

Legal Protection for Rights Holders Land in Determination of Compensation Related to Land Procurement for Public Interests Based on Justice

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Abstract. *The purpose of this study is to determine and analyze the legal protection for land rights holders in determining compensation for land acquisition for the public interest based on justice; know and analyze the legal consequences for land rights holders in determining compensation for land acquisition that is not suitable for the public interest based on justice; know and analyze the policy arrangements for determining compensation for land acquisition for the public interest in the future. The approach used in conducting this research is through a Normative juridical approach. The result of this research is legal protection to landowners in land acquisition activities for the public interest is the obligation to provide adequate compensation for landowners. The provisions in Article 33 of Law No. 2 Year 2012, have determined the assessment of the amount of compensation value is carried out by an appraiser who will assess the land parcel by parcel, which includes: Land; Aboveground and underground space; Buildings; Plants; Objects related to land; and/or; Other losses that can be assessed. in land acquisition activities for the public interest is firmly implemented on the basis of aspects of justice, namely providing guarantees of adequate compensation to the entitled parties in the land acquisition process so that they get the opportunity to be able to live a better life. Compensation for losses in land acquisition for the public interest often causes legal consequences that are detrimental to landowners who are the object of land acquisition related to land acquisition for the public interest. The losses received become a burden for landowners so that they feel they have no legal protection in maintaining and protecting their rights as owners of legal land rights according to applicable law. There needs to be an institution, agency or body directly appointed to supervise the land acquisition process. The basis for the need for supervision is to control and monitor so that there is no abuse of authority or it does not run in accordance with existing regulations. The duties and authorities given to the supervisor start from*

land acquisition planning to the termination of legal relations between the entitled party and the object of land acquisition.

Keywords: *Compensation; Legal; Protection.*

1. Introduction

Land for the Indonesian people has a very strategic role in achieving a just and prosperous social life, but because its management cannot be carried out by the Indonesian people themselves, the State is given the authority to control it.

The State's authority to control this 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 solely public. Based on this constitutional basis, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) was promulgated and one of the aims of establishing UUPA was to provide legal certainty.

Legal regulations relating to land acquisition for public purposes and all other related regulations have undergone a process of development over time. Several existing land acquisition regulations are deemed unable to accommodate the interests of land rights holders, so there is a dire need for legal instruments at the level of law to provide a strong legal umbrella. To answer these complaints, the government adopted a policy by issuing Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The Law explains in Article 2 that "Land acquisition for public purposes is carried out based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, prosperity, sustainability and harmony" if you look closely at the mandate of this The law is certainly very clear that land acquisition for public purposes must pay attention to justice in order to achieve a prosperous society and feel safe and comfortable in the surrounding environment.

Land acquisition for public purposes often triggers conflicts and land problems, especially in the compensation process 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.

In order to regulate the land acquisition process which is carried out through deliberation regarding the form and form of compensation, the Government has issued successive regulations, namely Minister of Home Affairs Regulation (Permendagri) Number 15 of 1975 concerning Provisions Regarding Procedures for Land Acquisition (Article 6 paragraph (2)), Presidential Decree (Keppres) Number 55 of 1993 concerning Land Acquisition for the Implementation of Development in the Public Interest (Article 13), with the implementation of State Minister for Agrarian Affairs Regulation Number 1 of 1994 (Article 16),

Presidential Regulation (Perpres) Number 36 2005 (Article 13), then amended by Presidential Regulation (Perpres) Number

65 of 2006 concerning Land Acquisition for the Implementation of Development in the Public Interest (Article 13), with provisions for implementing Regulation of the Head of the National Land Agency Number 3 of 2007.

The process of providing compensation in land acquisition activities is very important, because without compensation, development will be hampered, and land rights owners who do not receive compensation payments from the government or regional government will demand compensation through legal means. Compensation according to Law no. 2 of 2012 is appropriate and fair compensation to entitled parties in the land acquisition process.

Legal protection for land rights holders whose land will be used as a development project 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 government and used as much as possible for the prosperity of the people.

Based on this background description, the aim of this research is to understand and analyze legal protection for land rights holders in determining compensation for land acquisition for the public interest based on justice. Understand and analyze the legal consequences for land rights holders in determining compensation for land acquisition that is not suitable for justice-based public interests. Know and analyze policy arrangements for determining compensation for land acquisition for the public interest in the future.

2. Research Methods

The approach used in conducting this research is through a normative juridical approach. This research specification uses a descriptive analysis method, namely by describing and providing the researched data as carefully as possible about a problem with the aim of strengthening theories which can also develop a new theoretical framework.

