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Analysis of Legal Protection For (Dela Fatwa Yuda & Djunaedi)

Analysis of Legal Protection For Land Rights Holders in Determining Compensation Related To Land Acquisition For Public Interest Based on Justice Values

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Abstract. Land acquisition for public interest often triggers conflicts and land problems, especially in the process of compensation for land rights holders which in its implementation tends to be inappropriate and unfair to land rights holders. The purpose of this study is to determine and analyze legal protection for land rights holders in determining compensation for land acquisition for public interest based on justice and to determine and analyze the legal consequences for land rights holders in determining compensation for land acquisition that is not appropriate for public interest based on justice. Type of researchused in conducting this research is Normative juridical. Legal protection for land owners in land acquisition for public interest is realized through the provision of appropriate compensation based on Article 33 of Law No. 2 of 2012, with an assessment covering land, above and below ground, buildings, plants, land-related objects, and other losses. However, the practice of compensation often harms land owners, so supervision is needed to ensure that the process is fair and in accordance with regulations. This supervision is important to prevent misappropriation and ensure the protection of land owners' rights legally.

Keywords: Acquisition; Compensation; Determining; Protection

1. Introduction

One of the goals of Indonesia's national development which is also in line with the mandate of the Preamble to the 1945 Constitution is to advance the welfare of all Indonesian people, therefore as an effort to achieve this goal the Indonesian Government continues to promote development in various fields, including development for the public interest. Development for the public interest requires land as one of the important aspects supporting the success of its implementation, but the problem is that the amount of land controlled by the state is limited. Based on this situation, land acquisition has begun by the Government by using individual land or legal entities that have been controlled with a land right in order to meet the need for land for development activities for the public interest.¹

The State's authority to control is a delegation of the Nation's duties and is a concrete legal relationship between the State and the Earth, water, and natural resources. The State's authority is purely public. Based on this constitutional basis, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) was enacted and one of the objectives of the UUPA was to provide legal certainty.²

Land and development are an inseparable whole. In addition, land also has a social function, meaning that land owned by a person does not only function for the owner of the rights, but also for the Indonesian nation as a whole. As a consequence, the use of the land is not only guided by the interests of the rights holder, but must also remember and pay attention to the interests of the community. Therefore, it can be said that land has a dual function, namely as a social asset and a capital asset.³

The existence of land needs that will be used by the government for public interest must truly guarantee the interests of its owners. In this case, it must not harm the rights of the land owner. Therefore, to regulate this, a legal regulation or policy is needed that can guarantee legal protection for land rights holders. The provisions in the UUPA itself provide a strong legal basis for the government to take land rights owned by the community as regulated in Article 18, namely: "for the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation in accordance with the method regulated by law.⁴

¹Achmad Rifai, Determination of Land Rights Ownership in Land Disputes as Educational Facilities, Yustisia Journal, Vol 20, No 1 (2019). Pp. 12-40

²Julius Sembiring, State Control Rights Over Agrarian Resources, Bhumi: Agrarian and Land Journal, Vol. 2 No. 2 (2016), pp. 119-133

³Muhammad Yusrizal, Legal Protection of Land Rights Holders in Land Acquisition for Public Interest, De Lega Lata Journal of Legal Studies, Vol 2, No 1 (2017)

⁴Nurdiana Lestari (et. al.), Legal Protection Against Compensation for Land Rights Holders in Land Acquisition for Public Interest. Journal of Comprehensive Science (JCS), Vol. 2, No. 6, 2023, pp. 1544–1552.

