested parties in order to reach an understanding and agreement in planning Land Acquisition for development in the public interest.

(9) Waiver of rights is an activity of terminating legal relations from the Entitled Party to the state through the Ministry.

(10) Compensation is a proper and fair compensation to the Entitled Party in the Land Acquisition process.

(11) Land Appraiser, hereinafter referred to as Appraiser, is an individual who conducts appraisal independently and professionally who has obtained a license to practice Appraisal from the Minister of Finance and has received a license from the Ministry to calculate the value/price of Land Acquisition Objects.

(12) Public Appraiser is an appraiser who has obtained permission from the Minister of Finance to provide appraisal services.

(13) Location Determination is the determination of the location of a development for public interest determined by a governor's decision, which is used as a permit for Land Acquisition, changes in land use, and transfer of land rights in Land Procurement for development in the public interest.

(14) The Central Government, hereinafter referred to as the Government, is the President of the Republic of Indonesia who holds the powers of government of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia.

- (15) Regional Governments are governors, regents/mayors, and regional apparatus as elements of regional government administration.
- (16) Minister is the minister who organizes government affairs in the agrarian/land sector.
- (17) The ministry is a government agency that organizes government affairs in the land sector.
- (18) Provincial National Land Agency Regional Office, hereinafter referred to as BPN Regional Office, is a BPN vertical agency in the province led by the Head of BPN Regional Office who is under and directly responsible to the Minister.
- (19) The Land Office is a vertical BPN agency in a regency/city led by the Head of the Land Office who is under and directly responsible to the Minister through the Head of the BPN Regional Office.
- (20) The Land Acquisition Preparatory Team, hereinafter referred to as the Preparatory Team, is a team formed by the governor to assist the governor in implementing development plan notifications, initial data collection on development plan locations and Public Consultations on development plans.
- (21) The Objection Study Team, hereinafter referred to as the Study Team, is a team formed by the governor to assist the governor in carrying out an inventory of the problems that are the reasons for objections, holding meetings or clarifying with objectors, conducting studies and making recommendations for acceptance or rejection of objections.
- (22) Task Force is a unit formed by the Ministry to assist the implementation of Land Procurement.
- (23) Above-ground and underground space is space that is below the earth's surface and/or space that is above the earth's surface that is only needed for purposes that are directly related to land use.

Then in its development the implementation of land acquisition and compensation as referred to in Article 1 paragraph (9) and (10) of Presidential Regulation Number 148 of 2015 was not able to materialize fairly. This is because Presidential Regulation Number 148 of 2015 has the same weakness as the UUPA, namely in the form of development carried out by the government which cannot be felt directly by today's society. Land acquisition is only related to the development of existing industrialization supporting facilities and infrastructure.

This situation has clearly resulted in the community's conception of the social function of land in land acquisition for development for the public interest benefiting certain parties and cannot be carried out voluntarily but must be balanced with appropriate compensation for the revocation of land rights. As a result, all national development which is truly for the progress of the nation and the nation also has an impact in terms of land acquisition for existing developments. Land acquisition that is in accordance with the strategy and plan for land development with an archipelago perspective that honestly carries out the mandate of national development, namely the life of a developed nation and country, must deal with the paradigm of land commercialization in terms of existing land acquisition.

Article 76 of Presidential Regulation Number 148 of 2015 clearly states that:

1) Compensation in the form of money as referred to in Article 74 paragraph (1) letter a, is given in the form of rupiah currency.

2) The provision of Compensation in the form of money as referred to in paragraph (1) is carried out by the Agency that requires land based on validation from the Chief Executor of Land Procurement or an appointed official.

2a) Validation from the Chief Executor of Land Procurement or the designated official as referred to in paragraph (2) shall be carried out within a maximum period of 3 (three) working days from the minutes of the agreement on the form of Compensation as referred to in Article 72 paragraph (1).

3) The provision of Compensation as referred to in paragraph (2) is carried out simultaneously with the waiver of rights by the Entitled Party.

