

Land Acquisition for Public Interest Reviewed from the Principle of Social Function and the Principle of Justice at TPST Batargebang

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Abstract. *Land acquisition for public interest in Indonesia has limited land so the author will examine the government's considerations in determining areas for land acquisition reviewed from the principle of social function and examine the implementation of land acquisition for public interest against land rights reviewed from the principle of justice with the study area at TPST Batargebang. The writing is compiled using a normative legal research method that refers to legal norms contained in laws and regulations. The data processing method used is a qualitative method. Land acquisition for public interest at TPST Batargebang has implemented the principle of social function and the principle of justice by collaborating between the DKI Jakarta City Government and the Bekasi City Government.*

Keywords: *Acquisition; Justice; Land; Social.*

1. Introduction

Land is a very important factor in the life of a society, in Indonesian society the majority of the population depends on land for their livelihood (Muchsin & Imam Koeswahyono, 2008). Land in Indonesia is collectively individual, meaning that the earth, water and natural resources found on the surface of the land are the shared property of the Indonesian people. The Indonesian people are obliged to protect, manage and preserve it well from damage by other countries, both individually and together (Arba, 2019). Article 2 paragraph (3) of Law No. 5 of 1960 concerning the Basic Agrarian Regulations of the Republic of Indonesia (hereinafter referred to as UUPA) states that:

"The authority derived from the State's right to control as referred to in paragraph (2) of this article is used to achieve the greatest prosperity of the people in the

sense of nationality, welfare and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous."

The article provides the understanding that there must be a balance between the interests of society and individual interests. Article 2 of the UUPA can be realized through provisions related to compensation regulated in Article 18 of the UUPA which clearly states that:

"In the public interest, including the interests of the nation and the State as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation and in accordance with the methods regulated by law."

UUPA also adheres to the principle that land rights have a social function, as stated in Article 6 of UUPA, namely:

"All land rights have a social function."

This principle implies that land rights holders must give up their land rights to be released or handed over if the government needs the land for the implementation of development for the public interest. Article 6 of the UUPA is supported by Article 18 of the UUPA that for the public interest the state can revoke land rights, thus the two Articles become the legal basis for the government to take over community land for the public interest in carrying out social functions. Land is very much needed in development, both for public and private interests. Currently, development continues to increase while the land area remains the same. In 2012, the government issued Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (hereinafter referred to as Law No. 2 of 2012) which will guarantee the rights of each party, both the government and the community. This new law allows the government to take over land to facilitate the development of new infrastructure projects. This law aims to remove the biggest obstacles to infrastructure development in Indonesia. Development, especially for the public interest, often uses land that comes from the community. Article 1 Number 6 of Law No. 2 of 2012 stipulates that:

"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 legal basis used in land acquisition for development in the public interest includes:

1. The 1945 Constitution of the Republic of Indonesia;
2. Basic Agrarian Law No. 5 of 1960 concerning Basic Agrarian Regulations;
3. Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest;
4. Government Regulation Number 81 of 2012 concerning Management of Household Waste and Waste Similar to Household Waste;
5. Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest; and
6. Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Instructions for the Implementation of Land Acquisition as amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 6 of 2015 concerning Amendments to Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Instructions for the Implementation of Land Acquisition.

Types of development for public interest based on Article 4 paragraph (1) of Law No. 2 of 2012 concerning land for public interest, one of which will be studied in this journal is waste disposal and processing sites. Land acquisition activities by parties who need land against land rights of other parties are known as land acquisition. Along with the development of society and to facilitate development for public interest, with limited land areas, land owned by the community must be released, based on UUPA (Adrian Sutedi, 2008). Land acquisition in land procurement for public interest requires approval from the land rights holder whose land is required by the agency, therefore compensation must be given as fairly as possible. Land rights owned by individuals whose rights are released for public interest through the revocation of land rights to the government are entitled to receive appropriate compensation from the government. Regarding land acquisition for public interest, there are principles that according to researchers can be studied, namely the principle of justice shown to land holders whose land rights are taken and the principle of social function for land that will be used as the object of land acquisition. One of the land acquisitions carried out by the government for public interest is the waste disposal and processing site in Batargebang, namely the role of the DKI Jakarta Provincial Government carried out by the DKI Jakarta Provincial Cleaning Service and the role of the Bekasi City Government by the Bekasi City Cleaning Service in carrying out handling at the Final Disposal Site (hereinafter abbreviated as TPA) / Integrated Waste

Management Site (hereinafter abbreviated as TPST) so that there are no mountains of garbage located in Bantargebang District, Bekasi City. TPA / TPST Batargebang has become the world's spotlight after National Geographic uploaded about TPST Bantargebang which is said to be the largest waste disposal site in the world (Muhammad Azzam, 2019).

