



## Juridical Review of Compensation in Village Cash Land Procurement

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## ABSTRACT

Development commonly occurs by managing and utilizing natural resources. For example, the use of village land and private land for public interest. The purpose of this research is to find out how the Government Regulation in this case implements compensation in Land Acquisition for Public Interest by Law No.2 of 2012 and how the rights of the village government whose land is affected by Land Acquisition for Public Interest. The land that will be used for the Trans Java Semarang – Solo toll road sector V Salatiga – Boyolali construction project in Tanjungsari Village, Banyudono District, Boyolali Regency. This study uses a normative sociolegal research method and it can be concluded: 1. That compensation for village treasury lands affected by the project according to Law no. 2 of 2012 does have binding legal force. However, in practice, there are still weaknesses such as the method, the basic form of calculating compensation, and the land acquisition mechanism that is carried out. 2. Whereas the obstacles that occurred in the compensation process did not guarantee rights holders get their rights and obligations compared to the previous project. This is because the basis for calculating the compensation only takes into account physical losses, namely: land, buildings, and plants on it. Non-physical losses related to sociology experienced by land rights owners are not calculated and regulated in statutory regulations. This shows that most of the Government's actions in this land acquisition case do not favor the interests of the community in particular.

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## PRELIMINARY

Land has an important role in human life in society as a basis for residence, industry, and roads or other infrastructure (Abdulrahman, 1993: 5). Therefore, the function of land is not only as a place to live but also as a place for social and cultural growth and development.

The construction of public facilities is a form of service from the government to the community in building this nation. Currently, development is being carried out vigorously in various fields of infrastructure and all aspects of life to provide a better life as the goal of every region, is to contribute to the development of a better nation. In carrying out this development, the central government does not always run smoothly, in fact, the implementation of this development often experiences many obstacles, both with residents or the government that owns the land assets, be it village, city, or provincial governments (Maria Sumardjono, 2008: 248).

Article 33 paragraph (3) of the 1945 Constitution states that "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Then, Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) provides the legal basis for the government to take private land for public interest, including for the benefit of the nation and state for the common interests of the people. This right to land can be revoked by providing appropriate compensation according to the regulations regulated in law (Soedharyo Soimin, 1993: 82). The regulations governing land acquisition are Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, which is also called the Land Acquisition Law.

Article 6 of Law Number 2 of 2012 states that Land Acquisition for Public Interest is carried out by the Government through an agency or team formed within a Ministry. Then, Article 10 of Law Number 2 of 2012, states that land for public purposes as referred to in Law Number 2 of 2012 in Article 4 paragraph (1) is the use of the land for the construction of public roads, toll roads, and tunnels, railway lines, train stations, and other facilities for operational purposes that support railways.

Land procurement referred to here is an activity in providing land by providing adequate and fair compensation to the parties entitled to it (Law Number 2 of 2012 Article 1 number 4), namely the parties who control or own the object of land acquisition in question. intended.

Based on this background, the author is interested in researching village treasury land procurement by focusing on compensation, taking the title "Judicial Review of Compensation in Village Treasury Land Procurement".

## **METHOD**

The problems described above will be discussed using an empirical juridical approach. Juridical approach (law is seen as a norm or *das sollen*), because in discussing the problem this research uses legal materials (both primary legal materials and secondary legal materials). Empirical approach (law as social reality or *das sein*), because in this research primary data was obtained from interviews in the field (Soerjono Soekanto, 2008: 52).

