

## COMPENSATION OF LAND ACQUISITION FOR PUBLIC INTEREST

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### ABSTRACT

*Implementation of land acquisitions on landowners for the reconstruction for public interest is best practiced which is to keep the importance of land in public life as well as respect for the legal rights of individuals. Every release of land should be carried out in accordance with the principle of ownership and should regard the status of the land so that there is no pressure or intimidation on both sides of the government undertaking the construction or the society that relinquishes the rights of the land without seeking compensation beyond the fair market price. Implementation of the award of land compensation for public interest adheres to the principle of respect for land rights and its implementation under Law No. 2 of 2012. The form and extent of damages in the release of land for the public benefit is determined by an agreement between the rights of community on land by executing the procurement of land at a designated value by an appraisal team.*

*Keywords: Compensation, Land Release, Public Interest*

### INTRODUCTION

The country has the right to intervene on land in the Republic of Indonesia. Every owner or rightful owner of land should not lose his or her right to national sovereignty. Today, public interest is in the interests of the group or the interests of the group, it does not mean that the individual or group's interests can be sacrificed simply by switching it to the public interest.

According to Article 16 of Law No. 5 1960 is governed by the rights to land granted by the country to its citizens in the form of: property, land use rights, building rights, use rights, rentals, land rights, land rights, and other rights that have been acquired. is governed by law. The state in obtaining the rights to the people's land should have appropriate compensation and must be approved by the rights holder with the land procurement committee.

Land is not only economically valuable, it also has social functions but the state must guarantee and respect the rights that the country gives to its citizens, as land plays an important role in people's lives including infrastructure in the areas of housing, settlements, farming businesses, and plantations that can be taken to public interest.

Acquisition of land in public interest is in the interest of the general public such as roads, highways, airports, railways, ports, terminals and others where everyone has the right to use it. With the increase and construction continues to grow the demand for land for public benefit is increasing. The availability of land owned by the state is very limited because generally the land is owned by the people, the consequence is that if any activity or construction requires land then the land must be acquired by acquisition of land owned by the people.

- In theory land acquisition for public benefit is set out in the No. 2 of 2012 Law on land acquisition for public construction and is also set out in Presidential Directive No. 148 of 2015 on the fourth amendment to Presidential Rule No. 71 of 2012 on maintenance of land acquisition for construction in the interest of the public, and is set out in the Minister of Agriculture and Space / Head of the National Land Agency (BPN) No. 5 of 2015 regarding changes to the National Head of Land Regulation No. 5 of 2012 regarding technical guidance on land procurement.

Implementation of land acquisition for construction in public interest should include stages such as counseling, inventory, extradition and proportionality of damages as well as stage of implementation of deliberation. Consignment, whereas in the event of a further stage of the deal is a compensation which is then followed by the news of the event of an abdication or surrender of the land.

Further the procurement of land for construction in public interest is often turbulent in its implementation with the coercion of both the government which imposes unilateral damages and high landowners who demand high prices. Legal instruments have not been able to realize these two interests as a result of coercion and intimidation of the public in the release of land for the common good so that the rights and interests of the landowners are not protected by law.

The revocation of land rights is governed by article 18 of the Agrarian Laws, which states that "in the interest of the public including the national and state interests and common interests of the people, the rights of the land may be revoked by compensating for the benefit and in the manner prescribed by law, law, but this is often a matter of serious concern in the release of land for public interest.

The assurance of legal certainty in farming requires one to secure and secure land. Robust domination is seen in terms of time and length of time a person can take possession of his land and the contents of his authority while the land is secure and free from interference to prevent it, it can come from fellow members of the public or government.

The most common issue in land acquisitions in public interest is the form and extent of compensation from the land procurement committee. The public is asking for higher rates of compensation while the land procurement committee has not yet complied with the prices requested by the community and is offering at a price determined by the appraisal agency. The misunderstanding

of the nature and extent of the damages between the land acquisition committee and the public has resulted in the revocation of the rights by leaving the compensation money in court (consignment). The public considers that the revocation of the rights violates the principle of respect for the ownership of the land, in violation of the principle of justice so that the people have not relinquished their rights at the price set by the land acquisition committee resulting in disputes and protests from the landowners.