3. Results and Discussion

3.1 Legal Protection for Land Rights Holders in Determining Compensation for Land Acquisition for Public Interests Based on Justice

Legal protection is a universal concept of a legal state. Legal protection is provided if there are violations or actions that are contrary to the law carried out by the government, whether the actions of the authorities violate the law or the public must pay attention to it. The meaning of the word legal protection is an effort to provide protected rights in accordance with the obligations that must be carried out.

There are two forms of legal protection for the interests of legal subjects, namely preventive protection and repressive protection. It can be said that legal protection is an illustration of the function of the law itself, the concept of which is that the law is expected to guarantee justice, order, certainty and benefit. Legal protection is a form of protection of human rights and their dignity as regulated by the rules of law itself. There are two forms of legal protection for society, namely:

- a. Preventive Legal Protection, namely a form of legal protection which is a form of prevention effort, as well as providing opportunities for people to express their opinions. This preventive protection has a big influence on the government, so that later the government can be more careful in its actions.
- b. Repressive Legal Protection, namely legal protection provided after a dispute occurs or with the aim of resolving the dispute.

The existence of Law no. 2 of 2012 places greater emphasis on realizing legal protection for owners of land rights in reforming laws relating to land acquisition in the implementation of development for the public interest. Provisions regarding legal protection in laws and regulations aimed at owners of land rights are clearly stated in the articles that regulate them.

In general, there are two types of compensation payment mechanisms, namely direct compensation and indirect compensation. In contrast to indirect compensation, namely compensation whose implementation is entrusted to the procurement organizer, direct compensation is compensation paid in cash

by the land procurement organizer to the party authorized to obtain its rights after reaching an agreement regarding the method and mechanism.

Every land acquisition action, whether involving the process of revoking land rights or acquisition, must adhere to the principle of compensation. There is no land acquisition by the government without adequate compensation. In accordance with Article 78 of the Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest, it is very urgent to arrange compensation in the form of money which is considered more effective by the community. This regulation must begin with a validation process and be implemented by the head of land procurement until completion.

Land acquisition for public purposes is also regulated in the Indonesian Valuation Standard 204 which regulates land valuation related to the provision of compensation in the context of land acquisition for development in the public interest.¹⁰ The purpose and objective of the assessment in the Indonesian Valuation Standard 204 is to provide an opinion on Fair Replacement Value (NPW), namely the value for the interests of the owner which is based on equality with the Market Value of a property, taking into account extraordinary elements in the form of non-physical losses resulting

from the takeover of the rights to the property. the property, which will be used for the purpose of acquiring land for development in the public interest. The NPW is defined as the same as the Compensation Value as intended in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The purpose and objective of the assessment in the Indonesian Valuation Standard 204 is to provide an opinion on Fair Replacement Value (NPW), namely the value for the interests of the owner which is based on equality with the Market Value of a property, taken into account extraordinary elements in the form of non-physical

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Apart from having to fulfill its purpose for the public interest, it must also be fair and its benefits can be felt by the community. A fair process must be consistent over time, contain accurate interests based on reliable informed decisions; as well as possible improvements or appeals against decisions; and a representation of all the attention involved in a process. In land acquisition for public purposes, from the aspect of justice, a guarantee of adequate compensation must be provided. Decent means fair, so land procurement for public purposes must be fair during the land acquisition process until after the final process of land acquisition, namely the final result which is a manifestation of the principle of justice by providing compensation and a better life after compensation. In implementing the justice aspect in land procurement for the public interest in statutory regulations, land procurement activities for the public interest are strictly carried out on the basis of the justice aspect, namely providing guarantees of adequate compensation to the entitled parties in the land procurement process so that they get the opportunity to live a better life.

3.2 Legal Consequences of Providing Inappropriate Compensation in Land Acquisition for Public Use

Implementation of the land acquisition process for the public interest often causes problems and obstacles, especially in the context of compensation for land rights holders whose land is the object of land acquisition for development in the public interest. The cultural difference between the government and society lies in determining the price of compensation. The community wants the price to be as high as the existing market price or at least in line with the market price, there are even

people who want the compensation price to be based on the price several years into the future or after the land has been acquired and has been used as a public facility. A legal consequence is an event that arises due to a cause, namely an action

carried out by a legal subject, whether an action that is in accordance with the law or an action that is not in accordance with the law. Article 1266 of the Civil Code provides legal consequences for debtors who are not active in the agreement, the legal consequences will be explained in more depth in Chapter IV Discussion.

The legal consequences of relinquishing land rights, stated by Boedi Harsono, are that relinquishing land rights does not mean that the land rights are transferred from the holder of the land rights to another party who provides compensation, but rather that the rights to the land are forfeited and returned to state land or controlled land. directly by the state. Relinquishment of land rights is one of the causes of the elimination of land rights and is not a transfer of land rights. By relinquishing land rights by the entitled party for the benefit of the agency that needs the land does not mean that the rights to the land are transferred from the right holder to the agency that needs the land, but rather results in the rights to the land being extinguished and the rights to the land returning to state land or land that is directly controlled. by country.

