

DETERMINATION OF COMPENSATION FOR LAND PROCUREMENT FOR PUBLIC INTEREST

Edy Lisdiyono

ABSTRACT

Land rights and their implementation are based on Law Number 2 of 2012. The form and amount of compensation in land acquisition for the public interest is determined based on an agreement between the community holding land rights and the implementer of land acquisition with a value that has been determined by the appraisal team which is fully authorized in assessing the amount of compensation with the work unit. The implementation of compensation for land acquisition for the public interest from Jhon Rawls's theory of compensation can be said to be fair because the amount of compensation assessed by the appraisal team is quite large on the basis of taking into account physical (land and/or building) and non-physical losses (losses incurred). They can be calculated on land acquisition by reviewing all losses experienced by the land owner.

Keywords: Compensation, Land Procurement, Public Interest

Introduction

The state's right to control land means that the state has the right to intervene on land in the Republic of Indonesia. Every owner or holder of land rights cannot be separated from the rights controlled by the state because of the public interest. Today the public interest is above personal or group interests, but it does not mean that individual or group interests can be sacrificed by diverting them to the public interest.

According to Article 16 of the Basic Agrarian Law (UUPA), it regulates land rights granted by the state to its citizens in the form of property rights, cultivation rights, building use rights, use rights, lease rights, land clearing rights, rights to collect forest products and other rights that have been stipulated by law. In taking the rights, there must be proper compensation and must be agreed by the right holder with the land acquisition committee.

Viewed more deeply in addition to having economic value, land also has a social value of absolute land rights, but the state must guarantee and respect the rights granted by the state to its citizens because land plays an important role in people's lives including infrastructure in the housing sector, settlements, farming, and plantations that can be taken for the public interest.

Procurement of land for public interest is related to the interests of many people which are used by the wider community such as roads, toll roads, airports, railways, ports, terminals and others in which everyone has the right to use them. Increasing national development aims to fulfill the mandate of the 1945 Constitution, the population is increasing and development continues to grow resulting in a wider need for land for public purposes. The availability of land controlled by the state is very limited because in general land is controlled by the community. The consequence is that if there are activities or developments that require land, the land must be obtained by expropriation.

Theoretically, land acquisition for the public interest is regulated in Law Number 2 of 2012 concerning land acquisition for the development of public interest, in Presidential Regulation Number 148 of 2015 concerning the fourth amendment to Presidential Regulation Number 71 of 2012 concerning the implementation of land acquisition for the development of public interest, and in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (BPN) Number 5 of 2015 concerning the amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning technical instructions for the implementation of land acquisition.

The main problem that often occurs in land acquisition for the public interest is regarding the form and amount of compensation from the land acquisition committee. The community asked for a higher compensation price while the land acquisition committee had not agreed to the price requested by the community and bid at a price determined by the appraisal agency. The disagreement regarding the form and amount of compensation between the land acquisition committee and the community resulted in the revocation of rights by depositing the compensation money in court (consignment). The community considers that the revocation of rights violates the principle of respect for land ownership rights because the land is a business they have been involved throughout their lives and to fulfill their daily needs. The community does not want to relinquish their land rights at the price set by the land acquisition committee, resulting in disputes and protests from land owners. It is discussed in this paper with the title: Determination of Compensation for Land Procurement for Public Interest.

Problem Formulation

Based on the background of the research above, the research problem can be formulated as follows:

1. What is the amount of the determination of compensation for land owners affected by development for the public interest?
2. Has the provision of compensation for land affected by development for the public interest fulfilled the principle of justice?

Discussion

1. The amount of the determination of compensation for land owners affected by development in the public interest

a. Land Procurement in the Public Interest

The definition of land acquisition in Presidential Regulation Number 148 of 2015 states that land acquisition is an activity to provide land by providing appropriate and fair compensation to the entitled party.

The definition of land acquisition for the public interest in Presidential Regulation Number 71 of 2012 is the same as the definition of public interest in Article 3 of Law Number 2 of 2012 which is essentially for the benefit of the wider community, but the public interest in the Presidential Decree is limited to what has been formulated. It is the development activities implemented by the government, and the results are also owned by the government.

