



## Legal Protection for Land Owners Regarding the Provision of Land Compensation Costs Due to Land Acquisition for Public Interest

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### ABSTRACT

Indonesia as an agricultural country, which has a very large area of agricultural land and has the potential for yields to fulfil the needs of the community. The potential is generally such as agricultural products such as rice, corn, sweet potatoes, and various other palawija, and also plantation products such as oil palm, rubber. Various potential results, so that the land has a high quality and price and has a high level (income) of income from the processing of agricultural land and plantations. Ownership of such land by legal subjects, both individuals and legal entities, is inseparable from the reach of government supervision, and can transfer ownership rights to the government if development is carried out in the public interest. The public interest can be in the form of the construction of toll roads, hospitals, and several other public facilities as mandated by UU No. 2 Year 2012. The community will receive compensation for the land that the state has taken, and if they disagree with the nominal amount of compensation, they may file a lawsuit in the District Court in accordance with the land's legal location. The government will first determine the price of the local object when carrying out land acquisition and revocation from the community. The purpose of this research is to discuss the acquisition and revocation of community land rights. The research method used is normative juridical (normative legal research), namely by collecting secondary data consisting of laws and regulations and various sources of literature review. The analytical approach is to determine the fulfilment of rights received by the community in the context of the acquisition and revocation of land rights by the government, as mandated by UU No. 2/2012

## **INTRODUCTION**

The development of the need for the construction of public facilities has increased and the government provides payment for the value of land objects that are released and revoked for individual land rights or legal entity businesses. The release and revocation of land rights must be able to consider human rights (human dignity) which must be respected as mandated in Law No. 39 of 1999 concerning Human Rights, and the government in carrying out state duties and powers must continue to uphold every rule/constitution and all provisions contained in the applicable laws and regulations in the Unitary State of the Republic of Indonesia (NKRI).

Regulations made to provide protection to humans, are required to meet several elements, namely: Elements of Legal Certainty, Elements of Legal Benefits, and Elements of Legal Justice. The elements of legal certainty provide a guarantee of legal protection in order to create peace/order in community life, and the legal regulations made must have a value of benefit in providing law enforcement so that there is no public unrest, and provide justice for all parties without exception without considering SARA elements.

## **LITERATURE REVIEW**

The release and revocation of land rights are still guided by Law No. 2 of 2012. Land release by the government is carried out to fulfill public interests such as:

- a) "national defense and security;
- b) "public roads, toll roads, tunnels, railway lines, railway stations, and railway operating facilities;
- c) "reservoirs, dams, weirs, irrigation, drinking water channels, water and sanitation drainage channels, and other irrigation buildings;
- d) "ports, airports, and terminals;
- e) "oil, gas, and geothermal infrastructure;
- f) "power plants, transmission, substations, networks, and distribution of electricity;
- g) "Government telecommunications and informatics networks;
- h) "waste disposal and processing sites;
- i) "Government/Regional Government hospitals;
- j) "public safety facilities;
- k) "Government/Regional Government public cemeteries;
- l) "social facilities, public facilities, and public green open spaces;
- m) "nature reserves and cultural reserves and Government/Regional Government/village offices;
- n) "urban slum settlements and/or land consolidation, as well as low-income housing with rental status;
- o) "Government/Regional Government education or school infrastructure;
- p) "Government/Regional Government sports infrastructure; and
- q) public markets and public parking lots".

A lawsuit based on the location of the land object may be filed if members of the public disagree with the government's nominal compensation offer. The

government grants freedom to agencies and members of society affected by the development to voluntarily accept the nominal value of compensation that is appropriate and fair as determined by the government. As in Article 55 to Article 57 of Law No. 2 of 2012. And the payment of compensation must be made, meaning that the act of taking land by the state does not take into account compensation. In accordance with Presidential Decree Number 55 of 1993, the government provides compensation in the form of resettlement, replacement land, or a combination of two or more forms of compensation, in addition to the nominal value of money.

Land acquisition to be able to provide land to meet public interest facilities, as well as to improve community welfare, economic development, and provide basic services. Land acquisition has several stages, namely: Planning Stage, Preparation Stage, Implementation Stage, Results Delivery Stage. In order to continue with the development project, the government must complete these stages. The landowners impacted by the property acquisition shall not suffer losses as a result of these stages being completed. activities related to land acquisition. The following guidelines guide government agencies' land purchase efforts for the public interest:

- a. "humanity;
- b. "justice;
- c. "benefit;
- d. "certainty;
- e. "transparency;
- f. "agreement;
- g. "participation;
- h. "welfare;
- i. "sustainability; and
- j. "harmony.