Compensation for losses in land acquisition for public purposes often results in legal consequences that are detrimental to land owners who are the objects of land acquisition related to land acquisition for public purposes. The losses received become a burden for land owners so that they feel they do not have legal protection in maintaining and protecting their rights as legal owners of land rights according to applicable law.

3.3 Arrangement of Compensation Policy for Land Acquisition in the Future

Good law conditions the creation and implementation of legal rules in accordance with human dignity. By obeying good laws, a person's freedom is not lost and therefore his dignity as a human being is not degraded. In fact, by obeying good laws, he actually realizes the nobility of his dignity because he realizes and understands

what he is obeying. In this obedience, he is free to choose to obey the law in order to actualize his dignity as a human being in social interactions with other people.

The process of implementing the construction of infrastructure for the public interest, especially the implementation of national strategic projects, of course cannot be separated from land acquisition. Land Procurement is the activity of providing land by providing adequate and fair compensation to the entitled parties. The entitled party is the party who controls or owns the land acquisition object. The stages of taking land rights must of course pay attention to a sense of justice and that no party feels disadvantaged by the loss of a right. In terms of meaning, compensation is appropriate and fair compensation to the entitled Party in the Land Acquisition process.

If the concept of justice is correlated with the determination of the amount of compensation in Government Regulation (PP) Number 19 of 2021 concerning

the Implementation of Land Acquisition for Development in the Public Interest, then there are still habits found in the governing regulations, these Habits certainly give rise to a sense of injustice and a sense of uncertainty. law. This can be seen in the word "Compensation", meaning that a pronoun has the meaning "a type of word that functions to replace a noun or a particular person who is not mentioned directly." Meanwhile, in terms of meaning, based on the KBBI, it is something that becomes a substitute for something that does not exist or is lost. Meanwhile, the word "loss" comes from the word "loss" which according to the KBBI means less than the purchase price or capital, in other words, no profit, while the word loss means bearing or suffering a loss.

The release or surrender of land rights must be based on the principle of respect for land rights. Rationally, to protect someone's rights, every land acquisition must be carried out with appropriate compensation and to be said to be appropriate, the minimum compensation must be in accordance with the market value. The sales value of the tax object that is used as the basis for the calculation has the potential to not meet the elements of appropriate compensation. It is a general understanding that the sales value of tax objects often does not reflect the market value. Justice is meant if the owner/holder of land rights has received compensation that is deemed adequate, because the compensation has been beneficial and given them a better life. For example, by giving up their land rights and then receiving compensation payments

which can then be used to pay for their children's school fees, or they can use it for business capital, besides that, they can also live in a new house which is in better condition than their previous house.

In the future, there will need to be institutions, agencies or bodies appointed directly to supervise the land acquisition process. The basis for supervision is to carry out control and monitoring so that there is no abuse of authority or failure to comply with existing regulations. The duties and authority given to supervisors start from land acquisition planning to terminating the legal relationship between the entitled party and the land acquisition object, bearing in mind that at this stage the community has received or received certainty and rights that must be accepted for the loss of rights to the land they own.

4. Conclusion

Legal protection for land owners in land acquisition activities for the public interest is the obligation to provide adequate compensation for land owners. Provisions in Article 33 of Law no. 2 of 2012, has determined that the assessment of the amount of compensation will be carried out by an appraiser who will assess each parcel of land, which includes: Land; Above ground and underground space; Building; Plants; Objects related to land; and/or; Other assessable losses. Providing compensation for land acquisition must pay attention to 3 important aspects, namely economic aspects, sociological aspects and philosophical aspects. The sociological aspect must consider the social

impact on society whether it will cause social problems, while the economic aspect looks at the people's economy to see whether compensation for land acquisition can further improve the people's economy. Implementation of the land acquisition process for the public interest often causes problems and obstacles, especially in the context of compensation for land rights holders whose land is the object of land acquisition for development in the public interest. The cultural difference between the government and society lies in determining the price of compensation. Compensation for losses

in land acquisition for public purposes often results in legal consequences that are detrimental to land owners who are the objects of land acquisition related to land acquisition for public purposes. There needs to be an institution, agency or body appointed directly to supervise the land acquisition process. The basis for supervision is to carry out control and monitoring so that there is no abuse of authority or failure to comply with existing regulations. The duties and authority given to supervisors start from land acquisition planning to terminating the legal relationship between the entitled party and the land acquisition object.

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