

COMPENSATION FOR PRICE DISAGREEMENTS IN LAND PROCUREMENT FOR PUBLIC INTEREST DEVELOPMENT

Raafi Wiragati
Hari Purwadi
Muhammad Rustamaji

ABSTRACT

This study aims to explain the mechanism of compensation for the holding of land acquisition for development in the public interest by the Government and legal protection efforts for land rights holders who are disadvantaged because there is no price agreement in the compensation process for land acquisition for development in the public interest. The research method is normative juridical. The legal materials used are secondary legal materials. The approach used is a statutory and conceptual approach. According to the findings of this study, the compensation mechanism in land acquisition for the public good is by deliberation. The appraisal of the amount of compensation is carried out by the appraiser, and the results of the assessment are used as the basis for deliberations between the Government and the entitled party. If the party entitled to reject the results of the deliberation files an objection with the District Court, and cassation if you still object to the District Court's decision, If the Entitled Party does not raise an objection, it is deemed to accept and agree. However, if the Entitled Party rejects the results of the deliberation and/or decision of the District court or supreme court, compensation can be deposited with the local District Court (consignment). If it is related to social functions, the conveyance in land acquisition is in accordance with the UUPA's mandate that all land rights have a social function. As for efforts that can be made to provide legal protection to Entitled Parties (land rights holders) in land acquisition activities for the public interest, in the case of parties entitled to be harmed because there is no agreement on the amount of compensation in the compensation process, it is necessary to make arrangements regarding the criteria for determining the amount of compensation are appropriate and fair, so that in providing compensation, there are criteria that are used as a benchmark, so even though the Government carries out a consignment by entrusting compensation to the District Court, the amount of compensation provided by the Government is appropriate and fair according to the criteria for the amount of compensation stipulated in the legislation.

Keywords: Social Functions, Compensation, Consignment, Land Acquisition, Legal Protection.

INTRODUCTION

In order to create a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Government needs to carry out development. One of the development efforts within the national development framework organized by the Government is development for the public interest. In development for the public interest, land procurement is required by prioritizing the principles contained in the 1945 Constitution and national land law, namely the principles of humanity, justice, benefit, certainty, openness, agreement, prosperity, sustainability, and harmony.

In the era of globalization, development is growing rapidly, especially infrastructure development by the Government. Along with the rapid development, the need for land is also increasing, so the Government and entrepreneurs are conducting land acquisition everywhere (Debora, 2017). This has caused many land conflicts regarding land acquisition for public purposes. Therefore, the Government issued Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (hereinafter referred to as "Law Number 2 of 2012") and its derivative regulations, Government Regulation Number 19 of 2021 concerning Implementation of Land Procurement for Development in the Public Interest (hereinafter referred to as "PP Number 19 of 2021"), in the hope of being able to resolve conflicts in the implementation of land acquisition.

The definition of land acquisition, according to Article 1 Number (2) of Law Number 2 of 2012, is the activity of providing land by providing proper and fair compensation to the entitled party. What is meant by the "entitled party" is the party that controls or owns the object of land acquisition. Even though there are already regulations governing land acquisition, in practice, land acquisition activities for development in the public interest sometimes still cause problems between the Government and the community, especially in terms of compensation in land acquisition. Compensation is a proper and fair payment to the party who is entitled to the land acquisition process.

Basically, the life of the Indonesian people tends to be agrarian in nature, so land plays a very important role as the basic capital in efforts to increase people's prosperity and welfare. It is undeniable that development in the public interest necessitates large tracts of land, which are typically attached by land rights. Therefore, efforts to acquire land for the public's interest in handling it must be carried out as well as possible by paying attention to the role of land in human life and the principle of respect for legal rights to land (Rusli, 2018). The handling of land acquisition is a very complicated issue because it involves the livelihoods of many people. When viewed from the point of view of the Government requiring land for development purposes, it can be understood that the available state land is indeed very limited, so that land acquisition is the only way that can be taken, namely by freeing land belonging to the community, both those that have been controlled with rights based on customary law and other rights according to UUPA (Sutedi, 2008).

