

Legal Protection For Land Rights Holders Upon Disposal Of Land Rights For Public Interest (Case Study Of Depok Toll Road Land Acquisition)

Dinda Novianti^{1*}, Adi Sulistiyono², Supto Hermawan³

^{1,2,3} Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

*Corresponding Author:

Email: Noviantidinda22@gmail.com

Abstract.

Indonesia as a legal state is clearly guided by existing rules in policies relating to the rights of its citizens. This research aims to determine the form of legal protection for land ownership rights for development in the public interest of the Depok Toll Road and to determine the mechanism for providing compensation for land ownership rights for development in the public interest. The method used in this research is a normative research method with a conceptual and statutory approach, as well as using quantitative analysis in the form of quantitative analytical literature. Compensation for land for public purposes must be based on the principle of justice, where there are adequate guarantees to the entitled parties, the obstacle that arises is the lack of funds from the government for land acquisition.

Keywords : *Compensation, Land Acquisition and Legal Protection.*

I. INTRODUCTION

Indonesia as a developing country needs infrastructure developments in order to improve the welfare of the Indonesian people through this development. Every development activity carried out by the Government cannot be separated from the need for land as a forum for its activities. Because of the importance of land in human life, land can also be used as a means to achieve the prosperity of the nation's life, because land has two dual functions, namely as a social asset and a capital asset. As a social asset, land is a means of binding social unity among Indonesian people to live and survive. , while as a capital asset, land is a capital factor in development (Hermayulis, 2000: 49).The land issue is a national and state problem, so it is also a problem for all of us children of the nation who live throughout the archipelago. This means that land is fundamental for all of us, therefore it is very ironic if land issues are not handled seriously by the government. Article 6 of the Basic Agrarian Law shows that the Basic Agrarian Law shows that the 1945 Constitution which states "earth (land), water and natural resources should be used for the prosperity of the people, used for the greatest prosperity of the people in article 2 paragraph (3) The Basic Agrarian Law Number 5 of 1960 is interpreted as the interests of nationality, welfare and independence in society and the independent Indonesian legal state. , sovereign, just and prosperous (Boedi Harsono, Basic Agrarian Law Law No. 5 of 1960.) Development by the government, especially physical development, absolutely requires land. The land required can be land that is controlled directly by the state or land that is already owned with a right by a legal subject.

In terms of the compensation and resettlement process, it must be followed by activities to restore the socio-economic life of the community. There needs to be an effort to calculate the losses experienced to restore the economic activities of communities affected by land acquisition. For community members whose land was previously a valuable asset for business, gardening, etc., they were forced to lose this asset because they were moved to new residential areas. The restoration of new residential locations for community members should be accompanied by planning for infrastructure development that supports activities in efforts to restore the socio-economic life of the community. At least the people will not be harmed by the government over the acquired land. Land that will be used by the government for development purposes must not harm the rights of the land owner. Therefore, to regulate this matter, it is necessary to have legal

regulations that can provide legal protection to land rights holders. The state's right to control land and what is contained therein includes the procurement of land to be used for public purposes. Land procurement for public purposes aims 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 (Badriyah Harun, 2013).

Land procurement aims to build public interest facilities, so there must be criteria which is certain about the meaning or category of the public interest itself. In the Depok Toll Road project, there are still a number of problems. In particular, the issue of compensation money for land that is not visited is clear. In this case, the land was acquired without deliberation, the Plaintiffs are the legal owners of the plots of land, buildings, plants and other objects on the plot of land affected by the construction of Jalan Depok. The Plaintiffs do not feel that they have ever carried out a deliberation process, and object to the Assessment mechanism because the assessment was correct and not in accordance with the wishes of residents whose land and property were affected by the Depok Toll Road construction. In most of the acquired land, the amount of compensation provided by the government which is claimed by the government is greater than the Tax Object Sales Value of the land. Apart from that, the Depok government has also prepared replacement land as an effort to relocate residents, but many residents chose not to occupy it. In most of the acquired land, the amount of compensation provided by the government which is claimed by the government is greater than the Tax Object Sales Value of the land. Apart from that, the Kulonprogo Regency government has also prepared replacement land as an effort to relocate residents, but many residents chose not to occupy it.