Legal regulations related to land acquisition for public interest and all other related regulations have undergone a development process from time to time. Several existing land acquisition regulations are considered unable to accommodate the interests of land rights holders, so that a legal instrument at the level of a law is needed to become a strong legal umbrella. To answer the complaints that occurred, the government took a policy by issuing Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In the Law, it is explained in Article 2 that "Land acquisition for public interest is carried out based on the principles of Humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony" if we observe the mandate of this Law, it is certainly very clear that land acquisition for public interest must pay attention to justice in order to achieve a prosperous society and feel safe and comfortable in the surrounding environment.⁵

Term "Procurement Land" became known after the issuance of Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for Public Interest. The term Land Acquisition is also used in Presidential Regulation Number 36 of 2005 and Presidential Regulation Number 65 of 2006, and is now updated to Law Number 2 of 2012.⁶Land acquisition for public interest often triggers conflicts and land problems, especially in the process of compensation for land rights holders, which in its implementation tends to be inappropriate and unfair for land rights holders, so that legal protection for land rights holders is not effective.⁷

The process of providing compensation in land acquisition activities is very important, because without compensation, development will be hampered, even land rights owners who do not receive compensation payments from the government or local government will demand compensation through legal channels. Compensation according to Law No. 2 of 2012 is a fair and equitable replacement for the entitled party in the land acquisition process.⁸

One of the obstacles or problems in the Solo-Yogyakarta toll road construction process is the land acquisition process that has not been completed. This is because there are several people who do not accept the compensation value

⁵Hardianto Djanggih and Salle, Legal Aspects of Land Acquisition for the Implementation of Development for Public Interest, Pandecta, Vol. 12. No. 2. 2017, pp. 165-172

⁶Dekie GG Kasenda, Compensation in Land Acquisition for Public Interest, Jurnal Morality, Volume 2, Number 2. 2015, pp. 1-20

⁷William Matthew Theogives Tamo (et. al.), Legal Protection for Compensation Recipients in Land Acquisition for Public Interest, Lex Crimen, Vol. 11 No. 4 (2022), pp. 1-12

⁸Rahayu Subekti, Compensation Policy in Land Acquisition for Development in the Public Interest, Yustisia. Vol. 5 No. 2 May - August 2016, pp. 375-394

given by the Solo-Yogyakarta toll road acquisition team, the compensation that is considered unfair and not in accordance with the standards has caused the community holding land rights to suffer losses against 30 objections by Klaten residents submitted to the Klaten District Court. The complexity of the problem of land acquisition for public interest is a fundamental problem and has been going on for a long time. People who feel disadvantaged by the injustice and inappropriateness of the compensation can file an Objection.

Legal protection for land rights holders whose land will be used for development projects for the public interest is very important because under certain conditions, land rights holders must hand over their land to the government, on the grounds that the 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.

The purpose of this research is to find out and analyze legal protection for land rights holders in determining compensation for land acquisition for public interests based on justice and to find out and analyze the legal consequences for land rights holders in determining compensation for land acquisition that is not in accordance with public interests based on justice.

2. Research Methods

The type of research used in conducting this research is through normative legal research. Legal discussion means discussion based on laws and other regulations.⁹Meanwhile, the normative discussion is by examining library materials or secondary data alone.¹⁰The research approaches used are the statutory approach and the case approach. The statutory approach is an approach carried out by examining all laws and regulations related to the legal issues being handled. The research specifications used in this study are descriptive research, namely research that tests the truth of whether or not a fact is caused by a certain factor.¹¹The analysis method used in this research is a qualitative research method, namely a research method based on post-positivism philosophy.

⁹Suratman and Phillips Dillah, 2015, Legal Research Methods, 3rd Edition, Alfabeta, Bandung, p. 6.

 ¹⁰Bambang Sunggono, 2003, Legal Research Methodology, Jakarta: Raja Grafindo Persada, pp. 27 28

¹¹Blau, M Peter and MW Meyer. 2005. Bureaucracy of Modern Society, Second Edition, First Printing, Translated by Gary Rachman Jusuf, UI-Press, Jakarta. p:35

3. Results and Discussion

3.1. Legal Protection for Land Rights Holders in Determining Compensation for Land Acquisition in the Public Interest Based on Justice