## **RESULT AND DISCUSSION**

### **Village Cash Land Compensation Process in Tanjungsari Village, Banyudono District, Boyolali Regency.**

The land compensation process that occurred in Tanjungsari Village, Banyudono District, Boyolali Regency related to the construction of the Salatiga-Boyolali Toll Road went through several stages, including the release of land which was carried out by deliberation to obtain an agreement between the land procurement committee and the land owner, the Government. Village (Pemdes). Through this deliberation, the Village Government was asked to hand over its land rights accompanied by appropriate compensation. The handover must be carried out by the owner (Pemdes) voluntarily, in line with the provisions of the UUPA. This means that volunteerism is an absolute requirement in this matter. As explained by the Head of Tanjungsari Village, Banyudono District, Boyolali Regency, land acquisition that occurs in his area is carried out by generally applicable regulations, namely by deliberation, socialization of the land acquisition program from the initial process to the provision of compensation. (Interview with Mr. Joko Sarjono: Head of Tanjungsari Village, Banyudono District, Boyolali Regency) it was also said that the area of land that will be used in the construction of this toll road project is  $\pm 24,640 \text{ m}^2$  with compensation amounting to IDR 12,539,655,139.00 (Twelve billion five hundred thirty-nine million six hundred fifty-five thousand one hundred thirty-nine rupiah). The Village Treasury Land Procurement, which took place in Tanjungsari Village, Banyudono District, Boyolali Regency, was discussed with the parties involved, especially the village government (Village Head and Village

Consultative Body/BPD), as well as related parties. The Head of Tanjungsari Village stated that with deliberation it was hoped that problems would not arise in the future. In principle, the release of community land carried out in its area and the procurement of land for the village treasury refer to the applicable provisions. At the Tanjungsari Village Hall, a village meeting was held which was attended by elements of the Village Government, the Head of the RT, the Head of the RW, Community Leaders, and all members of the BPD (Village Consultative Body), discuss the Disposal of Village Treasury land and the amount of compensation, which will come from the proceeds. The compensation will involve finding replacement land as compensation for the land that has been released. The results of the meeting are stated in the Minutes of the Village Consultative Body Meeting. Furthermore, the Letter of Approval from the Tanjungsari Village Consultative Body was submitted to the Regent of Boyolali, the Head of the Village Government Division of Boyolali Regency, the Head of Banyudono District, and Head of Tanjungsari Village to approve the release of rights to the land in question.

The process of compensation for Tanjungsari village treasury land due to the public interest in the construction of the Trans Java Semarang-Solo Sector V Salatiga - Boyolali toll road is  $\pm$  32 kilometers out of a total length of  $\pm$  73 kilometers that passes through Tanjungsari Village and the land required for this construction is  $\pm$  26,640 m<sup>2</sup> which will be implemented in several stages. Firstly, the party that needs the land has mapped the land that will be affected by the development, after it has been mapped, the implementing party will carry out a measurement process of the affected land, after the process of issuing the plot map which has been processed at the National Land Agency (BPN) then A new certificate will be issued from the resolution process which will be compensated by the government. The compensation process is carried out using deliberation to obtain an agreement between the land acquisition committee the village government and the community represented by the Village Consultative Body and residents. That there are disagreements regarding the compensation price proposed by the appraisal team from the government can be discussed properly jointly between the government as the implementer of this project and the village government which is the owner of the legal rights to the land. The Tanjungsari Village Government submitted a request to the Village Consultative Body to request approval for the release of rights. During the deliberations, it was agreed to release the land by finding replacement land for the Village Treasury which would be used for the construction of the Salatiga-Boyolali Toll Road. Land procurement is an activity that provides land by providing appropriate and fair compensation, in its implementation with the village government land procurement for public purposes is by the stages or procedures mandated in Law Number 2 of 2012 concerning Land Acquisition for the Public Interest contained in article 13, also in the implementation of land procurement it refers to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest and technically the implementation is also by the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical instructions for Land Acquisition Implementation. In the context of Procuring Land Rights for the Public Interest, the presence of Law No. 2 of 2012 does have binding legal force. However, in its implementation, there are still weaknesses, such as the meaning of Public Interest being too broad, the form and basis for calculating compensation for land rights owners, and the Land Acquisition mechanism carried out by the Government.

### **Obstacles to Compensation for Land Acquisition for Public Interest.**

The obstacles that occur in implementing compensation according to Law Number 2 of 2012 concerning Land Acquisition for Public Use are mostly:

- a. Unwillingness to relinquish land rights;

b. Disagreement regarding the compensation value proposed by the Appraisal assessment team, even though the price offered is already above the selling value of the tax object (NJOP) of the land itself;

c. the status of land ownership owned by individuals, business entities, and local governments, and the existence of legal ownership rights is also protected by existing laws. For example, property rights, which in the UUPA are regulated in Articles 20 to Article 27, the meaning of property rights is formulated in Article 20 of the UUPA, namely:

1) Ownership rights are hereditary rights, the strongest and fullest, that people can have over land, bearing in mind the provisions of Article 6;

2) Ownership rights can be transferred and transferred to other parties (Article 20 of Law Number 5 of 1960).