II. METHODS

This research is normative research, namely the research process of researching and studying law as norms, rules, legal principles, legal principles, legal doctrine, legal theory and other literature to answer the legal problems being studied. This research describes and explains what problems arise in the implementation of land acquisition for development in Indonesia and what is the concept of land acquisition for public purposes with a fair consignment. The interviews conducted were unstructured interviews, namely interviews conducted without being limited by time and a list of questions, but still sticking to the main issues that are in accordance with the purpose of the interview. This unstructured interview is intended to obtain spontaneous answers and a broader picture of the problem being studied. (Soemitro, 2000) Secondary data is supporting data that provides provisions for conducting research in the field. Secondary data includes laws and regulations related to land acquisition, supporting literature.

III. RESULTS AND DISCUSSION

I. Legal Protection for Land Ownership Rights Holders Who Experience Compensation in Land Acquisition for Public Interest

There are 2 (two) forms of sources of National agrarian law, namely: (Arba; 2015) Written agrarian law, which is stated in the form of statutory regulations; and unwritten agrarian law, in the form of customary law and new customary law that is not customary law. Apart from the above, the source of national land law is the agreement made by the parties which constitutes concrete law for those entering into legal relations. The source of contract law is used if there is a case between two parties who make a promise, then the legal rules used to resolve the problem are the law agreed upon when the sale and purchase occurred. Apart from that, the source of law is court decisions regarding land matters. National land law provides legal protection to parties who have rights to land. Control and use of land by anyone and for any purpose must be based on land rights provided by national land law. Ownership and use of land based on rights is protected by law against interference from any party, whether by fellow members of the community or even by the authorities, if the interference has no legal basis. This principle is very important to understand because it contains the principle of respect for land rights (Arie, 2011). Meanwhile, the regulation of land acquisition for development in the public interest in Indonesia refers to statutory regulations (Gozal, 2019), one of which is Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (State Gazette Republic of Indonesia of 2012 Number 22, Supplement to

State Institutions of the Republic of Indonesia Number 5280), hereinafter referred to as Law Number 2 of 2012.

As a form of embodiment of essential legal protection in land acquisition for public purposes, it is the provision of adequate and fair compensation to entitled parties as stated in Article 1 number 2 of Law Number 2 of 2012, namely that, "Land procurement is the activity of providing land by providing adequate and fair compensation to the parties who are entitled to it. So that to obtain adequate and fair compensation there must be a basis and method for calculating the land compensation price which is formulated so that it is appropriate and fair in accordance with the provisions of the Law. Invite it. Protection of land rights is protected by the 1945 Constitution which is stated in article 28 letter h paragraph 4 that; "Everyone has the right to have private property rights and these property rights must not be taken arbitrarily and must be balanced with compensation. This compensation, in addition to payment in monetary terms, must also be able to provide better survival from the socio-economic level of life before the land acquisition, so as to produce a balanced compensation." According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights authority to him to act in the context of his interests. (Satjipro, 2003) The use of land must be adapted to the conditions and the nature of the rights, so that it is beneficial for the welfare and happiness of those who own it and is also beneficial for society and the state. However, this provision does not mean that a person's interests will be completely suppressed by the general (society) interest.

The Basic Agrarian Law also takes into account individual interests. The interests of society and individual interests must balance each other, so that in the end the main goal can be achieved: prosperity, justice and happiness for the people as a whole. The most important thing in implementing land acquisition is the existence of strong government guarantees, especially guarantees regarding compensation and guarantees during land acquisition and after land acquisition occurs. One of the functions of law is to provide protection to citizens, especially those in a weak position due to legal relations or unequal positions. Likewise with the release of rights for the public interest, which is protected by law. According to Philipus M. Hadjon, there are 2 (two) types, namely Preventive Legal Protection and Repressive Legal Protection: (Philipus, 1987). In preventive legal protection, the people are given the opportunity to submit objections or opinions before a government decision takes definitive form. Preventive legal protection aims to prevent a dispute from occurring. Meanwhile, repressive legal protection aims to resolve a dispute. Preventive legal protection means a lot for government actions that are 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 protect the law carried out through the judiciary, both general court and administrative court country. Law Number 2 of 2012 does not state the basis for calculating compensation as previously regulated in Presidential Decree Number 36 of 2006.