Land acquisition activities carried out by parties who need land against land rights of other parties are known as land acquisition. Based on its interests, land acquisition is divided into 2 (two) types, where the first is land acquisition for public interest. Parties who need land in land acquisition for public interest are agencies, namely state institutions, ministries, non-ministerial government institutions, provincial governments, district/city governments, state-owned enterprises. Then the second is land acquisition for the interests of private companies. Parties who need land in land acquisition for the interests of private companies are limited liability companies.¹²

Decision-making by the government at every level of government to obtain land rights must always be based on the need for land in carrying out government functions in order to achieve the goals of the state as formulated in the fourth paragraph of the preamble to the 1945 Constitution, namely to protect all Indonesian people and all Indonesian territory, and to advance general welfare, to improve the life of the nation.¹³

National land law provides legal protection to land rights holders that the use and control of land by anyone and for anything must be based on land rights provided by national land law. Land control and use are legally protected against disturbances by any party, whether fellow community members or the authorities, if the disturbance is not based on a legal basis. In other words, if the land is legally controlled by the rights holder, if it is needed for development, it must be preceded by deliberation first.

Legal protection in land acquisition for public interest, in general, can be interpreted as respect for individual rights to land. This is related to the consequences of state recognition of a person's land or a customary law community, so the state is obliged to provide legal certainty for the rights to the land so that it is easier for a person to defend his rights against disturbances from other parties.¹⁴

¹²Urip Santoso. "Dispute Resolution in Land Acquisition for Public Interest". Perspektif Journal. Vol XXI. No. 3. September Edition. 2016, p. 17

¹³Ali Ahmad Chomzah. Land Law, Granting of Rights to State Land, Land Law Series I. Jakarta: Prestasi Pustaka, 2002, p. 67

¹⁴Maria SW Soemardjono. Land Policy Between Regulation and Implementation. Revised Edition. Jakarta: Kompas. 2006, p. 12

When compared with several provisions that previously regulated land acquisition for public interest, namely Regulation of the Minister of Home Affairs No. 15 of 1975, Regulation of the Minister of Home Affairs No. 2 of 1976, and Regulation of the Minister of Home Affairs No. 2 of 1985, where in the content and spirit of the legal regulations basically pay attention to the public interest and the interests of the parties in a balanced manner. The impression that the law does not provide sufficient legal protection to land owners, who generally consist of the common people, is caused by its implementation which is not in accordance with the spirit and content of the regulations and laws.

In general, the 1945 Constitution has provided protection for land rights as regulated in Article 28 letter h paragraph 4, which states that: "Everyone has the right to have private property rights and such property rights may not be taken arbitrarily and must be balanced with compensation". Specifically for legal protection for land owners in land acquisition activities for public interest is the obligation to provide adequate compensation for land owners. The provisions in Article 33 of Law No. 2 of 2012, have determined that the assessment of the amount of compensation is carried out by an appraiser who will assess each plot of land.

The provisions of Article 33, which explicitly regulate the basis and method for assessing the amount of compensation in land acquisition for public interest, are considered to be much more advanced when compared with the provisions on compensation regulated in Presidential Decree No. 65 of 2006, where the determination of compensation in the Presidential Decree is only determined for land, buildings, plants and other objects related to land.

Then another form of legal protection in land acquisition for public interest is the opportunity to hold a deliberation between the land owner and the party requiring the land. The purpose of holding a deliberation is to determine and set the amount of compensation given to the land owner. In addition, regulations regarding the guarantee of certainty and legal protection of land rights are regulated in several laws and regulations, namely:

- a. Article 19 paragraph (2) letter c, Article 23 paragraph (2) and Article 38 paragraph (2) of the UUPA, which states that certificates are a strong means of proof.
- b. In the general explanation of Government Regulation No. 24 of 1997 concerning Land Registration, it is stated that: "In order to provide legal certainty to land rights holders, this Government Regulation provides an affirmation regarding the evidentiary power of the certificate, which is stated

as a strong evidentiary tool by the UUPA". For this reason, it is stipulated that as long as the opposite has not been proven, the physical data and legal data stated in the certificate must be accepted as correct data, both in daily legal acts and in disputes in court.

c. Then in the explanation of Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration it states that: "A certificate is strong evidence of rights, in the sense that as long as it cannot be proven otherwise, the physical data and legal data contained therein must be accepted as correct data."

