

COMPENSATION FOR HOLDERS OF RIGHTS TO DESTROYED LAND AS PARTIES IN LAND ACQUISITION FOR PUBLIC INTEREST DEVELOPMENT

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ABSTRACT

The Constitution of the Republic of Indonesia regulates land since it plays a crucial role in the lives of the Indonesian people. Numerous land needs lead to development for the people's prosperity because they undoubtedly require land, which can be obtained through the process known as land acquisition for the public interest. The public interest is a common interest and the government in realizing community welfare by one of the ways is to carry out development for the public interest. However, by classifying the area as devastated land, the government actually obtains the land for the benefit of the public. Compensation for land acquisition for the public interest should be made through land acquisition, not through determining the land to be destroyed land. This is not in accordance with the Law on Land Acquisition for the Public Interest. This article aims to review and analyze the legal status of destroyed land for public development according to the ATR/BPN Regulation Number 3 of 2024 which regulates the determination of destroyed land whose land is used for the public interest. This study uses normative juridical research, with reference to primary, secondary and tertiary data analyzed using qualitative methods. The results of the study's findings demonstrate that the devastated land no longer has legal standing, including ownership and management rights, and is only given the rohiman fund regulated in Presidential Decree Number 27 of 2023 regarding the calculation of rohiman fund assistance carried out by public appraisers.

Keywords: Land destroyed, Compensation for Damages, Public Interest

INTRODUCTION

Land is defined as a very basic need for the welfare of mankind in its daily life. The fulfillment of living needs for the community in population growth is one of the causes of the increasing need for land which is natural and unavoidable, the goal is to achieve prosperity and welfare for all Indonesian people. The importance of land for humans causes legal consequences or disputes and even conflicts regarding land ownership with the emergence of many land disputes (Prabandari et al., 2021).

According to Article 33 paragraph (3) of the Republic of Indonesia's 1945 Constitution, the state owns the land, water supplies, and other natural resources that are utilised to enhance the well-being of its citizens. For land rights owners whose property is in question, this rule serves as the cornerstone of their legal protection. According to the Republic of Indonesia's 1945 Constitution's fourth paragraph, it is expected that the government can protect its citizens, improve public welfare, enrich the nation's knowledge, contribute to the maintenance of world order, and get equal treatment before the law and legal certainty.

The large number of needs for land results in development for the prosperity of the people by definitely needing land that can be reached by taking land rights, the taking of land rights must be carried out by the Government based on the applicable laws and regulations with the aim of public interest purposes which must be compensated appropriately for those who possess land rights, a process known as land acquisition (Lestari, 2020).

Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest governs land acquisition and states that giving land by paying the rightful owner compensation is an activity that serves the public interest. Revocation of land rights is the process by which the government takes land that is owned by a person or organisation in the public interest. When land rights are revoked, the public interest-including the interest of the state and nation, the general welfare of the populace, and the interests of development-is taken into consideration.

Abolition of property rights is governed by Article 27 of the Basic Agrarian Law, which states that property rights may be eliminated when land is destroyed, rescinded, surrendered voluntarily, or abandoned and passes to the state. The Basic Agrarian Law does not provide an explicit definition of destroyed land, but implicitly states that land that has lost its function or is no longer used according to its designation can affect its legal status and use.

The Regulation of the Minister of ATR/BPN Number 17 of 2021 concerning Procedures for the Determination of Destroyed Land defines destroyed land in Article 2 paragraph (2). It states that land can be considered destroyed if natural events have caused it to shift from its original shape, making it unidentifiable and unable to be employed, function, or utilized as it should. The land ownership status will be erased if the Land Office destroys the identified land object. Land that is declared destroyed by

the Government will be given a welfare fund. In order to show the party that has lost his land rights respect and attention, the Rohiman Fund was established, this compensation covers emotional and psychological factors that are not just measurable by economic value (Harsono, 2003).

Based on the Supreme Court Decision Number 23 P/HUM/2022 which has submitted an application for objection to the right of material examination against Article 15 paragraphs (1), (2) and (3) of the Ministerial Regulation of ATR/BPR Number 17 of 2021 concerning by removing and/or abolishing the community's landowner authority through the determination of destroyed land, the Procedures for the Determination of Destroyed Land regulate and validate the existence of a new legal norm that grants the government the authority to attempt to acquire land owned by the community that will be used for the public interest. The community, however, has a legal stake in protecting, developing, using, and securing justice for the properties they own.