## PROBLEM FORMULATION

Based on the background on the issues raised in this paper:

1. How is the land exemption implemented on landowners affected by for public interest?
2. How is the provision for redistribution of land affected by construction in the public interest?

## DISCUSSION

### 1. Meaning of Compensation

In Article 1 of Number 2 of Law No. 2 of 2012 states that land acquisition is an act of providing land by compensating the eligible and fair damages, which means that the compensation is a fair and just alternative to the party responsible for the land acquisition process is the landowner. The basis of the award of damages is the result of the agreement in favor of the form and amount of damages.

Compensation is the compensation received by the landowner in lieu of the value of the land, including those for which it has been relinquished or vested.<sup>1</sup>

The term compensation or compensation is generally used in the field of civilization, whether in breach of promise (breach), breach of law or in the area of indemnification.

The process of acquiring land in public interest does not always go smoothly, especially with regard to the form and amount of damages. It is impossible to reach an agreement between the government and the owner of the land and the location of the construction is not possible to move to another location under the Agrarian Law Article 18 may be revoked as set out in Law No. 20 of 1961 on the revocation of rights on the land and other property thereon in lieu of monetary loss to a state court whose jurisdiction includes the location of the land concerned. The way to compensate by leaving a small amount of money in a state loan is known as the term "consignment."

In a transaction that is commonly known the terminology of "market value" as the basis for consideration of the transaction. While the market value is determined by the Indonesian valuation standard (SPI) which is also in line with the international valuation standard (IPS) as follows:

Market value is the estimated amount of money on the valuation date that can be obtained from a sale or purchase transaction of a property, among buyers who interested in buying and seller interested in selling, in a free-for-profit transaction where the offer is properly made, where both parties are aware of the use of the property, acting cautiously and without coercion.<sup>2</sup>

### 2. Public Interest Public

Interest is the national and national interest and the common interest of the people, focusing on social, political, psychological and human rights on the basis of national construction by promoting national resilience and national vision.<sup>3</sup>

According to Article 18 of the Law of the Agrarian Law it states that: "in the interest of the public, including the interests of the nation and the state and the common interest of the people the rights to the land may be revoked by compensating in the proper manner and in the manner prescribed in the Law". It means that the state can take away the private rights that a person has over land for public interest aligned with the interests of the nation and the state, the common interest of the people in the public interest.<sup>4</sup>

In explaining the common interest cannot be given a standard understanding can only be interpreted with the needs, needs or interests of the people with a broad social purpose but in the sense that it is still very broad and not limited. The definition of public interest is not only difficult to explain in Indonesia but also in other countries it is difficult to formulate what is called *public use*.

Public interest is literally a need, a need or a public interest where it is perceived or enjoyed by all legal societies nor does it explicitly state what is meant by public interest but to mention only examples of public interest activities such as : roads, ports, highway construction , airports and more.

<sup>1</sup> Olan sitorus, Carolina Sitepu dan Hermawan Suani, 1995, *Pelepasan atau penyerahan hak sebagai cara pengadaan tanah*, Jakarta. Dasamedia utama, p. 33.

<sup>2</sup> Danuza Okky, 2005, *Perpres 36 Dan Nilai Ganti Kerugian*, MAPPI, Jakarta, P. 2.

<sup>3</sup> John Salindo, 1993, *Masalah Tanah Dalam Pembangunan*, Jakarta, Sinar Grafika, P. 40.

<sup>4</sup> Guna Negara, 2008, *Rakyat Dan Negara Dalam Pengadaan Untuk Pembangunan*, Jakarta, Tatanusa, P. 58.