In relation to legal protection for the people that must be provided by the government/rulers, according to Philipus M. Hadjon, it is divided into 2 (two) types, namely Preventive Legal Protection and Repressive Legal Protection:¹⁵In preventive legal protection, the people are given the opportunity to raise objections or opinions before a government decision is made definitive. Thus, preventive legal protection aims to prevent a dispute from occurring. On the other hand, repressive legal protection aims to resolve a dispute. Preventive legal protection is very important for government actions based on freedom of action because with this legal protection the government is encouraged to be careful in making decisions, while repressive legal protection is an effort to provide legal protection carried out through the courts, both general courts and state administrative courts.

Law Number 2 of 2012 does not mention the basis for calculating compensation as previously regulated in Presidential Regulation Number 36 of 2006. Is the determination of compensation based on NJOP or real value at the time of land acquisition? The assessment of land prices is submitted to land appraisers or appraisal institutions. The Land Agency determines the assessment of compensation in accordance with the provisions of laws and regulations. The Land Agency announces the appraisers who have been appointed to carry out the assessment of land acquisition objects. The appraisers who have been appointed are required to be responsible for the assessment that has been carried out and if there are violations, administrative sanctions and criminal sanctions will be imposed in accordance with the provisions of laws and regulations.

¹⁵Philipus A Hadjon, Legal Protection for the People in Indonesia, Bina Ilmu, Surabaya. 1987, pp. 2-3.

3.2. Legal Consequences for Land Rights Holders in Determining Compensation for Land Acquisition That is Not in the Public Interest Based on Justice

Sustainable development, which means in the provision, use, improvement of natural resource capacity and improvement of economic level, needs to be aware of the importance of preserving environmental functions, equality between generations, awareness of community rights and obligations, prevention of development that is damaging and irresponsible towards the environment and the obligation to participate in implementing and applying sustainable development in various levels of society.¹⁶

The cultural difference between the government and the community lies in the determination of compensation prices. The community wants the highest price from the existing market price or at least in accordance with the market price, there are even people who want the compensation price to be based on the price several years in the future or after the land has been cleared and has been used as a public facility.¹⁷

The government in determining the price only refers to the Taxable Object Sales Value (NJOP) which is determined by the Land and Building Tax Office based on reality, the market price in the community is much higher when compared to NJOP. The difference between NJOP and market price is still a problem in determining the compensation price in the implementation of land acquisition for public interest. The government in providing compensation always refers to NJOP, while the community (land rights holders) refers to market price.

This is a trigger for conflict in land acquisition for public interest. The reality is that the compensation process is often not appropriate and fair to land rights holders. This causes land problems and/or land disputes such as several cases that have occurred, one of which the author uses as an example, namely:

The Klaten District Court has issued Decision Number 127/Pdt.G/2021/PN Kln, dated December 9, 2021, examining a civil case at the cassation level has decided as follows in the case between: C, residing in Mlandang, RT 25, RW 10, Ngawen District, Klaten Regency, in this case granting power of attorney to Purwanto, SH, and friends, Advocates at the Legal Aid Organization of the Legal Advocacy Center and Human Rights (PAHAM) Central Java, having an address at Jalan Larasati,

¹⁶Koesnadi Hardjasoemantri, Environmental Law, Gajah Mada University Press, Yogyakarta, 1999, pp. 18-19.

¹⁷Adrian Sutedi, Implementation of the Public Interest Principle in Land Acquisition for Development, Sinar Grafika, Jakarta, 2007, p. 46.