The issue of land acquisition is an important and sensitive issue because there are 2 (two) conflicting interests, namely those of the Government and the community. UUPA lays down the principle that "all rights to land have a social function," which means

that all rights to any land owned by a person are not allowed to be solely used for their personal interests, but must also provide benefits for the interests of themselves, society, and the state. However, the existence of this principle does not mean that individual interests will be driven by public interests. In this regard, compensation should be offered in land acquisition not only for physical compensation for lost losses, but also for non-physical compensation arising as a result of land acquisition, such as the restoration of the socio-economic conditions of people who are relocated to a new location. Besides that, it is appropriate that the provision of compensation should not have a detrimental impact on the holders of land rights who have lost their rights but can have a better impact on their level of life or at least the same as before the development activities took place. The most important thing in the process of determining the form and amount of compensation is deliberation or a dialogic communication process in land acquisition for development in the public interest (Anugrah, 2016). However, in practice deliberations or negotiations regarding the form and amount of compensation for land acquisition are often the most lengthy and protracted process due to the absence of a common ground agreed upon by the parties concerned. Sometimes people holding land rights set a very high nominal compensation or the Government gave compensation to people holding land rights unfairly and improperly. Based on the description of the problem, the author is interested in studying compensation for price disagreements in land acquisition for development in the public interest.

RESEARCH PROBLEMS

1. What is the compensation mechanism for land procurement for development in the public interest by the Government ??
2. What are the legal protection efforts for land rights holders who are disadvantaged because there is no price agreement in the compensation process in the procurement of land for development in the public interest ?

RESEARCH METHOD

The type of research used in this study is a normative juridical approach. The approach used is a statutory and conceptual approach. The legal materials used are secondary legal materials. The data analysis method used is qualitative, and the results of the analysis are presented descriptively, which will then obtain answers to the problems and draw conclusions on the answers to these problems.

DISCUSSION

Mechanism of Compensation for Land Acquisition for Development in the Public Interest by the Government

Development is essentially homework for every developing country, including Indonesia, and in order to realize this development, the government requires a variety of resources, including large and strategic land. To meet these needs, the Government conducts land acquisition. Land acquisition was previously referred to as "land acquisition," which is regulated in Minister of Home Affairs Regulation Number 15 of 1975 concerning Provisions for Land Acquisition Procedures. Over time, to anticipate problems that may occur, land acquisition was replaced by "land acquisition," which is regulated in Presidential Regulation Number 71 of 2012 concerning Implementation of Land for Development for Public Interest, the first amendment to Presidential Regulation Number 40 of 2014, and the second amendment to Presidential Regulation Number 99 of 2014 concerning Implementation of Land Procurement for Development for Public Interest, Law Number 2 of 2012 concerning Land Acquisition for Public Interest, and Law Number 5 of 1960 concerning the basis of Agrarian (Nyoman, 2021).

Land acquisition is an institution that is used to obtain land for the implementation of development in the public interest, carried out by relinquishing or transfer land rights from land rights holders to government agencies that require land. As a form of respect, the Government then provides compensation to land rights holders through deliberations. Compensation, as defined in Law Number 2 of 2012, is proper and fair compensation to the entitled party in the land acquisition process. In Article 33, it is stipulated that, the assessment of the value of compensation by the appraiser, as referred to in Article 32 paragraph (1) is carried out plot per plot of land, including: a. land; b. above ground and underground space; c. buildings; d. plants; e. objects related to land; and f. other losses that can be assessed, what is meant by other losses that can be assessed are non-physical losses that can be equivalent to a monetary value, for example, losses due to the loss of a business or job, costs for moving places, costs for changing professions, and the value of residual property. Based on Article 36 of Law Number 2 of 2012, it is regulated that compensation can be given in the form of:

- a) money;
- b) replacement land;
- c) resettlement;
- d) shareholding; or
- e) other forms agreed by both parties.