To understand the meaning and scope of activities that are of public interest, the following is presented in the common law contained in Law No. 2 of 2012, in article 1 of the number (6) stating that public interest is “the interests of the nation, state and society that must be established by government and used it largely for the prosperity of the people.” Article 10 of Law No. 2 of 2012 sets out 18 categories of public interest:

1. Defense and national security;
2. Public roads, highways, tunnels, railways, railway stations, and railway operations;
3. Containers, dams, irrigation, drinking water, sewerage and other drainage and irrigation buildings;
4. Ports, airports and terminals;
5. Oil, gas and geothermal infrastructure;
6. Generation, transmission, substation, network, and distribution of electricity;
7. Government telecommunications and informatics networks;
8. Waste disposal and processing facilities;
9. Government hospitals or local governments;
10. Public safety facilities;
11. Public or local government burial places;
12. Social amenities, public facilities, and public green spaces;
13. Nature and cultural heritage;
14. Government / regional / village offices;
15. Arrangement of urban slums and / or consolidation of land and housing for low-income communities with rental status;
16. Government education / school infrastructure / local government infrastructure;
17. Infrastructure by local government / local government; and
18. Public markets, public parking lots.

### 3. Implementation of Land Release for Public Interest Construction

Land acquisition is an activity undertaken by the government to undertake construction by compensating the owners or owners of the land in a manner that is agreed upon by the landowner and the landowner. Land owned by the state is very limited therefore by virtue of Article 6 of the Law of Agraria No. 5 1960 "all land rights have a social function" then the government with that proposition can take away the rights of the land owned by the people by providing decent compensation even though the property owned by the community is also protected by law and prohibits anyone from seizing his right. Most people feel the injustice of such damages as measured by material is reasonable but historical value cannot be replaced with money since it has been lived for a lifetime.

Public interest under article 1 (6) of Law No. 2 of 2012 on land acquisition for public interest construction and Presidential Rule No. 148 of 2015 states that public interest is the national, state, and community interest that should be established by the government and great for the prosperity of the people.

Public interest is a priority that should come from other interests while maintaining a high regard and respect for other interests.<sup>5</sup>

The general importance of the concept is not difficult to understand but it is not easy to define. Public interests are defined as the interests of the public While construction activities for public interest are limited to construction activities that are subsequently owned by the government, and are not used for profit.<sup>6</sup>

Land procurement under Presidential Decree No. 148 of 2015 states that land acquisition is an act of providing land at a fair and reasonable loss to the rightful owners.

The definition of land acquisition is mentioned in article 1 of number 2 of the Law No. 2 of 2012, which is the activity of providing land with a fair and just compensation to the rightful parties. The lawful parties are the owners or owners of land procurement whereas land procurement objects pursuant to article 1 of the 4 Laws of the Year 2 of 2012 juncto Article 1 of the number 4 of 71 of 2012 are land, parcels and underground , buildings, plants, land-related objects or other valuables.

Construction activities for public interest in article 10 of Law No. 2 of 2012 include:

1. National defense and security;
2. Public roads and highways, tunnels, railways, railway stations and railway operations;
3. Containers, dams, dams, drinking water irrigation, drainage, sanitation and other irrigation construction ;
4. Ports, airports and terminals;
5. Oil, gas and geothermal infrastructure;
6. Power plants, transmissions, stations, networks and distribution of power;
7. Government telecommunications and informatics networks;
8. Waste disposal and processing facilities;
9. Government / regional government hospitals;
10. Public safety facilities;

<sup>5</sup>Sudikno Mertokusumo, 1996, *Artikel Hukum “ Kertas Kerja Untuk Didiskusikan Di Kejangung RI”*, Universitas Gajahmada, Jakarta, P.5.

<sup>6</sup>Maria S. W .Sumarjono, 2008, *Tanah Dalam Perspektif Hak Eknomi Sosial Dan Budaya*, Kompas, Jakarta, P. 73.

11. Public / local government burial places;
12. Social amenities, public facilities, and public green spaces;
13. Nature and cultural heritage;
14. Government / regional / village offices;
15. Arrangements of urban slums, land consolidation, and low-income community housing for rent.