Number 35 Dawung Tengah 2/13, Serengan District, Surakarta City, based on a Special Power of Attorney dated December 21, 2021; the order is as follows:

- a. Declaring the Applicant's objection to be inadmissible (niet ontvankelijke verklaard);
- b. Ordering the Applicant to pay the costs arising in this case amounting to Rp. 430,000.00 (four hundred and thirty thousand rupiah);

That the objection application cannot be accepted (niet ontvankelijke verklaard) because in accordance with Article 5 of the Supreme Court Regulation Number 2 of 2021 concerning Amendments to the Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Depositing Compensation to the District Court in Land Acquisition for Development in the Public Interest, it states that the objection application must be submitted no later than 14 (fourteen) days after the date of the compensation determination deliberation.

If the author relates the problem to the theory of legal consequences according to R. Soeroso, legal consequences are a result of an action taken, to obtain a result expected by the legal actor. The consequences in question are the consequences regulated by law, while the actions taken are legal actions, namely actions that are in accordance with applicable law.¹⁸

Legal consequences are consequences caused by the law, to an act committed by a legal subject. Legal consequences are the consequences of an action taken, to obtain a result expected by the legal actor. The consequences referred to are the consequences regulated by law, while the actions taken are legal actions, namely actions in accordance with applicable law.

It is even clearer that according to Syarifin, legal consequences are all consequences that occur from all legal acts carried out by legal subjects against legal objects or other consequences caused by certain events which the law in question has determined or considered as legal consequences.¹⁹

The legal consequences of the release of land rights are stated by Boedi Harsono, the release of land rights does not mean that the land rights from the land rights holder to another party who provides compensation, but rather the land rights are erased and return to state land or land directly controlled by the state. The release of land rights is one of the causes of the erasure of land rights and does

¹⁸R. Soeroso, Introduction to Legal Science, Sinar Grafika, Jakarta, 2006, p. 295

¹⁹Pipin Syarifin, Introduction to Legal Science, Pustaka Setia, Bandung, 1999, p. 71

not constitute a transfer of land rights.²⁰With the release of land rights by the entitled party for the benefit of the agency that requires the land, it does not mean that the land rights are transferred from the rights holder to the agency that requires the land, but rather results in the land rights being revoked and the land rights returning to state land or land directly controlled by the state.

The government in determining the price only refers to the Taxable Object Sales Value (NJOP) which is determined by the Land and Building Tax Office based on reality, the market price in the community is much higher when compared to NJOP. The difference between NJOP and market price is still a problem in determining the compensation price in the implementation of land acquisition for public interest. The government in providing compensation always refers to NJOP, while the community (land rights holders) refers to market price.

This is a trigger for conflict in land acquisition for public interest. The reality is that the compensation process is often not appropriate and fair to land rights holders. This gives rise to land problems and/or land disputes such as several cases that have occurred, one of which the author uses as an example, namely the Supreme Court Decision Number 992 K/Pdt/2022 concerning Unlawful Acts (Onrechmatigdaad) Regarding Compensation for Land Acquisition for Public Interest where land rights holders did not receive adequate and fair compensation, so that the Panel of Judges granted the applicant's objection in its entirety.

4. Conclusion

Legal protection for land owners in land acquisition activities for public interest is the obligation to provide adequate compensation for land owners. The provisions in Article 33 of Law No. 2 of 2012, have determined that the assessment of the amount of compensation is carried out by an appraiser who will assess each plot of land, which includes: Land; Above ground and underground space; Buildings; Plants; Objects related to land; and/or; Other losses that can be assessed. Legal protection for recipients of compensation in land acquisition for public interest is very important to ensure the fulfillment of the rights of recipients of compensation affected by land acquisition. The existence of disputes in the community shows that legal protection for recipients of compensation in land acquisition for public interest is not yet optimal. The legal consequences of providing compensation that is not appropriate in land acquisition for public interest causes losses for the owner of the land rights who in this case is the recipient of compensation for the legal act of land acquisition for public interest.

