



Shifting the Meaning Regarding Damages on Good Intention Party in the Implementation of Land Acquisition for Public Interest

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<http://dx.doi.org/10.18415/ijmmu.v9i1.3294>

Abstract

The research used is normative legal research. Arrangements for land acquisition promulgated through Law no. 2 of 2012 specifically became the strongest legal basis used in land acquisition for the benefit of public development. Land acquisition in many cases causes cases, especially regarding the provision of compensation in the land acquisition process due to data manipulation by third parties with bad intentions where the subject in land control is not necessarily the owner of the land object. In Article 18 paragraph 2 letter f and g in Government Regulations No 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest, it seems as if it positions the community as a vulnerable party in the context of land acquisition because they are the rightful party in the event of a dispute over land objects that are in fact controlled and/or illegally owned by third parties. In addition, it also opens up opportunities for irresponsible parties to falsify proof of ownership of land objects by taking advantage of this norm gap.

Keywords: *Public; Shifting; Regarding*

Introduction

In the mandate of Article 33 paragraph (3) it's described in Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles contained in the State Gazette of 1960 Number 104. That the authority of the State is as follows: a). The authority to regulate and organize the allotment of the use, supply, and maintenance of the earth, water and space; b). Determine and regulate the legal relationship between people and the earth, water and space; c). Determine the legal relationship between people and legal actions concerning the earth, water and space.

In the provisions mentioned above, there is the term right to control land by the state (hereinafter referred to as LTS) as one of the principles of agrarian law. LTS doesn't only give certain powers to the State to regulate and manage all agrarian issues, but also places an obligation. Namely to use the authority that stems from the right to control: "to achieve the greatest prosperity of the people, in the sense of happiness, prosperity, and independence in society and an independent, sovereign, just, and prosperous Indonesian legal state". This obligation is also emphasized in the preamble to the "Opinion" section letter d: ".....which obliges the state to regulate land ownership and lead its use, so that all land in the entire

territory of the nation's sovereignty is used for the greatest prosperity of the people, both individually or collectively.(Harsono, 1971)

At points f and g both in the Elucidation of Article 40 of Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest in conjunction with Article 18 paragraph 2 letters f and g of Government Regulations No. 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest, it can be interpreted that the party who controls state land in good faith and the holder of the basic control over the land can be classified as a party entitled to compensation from the state. And especially in letter g, namely the holder of the basic control over land, in reality problems often occur and violate the principle of justice for those who are entitled as a result of the actions of irresponsible parties, as well as harming the State.

The Job Creation Law basically has the spirit of accelerating the course of development by regulating 10 (ten) areas of acceleration as regulated in Article 4 of the Job Creation Law, one of which is the land acquisition sector (Article 22 of the Job Creation Law) which consists of Law no. 2 of 2012 and Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. Therefore, amendments to several articles in the Land Procurement Law were made to speed up the process of land acquisition for development projects. However, unfortunately the amendment to the Land Acquisition Law doesn't change the basic problems, especially Articles 40 and 41 paragraphs (1), (2) and (3). Compensation given to the Entitled Party as regulated in Article 40 and Article 41 has legal problems from a complicated normative perspective and in many cases in the reality of society there have been many social problems.

Amendments to the Land Procurement Law through the Job Creation Law should strengthen the certainty, protection and fulfillment of human rights over the justice of agrarian resources. This is because the main purpose of the Job Creation Law is to accelerate development (Warburton, n.d.) which cannot be denied requiring large land acquisition/land acquisition. The role of law in the context of this research is important to formulate legal arrangements for land acquisition with social justice.(Abdun Noor, 2021).