2. Research Methods

The normative legal writing approach that will be used in writing the law in this journal. Soerjono and Sri Mamudji as quoted by Ishaq provide an understanding of normative legal research, namely legal research conducted by examining library materials or secondary data alone (Ishaq, 2017). Writing using a normative legal research method that refers to legal norms contained in statutory regulations (Sri Mamudji. et al, 2005). The data processing method used in writing this journal is a qualitative method.

3. Results and Discussion

Article 6 of the UUPA confirms that all land rights have a social function which is a continuation of Article 33 paragraph (3) of the 1945 Constitution, which implicitly explains that the social function of primary property rights can be interpreted as property rights which must not be allowed to harm the general interests of the general public. Land has a social function, namely prioritizing social interests above personal or group interests, so public interests must be prioritized. When land rights fulfill social functions, they will provide happiness to the rights holders, but also the goals of society as a whole (Nia Kurniati, 2016).

The social function of land then gave birth to a system of revocation of land rights for public interest, revocation of land rights for the purpose of revocation of land due to the social function of the land then gave birth to a land compensation system in land acquisition for development in the public interest as an effort to realize national development and development of community welfare which in this case is specifically mandated by agrarian law through Article 2 paragraph (3) and Article 18 of Law No. 5 of 1960 concerning the Basic Agrarian Law.

Indonesia uses legal basis to determine something. One of the goals of law through justice is to create a just and prosperous society, just in prosperity and prosperous in justice (Jarot Widya Muliawan, 2018). Basically, justice is the word fair, which means impartial, impartial, impartial, impartial, impartial, upright and fair (Tri Kurnia Nurhayati, 2012). The position of justice in every society, both large and small societies, has a high position regardless of work and type of behavior.

However, the implementation of justice has obstacles whether something is fair or not because of the many forms of justice (Ervan Hari Sudana, Djoni S. Gozali & Akhmadi Yusran, 2022).

One of the important elements in development activities is the availability of land. Currently, there are limitations in finding land for the implementation of development activities, especially in urban areas with quite dense population and activity levels. The government in carrying out development for public interests will take over land owned by individuals, because the availability of state land is very limited (Nia Kurniati, 2017). Article 1 Number 6 of Law No. 2 of 2012 stipulates that:

"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 prosperity people".

Land acquisition for public interest in Article 4 paragraph (1) of Law No. 2 of 2012 is stated in Article 10, namely:

1. National defense and security;
2. Public roads, toll roads, tunnels, railway lines, railway stations and railway operating facilities;
3. Reservoirs, dams, bends, irrigation, drinking water channels, water and sanitation drainage channels, and other irrigation structures;
4. Ports, airports and terminals;
5. Oil, gas and geothermal infrastructure;
6. Generation, transmission, substations, networks and distribution of electric power;
7. Government telecommunications and informatics networks;
8. Waste disposal and processing site;
9. Government/Local Government Hospitals;
10. Public safety facilities;
11. Public cemetery of the Government/Regional Government;

12. Social facilities, public facilities, and public green open spaces;
13. Nature reserves and cultural reserves;
14. Government Office / Regional Government / Village;
15. Arrangement of urban slum settlements and/or land consolidation, as well as housing for low-income communities with rental status;
16. Government/Regional Government educational or school infrastructure;
17. Government/Regional Government sports infrastructure; and
18. Public market and public parking lot.

Land Acquisition Planning for Public Interest based on Article 14 and Article 15 of Law No. 2 of 2012 is by compiling a land acquisition planning document, which at least contains the intent and purpose of the development plan, conformity with the Regional Spatial Plan and the National and Regional Development Plan, location of the land, area of land required, general description of land status, estimated time of Land Acquisition implementation, estimated time period of development implementation, estimated land value and budget plan.

The purpose of land acquisition is to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and society while still guaranteeing the legal interests of the entitled parties. The land acquisition process related to the determination of locations that will be affected by development activities for the public interest must be in accordance with the RT/RW. National/Regional Development Plan, Strategic Plan, Work Plan of each Agency that requires land (Boedi Harsono, 2003).

Land rights must be used based on the category of land rights so that they are useful for society and the state, but in certain circumstances this does not mean that individual interests will be completely suppressed by public (community) interests (Zalfa Dhea Fairuz Shofi, Rahayu Subekti & Purwono Sungkowo Raharjo, 2022). Article 9 of Law No. 18 of 2008 concerning Waste Management (Waste Management Law), that the Regency/City Government has the responsibility and authority in waste management so that there is no accumulation and mountains of waste. Government Regulation Number 81 of 2012 concerning the Management of Household Waste and Waste Similar to Household Waste (PP Number 81 of 2012) especially Article 4 and Article 5 regulate government policies and strategies in carrying out waste management.