The characteristics of property rights differentiate them from other rights. Property Rights are the strongest and fullest rights that people can have over land (Hamdi, 2014: 134). Giving this characteristic does not mean that the right is an "absolute, unlimited and inviolable" right as in the original definition of rights. Such characteristics would conflict with the nature of customary law and the social function of each right. The words "strongest and fullest" are intended to differentiate it from Cultivation Rights, Building Use Rights, Use Rights, and others, namely to show that among the land rights that people can have, property rights are the "most " (meaning: most) strongest and fullest (Adrian Sutedi, 2014: 60). The occurrence of ownership rights to land is a series of granting rights to land regulated in the UUPA, which in article 22 of the UUPA states:

a. The existence of property rights according to customary law is regulated by government regulations;

b. Apart from using the method as intended in paragraph (1) of this article, property rights arise because;

c. Government determination, according to the methods and conditions determined by government regulations.

d. Provisions of the Act.

The existence of property rights due to statutory provisions is based on the conversion provisions according to the UUPA. All land rights that existed before 24 September 1960 were changed to one of the new rights. This change is called conversion. The occurrence of ownership rights due to government determination requires a process, starting with applying to the government agency that manages the land, then that agency issues a decision letter granting ownership rights to the applicant. After that, the applicant is obliged to register his rights at the land registry to make a land book. The applicant is given a certificate consisting of a copy of the land book and a measuring certificate as proof of his rights. Ownership rights arise when a land book is drawn up. The state's power regarding land that is already owned by a person or legal entity with a right is limited to the content of that right, while the state's power over land that is not owned by a person or legal entity is broader and fuller. The state can grant such land to a person or legal entity with rights according to its purpose and needs. At that time, state power over land was also more or less limited by customary rights as long as it was according to its purpose and needs. Meanwhile, state power over land is also more or less limited by customary rights as long as in reality these rights still exist (A.A. Oka Mahendra, 1996: 253). Based on the state's right to control as intended in Article 2 paragraph (1) of the UUPA, it is determined that various land rights can be granted and owned by individuals or legal entities with the following provisions:

a. All land rights have a social function;

b. Ownership and control of land that exceeds the limits is not permitted;

c. Only Indonesian citizens can have a full legal relationship with land;

d. Every person and legal entity who has basic agricultural rights is obliged to do it himself or actively cultivate it himself by preventing extortion methods;

e. Controlling land use through monitoring and controlling land use by land conditions and its intended use plan;

f. Putting in order regulations as implementation of UUPA.

Land rights in the formulation of Article 4 paragraph (2) are the authority to use the land in question as necessary for purposes directly related to the use of the land within the limits according to the law or the provisions of higher legal regulations (Rusmadi Murad, 1991: 83). In the provisions of article 4 of the UUPA, various land rights are determined which originate from the right to control by the State, in article 16, namely in the form (Rusmadi Murad. 1991: 83):

- a. Right of ownership;
- b. Cultivation Rights;
- c. Building rights;
- d. Usage Rights;
- e. Rental Rights;
- f. Right to Open Land;
- g. Right to Collect Forest Products;
- h. Other rights that are not included in the rights mentioned above will be determined by law as well as temporary rights as mentioned in article 53 of the UUPA. (Management Rights, Apartment Unit Ownership Rights, Mortgage Rights on Land, Land Use Rights, etc.).