4) The provision of Compensation as referred to in paragraph (2) is carried out within a maximum period of 7 (seven) working days from the determination of the form of Compensation by the Land Procurement Executor.

Then in Article 121 paragraph (4) of Presidential Regulation Number 148 of 2015 it is stated that "land valuation in the context of land acquisition as referred to in paragraph (1), Agencies requiring land use the results of the appraiser's services". It is clear that the absolute amount of compensation is determined by the assessment team without involving the aspirations of the affected people, while the assessment team is meant according to Article 1 paragraph (11) and paragraph (12) of Presidential Regulation Number 148 of 2015, namely:

1. Land Appraiser, hereinafter referred to as Appraiser, is an individual who conducts appraisal independently and professionally who has obtained a license

to practice Appraisal from the Minister of Finance and has received a license from the Ministry to calculate the value/price of Land Acquisition Objects.

2. Public Appraiser is an appraiser who has obtained permission from the Minister of Finance to provide appraisal services.

Then the confusion of information that needs to be received by the community regarding compensation for land acquisition under construction for public purposes is also seen in Article 11 of Presidential Regulation Number 148 of 2015 which states that:

1. The Preparatory Team as referred to in Article 8 paragraph (2) carries out notification of the development plan to the community at the location of the development plan.

2. Notification of the development plan as referred to in paragraph (1) shall be carried out no later than 3 (three) working days after the formation of the Preparatory Team.

3. The notification of the development plan as referred to in paragraph (1) contains information regarding:

- a. The aims and objectives of the development plan;
- b. Land location and required land area;
- c. Stages of land acquisition plan;
- d. Estimated period of implementation of land acquisition;
- e. Estimation of the period of construction implementation; And
- f. Other information deemed necessary.

4. The notification of the development plan as referred to in paragraph (1) is signed by the Head of the Preparatory Team.

The meaning of other information deemed necessary in this case does not have a clear explanation and is also not included in terms of information on the mechanism and amount of compensation for land in land acquisition for development for public purposes. compensation for development in the public interest, the problem in the form of unclear regulation regarding the time limit

for completing the delivery of compensation to the community has also resulted in many psychological problems for the community because of the long waiting time while it is not uncommon for the delivery of compensation to be carried out in stages which results in some people getting compensation faster while the community whose rights will be paid at the next stage must waiting for an indefinite period of time.

This has an impact on the issue of unclear time limits for submitting compensation to affected communities and besides that it also results in unclear amounts of compensation to affected communities. This view occurs in the land acquisition for the Semarang-Demak Toll Road, which took place in Sidogemah Village, Sayung District, Demak Regency. According to Syamsuri, as one of the residents who has not received compensation since 2019 until June 2020, he stated that:⁶

Some of the people including Sidogemah Village leaders and their relatives have received compensation for land acquisition in stages I and II. The amount is not in accordance with the price of land that should be and also does not take into account the range of building prices and business losses. Meanwhile, those of us who have not received compensation in stages I and II must wait for compensation in stage III. However, most of the parties who have received compensation have moved and resulted in us being in the same village unable to live together again and what's worse, some of the work by the toll road contractor has started which does not take into account the residents who still live in Sidogemah Village.

Meanwhile, according to Masrur, as the party that has received the compensation, stated that the amount of compensation available was not appropriate, considering that the price of his land is only one million per meter, even though his land is in front of a major road, besides that his house is interpreted as five hundred million rupiah was only valued at fifty million, so Masrur only received compensation of IDR 150,000,000.00.⁷

This is different from the view of Suhud as the Village Secretary. According to him, the amount of compensation is appropriate considering that the land in the

⁶Syamsuri, Personal Interview with Communities Affected by Compensation in the Procurement of Land for the Construction of the Semarang-Demak Toll Road, The interview was conducted on April 9, 2020.

⁷Masrur, Personal Interview with Communities Affected by Compensation in the Procurement of Land for the Construction of the Semarang-Demak Toll Road, The interview was conducted on April 9, 2020.