Research Methods

The research used is normative legal research.(Michael & Boerhan, 2020)

Results and Discussion

Shifting Meaning on the Subject of Compensation in the Right to Control the State in its Rules

In essence, land acquisition for the public interest is important. However, in its implementation it needs to be carried out transparently by taking into account the principle of respect for legal rights to land.(Limbong, 2011) The state's authority in expropriating land rights for the public interest in Indonesia is derived from the State's Right to Control. The Right to Control the State in Indonesia is different from that in the United States which originates in the eminent domain, where the State (the holder of sovereignty) is believed to have this authority inherently. And although these two principles are believed to have been derived (and given in the United States), but philosophically-historically these two principles are different. The Right to Control the State is a principle that was born to erase the principle of the state domain which is the philosophical foundation of the eminent domain.(Pound, 2017)

Changes in the orientation of economic development affect the legal development of the expropriation of land rights, especially the choice of interests and social values, according to Nurhasan Ismail, based on the idea that there is a functional relationship between the two: a). land as the main

means of development, either directly or indirectly; b). "building" activities tend to be interpreted as efforts to change the economy, especially changes in the economic structure.(Ismail, n.d.)

Compensation After Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest in Conjunction with Government Regulations No. 19 of 2021 on Compensation for the Right to Control the State in Good Faith

Land has an important role in people's lives and lives, including as infrastructure in the fields of industry, housing, and roads. Land can be valued as a fixed object that can be used as future savings. In addition, land is a place of settlement for most of humanity, as well as a source of livelihood for humans who make a living through farming and plantations, which in the end the land is also used as the last burial for someone who dies.(Abdurrahman, 1983)

Compensation in land acquisition law is not given in relation to a default or an unlawful act. Compensation in land acquisition law is a compensation for the loss of land rights holders who lose their land rights because they are released for the public interest. The term compensation or compensation is usually used in the civil sector, whether it is regarding breach of promise (default), violations of law or in the field of compensation for losses. In connection with the terms mentioned above. Thus, R Setiawan once said that compensation can be in the form of replacement rather than achievement, but can stand alone in addition to achievement.(Setiawan, 1987)

Compensation is an absolute right of the holders of land rights who release their land for the public interest there is no authority on the state to take land without compensation. Indonesia is not a country with a communist ideology that allows land confiscation without compensation.(Rogers et al., 2020) The confiscation of land is only possible for lands that are the result of crimes. There are a number of basic principles of compensation that must be used as guidelines, including fair market prices; the doctrine of substitute facilities in the form of replacement land; the principle of justice.(Sutedi, 2008)

According to Article 1 number 10 of Law No. 12 of 2012 concerning Land Procurement for Development in the Public Interest, the definition of compensation is a proper and fair compensation to the party entitled to the land acquisition process. This stage is the determination of the amount of compensation carried out by the Head of the Land Procurement Executor based on the results of the appraisal service of appraisers or public appraisers 63, the Appraiser is in charge of assessing the amount of Compensation per plot of land, including Land; Above ground and underground space; Building; Plant; Objects related to land; Other losses that can be assessed.

The provision of compensation is carried out through deliberation by the executor of land acquisition with the rightful party by inviting the agency that requires the land, deliberations are carried out directly to determine the form of compensation. The results of the agreement in the deliberation become the basis for providing Compensation to the entitled Party as outlined in the minutes of the agreement, but in the event that there is no agreement regarding the form and/or amount of Compensation, the Entitled Party may file an objection to the local District Court within a maximum period of 14 (fourteen) working days after signing the Minutes of the results of the deliberation.

Conclusion

Arrangements for land acquisition promulgated through Law No. 2 of 2012 specifically became the strongest legal basis used in land acquisition for the benefit of public development. Land acquisition in many cases causes cases, especially regarding the provision of compensation in the land acquisition process due to data manipulation by third parties with bad intentions where the subject in land control is not necessarily the owner of the land object.

In Article 18 paragraph 2 letter f and g in Government Regulations No 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest, it seems as if it positions the community as a vulnerable party in the context of land acquisition because they are the rightful party in the event of a dispute over land objects that are in fact controlled and/or illegally owned by third parties. In addition, it also opens up opportunities for irresponsible parties to falsify proof of ownership of land objects by taking advantage of this norm gap.

The legislature needs to consider efforts to integrate the disenfranchisement agency into land acquisition regulations. This integrated arrangement ensures more consistency, synchronization and efficiency in the implementation of land acquisition for the public interest. With the integration of these regulations, it is expected to increase the guarantee of justice for land rights holders and support national development programs.

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