The amount of compensation value is determined by the head of land acquisition executor based on the results of the appraiser or public appraiser's appraisal services. Appraisal services, or public appraisers, are held and determined by the chief executive of land acquisition. The procurement of appraiser services is carried out in accordance with statutory provisions in the field of government procurement of goods and services. Appraiser procurement is completed within 30 (thirty) working days. In the case of selecting an appraiser, the head of the land acquisition executor appoints a public appraiser. The appraiser is tasked with evaluating the amount of compensation per plot of land, including land, above-ground and underground space, buildings, plants, objects related to land, and/or other losses that can be appraised. The value of compensation assessed by the appraiser is the value at the time of the announcement of the determination of the construction location for the public interest. The compensation value is a fixed amount per parcel and plot of land. The amount of the compensation value based on the results of the assessment by the appraiser is submitted to the chief executive of land acquisition

with the minutes of the submission of the results of the assessment. The amount of the compensation value is used as the basis for deliberations to determine the form of compensation.

The land agency must hold a deliberation with the community whose land is affected by the procurement, and this deliberation must be held no later than 30 (thirty) working days. The deliberation is chaired by the chief executive of land acquisition or an appointed official. The results of the assessment by the assessment team are submitted to the land agency to determine the form and amount of compensation to be given to the community. The results of this deliberation are the basis for awarding compensation. Whether the community agrees or not, there should be no coercion. In the event that an agreement has not been reached, deliberations can be held more than once (Palilingan, 2020). If you do not agree on the form and amount of compensation in the deliberation, the party who objected or disagrees is allowed to submit an objection to the local District Court within a maximum period of 14 (fourteen) days from the deliberation to determine compensation. The District Court decides the form and amount of compensation within 30 (thirty) working days from the date the objection was filed. If the party filing the objection still has objections to the decision stipulated by the District Court, the objecting party may submit another appeal at the cassation level to the Supreme Court. The Supreme Court makes its decision within 14 (fourteen) working days and within 30 (thirty) working days. In the event that the entitled party refuses the form and/or amount of the compensation but does not raise an objection, because by law the entitled party is deemed to have accepted the form and amount of the compensation.

Meanwhile, if an agreement has been reached, the implementation of the decision must involve the agency that needs the land and invite the rightful party. In principle, the provision of compensation must be submitted directly to the party entitled to it. If the entitled party is unable to attend the deliberation, the entitled party can give power of attorney to (Article 71 paragraph (1) of Presidential Regulation Number 71 of 2012):

- a) person who is related by blood up, down or sideways to the second degree or husband/wife for those entitled to individual status;
- b) a person appointed in accordance with the provisions of the articles of association for a party entitled to the status of a legal entity; or
- c) other entitled parties.

Based on the above, it means that the amount of compensation resulting from the appraiser's assessment is then used as the basis for deliberations in determining the form of compensation. This means that deliberations are carried out not to seek the form and amount of compensation, but the form and amount of compensation have been determined beforehand, and the deliberations are only carried out to seek agreement from the parties entitled to agree on the form and amount of such compensation. Thus, the entitled party is indirectly forced to agree to the form and value of compensation that have been determined by the appraiser. In fact, deliberation is actually a process or activity of mutual hearing between the holders of land rights and those who need land, namely the Government by way of interactive dialogue between the parties by placing them in equal or similar positions.

According to Article 38 of Law Number 2 of 2012, if a party has the right to refuse the form and/or amount of compensation based on the results of deliberations or the decision of the District Court or Supreme Court, the compensation is deposited at the local District Court. Custody of compensation is also carried out when: 1) the location of the party entitled to compensation is unknown; or 2) the object of land acquisition to be compensated is currently the subject of a court case; ownership is still disputed; the property is confiscated by an authorized official; or the land is used as collateral at the bank. Based on this article, in terms of land acquisition, it means that the Government can carry out a consignment, namely by entrusting compensation to the District Court, if, in the end, there is no agreement on the form and amount of compensation with the holders of land rights in the deliberation process.