²⁰Boedi Harsono, "Legal Aspects of Land Provision", Law and Development Magazine, Number 2 Year XX, Faculty of Law, University of Indonesia, Jakarta, April 1990, p. 168.

Losses for recipients of compensation are due to the improper and unfair provision of losses for the owner of the land rights who is the object of land acquisition for public interest. In addition to compensation that is not proper and fair.

5. References

Journals:

- Achmad Rifai, Penentuan Pemilik Hak Atas Tanah Dalam Sengketa Tanah Sebagai Fasilitas Pendidikan, Jurnal Yustisia, Vol 20, No 1 (2019). Hlm. 12-40
- Adrian Sutedi, Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan, Sinar Grafika, Jakarta, 2007, hlm. 46.
- Ali Ahmad Chomzah. Hukum Pertanahan, Pemberian Hak Atas Tanah Negara, Seri Hukum Pertanahan I. Jakarta: Prestasi Pustaka, 2002, hlm 67
- Bambang Sunggono, 2003, Metodologi Penelitian Hukum, Jakarta: Raja Grafindo Persada, h. 27-28
- Blau, M Peter dan M. W. Meyer. 2005. Birokrasi Masyarakat Modern, Edisi Kedua, Cetakan Pertama, Alih Bahasa Gary Rachman Jusuf, UI-Press, Jakarta. h:35
- Boedi Harsono, "Aspek Yuridis Penyediaan Tanah", Majalah Hukum Dan Pembangunan, Nomor 2 Tahun XX, Fakultas Hukum Universitas Indonesia, Jakarta, April 1990, h. 168.
- Dekie GG Kasenda, Ganti Rugi Dalam Pengadaan Tanah Untuk Kepentingan Umum, Jurnal Morality, Volume 2, Nomor 2. 2015, hlm. 1-20
- Hardianto Djanggih dan Salle, Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum, Pandecta, Vol. 12. No. 2. 2017, hlm. 165-172
- Julius Sembiring, Hak Menguasai Negara Atas Sumber Daya Agraria, Bhumi: Jurnal Agraria dan Pertanahan, Vol. 2 No. 2 (2016), hlm. 119-133
- Koesnadi Hardjasoemantri, Hukum Tata Lingkungan, Gajah Mada University Press, Yogyakarta, 1999, hlm. 18-19.
- Maria S.W. Soemardjono. Kebijakan Pertanahan Antara Regulasi dan Implementasi. Edisi Revisi. Jakarta: Kompas. 2006, hlm 12

- Muhammad Yusrizal, Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum, De Lega Lata Jurnal Ilmu Hukum, Vol 2, No 1 (2017)
- Nurdiana Lestari (et. al.), Perlindungan Hukum Terhadap Ganti Rugi Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum. Journal of Comprehensive Science (JCS), Vol. 2, No. 6, 2023, hlm. 1544– 1552.
- Philipus A Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia, Bina Ilmu, Surabaya. 1987, hlm. 2-3.
- Pipin Syarifin, Pengantar Ilmu Hukum, Pustaka Setia, Bandung, 1999, hlm. 71
- R. Soeroso, Pengantar Ilmu Hukum, Sinar Grafika, Jakarta, 2006, hlm. 295
- Rahayu Subekti, Kebijakan Pemberian Ganti Kerugian Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum, Yustisia. Vol. 5 No. 2 Mei -Agustus 2016, hlm. 375-394
- Suratman dan Phillips Dillah, 2015, Metode Penelitian Hukum, Cetakan ke-3 Alfabeta, Bandung, hlm. 6.
- Urip Santoso. "Penyelesaian Sengketa dalam Pengadaan Tanah untuk Kepentingan Umum". Jurnal Perspektif. Vol XXI. No. 3. Edisi September. 2016, hlm 17
- William Matthew Theogives Tamo (et. al.), Perlindungan Hukum Bagi Penerima Ganti Rugi Dalam Pengadaan Tanahuntuk Kepentingan Umum, Lex Crimen, Vol. 11 No. 4 (2022), hlm. 1-12