Determining whether land has been destroyed grants the State the power to "usurp" and take the rights and interests of the community over that designated area. In addition, the Government will only compensate the community in the form of providing welfare funds. As outlined in Law Number 2 of 2012 concerning the concept of land use/acquisition for the public advantage, which requires the State to compensate landowners, is entirely at conflict with land purchase for development for the public benefit (Zulfida, 2024).

The author is interested in carrying out a more thorough investigation into whether the owner of the right to demolished land can be categorised as a party entitled to land acquisition for the public interest by Considering aspects of legal justice targeted at the well-being and prosperity of the Indonesian populace, as described above.

RESEARCH METHODS

The research method used in this study is normative juridical. Normative juridical research is a legal research approach that refers to applicable laws and regulations. This approach is also known as the literature approach, because it is done by studying books, laws and regulations, and other relevant documents. Normative juridical research according to Peter Mahmud Marzuki is that implementing rules or norms in positive law is the main emphasis of the issues brought up, examined, and detailed in this paper. In order to conduct normative juridical research, several types of formal legal rules-such as laws and theoretical notions found in literature-are examined and the linked to the issues under consideration (Marzuki, 2010).

Meanwhile, according to Soerjono Soekanto, the normative juridical approach is legal research conducted by researching literature materials or secondary data as a basis for research by conducting a search of regulations and literature; iterators related to the problem being studied (Soekanto, 1984).

This research uses primary legal materials, secondary legal materials and tertiary legal materials. This research method will focus on the process of using the document study method and literature study which is then presented and analyzed using qualitative methods, namely by discussing the main problem based on the data obtained both which are then analyzed qualitatively for problem solving.

RESULTS AND DISCUSSION

The requirements of Article 2 paragraph (2) of the Basic Agrarian Law serve as the foundation for the State's representation in the government's management of the land sector with regard to legal laws and land utilisation. The authority in this context encompasses limitations and guidelines pertaining to the designation, use, supply, and upkeep of land, as well as the regulation of legal relationships between individuals and land-related legal acts.

Land acquisition means to hold or provide land. The government's attempt to acquire property rights from its owners by paying the a fair price for development in the public interest is known as land acquisition (Harsono, 2008). Meanwhile, according to Peter Mahmud Marzuki, the procedure of acquiring land in the public interest involves paying the person who donates their property the appropriate quantity of funding for development in the public interest (Marzuki, 2011).

Revocation of land rights for the public benefit is recognised as land acquisition under the Basic Agrarian Law. The government created Law Number 20 of 1961 on the Revocation of Land Rights and Objects on Them for the Public Interest in order to carry out this implementation. The Basic Agrarian Law's Article 2 and Article 6 requirements are really put into practice when land is acquired for the public good (Arba, 2021).

Details on land acquisition are provided by Law Number 2 of 2012, which respects land acquisition for the public interest. While Article 1 paragraph (6) declares that "the public interest is the interest of the nation, state, and society that must be realised by the government and used as much as possible for the prosperity of the people," The statement "land procurement is the activity of providing land by providing decent and fair compensation to the right party" is clarified in Article 1 Paragraph 2.

In Indonesian national and state life, the idea of the public interest is crucial. This idea is significant not just in Indonesia but also in other nations worldwide. Because it captures the link between the state and society, including the rights and responsibilities of both the state and its citizens, the public interest is crucial (Asmorowati, 2020).

The term public interest refers to needs that are general and prioritize the interests of the wider community over individual interests, such as the construction of highways, bridges, and other public facilities (Siahaan, 2004). Public interest refers to the use of land for projects that provide significant benefits to the community, such as the development of public infrastructure that needs to be regulated by law to ensure the welfare of the community (Harsono, 2008).

According to the previously stated interpretation, the process of purchasing land for the benefit of the nation, the state, and the greater community by paying the right parties a fair and reasonable sum in order to guarantee the prosperity of the people is known as land acquisition for the public interest. Law Number 2 of 2012 states that the government must implement development in order to realize a society that is just, prosperous, and founded on Pancasila and the Republic of Indonesia's 1945 Constitution. One of the steps in the government's national development ambitions is development for the public interest.