With regard to disagreements over the price of compensation between the Government and holders of land rights, either through a deliberation process or the District Court/Supreme Court, when it is associated with the social function of assets in the context of land, it has been explicitly stated in the UUPA that "all land rights have a social function." The social function in the UUPA is one of the obligations imposed on every holder of land rights, in addition to the obligation to maintain and make good use of the land (Article 52 paragraph (1)), and the obligation to work actively on agricultural land themselves (Article 10). According to the provisions of Article 6, the UUPA can be interpreted to mean that land rights held by a legal subject are not a barrier to the government exercising its public authority in land acquisition. (Tukgali, 2010). So based on this, in the case of land acquisition, regarding arrangements regarding consignment, even though seen from the point of view of the holder of land rights indirectly reflects coercion, in essence the Government does have the authority to use plots of land owned by holders of land rights for development purposes, public interest, in accordance with the mandate of the UUPA mentioned above.

Related to the social function of land rights is a theory that was first developed by Leon Duguit in 1922. Duguit contends that property, also known as ownership of land rights, is a social function rather than a right. The owner has obligations in connection with his social functions, so he cannot just do what he wants with his property. It was explained again that the owner is obliged to make the land he owns productive and put it at the service of the community through economic activities. The concept of the social function of property, also known as the social function of land rights based on the description of social reality, acknowledges solidarity as one of its main pillars. According to social function theory, rights are a social function in the sense that the power a person has is limited by the interests of the community. In the concept of social function, there is no subjective right (deep right), but there is only a social function (Rejekiingsih, 2016). So based on this, it is appropriate if the Government can carry out a consignment if no agreement is reached regarding the form and amount of compensation in deliberations with land rights holders, because as mandated by the UUPA, all land rights have a social function.

Efforts for Legal Protection for Land Rights Holders who are disadvantaged because there is no price agreement in the Compensation Process in Land Acquisition for Development in the Public Interest

Basically, the state is obliged to provide legal protection to its people. Legal protection is given in the event of a violation or action against the law committed by the Government, both the actions of the authorities violating the law and the public must be considered. The meaning in the word legal protection" is that there is an attempt to provide protected rights in accordance with

the obligations that must be carried out (Yusrizal, 2017). With regard to land, in general, the 1945 Constitution has provided protection for land rights as stipulated in Article 28 letter h paragraph 4, which states that "Every person has the right to have private property rights, and these property rights may not be taken arbitrarily and must be balanced with compensation."

The term "compensation" or "compensation" is usually used in the civil field, both regarding broken promises (defaults), violations of law and the field of compensation for losses. In connection with the terms mentioned above, R. Setiawan has said that compensation can be in the form of compensation rather than achievement, but can stand alone besides achievement (Setiawan, 1987). In the case of land acquisition for public purposes, Law Number 2 of 2012 has actually provided legal protection to land rights holders by providing arrangements regarding compensation and opportunities for deliberations. The issue of compensation is the central issue that is the most difficult to resolve in the government's efforts to acquire land by utilizing private lands. In any land acquisition for development purposes, among the people whose land rights are affected by land acquisition projects, there is almost always a feeling of dissatisfaction. The deliberation mechanism, which is supposed to be a means of finding a middle ground in determining the amount of compensation, often does not reach an agreement. Therefore, if no agreement is reached in determining the amount of compensation, on the grounds of public interest, the Government through the land acquisition committee, can unilaterally determine the amount of compensation, and then entrust it to the local District Court through a consignment procedure. This is what then becomes the problem, that the consignment applied in Law Number 2 of 2012 is different from the consignment regulated in the Civil Code, namely, where consignment can be carried out if previously there was a legal relationship between the parties. Whereas in Law Number 2 of 2012 it is the opposite, consignment is applied when an agreement between the parties is not reached, and there is no legal relationship at all between the parties (Rusli, 2018).