The obstacles that arise in the process of compensation for village treasury land as a result of the procurement of village treasury land for public purposes in Tanjungsari Village are:

- a. many parties want to participate in making decisions for certain benefits in this land compensation process. In deciding compensation for the construction of the Salatiga - Boyolali toll road project, is carried out by the Tanjungsari Village Government and its staff as well as the Village Consultative Body (BPD) of Tanjungsari Village, Banyudono District, Boyolali Regency. The making of this decision is by Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the implementation of development in the public interest;
- b. That the lack of socialization and deliberation is necessary to reach a collective agreement. The deliberation is the socialization of the project in which the community has no other choice in this matter;
- c. The process of land acquisition and village treasury compensation and looking for replacement land as a result of the relinquishment of village land rights due to public interests in Tanjungsari Village, Banyudono District, Boyolali Regency includes Inventory and Identification of Control, Ownership, Use and Utilization of Land, Assessment of compensation, Deliberation on the provision of compensation, Land release, Procurement of replacement land, Evaluation of land acquisition, Provision of compensation for cash replacement land and future socio-economic use of the replacement land;
- d. That land compensation in the construction of the Trans Java Salatiga-Boyolali Sector V toll road at least has a strong legal basis and is by existing principles, namely the principle of equality and equity, the principle of justice because in determining the basis for the amount of compensation refers to the sales value of the tax object (NJOP), the location of the land, buildings, and contents of the land, as well as the local market price and many other aspects which are also the basis for price considerations, and also other aspects including honesty or truth, freedom, written testimony, and good faith.

Land compensation in this national toll road project is a sale and purchase agreement between the parties who need the land, namely the government through the Ministry of Public Works and Public Housing (PUPR) represented by the Public Works Service (DPU) Directorate General of Highways, Directorate of freeways Urban Obstacles and Regional Road Facilities, Land Inventory and Acquisition Work Unit Land Acquisition for the Salatiga Boyolali Toll Road with the village government affected by the

construction of this toll road, the village government has received its proper rights as regulated in the law, namely to obtain compensation loss of replacement land, buildings or something that can be valued. However, the size of this compensation sometimes does not match what the parties expect, so many say that this law does not accommodate the community or even local governments who have land rights.

## CLOSING

That compensation for village treasury land affected by the project according to Law Number 2 of 2012 does have binding legal force. However, in its implementation, there are still weaknesses such as the method, basic form of calculating compensation, and the land acquisition mechanism carried out. The obstacles that occur in the compensation process do not guarantee that the rights holder will receive the rights and obligations they had before the project existed. This is because the basis for calculating compensation only takes into account physical losses, namely: land, buildings, and plants located above them. Non-physical losses related to sociological issues experienced by owners of land rights are not taken into account and regulated in statutory regulations. This shows that most of the Government's actions in this land acquisition case are not in favor of the interests of the community in particular.

## Suggestions

- a. The State, through the relevant agencies, in determining policies, especially in the process of land acquisition for development in the public interest, must emphasize the rights of the people to achieve a just and prosperous society.
- b. The community should play a more active role and understand their rights and obligations as citizens and as affected parties in land acquisition activities for the public interest.
- c. The state and society must work together to maintain the realization of the land acquisition process for development in the public interest without ignoring the welfare of the community as mandated by the constitution.

## BIBLIOGRAPHY

### Books :

- Abdulrahman. (1993). *Masalah Hak-hak atas tanah dan pembebasan tanah di Indonesia*. Cet ke 2. Bandung: Alumni.
- Hamdi. (2014). Penyelesaian Sengketa Penetapan Ganti Rugi Dalam Pengadaan Tanah Untuk Pembangunan Kepentingan Umum (Kajian Terhadap Undang-Undang Nomor 2 Tahun 2012). *Jurnal IUS*, Volume II Nomor 4 : 78-104.
- Mahendra, Oka. (1996). *Menguak Masalah Hukum, Demokrasi Dan Pertanahan*. Cet ke-1. Jakarta: Pustaka Sinar Harapan.
- Murad, Rusmadi. (1991). *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni.
- Soimin, Soedharyo. (1993). *Status Hak dan Pengadaan Tanah*. Jakarta: Sinar Grafika.
- Sumardjono, Maria. (2008). *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*. Jakarta: Buku Kompas
- Sutedi, Adrian. (2014). *Peralihan Hak Atas Tanah dan Pendaftarannya*. Cet ke-6. Jakarta: Sinar Grafika

### Regulations :

Undang -Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria

Undang-Undang Nomor 2 tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum

Peraturan Presiden Nomor 36 Tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Untuk Kepentingan umum.

Peraturan Presiden Nomor 71 tahun 2013 tentang Penyelenggaraan Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum.