The definition of land acquisition is stated in Article 1 point 2 of Law Number 2 of 2012 which is the activity of providing land by means of proper and fair compensation to the entitled party. The party entitled according to the law is the party who controls or owns the object of land acquisition. Meanwhile, the object of land acquisition according to article 1 point 4 of Law Number 2 of 2012 in conjunction with article 1 number 4 of Presidential Regulation 71 of 2012 is land, above ground and underground space, buildings, plants, objects related to land or other things that can be valued.

The development activities for the public interest in Article 10 of Law Number 2 of 2012 include:

1. National defense and security;
2. Public roads and toll roads, tunnels, railway lines, railway stations and railway operational facilities;
3. Reservoirs, dams, weirs, irrigation of drinking water channels, sewers, sanitation and other irrigation developments;
4. Ports, airports and terminals;
5. Oil, gas and geothermal infrastructure;
6. Generation, transmission, substation, network and distribution of electric power;
7. Government telecommunications and information networks;
8. Places for waste disposal and processing;
9. Government hospital/ local government;
10. public safety facilities;
11. Public cemeteries of the government/local government;
12. Social facilities, public facilities, and public green open spaces;
13. Natural and cultural reserves;
14. Government office/regional/village government;
15. Arrangement of urban slum settlements, land consolidation, and low-income housing for rent.

In the acquisition of land for the public interest, the things that must be affirmed are the principles of land acquisition for the implementation of development, i.e.:

1. Certainty of the implementation of the development process for the public interest, not for the private sector or business;
2. Public transparency in the project development process for the public interest;
3. Respect for land rights;
4. Justice for those who surrender or relinquish land rights for the public interest.¹

Public interest according to article 1 point (6) of Law Number 2 of 2012 concerning land acquisition for the development of public interests and Presidential Regulation Number 148 of 2015 states that public interest is the interest of the nation, state and society which must be realized by the government and used to the fullest. for the welfare of the people.

Public interest is an interest that must take precedence over other interests while still paying attention to its important position and respecting other interests.²

Public interest as a concept is not difficult to understand but not easy to define. Public interest is defined as the interest of the whole community. Meanwhile, development activities for the public interest are limited to development activities carried out which are then owned by the government, and are not used for profit.³

The meaning of the public interest must include the interests of the majority of the Indonesian people and actually the meaning of the majority of the people themselves including the interests of the victims of land acquisition. There are two kinds of public interest, namely the interests between land users in this case the government and the interests of the victims of land acquisition, in this case the land owners affected by the acquisition.⁴

¹ Adrian Sutedi, 2007, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan (Implementation of the Principles of Public Interest in Land Procurement for Development)*, Sinar Graphic, Jakarta, p. 195.

² Sudikno Mertokusumo, 1996, Artikel Hukum "Kertas Kerja Untuk Didiskusikan Di Kejaksaan RI (Legal Article "Working Paper for Discussion at the Indonesian Attorney General's Office)", Gajahmada University, Jakarta, P.5.

³ Maria S. W. Sumarjono, 2008, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya (Land in the Perspective of Economic, Social and Cultural Rights)*, Kompas, Jakarta, p. 73.

⁴ Mudakir Iskandar Syah, 2007, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum (Fundamentals of Land Acquisition for Public Interest)*, Jala Permata, Jakarta, P. 17.

The definition of land acquisition in Presidential Regulation Number 148 of 2015 states that land acquisition is an activity to provide land by providing appropriate and fair compensation to the entitled party.

The definition of land acquisition for the public interest in Presidential Regulation Number 71 of 2012 is the same as the definition of public interest in Article 3 of Law Number 2 of 2012 which is essentially for the benefit of the wider community, only that the public interest in the Presidential Decree is limited to what has been formulated, namely development activities that implemented by the government and the results are also owned by the government.

b. Amount of Compensation

Every development implementation in general always requires land. The development that continues to increase causes land to become relatively valuable for the community. Land acquisition for the development of public interest in its implementation often occurs in compensation disputes which are considered to violate the rights of the people who own the land and violate human rights. This happens because the government under the pretext of development for the public interest provides compensation that is considered inadequate to the people who own land and buildings.

The compensation provided by the government must also fulfill a sense of justice for the holders of land rights whose rights have been taken by taking into account the legal ownership rights to the land. The revocation of land rights is the last resort if all peaceful efforts have been taken and there is no agreement between the holders of land rights and the land acquisition committee. Revocation of land rights must still be compensated in accordance with applicable laws and regulations and must be in accordance with the principle of justice.