In the acquisition of land for public interest, the thing to be emphasized is that the principles of land acquisition are for the purpose of construction: The

1. certainty of the sustainability of the construction process for the public and private interests;
2. Public openness in the process of project construction in the public interest;
3. Respect for land rights;
4. Justice for a person who surrenders or relinquishes a right to the public interest.<sup>7</sup>

Generally land acquisition for construction in public interest or so-called *land acquisition* is carried out by the government in 3 (three) stages:

1. Planning stage (agency that requires land to convey to governor)
  - 1) Purpose and plan of construction.
  - 2) Suitability of construction plan.
  - 3) Put the ground down.
  - 4) Area required.
  - 5) Overview of land status.
  - 6) Duration of execution.
  - 7) Estimated land value.
  - 8) Establishment of construction costs.
2. The preparation stage (consisting of land procurement committee is Secretary, National Land Agency, the ministry of law and human rights, department of housing and residential people and institutions who require land PU)
  - 1) notice construction plan
  - 2) Documenting the start location
  - 3) Public consultations
  - 4) Determination of the location of
3. the level of implementation (implementing land acquisition P2T)
  - 1) Inventory and identification of land
  - 2) Assessment compensation
  - 3) Deliberation fixing for damages
  - 4) Granting compensation
  - 5) for land clearance
4. Submission stage in which the payment is made after the implementation of land acquisition compensation P2T submit these results to the agency requiring the land.

The act of procurement of land for public interest is theoretically based on certain principles which are divided into two systems:

- a. Government procurement of land by the public interest; and
- b. Land acquisition because it is not a public or commercial interest.<sup>8</sup>

According to Soemarjono, public interest comprises three essential elements:

1. Government action;
2. Government owned; and.
3. Nonprofit.<sup>9</sup>

Of these three elements according to Soemarjono the provision of highway construction is not in the public interest, as the construction of the highway does not yet contain all three elements and in reality the profit-driven highway.<sup>10</sup> Thus it should be the procurement of land for tolls the most appropriate legal argument for freeway freedoms is not with the release of land for the public benefit but with the sale and purchase system.<sup>11</sup>

Acquisition of land for public interest in the implementation of the construction is in the interest of the people who have been deprived of their rights and even those who have been deprived of their rights cannot use such facilities as toll roads are entitled to only compensation determined by the government.

In implementing the construction of public interest it must be done with the utmost importance that is, keeping in mind the important meaning of land in people's lives and the principle of respect for the rights of individuals who are legally entitled to land. Every acquisition of land must be carried out in accordance with the principle of ownership and the consideration of the

<sup>7</sup>Adrian Sutedi, 2007, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, Sinar Grafika, Jakarta, P. 195.

<sup>8</sup>Oloan Sitorus, 1995, *Pelepasan Atau Penyerahan Hak Atas Tanah Sebagai Cara Pengadaan Tanah, Cetakan Pertama*, Jakarta, Dasamedia Utama, P. 7.

<sup>9</sup>Maria S. W. Sumarjono, 2008, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*, Kompas, Jakarta, P. P. 78.

<sup>10</sup>Ibid, P. 78.

<sup>11</sup>Oloan Sitorus, 2004, *Pengadaan Tanah Untuk Kepentingan Umum*, Yogyakarta: Mitra Kebijakan Tanah Indonesia. P. 7.

status of the land so that there is no pressure or intimidation on both sides of the government undertaking the construction or society that relinquishes the rights of the land without seeking compensation beyond the reasonable price of the market.

#### 4. Determination of Compensation in the Implementation of Land Acquisition for Public Interest

In Article 1 of Law No. 2 of 2012 it is stated that land acquisition is an act of providing land by compensating the reasonable and equitable parties to the right, which is to say the loss is a suitable and just substitute for the rightful owner of the land acquisition process is the landowner. The basis of the award of damages is the result of the agreement in favor of the form and amount of damages.

Compensation is the compensation received by the landowner in lieu of the value of the land, including those for which it has been relinquished or vested.<sup>12</sup>

The process of acquiring land in public interest does not always go smoothly, especially with regard to the form and amount of damages. It is impossible to reach an agreement between the government and the owner of the land and the location of the construction is not possible to move to another location under the Agraria Law Article 18 may be revoked as set out in Law No. 20 of 1961 on the revocation of rights on the land and other property thereon in lieu of monetary loss to a state court whose jurisdiction includes the location of the land concerned. The way to compensate by leaving a small amount of money in a state loan is known as the term "consignment."