Actually, implicitly in laws and regulations and other related provisions regarding compensation, there are several legal principles for the creation of legal protection for people affected by land acquisition. Therefore, in providing compensation to the people who are victims of land acquisition, the government should pay attention to legal principles so that people get legal protection, including (Ediwarman, 2001):

a) **The basis of good faith**

The point is that land acquisition for the public interest must be based on good faith and openness and honesty from both parties, both in terms of designation, form, and the amount of the value of the compensation given. So that no one is harmed between the two parties in the implementation process.

b) **Basic balance**

This principle is intended so that there is a balance between rights and obligations in each award of compensation, both form and amount. Compensation must be made in accordance with the rights of the land owner.

c) **The principle of propriety**

The compensation value should be qualified and appropriate based on the real value of the land and/or everything that follows it.

d) **The basis of legal certainty**

Laws regarding land acquisition and compensation must strictly and clearly regulate legal sanctions related to the provision of compensation and provisions regarding compensation must reflect true justice so that the interest of both parties are accommodated and so that society is free from practices the practice of abuse of authority in granting compensation for land, and decisions taken by the Government always adhere to fairness and justice.

e) **The basis of well-being**

This principle requires protection for those who release land from an economic standpoint. The expected legal protection must be concrete, by applying penal and non-penal sanctions.

f) **The basis of justice**

This principle is intended to ensure that affected communities receive compensation that restores their socioeconomic conditions to at least their original state, taking into account physical and non-physical losses. Non-physical losses, for example, the loss of business fields or sources of income. The placement of the principle of justice in the legal norms governing land acquisition means that it reflects distributive justice as stated by Aristotle.

Basically, compensation as an effort to realize respect for the rights and interests of individuals who have been sacrificed for the public interest, can be said to be fair if this does not make a person richer, or conversely, poorer than his original state (Lestari, 2020). According to PP Number 19 of 2021 the determination of compensation in land acquisition must be carried out on the basis of deliberations. Article 42, paragraph 1 of Law Number 2 of 2012, on the other hand, states that if the party entitled to refuse the form and/or amount of compensation based on the results of deliberations does so, the compensation is deposited at the local District Court. And, once the implementation of the granting of compensation and release of rights, as referred to in Article 41 paragraph (2) letter, or the deposit of compensation in the District Court, as referred to in Article 4 paragraph (1), ownership or land rights from the party entitled to the land are deleted, the proof of rights is declared null and void, and the land becomes land directly controlled by the State. Based on this, it follows that if the holder of land rights refuses the amount of compensation or if it can be said that there is no agreement between the holder of land rights and the government, then the government can entrust the compensation to the District Court unilaterally without having to wait to reach an agreement on the amount of compensation with holders of land rights, and if the compensation has been entrusted to the District Court, the ownership of land rights will be transferred to the District Court. Although the public interest must be prioritized, the interests of the community as individuals must also be respected and valued because every individual has the right to fair

legal treatment as referred to in Article 3 of Law Number 39 of 1999 concerning Human Rights which contains the provision that "Every person has the right to recognition, guarantee, protection, and fair legal treatment and to obtain legal certainty and equal treatment before the law."

Law Number 2 of 2012, which has not explicitly stipulated criteria for proper and fair compensation, has caused many land rights holders to disagree with the amount of compensation offered by the Government. This is because the holders of land rights consider that the compensation does not accommodate the losses felt by the holders of land rights, and besides that, it also causes the Government to sometimes not provide proper and fair compensation to the holders of land rights. In the legal conception, an assessment of fair and proper compensation must be able to take into account the actual loss suffered (scabeden), expenses incurred (the art), lost profits (interests), and income that the victim will get in the future (winstanderving) (Bhumi, 2019). As a result, one of the efforts that can be made to provide legal protection to land rights holders in terms of providing compensation in the land acquisition process for the public good is to develop a policy that includes an element of compensation for victim recovery, both material and immaterial in nature, so that they can recover and fulfill their rights the basics.