Population growth and the development of socio-economic development activities in the Special Capital Region (DKI) of Jakarta have resulted in increasingly limited land for final waste disposal sites. This is the responsibility of the DKI Jakarta Provincial Government to provide final waste disposal infrastructure, so that the problem of final waste disposal can be managed properly. The solution to this problem is that the DKI Jakarta Provincial Government and the Bekasi City Government must collaborate to build and manage a final waste disposal site (TPST) located in Bantargebang Bekasi. TPST Bantargebang is located in Ciketingudik Village, Cikiwul Village, and Sumurbatu Village, Bantargebang District, Bekasi City. Based on documents obtained from Roy Sihombing (2020), TPST Bantargebang has 5 waste disposal zones consisting of: Zone I has an area of 18.3 hectares Zone II 17.7 hectares Zone III 25.41 hectares Zone IV 11 hectares Zone V 9.5 hectares (Alinda Hardiantoro & Inten Esti Pratiwi, 2023).

The implementation of land acquisition involves the government and the people, so in providing legal certainty in the land sector, it requires a complete and clear written legal source. These developments include compensation which is a replacement for the value of the land including buildings, plants and/or other objects related to the land as a result of the release or transfer of land. In Law No. 2 of 2012 in the provisions of Article 1 number 10, compensation is

"Proper and fair compensation to the entitled parties in the procurement process land".

The definition of compensation in this law emphasizes the aspects of eligibility and justice for land rights holders. The implementation of compensation for the community as land rights holders around who have lost their rights, the government is obliged not to cause loss at least they remain in the same living conditions (R. Setiawan, 2007). The basic guidelines for compensation are contained in the principles, including: (Benhard Limbong, 2011).

1. The principle of good faith, land acquisition is aimed at public interest, therefore in determining the compensation value it must be based on good faith so that no party is harmed.
2. The principle of balance, the provision of compensation must bring about shared prosperity in accordance with the legal basis held by each land owner.
3. Principle of Appropriateness, the compensation value must be appropriate and proper based on the real value of the land and/or all its derivatives.

4. Principle of Legal Certainty, the implementation of compensation is based on special laws that regulate it.
5. The principle of welfare, protection assessed from an economic perspective for the party releasing the land.

Article 33 of Law No. 2 of 2012 states that the assessment of the amount of compensation is carried out on a per-plot basis including land, above-ground and underground space, buildings, plants and objects related to land and other losses that can be assessed. Article 36 of Law No. 2 of 2012 states that compensation can be given in the form of money, replacement land, resettlement, share ownership and other forms agreed upon by both parties. Compensation is provided no later than 7 working days since the determination of the form of compensation by the implementation of land acquisition.

In order to realize Article 18 of the UUPA, it is specifically regulated regarding the provisions for the revocation of land rights due to the need for public interest, these provisions are regulated in Law No. 20 of 1961 concerning the Revocation of Rights to Land and Objects Thereon, this provision is then followed up with special provisions regarding compensation for development in the public interest, namely the Republic of Indonesia Law. Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. So it is clear that there are constitutional rights to land as regulated in Article 33 of the UUD NRI.

Land acquisition for public interest at TPST Batargebang (waste disposal), the DKI Jakarta City Government is collaborating with the Bekasi City Government. The cooperation agreement on October 26, 2021, the Governor of DKI Jakarta Anies Baswedan together with the Mayor of Bekasi Rahmat Effendi was extended for the next five years. Anies stated that the extension of this cooperation aims to make the two 'neighboring' areas able to carry out a collaboration and provide many benefits for residents in both areas (Princess Anisa Yulian, 2021).

Regarding the waste management cooperation plan, the scope includes compensation funds, revision of the Environmental Impact Analysis (AMDAL) document, namely the Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL), as well as assessment of environmental carrying capacity and capacity. The government considers the waste disposal mechanism for waste transportation routes and times, monitoring and evaluation of waste utilization management, waste disposal and collection, waste reduction technology innovation, to the termination process of the Bantargebang Bekasi TPST. The government is also considering the scope of compensation for this agreement to

residents in the form of direct cash assistance, to death insurance for residents affected by the Bantargebang TPST.

4. Conclusion

Land acquisition for public interest at TPST Batargebang has implemented the principles of social function and justice by conducting cooperation between the DKI Jakarta City Government and the Bekasi City Government which includes land and waste acquisition, the scope of which includes compensation funds, revision of the Environmental Impact Analysis (AMDAL) document, namely the Environmental Management Plan (RKL) and the Environmental Monitoring Plan (RPL) based on applicable legal regulations.

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