The major determination of the value of the loss is made by the chief executor of the land based on the appraisal team's (appraisal) valuation which is referred to as the appraisal team (appraisal) subsequently referred to as the assessor is an independent and professional individual who has obtained the practice of appraisal permit from finance minister and has been licensed by the ministry to interpret the value of the land to be compensated.

As set forth in Article 36 of Law No. 2 of 2012 on the acquisition of land for construction in public interest the grant of compensation may be provided in the form of:

1. Money;
2. Substitute land;
3. Resettlement;
4. Ownership of shares; or
5. Other Forms approved by both parties.  
The magnitude of the value of the damages by the valuer as intended per field, includes:
  - a. Land;
  - b. Space and basement;
  - c. Building;
  - d. Crops;
  - e. Land-related objects; and / or any
  - f. other losses that may be interpreted.

According to John Salindeho, the basic price and the local general price of the land subject to exemption because it is said that the base price or value of the taxable object (NJOP) should be the basis for determining the price of land / monetary compensation for the land, while the general price is defined as the price of the land is generally available in the context of a sale of a place.<sup>13</sup>

The basis for calculating land loss compensation is also based on:

- a. The selling value of a tax object or its actual or actual value by considering the selling value of a tax year object based on the establishment of a land valuation agency or team appointed by the land acquisition committee;
- b. The selling value of the building assessed by the responsible area device in the building;
- c. The selling value of the crop assessed by the responsible farm equipment in the field.

In the case of land, buildings, plants or things relating to land owned by some persons, while one or more rights holders may not be found, the compensation for which the rights of the unseen person may be sought in state court whose jurisdiction includes the location of the land in question.

#### 4. Consultation Determination of

Compensation According to M. Taopan the characteristics of deliberation for mediation are as follows:

- a. Prioritizing the interests of the nation and society.
- b. Not imposing will on others.
- c. Prioritize deliberation in making decisions for mutual benefit.
- d. The deliberation of reaching a consensus is embodied in the spirit of the family.
- e. With good faith and a sense of responsibility accept and implement the results of deliberation.
- f. Counseling is done with common sense and with a high degree of conscience.

<sup>12</sup> Olan sitorus, carolina sitepu dan hermawan suani, 1995, *pelepasan atau penyerahan hak sebagai cara pengadaan tanah*, jakarta. dasamedia utama, p. 33.

<sup>13</sup> John Salindo, 1987, *Masalah Tanah Dalam Pembangunan*, Sinar Grafika, Jakarta. P, 62.

Decisions made can be morally accountable to the supreme deity, upholding human dignity and dignity and the values of truth and justice.<sup>14</sup>

Landlord executives are consulting with landlords by including agencies that require land and are submitted no later than two business days before the date of implementation of the compensation redress consultation. The deliberations can be divided into groups by considering the number of time-honored parties and the venue of the deliberation in the absence of a consensus agreement can be held more than once and where the party entitled to attend the consultation can authorize:

- 1) A person in a blood relationship, down or down up to the second degree or husband / wife on behalf of the individual.
- 2) A person appointed in accordance with the provisions of the policy for the rights of a legal body; or
- 3) any other Party.

In the event that the rightful person has been properly invited to attend and is not empowered, the party is deemed to accept the form and extent of the compensation set by the land acquisition committee. The outcome of a consensus agreement constitutes the basis for indemnification disclosed in the news of the event of the agreement which:

- 1) includes The parties who present or their powers agree with and the forms of compensation agreed upon;
- 2) The party entitled to attend or its authority, who disagrees;
- 3) The right party does not attend and does not authorize.