Sidogemah area often experiences seawater flooding which causes land prices to be cheap.⁸

Then regarding the length of time for submitting compensation, according to Khanafi as the village head of Sidogemah Village, this is because the budget for land acquisition in the construction of the Semarang-Demak toll road is not enough if you only expect from the APBN and APBD, so you are still waiting for bailout funds from investors.⁹

This statement from Khanafi was justified by Supriyono as Secretary of the Semarang-Demak Toll Road Land Acquisition Committee, according to him, the long time for submitting compensation was waiting for the disbursement of the bailout budget from the private sector, this was considering that the APBN and APBD were insufficient.¹⁰

b. Compensation for Procurement of Land for Development for Public Interest in the Construction of the Semarang-Demak Toll Road in Terboyo Wetan, Semarang City

The problem with land acquisition for the construction of the Semarang-Demak toll road is related to the length of time for payment of compensation. Afif as a representative of the community said that regarding the payment of compensation, including the amount of compensation, there was no clear information from the Semarang-Demak Toll Road Land Procurement Committee. Afif added that so far the community often does not get clear information regarding information on the areas affected by compensation, the amount of compensation and procedures for calculating compensation, besides that the government has so far closed access to appraisers who know for sure the amount of compensation per area affected. Semarang-Demak Toll Road development plan.¹¹

So it is clear that the problems experienced by the people in Terboyo Wetan have similarities with the problems faced in Sidogemah Village. Afif's view is supported by Soni Widi Nugroho as Commitment Making Officer from the PUPR

⁸Suhud, Personal Interview with the Sidogemah Village Secretary, Interview was conducted on 16 June 2020.

⁹Khanafi, Personal Interview with the Village Head of Sidogemah Village, Interview was conducted on June 16, 2020.

¹⁰Supriyono, Personal Interview with the Secretary of the Land Acquisition Committee for the Semarang-Demak Toll Road, Interview was conducted on 16 June 2020.

¹¹Afif, Personal Interview with Communities Affected by Compensation in the Procurement of Land for the Construction of the Semarang-Demak Toll Road, The interview was conducted on February 10, 2021.

Ministry who stated that land acquisition for the construction of the Semarang-Demak Toll Road has not been significant due to constrained budget issues.¹²

3.2. Juridical Weaknesses in Compensation for Land Acquisition for the Construction of the Semarang-Demak Toll Road

Based on the description above, it can be understood that legal norms which are arranged in tiers and layers, as well as in groups, indicate a line of legal politics. This is because the basic norms that contain social ideals and ethical judgments of society are translated and concretized into lower legal norms.

This shows that there is a demand from the community, both social ideals and ethical judgments, that society wants to realize in a social life through the legal norms that are created. The legal norms which are arranged in layers and layers also indicate the existence of a line of synchronization between higher legal norms and lower legal norms. This is because lower legal norms apply, originate, are based on, and therefore may not conflict with higher legal norms.

If you look at Nawiasky's theory above, it is clear that Law Number 2 of 2012 as Formell Gezets and Presidential Regulation Number 71 of 2012 jo. Presidential Regulation Number 99 of 2014 jo. Presidential Regulation Number 30 of 2015 jo. Presidential Regulation Number 148 of 2015 as Verordnung & Autonome Satzung has contradicted Article 1 paragraph (2) and Article 18 of the UUPA Number 5 of 1960 Formell Gezets, as Article 28D and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia as Staatsgrundgesetz, which matters This also clearly contradicts the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia and Pancasila which is the Staatsfundamentalnorm. So that in terms of the issue of consignment implementation as referred to in Law Number 2 of 2012 and Presidential Regulation Number 71 of 2012 Presidential Regulation Number 71 of 2012 jo. Presidential Regulation Number 99 of 2014 jo. Presidential Regulation Number 30 of 2015 jo. Presidential Regulation Number 148 of 2015 where there is a loophole for the government's domination of the community in determining the implementation of consignments including in the construction of the Semarang-Bawen toll road, will result in opportunities for discrimination against the community in terms of land compensation. Based on the existing problems, it is clear that there has been harmonization and dissynchronization of legal politics related to compensation due to land acquisition for state development. will result in opportunities for discrimination against the community in terms of land compensation. Based on the existing problems, it is clear that there has been