The problem starts from the background of the problem above, some of the main problems that will be studied are as follows:

1. How is the implementation of land acquisition and compensation by the government to affected landowners?
2. How is the legal protection for landowners who do not agree with the nominal value of compensation for the land acquisition?

## **METHODOLOGY**

Normative legal research is the research methodology employed in this legal research/journal. Normative legal research is a technique for gathering secondary material that includes a variety of sources of literature reviews as well as laws and regulations. The problem approach (Conceptual Approach) used in this journal is based on actual cases as well as the statute approach and norms that exist as legal regulations in actual legal practices that are part of everyday community life.

## **RESEARCH RESULT AND DISCUSSION**

"Article 1 Number 2 of Law No. 2 of 2012, land acquisition is an activity to provide land by providing proper and fair compensation to the entitled party", and in paragraph 9, "release of rights is the termination of legal relations from the entitled party to the state through the land institution, and in paragraph 10 Compensation is a proper and fair replacement for the entitled party in the land acquisition process".

The land acquisition process must first go through several stages in the construction process later, because in the land acquisition will have an impact on the revocation of the right to ownership of the land and the provision of compensation for the affected land. Land objects in accordance with Article 12 of Presidential Decree Number 55 of 1993 and Presidential Decree No. 36 of 2005, which can be compensated, namely: Land rights; Buildings; Plants and other objects related to land.

The compensation must be in a reasonable amount, and not only in the form of material/additional value, but also in the form of immaterial things for land objects that have an impact on the status of customary land that contains spiritual/sacred values (religious magic).

The components of the compensation, there are things that must be the main concern, namely:

1. The appropriateness of the compensation price

The basis for calculating the appropriate compensation can be considered from the acquisition price of the land, and also in accordance with the NJOP (Taxable Object Sales Value) tax bill for the land object, with the aim that the affected landowner can use the money to rebuild their business/residence, and if there is a plan to build a shelter for people whose rights to the land have been revoked as regulated in Presidential Instruction (Inpres) Article 6 paragraph (2) Number 9 of 1973. The nominal value of the compensation will be assessed by the assessment of the Land Price Assessment Institution/Team appointed by the Committee, as well as the support of the estimated value by the regional apparatus specifically for buildings, and if specifically for plants, it will also be estimated by the regional apparatus specifically for agriculture. The determination of the assessment team comes from the government agency's goods/services procurement team, and the results of the assessment are final and binding. The assessment team will conduct a joint deliberation activity with the Head of the Land Acquisition Implementation together with the party entitled to receive the compensation value for the affected land. If an agreement is not reached during the deliberation activities carried out by the compensation committee with the land owner, then:

1. "The entitled party may file an objection to the local district court, within a maximum of 14 (fourteen) working days after the compensation determination meeting.
2. The district court shall decide on the form and/or amount of Compensation within a maximum of 30 (thirty) working days from the receipt of the objection.

3. The party objecting to the district court decision as referred to in paragraph (2) may file an appeal to the Supreme Court of the Republic of Indonesia within a maximum of 14 (fourteen) working days.
4. The Supreme Court is required to issue a decision within a maximum of 30 (thirty) working days from the receipt of the cassation application.
5. The decision of the district court/Supreme Court that has obtained permanent legal force shall be the basis for payment of Compensation to the party filing the objection.”

#### 1. Type/Form of Compensation

The form of compensation as explained in the provisions of Law No. 20 of 1961 concerning Revocation of Land Rights and Objects Thereon, namely:

- a. Provision of nominal compensation in money, based on the value of the land object. Compensation in the form of money is regulated in the following regulations:
  1. “Compensation in the form of money in the form of rupiah currency.
  2. “Provision of Compensation in the form of money as referred to in paragraph (1) is carried out by the Agency that requires land based on validation from the Head of the Land Procurement Implementation or an appointed official”.
  3. “Validation from the Head of the Land Procurement Implementation or an appointed official as referred to in paragraph (2) is carried out within a maximum of 3 (three) working days since the minutes of the agreement on the form of Compensation as referred to in Article 72 paragraph (1)”.
  4. “Provision of Compensation as referred to in paragraph (2) is carried out simultaneously with the release of rights by the Entitled Party”.
  5. “Provision of Compensation as referred to in paragraph (2) is carried out within a maximum of 7 (seven) working days since the determination of the form of Compensation by the Land Procurement Implementer”.
- b. Compensation by providing a place to live or in the form of cultivated land/replacement land. The mechanism for providing compensation in the form of replacement land is:
  1. “Compensation in the form of replacement land as referred to in Article 74 paragraph (1) letter b is provided by the Agency requiring land through the Land Acquisition Implementer”.
  2. “Provision of Compensation as referred to in paragraph (1) is carried out by the Agency requiring land after receiving a written request from the Head of the Land Acquisition Implementer”.
  3. “Replacement land as referred to in paragraph (1) is provided for and on behalf of the Entitled Party”.