In the event of an agreement on the nature and extent of the compensation the rightful party may appeal to the local court within a maximum period of 14 (fourteen) business days after the signing of the deliberative event and the state court deciding whether or not to recover the amount within the time limit 30 (thirty) business days since receipt of objection. If there are any parties who have no objection then within 14 (fourteen) business days may submit to the Supreme Court and the Supreme Court shall give a decision of at least 30 (thirty) business days after the application is received. The decision of the State Court / Supreme Court which has acquired legal power remains the basis of compensation for the plaintiff in accordance with the provisions of Article 38 of Law No. 2 of 2012. Indemnification of the Compensation

5. The

determination of the shall be given to the entitled party based on the results of the assessment. appraisal team or state court decision and Supreme Court decision and submitted directly to the appropriate party in the form of:

- a. Money;
- b. Land of the successor;
- c. Resettlement;
- d. Ownership of shares;
- e. Other forms agreed to by both parties.

The form of compensation is provided in accordance with the nominal loss equal to the value determined by the committee and prioritized in the form of money. The grant of compensation in the form of money has been made within 7 (7) business days of the determination of the compensation form by the land procurement committee upon the validation of the chairperson of the land acquisition committee since the news of the signing of the agreement and the compensation has been provided in rupiah currency.

The grant of compensation in the form of a replacement land is provided by the agency requiring land for and on behalf of the rightful person after obtaining written request from the chief executor of the land acquisition and is done in a manner that is legally agreed. The grant of land to the successor is made in conjunction with the release of the rights by the rightful parties without waiting for the replacement of the land. Substitute land preparation funds are deposited into banks by and on behalf of agencies that require land.

The loss in the form of resettlement is provided by the agency requiring land for and on behalf of the rightful person after a written request from the chief executor of the land acquisition has been made for at least 1 (one) year since the settlement of the form of compensation has been agreed and carried out in conjunction with the release of rights by the parties. Who has the right to wait without the completion of the resettlement.

Indemnification in the form of ownership of shares is granted and executed on the basis of the agreement between the relevant parties and the state-owned enterprises and received special assignment from the government. This indemnification is done in conjunction with the release of the right by the rightful party.

Indemnification in other forms agreed upon by both parties may be a combination of two or more forms of compensation and compensatory damages made in the event news.

Judgment of damages is brought against:

1. The party entitled to compensation for the loss is unknown; or The
2. object of acquisition of land to be compensated:

<sup>14</sup> M. Taopan, 1987, *Demokrasi Pancasila Analisis Konsepsional Aplikatif*, Sinar Grafika, Jakarta. P. 34.

- a. Being the object of the case in court;
- b. Still disputed ownership;
- c. Deposited by authorized office; or
- d. Be a bank guarantee.

The form of compensation for the acquisition of land in public interest may be provided separately in accordance with the agreed-upon compensation value of the land acquisition (P2T) executor evaluated by the appraisal team and the community that relinquishes their land rights. The form of compensation in the form of land acquisition is prioritized in the form of money pursuant to Article 75 Paragraph (1) of the 71st Anniversary of 2012.

The remuneration in the form of money is made a maximum of 7 (seven) business days from the determination of the form of compensation by the land procurement committee. Agreed by the landowner. Compensation submitted by the chief executor of the land acquisition or designated office within 3 (three) business days is calculated since the news of the deed of settlement form is signed and given in cash, if the land included in the exemption is the land of the village or other agency then the form instead it is a replacement land.

## CONCLUSIONS

The above description can be summarized as follows:

1. The implementation of land liberation against landowners affected by construction for public interest, is best practiced, which is to maintain the importance of land in the lives of the people and the principle of respect for the rights of individuals who are legally entitled to land. Every release of land should be carried out on the principle of privatization and should take into account the status of the land so that there is no pressure or intimidation on both sides of the government undertaking the construction or society that relinquishes their rights without seeking compensation beyond the reasonable price of the market.
2. The implementation of the provision of compensation for land affected by the construction of the public interest adheres to the principle of respect for land rights and its implementation based on Law Number 2 of 2012. The form and amount of compensation in the acquisition of land for public purposes is determined based on an agreement between the community holders of land rights with the executor of the land acquisition with a value that has been determined by the appraisal team.

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