According to Law Number 2 of 2012, Article 2, land purchase for the public benefit is done in accordance with the following principles:

- a. Humanitarian principles, human rights, as well as the dignity of Indonesian residents and society, must be respected and safeguarded during the land acquisition process;
- b. The principle of justice, when acquiring land for the public good, the right party must get fair compensation in order to restore its socioeconomic status to at least its pre-acquisition level, taking into account both physical and non-physical losses;
- c. The principle of utility, those in need of land, impacted communities, and the larger community are anticipated to profit from land acquisition, and the community as a whole must experience the advantages of development initiatives for the general good;
- d. The principle of certainty, by giving legal clarity and guarantees to the parties entitled to compensation, the procedures prescribed by the legislation are followed when purchasing land for the public interest, ensuring that all parties are aware of their individual rights and obligations;
- e. The principle of openness, public access to information on land acquisition and its effects, compensation practices, development timetables, plans for relocation and, if applicable, replacement locations, as well as the community's ability to object;
- f. The principle of agreement is that all land acquisition activities and land rights holders are carried out based on an agreement between the parties who need land and the land rights holders. Only after an agreement has been reached and payment has been made may physical development activities be conducted;
- g. The principle of participation, participation of the community must be encouraged throughout the whole land acquisition process, from planning to building, in order to decrease community resistance to the relevant actions and promote a sense of ownership;
- h. The principle of welfare, welfare must be the community's top priority when it comes to development for the public good;
- i. The principle of sustainability, publicly beneficial land acquisition operations that can be carried out continuously and sustainably to meet the desired outcomes, specifically community welfare;
- j. The principle of harmony, In order to give individuals in need of land and the impacted parties equal standing in the land acquisition process, it must be fair and consistent with the interests of the state and the community.

For development to be implemented in the public interest, the landowner must get fair recompense. "Land acquisition is the activity of providing land by providing decent and fair compensation," according to Article 1 Number 2 of the Minister of ATR/BPN's Regulation Number 19 of 2021 concerning the Provisions for the Implementation of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest.

The appraiser's evaluation of compensation is the amount that was in force at the time the compensation decision was made public, and it is conducted in accordance with laws and regulations. After the appraiser or public appraiser completes the evaluation of the land acquisition object and submits the results to the land institution together the process of figuring out compensation starts with the minutes of submission of the assessment results. The implementation of discussions on compensation determination marks the start of the compensation determination procedure.

The rightful owner receives remuneration for their land rights directly. Assessments from discussions, District Court rulings, and Supreme Court rulings are used to determine compensation. After the compensation is submitted, the recipient of the compensation is required to release the rights and submit proof of ownership of the rights, in the form of a land certificate, to the agency in need. The certificate is then handed over to the local National Land Agency which will take care of it.

Furthermore, According to this assessment, If a specific piece of land impacted by land acquisition has residues that are no longer useful in accordance with its designation and use, the party in issue may request a complete replacement of the land plot. The term "no longer functional" refers to a piece of land that is no longer able to be utilised for the purposes for which it was originally designated and utilised, such as a residential home that has been divided so that a portion of it is no longer suitable for residential usage. In this regard, the landowner or controlling party may demand payment for the entirety of the land.

While the people needs land for settlements and as a source of income, the government requires land for physical development. In order to acquire land for the public good, the right party must be compensated fairly and reasonably. The state has the authority to regulate, control, and supervise land acquisition for the public welfare under national land law, which also recognizes and protects the community's rights to land and land-related property. Law Number 2 of 2012, which established the principle of decent and equitable compensation, serves as the foundation for this idea.

Meanwhile, The State is authorised to take over the rights and interests of the community over their lands by designating them as destroyed lands, thanks to the legislative rules in the Ministerial Regulation of ATR/BPN Number 17 of 2021 concerning Procedures for the Determination of Destroyed Land. As a result of the Decision regarding the right to material test against the Ministerial Regulation of ATR/BPN Number 17 of 2021 concerning Procedures for the Determination of Destroyed Land, which in its implementation provides losses for holders of land rights whose land is destroyed for development of the public interest, the Government stipulates the Ministerial Regulation of ATR/BPN Number 3 of 2023 concerning Amendments to the Ministerial Regulation of ATR/BPN Number 17 of 2021 concerning Procedures for Determining Destroyed Land.

Regarding one of the changes to the Ministerial Regulation on ATR/BPN, Priority rights for restoration or reconstruction of property designated as devastated land utilized for public development are awarded to land rights holders. This right must be exercised no later than six (six) days after the land rights holder provides a statement. The purpose of this reclamation is to allow landowners who wish to reclaim their land that has been designated as destroyed land to do so. Compensation will then be paid in accordance with the Land Acquisition Law once the area has been reclaimed and is no longer designated as destroyed land.