The determination of compensation is guided by the NJOP or real value at the time of land acquisition. Land price assessments are handed over to land appraisers or appraisal institutions. Appraisers who have been appointed must be responsible for the assessments that have been carried out and if there are violations they will be subject to administrative sanctions and criminal sanctions in accordance with the provisions of statutory regulations. The difference in interpretation of the price of land that is compensated in land procurement for public purposes is that the value of the land can be seen from various aspects, one of which is the location. Land location is usually related to the proximity of the land to certain facilities, the land procurement location for the Cinere - Depok Toll Road is lower than the previous toll road. From a market perspective, land value can mean the land price negotiated and agreed upon by the seller and buyer. Land prices are not only judged by the quality of the land, but also the legal obstacles faced and its future use. So the value of land is not only assessed from one aspect, but must include many aspects. The more aspects that are included in the land appraisal, the better the value obtained.

The form of compensation regulated in Article 36 of Law 2/2012 Jo. Article 74 of Presidential Decree 71/2012 is in the form of:

- 1) Money;
- 2) Replacement land;
- 3) Resettlement;
- 4) Share Ownership;
- 5) Other forms agreed by the parties concerned.

The assessment of compensation is determined by a land appraiser appointed by the land agency (National Land Agency/BPN RI). The assessment of the amount of compensation value by the appraiser is carried out plot by parcel of land, including:

- a) Land;
- b) Above ground and underground space;
- c) Building;
- d) Plants;
- e) Objects related to land; and/or
- f) Other losses that can be assessed.

Law 2/2012 does not state the basis for calculating compensation as previously regulated in Presidential Decree 36/2005 Jo. Presidential Decree 65/2006. Is the determination of compensation guided by the NJOP or the real value at the time the land acquisition was carried out? Land price assessments are handed over to land appraisers or appraisal institutions.

II. Mechanisms for the Public Interest

Compensation is a way of paying respect to the rights and interests of every person who has sacrificed their land for the public interest. It can be said to be fair, if there is a balance between before and after giving compensation. The provision of compensation in the form of money in land acquisition efforts, based on Presidential Regulation No. 148/2015 concerning the Fourth Amendment to Presidential Decree No. 71/2002 concerning the Implementation of Land Acquisition for Development in the Public Interest, is carried out by interested parties/governments who need the land based on solid data from the official appointed for this purpose or here the chief land acquisition executive. In practice, the mechanism for providing compensation is carried out in the following ways;

1) The government agency with an interest makes a nominative list of compensation awards based on the results of a comprehensive check announced by the committee or the committee's decision regarding the form and amount of compensation or based on the governor's decision which determines or adds to the committee's decision or the governor's decision regarding changes to the amount or form of compensation. compensation.

2) Payment of compensation is made directly at the location determined by the committee, if in the form of money, it must be witnessed by at least 3 committee members. Apart from that, in the official report on the award of compensation, the amount of compensation needs to be recorded and later signed by the recipient together with the chairman/deputy committee member with at least 2 committee members, always asking for a receipt.

1) The government agency with an interest makes a nominative list of compensation awards based on the results of a comprehensive check announced by the committee or the committee's decision regarding the form and amount of compensation or based on the governor's decision which determines or adds to the committee's decision or the governor's decision regarding changes to the amount or form of compensation. compensation.

2) Payment of compensation is made directly at the location determined by the committee, if in the form of money, it must be witnessed by at least 3 committee members. Apart from that, in the official report on the award of compensation, the amount of compensation needs to be recorded and later signed by the recipient together with the chairman/deputy committee member with at least 2 committee members, always asking for a receipt.

There is often dissatisfaction regarding the amount of compensation between the government and land owners or holders of land rights because there is no agreement between the parties and each party has its own demands and its own standards in determining the amount of compensation. To facilitate this, healthy discussions and negotiating skills are needed, so that the parties do not lose out. For this reason, land rights holders or land owners can release their land to be used for social functions, the aim of which is also for the welfare of society, as the constitution requires.