In Article 18 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles states: "In the public interest including the interests of the nation and state and for the common interest of the people, land rights can be revoked by providing appropriate compensation and according to manner regulated by law". Simply put, it can be said that in the public interest, land rights can be revoked by the state by providing compensation. The definition of property rights which is stated explicitly that all land rights have a social function, on the basis of that social function the state has the authority to revoke land rights owned by community members.

In article 1 number (2) of Law Number 2 of 2012 it is stated that "land acquisition is an activity that provides land by giving proper and fair compensation to the entitled party". Article 42 also stipulates: "if there is no agreement in the deliberation in determining the form and amount of compensation, the land acquisition committee will entrust the compensation to the head of the district court in the area of the construction site for the public interest". Judging from the meaning of the two articles, it can be seen that there is an element of coercion from the government to acquire land and contrary to Article 28 Letter H Paragraph (4) of the 1945 Constitution, it is determined that "everyone has the right to have private property rights and such property rights may not be taken over, arbitrarily by anyone and is considered contrary to the principle of justice that has been put forward by Notonegoro who says that justice must be objectively acceptable to all parties, whether it is the community whose land rights are taken or the government carrying out development.

Compensation according to Law No. 2 of 2012 and Presidential Regulation No. 71 of 2012 says "compensation is a proper and fair replacement to the rightful party in the land acquisition process".

To determine the amount of compensation, it is based on or calculated with the value of objects and is determined in Presidential Regulation Number 65 of 2006 and Supreme Court Regulation Number 2 of 2016 namely:

1. Sales value of tax objects (NJOP) or real value by taking into account the current year's NJOP based on the stipulation agency or team of land price appraisal appointed by the committee;
2. The estimated selling value of the building (appraiser) who is responsible for the development sector;
3. The selling value of the plant is estimated by the regional apparatus responsible for agriculture.

According to the provisions of Article 40 of Law Number 2 of 2012 compensation for the object of land acquisition is given directly to the entitled party. According to the explanation of Article 40, the provision of compensation in principle must be submitted directly to the rightful party because the law can give power of attorney to other parties or heirs. The power of attorney can only receive power of attorney from one person who is entitled to compensation.

Compensation is regulated in article 33 of Law Number 2 of 2012 which states that the amount of compensation by the appraiser (Appraisal Institution) as referred to in article 32 paragraph 1 is carried out in plots of land, including:

- a. Land;
- b. Above ground and underground space;
- c. Building;
- d. Plant;
- e. Objects related to land;
- f. Other losses that can be assessed.⁵

According to article 36 of Law No. 2 of 2012 the provision of compensation is determined by the Appraisal institution and can be given in the form of:

1. money;
2. replacement land;
3. Resettlement;
4. Shareholding;
5. Other forms agreed by both parties.

⁵. Djono Sumardi Gojali, 2017, *Hukum Pengadaan Tanah Untuk Kepentingan Umum (Land Procurement Law for Public Interest)*, Uii Press, Yogyakarta, p. 67.

2. Provision of Compensation in fulfilling a sense of Justice

The issue of land acquisition for the development of the public interest is rooted in the allocation of the budget for financing compensation to the holders of land rights, the social, economic and cultural implications of changing people's lives whose land rights have been taken by the government. What are the consequences development for the public interest for farmers who lost their land so that they no longer became farmers, as well as other professions such as: farm laborers, factory workers, rickshaw pullers and construction workers who previously never imagined that they would have rights to the land and houses they had placed. The taking of these rights is very contrary to the theory of justice proposed by Notonegoro below.

The word justice comes from the word fair. In English it is called "justice" and in Dutch it is called "rechtvaarding". Fair means can be accepted objectively. Justice is defined as a fair nature (deed, treatment). There are three fair meanings, namely:

1. Not one-sided or partial;
2. Siding with the truth;
3. Rightly or not arbitrarily.

The concept of justice according to Notonegoro is "the ability to give to oneself and others what is due, what has become their right, the relationship between humans involved in the administration of justice is formed in a pattern called a triangular justice relationship which includes distributive justice), obedient justice or legal (legal justice), and commutative justice (commutative justice).