Apart from the fact that the criteria for compensation have not been regulated specifically in Law Number 2 of 2012, Article 38 of that law has regulated that if there is no agreement regarding the form and/or amount of compensation, the Entitled Party can file an objection to the local District Court within a maximum period of 14 (fourteen) working days after deliberation on the determination of Compensation. And if you still object to the decision of the District Court, the Entitled Party can file an appeal to the Supreme Court. This is a form of legal protection provided by the Government to holders of land rights related to an agreement on the amount of compensation. However, if the provisions of Article 38 of Law Number 2 of 2012 are linked to the provisions of Article 42 paragraph (1) of Law Number 2 of 2012, it can be interpreted that the legal protection provided by this law is still not strong because, despite the fact that it has been regulated that the holder of land rights can submit an objection to the District Court and a cassation to the Supreme Court if they do not agree with the amount of compensation, with the provisions of Article 42 paragraph (1) of Law Number 2 of 2012, As a result, the best effort that can be made to provide legal protection to land rights holders is to make arrangements regarding the criteria for determining the amount of compensation that is appropriate and fair, so that when providing compensation, there are criteria that are used as benchmarks, so that even though the government carries out a consignment by entrusting compensation to the District Court, the amount of compensation given by the government is appropriate and fair.

Making arrangements regarding the criteria for proper and fair compensation in statutory regulations is one of the ideal legal protection efforts, and can also fulfill one of the basic principles internationally in land acquisition by the State, namely that "no private property shall be taken for public use without just and fair compensation" which means "no private ownership may be taken over for the public interest without fair and equitable compensation", so it should be that in the process of land acquisition the principles of justice should be taken into account so that it does not harm land rights holders (Faza, 2022). This is also in line with the social contract theory by John Locke who argues that the fulfillment of human rights and a system that guarantees the existence of these rights is the essence of social contract theory. The social contract is the legitimacy of political authority to limit the authority of every subject and the rights of every rule of all human beings who are naturally born free and equal. So it should be if the holder of land rights gives their land rights to the state for the sake of development in the public interest, but the state, in this case the government, must also pay attention to the form and amount of appropriate compensation for holders of land rights because the positions of the community and the state are equal, according to social contract theory.

CONCLUSION

The amount of compensation value is determined by the head of land acquisition executor based on the results of the appraiser or public appraiser's appraisal services. The amount of the value of compensation determined by the appraiser is used as the basis for deliberations to determine the form of compensation, so that the deliberations are carried out not to determine the form and amount of compensation but only to seek agreement from the entitled party on the form and amount of compensation. In the process of deliberation, the party is entitled to agree or reject the form and amount of the compensation. If the party entitled to refuse, can submit an objection to the local District Court, as well as an appeal to the Supreme Court, If the party entitled to refuse does not raise an objection but does not object, it is deemed to have accepted/agreed with the form and amount of the compensation for the results of the deliberations. If a party has the right to reject the results of the District Court's or Supreme Court's deliberation and/or decision, the compensation can be entrusted to the local District Court. If it is related to social functions, then the Government can carry out consignments in the event that an agreement is not reached regarding the form and amount of compensation in deliberations with land rights holders, even though it indirectly reflects coercion but is in accordance with the mandate of the UUPA that all land rights have a social function.

The consignment procedure, in which compensation can be deposited with the District Court if the holder of land rights rejects the results of the deliberations and/or decisions of the District Court/Supreme Court, which do not reflect justice. This is because the holder of land rights only has one final choice, which is to accept the form and amount of compensation, because, in the end, the Government can carry out the consignment procedure by entrusting compensation to the District Court. The ideal effort that can be made to provide legal protection to land rights holders is to make arrangements regarding the criteria for determining the amount of compensation that is appropriate and fair so that in providing compensation there are criteria that are used as benchmarks, so even if the Government carries out a consignment by entrusting compensation losses to the District Court, the amount of compensation given by the Government is appropriate and fair in accordance with the criteria for the amount of compensation.

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Teguh Basuki
Faculty of Law, Sebelas Maret University
Jl. Ir. Sutami No. 36 A, Jebres, Surakarta, Indonesia
Email: teguh.yusubasuki@gmail.com

Waluyo
Faculty of Law, Sebelas Maret University
Jl. Ir. Sutami No. 36 A, Jebres, Surakarta, Indonesia
Email: waluyo.fh@gmail.com