IV. CONCLUSION

Legal protection for parties who have the right to compensation for land for public purposes must be based on the principles established by law, one of which is the principle of justice, where there is a guarantee of adequate compensation to the party who has the right, so that they get the opportunity to continue their life. which is better and must take into account not only physical losses such as loss of land, buildings, plants and things related to the land. Determining the amount of compensation must be carried out by a professional, impartial and objective appraisal and taking into account the opinions and income of the party entitled to the land, so that appropriate and fair compensation can actually be implemented.

REFERENCES

- [1] Government of the Republic of Indonesia. Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. 2012
- [2] Adrian Sutedi, Implementation of the Public Interest Principle in Land Acquisition for Development, Sinar graphic publisher: 2006. Jakarta.
- [3] Arba. Indonesian Agrarian Law. 2015. Jakarta: Offset Graphic Sinar.
- [4] Arie Sukanti Hutagalung, Struggle of Thought and Various Ideas Regarding National Land Law, (Depok: FHUI Publishing Agency, 2011),
- [5] Maria S.W.Sumardjono, "Judicial Review of Presidential Decree No. 55 of 1993 concerning Land Acquisition for the Implementation of Development in the Public Interest and its Implementation", (paper, national seminar "Land acquisition for development, 1994.
- [6] Satjipro Rahardjo, 2003, Other Sides of Law in Indonesia, Kompas, Jakarta.
- [7] Oloan Sitorus, SKH Sinar Indonesia Baru, 6 July 1994, in Oloan Sitorus and Dayat Limbong, Land Acquisition for Public Use, Yogyakarta, Indonesian Land Policy Partners, 2004.
- [8] Philipus A Hadjon, 1987, Legal Protection for the People in Indonesia, Bina Ilmu, Surabaya.
- [9] Pratiwi, D., Nurjannah, N., & Rahmawati, I. (2021). Pengaruh Penyuluhan Kesehatan Terhadap Perubahan Perilaku Hidup Bersih dan Sehat di Komunitas Pedesaan. *Jurnal Kesehatan Masyarakat*, 16(2), 123-130.
- [10] Rahman, A. (2018). Integrating Religious Values to Overcome Health Behavior Resistance. *Journal of Health Education and Promotion*, 7(1), 23-35.
- [11] Rahman, S., & Hassan, M. (2021). The Impact of Digital Technology on Health Education: Opportunities and Challenges. *International Journal of Digital Health Education*, 12(3), 89-102.
- [12] Rahmawati, S., & Fitriana, D. (2018). Metode Penyuluhan yang Efektif dalam Meningkatkan Kesadaran Kesehatan Masyarakat. *Jurnal Promosi Kesehatan*, 10(4), 207-215.
- [13] Sari, A. P., Hermawan, D., & Puspitasari, R. (2020). Efektivitas Penyuluhan Kesehatan Terhadap Perilaku Hidup Sehat. *Jurnal Pendidikan Kesehatan*, 8(2), 134-142.
- [14] Siti, R. A., & Rahman, A. (2020). The Significance of Health Behavior in Islamic Perspective: A Review. *Journal of Islamic Health*, 5(1), 23-35.
- [15] Siti, Z. (2021). Implementasi Ajaran Islam dalam Meningkatkan Perilaku Hidup Bersih dan Sehat. *Jurnal Studi Islam*, 14(3), 276-283.
- [16] Smith, J. D., & Johnson, A. B. (2019). The Role of Mass Media in Health Communication. *Journal of Health Communication*, 14(1), 123-135.
- [17] Syahputra, A., & Mulyadi, E. (2019). Pendekatan Promotif dan Preventif dalam PHBS. *Jurnal Kesehatan Masyarakat*, 15(1), 45-52.
- [18] Widyastuti, R., Yuniar, Y., & Rahmadani, E. (2019). Partisipasi Masyarakat dalam Program Kesehatan. *Jurnal Kesehatan Lingkungan*, 11(2), 89-97.
- [19] Yuliana, L. (2021). Integrasi Nilai-Nilai Agama dalam Program Penyuluhan Kesehatan. *Jurnal Kesehatan Islam*, 17(1), 50-58.