4. Provision of replacement land as referred to in paragraph (2) is carried out through sale and purchase or other agreed methods in accordance with the provisions of laws and regulations”.
  5. “Provision of Compensation as referred to in paragraph (3) is carried out simultaneously with the Release of Rights by the Entitled Party without waiting for the availability of replacement land.”
  6. “During the process of providing replacement land as referred to in paragraph (4), funds for providing replacement land are deposited in a bank by and on behalf of the Agency requiring land”.
  7. "Implementation of the provision of replacement land as referred to in paragraph (3) shall be carried out no later than 6 (six) months from the time the Land Procurement Implementer determines the form of Compensation."
- c. Provision of certain facilities, for example facilities for moving the location of residence by means of transmigration". The provision of compensation is carried out in cash, based on the mandate of Article 6 of Presidential Instruction No. 9 of 1973, paid and given to each owner of the rights to the affected land. The payment mechanism carried out by the government/agency to the owner of the rights to the land cannot be given through an intermediary or his/her attorney unless there is a direct obstacle. The implementation of the provision of compensation for the land, if the legal owner has died before the payment of compensation for the land is made, then based on Article 17 of Presidential Decree No. 55 of 1993 it can be submitted directly, namely to:
- a. Holder of land rights or holder of legal heir certificate.
  - b. Management rights holder,
  - c. Nadzir for waqf land.
  - d. Owner of former customary land.
  - e. Customary law communities.
  - f. The party who controls state land in good faith,
  - g. Holder of basic control over land
  - h. Owner of buildings, plants or other objects related to land.

Compensation by the land acquisition implementer can also be given in special circumstances. These special circumstances are where the entitled parties need compensation money in urgent circumstances. These urgent circumstances include natural disasters, education costs, carrying out religious activities, medical/treatment costs, and for debt payments. However, ownership must be proven by showing several proofs of ownership such as a certificate from the village head/sub-district head/village or a letter showing land ownership. Proof of ownership of the land rights provides an aspect of legal protection to the land owner so that they do not experience losses due to the release of the land. Legal protection is also given to the owner of the land rights, if they do not agree with

the nominal compensation given in the previous deliberation. However, if they still do not agree, and there is still a dispute over the land, then the government agency will deposit compensation (consignment) with the District Court according to the area/location of the land concerned. Depositing compensation in the form of money at the District Court meets the requirements in accordance with Article 1406 of the Civil Code regarding legal deposit (storage) according to law, which does not require control by the panel of judges.

The implementation of the consignment determination for the compensation meets several requirements, namely:

- a. "The person entitled to compensation is unknown.
- b. "Land, buildings, plants, and; other related objects.
- c. "Ownership is still disputed and there has been no settlement agreement from the parties".
- d. "Land, buildings, plants, and/or other objects related to the land are being confiscated".

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the results of the research and discussion above, the following conclusions can be drawn:

The mechanism for land acquisition for public interest based on development policies, by providing compensation to affected landowners must be resolved quickly and easily, so that the government as the land procurement to immediately carry out the development process for the public interest to be able to quickly in order to improve people's welfare. The government will also deposit compensation money (consignment) through the District Court institution based on the location of the land object affected by the land acquisition in order to settle disputes between communities that disagree with the nominal value of the compensation that has been set, based on calculations from the assessment team by considering the NJOP value of the land, and communities that disagree with the compensation value, in an effort to speed up the process of land acquisition and development. This will make it possible for the government to take ownership of land rights that state-owned land will directly control, through the National Land Agency (BPN).

Compensation can be given in addition to the nominal amount of money, but can also be in the form of providing replacement land, resettlement based on the agreement of the parties for the provision in the form of compensation offered. The process of providing compensation must comply with and comply with the rules that have been set out in the laws and regulations and other regulations, in order to create certainty, justice, and legal benefits and have national ethics (Principle of good governance) in the process of release, revocation of rights, and provision of compensation for land for the public interest so that it can be implemented quickly.

## **ADVANCED RESEARCH**

While writing this essay, the researcher realized there are still many shortcomings in language, writing, and presentation style, which is not surprising given their own limited experience and expertise. To guarantee the

work is perfect, the researcher therefore expects insightful criticism and suggestions from a variety of sources.

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