The definition above only analyzes the notion of justice, does not present the concept of a theory of justice (a theory of justice) for that it is necessary to explain the theory of justice, the theory of justice is:

"a theory that examines and analyzes the impartiality of the truth or the impartiality of institutions or individuals against community or other individuals"

The provision of compensation provided by the government to land rights holders who are inadequate is considered to violate the principles and theories of justice. The principle of land acquisition is explained in the law the government must pay attention to how the impact of land expropriation on the community. Communities whose lands have been taken may not retreat economically or socially and are expected to receive adequate compensation.

The provision of compensation in the form of money is carried out no later than 7 (seven) working days after the determination of the form of compensation by the land acquisition committee as agreed by the land owner. Compensation is submitted by the chief executive of land acquisition or the appointed official no later than 3 (three) working days counted from the minute of the agreement on the form of compensation being signed and given in the form of money, if the land included in the acquisition is land belonging to the village or other agency then the form of compensation is in the form of instead in the form of substitute soil.

The provision of compensation in land acquisition for the public interest, especially in Central Java is carried out simultaneously with the release of rights by the land owner. Provision of compensation is made in the minutes of granting compensation by attaching:

1. The party entitled to receive compensation.
2. The form and amount of compensation given to the land owner.
3. Proof of payment.
4. Minutes of relinquishment of land rights or transfer of rights.

If analyzed based on the theory of Justice put forward by John Rawls where he said the task of the law is to see the good and prevent the evil. Rawls, also stated that the interests of the community are also individual interests or individual interests that must be considered and protected, such as where their rights are taken by a coercive government.⁶

Legal protection in land acquisition for the public interest can be seen in the limitation of the definition of public interest in land acquisition. Protection of land rights can be seen in the provision of compensation if it is related to the legal protection proposed by Bentham then, in article 19 of the Basic Agrarian Law which states the social function of land and is the basis of the revocation of rights and is implemented by Law Number 2 of 2012 which states that for the public interest, including the interests of the state and the common interest of the people, land rights can be revoked by providing appropriate compensation. In terms of providing adequate compensation, it reflects one of the legal protections for land rights holders.

It is explained that if the owner of land rights does not agree with the form and amount of compensation, then the person concerned can file a lawsuit in court. Land owners cannot defend their rights because land has a social function over land, but the rights owned by the community must also be protected under Article 33 Paragraph 2 of the 1945 Constitution.

In Presidential Decree No. 71 of 2012 concerning the implementation of land acquisition for development for In the public interest, it is stated that the public interest is the interest of the whole community, but the interests of the land owner are not paid attention to it must be considered and protected if it is associated with the theory of justice and the theory of balance put forward by John Rawls where there must be a balance between the interests of the individual, the government and the public interest. must fulfill a sense of justice and legal protection.

Conclusion

From the description of the discussion above, it can be concluded

1. that the land rights and their implementation are based on Law No. 2 of 2012. The form and amount of compensation in land acquisition for the public interest is determined based on an agreement between the community holding land rights and the land acquisition implementer (P2T). with a value that has been determined by the appraisal team which is fully authorized in assessing the amount of compensation with the work unit or agency.

⁶. Jhon Rawls, 2006, A Theory Of Justice, Yogyakarta, Pustaka Pelajar, p. 26.

2. The implementation of compensation for land acquisition for the public interest from Jhon Rawls's theory of compensation can be said to be fair, because the amount of compensation assessed by the appraisal team is quite large on the basis of taking into account physical (land and/or building) and non-physical losses (losses incurred). They can be calculated on land acquisition) By reviewing all losses experienced by the land owner.

References

- Adrian Sutedi, 2007, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, Sinar Grafika, Jakarta.
- Djono Sumardi Gojali, 2017, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Uii Press, Yogyakarta.
- Jhon Rawls, 2006, *A Theory Of Justice (Teori Keadilan)*, Yogyakarta, Pustaka Pelajar.
- Maria S. W .Sumarjono, 2008, *Tanah Dalam Perspektif Hak Eknomi Sosial Dan Budaya*, Kompas, Jakarta.
- Mudakir Iskandar Syah, 2007, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum*, Jala Permata, Jakarta.
- Sudikno Mertokusumo, 1996, *Artikel Hukum “ Kertas Kerja Untuk Didiskusikan Di Kejaung RI”*, Universitas Gajahmada, Jakarta.

Edy Lisdiyono
Lecturer of the Faculty of Law,
University of 17 Agustus 1945, Semarang
Email: edylisdiyono@gmail.com