Furthermore, the government will only provide welfare monies as restitution to the community. Because the concept of compensation is uncertain and the idea of a "welfare fund" has emerged, this regulation is detrimental to the community in terms of striking a balance between development and the fairness and rights of the local community whose land will be utilized for public purposes.

The welfare fund is a compensation fund that is given or addressed to the land party who is eligible to receive welfare fund assistance, according to Presidential Regulation Number 52 of 2022 of the Republic of Indonesia concerning the Handling of Community Social Impacts on Land Identified as Destroyed Land in the Context of Development for the Public Interest.

Article 4 paragraph (1) of Presidential Regulation Number 52 of 2022 concerning parties entitled to receive humanitarian fund assistance, including the handling of community social impacts, is completed following the designation of land as destroyed and designated as a site for public development. That the holder of the right to land whose land is declared destroyed whose land plot will be reconstructed or reclaimed granted a welfare fund in line with the terms of the relevant laws and regulations in the interest of the public during development by the Central Government, Regional Government, or other parties.

Article 13 of Presidential Regulation Number 52 of 2022 regulates the amount of the tax fund, which is determined by multiplying the land area by 25% (twenty-five percent) of the tax object's selling price as last determined by the authorised agency. The minimum value of the tax fund is Rp 1,000,000.00,- (one million rupiah). The parties that are eligible to receive religious fund assistance for land that has been declared as devastated land may only be used by agencies that need the property for development in the public interest; these agencies are also in charge of providing physical security.

Because it is seen unjust to the owner of the land rights that are decided to be destroyed, the amount of money from this Presidential Regulation has sparked controversy. For this reason, the government established Presidential Regulation Number 27 of 2023 regarding Amendments to Presidential Decree Number 52 of 2022, which specifies how much welfare fund assistance landowners whose land is classified as destroyed land will receive. Appraisers will determine this amount using Indonesian assessment standards.

This emphasises that because every piece of property has unique conditions, the amount of religious monies awarded to each landowner will vary. According to Presidential Regulation Number 27 of 2023, which is more equitable and practical in its implementation than the previous Presidential Regulation, land rights owners who do not reclaim or rebuild their land that is designated as destroyed land have more rights to receive welfare funds.

The change in the amount of welfare funds in the new Regulation of the Minister of ATR/BPN has resulted in a lack of problems in providing loss funds for owners of destroyed land that is used for the public interest. In this study, land owners who were declared destroyed by the Government preferred to get conservation funds in accordance with the Ministerial Regulation on ATR/BPN Number 3 of 2024 rather than carrying out reclamation as stated in Article 15 of the Ministerial Regulation. The community feels more unharmed in the provision of compensation even though it is not in accordance with the provision of compensation based on the Land Acquisition Law for the Public Interest. Due to the condition of the land that does not allow reclamation and changes to the Regulation of the Minister of ATR/BPN which are considered not detrimental to the community, the case of compensation for destroyed land has undergone several improvements aimed at improving the welfare of the community.

The author's purpose in writing this article for other countries is to prevent inequality in providing compensation to landowners whose land is declared destroyed and the land is used for development for the public interest. The need for welfare for people around the world in protecting their rights for citizens who ensure the welfare of life because land is a primary need for every citizen around the world to survive and live daily life.

CONCLUSION

Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest which regulates land acquisition for the public interest involves the activity of providing reasonable and fair compensation to the right party. Land is needed for development in the public interest, and this is accomplished by giving the 1945 NRI Constitution and national land law top priority when it comes to the principles of humanity, justice, utility, certainty, openness, agreement, participation, welfare, sustainability, and harmony in line with national and state values.

The emergence of Ministerial Regulation of ATR/BPN Number 17 of 2021 concerning Procedures for Determining Destroyed Land provides legitimacy to the State to seize and take over the rights and interests of the community over their lands by designating them as destroyed lands, by only providing welfare funds. As outlined in Law Number 2 of 2012 concerning Land Acquisition for Development for the Public benefit, this is completely at odds with the idea of land use/acquisition for the public benefit, which mandates that the State compensate landowners. That's why the Government issued Ministerial Regulation of ATR/BPN Number 3 of 2024 concerning Amendments to Ministerial Regulation of ATR/BPN Number 17 of 2021 concerning Procedures for Determining Destroyed Land.

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