¹²Soni Widi Nugroho, Personal Interview with Commitment Officials for the Semarang-Demak Toll Road, Interview was conducted on 10 February 2021.

harmonization and dissynchronization of legal politics related to compensation due to land acquisition for state development. will result in opportunities for discrimination against the community in terms of land compensation. Based on the existing problems, it is clear that there has been harmonization and dissynchronization of legal politics related to compensation due to land acquisition for state development.¹³

So that with the opportunity to create an authoritarian consignment system from Article 42 of Law Number 2 of 2015 and Article 73 of Presidential Regulation Number 71 of 2012 Presidential Regulation Number 71 of 2012 jo. Presidential Regulation Number 99 of 2014 jo. Presidential Regulation Number 30 of 2015 jo. Presidential Regulation Number 148 of 2015, the concept of consignment or compensation for existing land will deviate far from the state's goal which is nothing but realizing people's welfare.

Then in its development in 2020 Presidential Regulation Number 66 of 2020 was issued concerning Funding for Land Acquisition for Development in the Public Interest in the Context of Implementing National Strategic Projects. Presidential Regulation Number 66 of 2020 also does not clearly stipulate the amount of compensation and related arrangements for community involvement in calculating the amount of land acquisition and compensation for the development of public interests.

In line with this, the theory of Welfare and State Responsibility from JM Keynes states that the state must actively strive for welfare, act fairly that can be felt by all people equally and in balance,¹⁴not prosper certain groups, but all the people.¹⁵It is very reckless if economic development is denied and economic growth is only seen and concentrated on mere percentage figures.¹⁶

People's welfare is the real indicator. In line with Keynes' view, Cicero stated that good governance is government based on civil society in which civil society is a manifestation of people's lives based on religious, moral, ethical and cultural values.¹⁷

¹³*Loc, cit.*

¹⁴Maria SW Sumardjono, "Juridical Review of Presidential Decree No. 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest and its Implementation," *Journal of Public Policy and Administration*, Vol. 1, No. 1 of 2015, p. 78-87.

¹⁵Peter Mahmud Marzuki, *Introduction to Law*, Kencana, Jakarta, 2008, p. 135.

¹⁶Mochamad Elmo Sidiq, Asep Sunarsa, and Amin Purnawan, *The Role of Notaries in Land Acquisition Transactions for Office Complex Development Locations of the Sekadau Regency Government*, *Journal of Deeds*, Vol 5 No 1, 2018, p. 236-237.

¹⁷Jarot Jati, BS, 2016, *Caring for Ethics and Morals in National and State Life*, Axiology Research Institute, Yogyakarta, p. 12.

In its development, the government also issued provisions related to compensation for destroyed land which was regulated in ATR/BPN No 17 of 2021, in this provision Article 15 is the main issue related to the implementation of the provisions of ATR/BPN No 17 of 2021. So that ATR/BPN No. 17 of 2021 was sued by the parties to the Supreme Court with case number 23P/HUM/2022.¹⁸ Even though it was won by the plaintiff, namely the affected community, but in its implementation ATR/BPN No 17 of 2021 also does not regulate large-scale community involvement and does not regulate a clear system of transparency regarding the determination of compensation for destroyed land.¹⁹

4. Conclusion

Compensation Payment System for Procurement of Land for Development in the Public Interest in the construction of the Semarang-Demak toll road it has not been based on the value of justice, the implementation of compensation for land acquisition for development for the public interest in Indonesia is currently still not fair, this is seen by the problem of unclear length of time for paying land compensation after the location determination is carried out, not clear benchmarks in terms of determining the amount of compensation, as well as the lack of transparency in the compensation process for affected communities.

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¹⁸<https://decision3.mahkamahagung.go.id/direktori/decision/zaed5f7f9b931c0a95bd323330383339.html>, accessed on 12 May 2022.

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