

Legal Reconstruction Of Compensation System “Proper” And “Fair” In Land Acquisition For General Interest

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ABSTRACT

According to the Indonesian regulation on land acquisition for the public interest, land acquisition is an activity that provides land by paying proper and fair compensation to the entitled party. However, no explanation is provided as to what an appropriate and suitable settlement will entail, resulting in legal uncertainty and multiple interpretations in its implementation. As a result, legal reconstruction is required to construct a compensation system that meets the intended fair and just principles. According to the findings of this study, the legal structure of a compensation system that meets the principles of fairness and justice must be built on several elements, including the following: first, the aspect of value, which includes the importance of physical and non-physical losses; second, the value is calculated by an independent and professional appraiser; third, the value and form of compensation are determined through fair deliberation and without coercion; and fourth, the bright future is protected.

Keywords: Legal reconstruction, "proper" and "fair" compensation, land acquisition.

I. INTRODUCTION

The preamble to the fourth paragraph of the Republic of Indonesia's 1945 Constitution states that "...the government of the Indonesian state protects the entire Indonesian nation and the entire homeland of Indonesia, promotes public welfare, educates the nation's life, and participates in world order..." The statement confirms that the government of Indonesia follows a welfare state system.

The state's protection of its people is intended to protect them and their rights, including the security of land rights from arbitrary expropriation. This is confirmed in Article 28H paragraph (4) of the Republic of Indonesia's 1945 Constitution, which states that "everyone has the right to private property rights, and such property rights may not be taken over arbitrarily by anyone." This is not to say that land rights cannot be taken over. Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which 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," the government is given legitimacy to acquire privately owned land in

the public interest, even without the consent of the owner.

Land acquisition for the public interest is referred to as "Land Acquisition." "Land Procurement is an activity to provide land by providing appropriate and fair compensation to the entitled party," according to Article 1 number 2 of Law No. 2 of 2012. However, there is no explanation in the preceding law as to what "proper" and "fair" compensation is. This explanation is also absent from other regulations, resulting in multiple interpretations and a lack of clear standards for implementing compensation for land acquisition in the public interest.

II. METHODS

The research method employed in this study was normative-empirical, with the statutory, conceptual, case, and comparative law approaches. Data and legal materials were used in this study. All data and legal materials were collected and descriptively analyzed using deductive logic.

III. DISCUSSION

As stated in Article 1, paragraph (3) of the Republic of Indonesia's 1945 Constitution, Indonesia is a legal state. According to Hamdan Zoelva (Chairman of the Constitutional Court of the Republic of Indonesia from 2013 to 2015), the concept of a state of law in Indonesia does not fully follow the concept of a state of law "rechtsstaat" because the concept of a state of law in Indonesia has a different nuance from the rule of law adopted in other parts of the world, which emphasizes liberalism, individual freedom, and the dignity of man. In this regard, the Constitutional Court of the Republic of Indonesia emphasized in its decision Number 140/PUU-VII/2009 that the Indonesian state's conception of the rule of law does not have to be the same as the principle of the rule of law in the sense of rechtsstaat and the rule of law. The principle of the rule of law in Indonesia must be viewed through the lens of the Republic of Indonesia's 1945 Constitution, namely a state of law that places the principle of God Almighty as the main principle, as well as religious values that underpin the life of the nation and state, rather than a state that separates the relationship between religion and the state and does not solely adhere to the principles of individualism and communalism.

In addition to claiming to be a legal state, Indonesia strictly adheres to the welfare state system. This is reflected in the fourth paragraph of the 1945 Constitution of the Republik of Indonesia, which states, "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and the entire homeland of Indonesia and promotes the general welfare,..." This is also evident in the formulation of the body of the Republic of Indonesia's 1945 Constitution, Chapter XIV on social welfare.

The concept of the rule of law and the welfare state necessitates legal protections for citizens. According to Steven J. Heyman, the right to legal protection originated in British legal tradition, where every loyal person was entitled to the king's protection. The concept was inspired by Edward Coke's writings. He defined the ruler-subject relationship as one of "reciprocal bonds and obligations," to which the people owed allegiance or obedience. On the other hand, the ruler was obligated "to rule and protect his subjects." "Legal protection is the protection of dignity and respect, as well as the recognition of human rights possessed by

legal subjects based on legal provisions from arbitrariness," according to Philipus M. Hadjon.

The state provides legal protection for the people not only against themselves but also for their rights, including property rights to land. According to Article 28 H of the Republic of Indonesia's 1945 Constitution, "everyone has the right to private property rights, and such property rights may not be taken over arbitrarily by anyone," including the government. However, this does not preclude it from being taken over. Article 18 of Law No.5 of 1960 (fundamental agrarian law) states that "land rights can be revoked for the public interest, including the interests of the nation and the state as well as the common interests of the people, by providing appropriate compensation and in a manner regulated by law."

According to the provisions of Article 28 H of the Republic of Indonesia's 1945 Constitution and Article 18 of Law No.5 of 1960 (fundamental agrarian law), the limitation of land acquisition that is not arbitrary is to provide compensation and to be carried out in accordance with the method prescribed by law.

The existence of the state's right to expropriate privately owned land for the public good, accompanied by an obligation to compensate, is consistent with Hohfeld's thinking about the jural correlative, which discusses claiming rights. According to Hohfeld, rights must be limited to those related to liability. Rights and obligations are related concepts, and when a right is violated, an obligation is always violated.

The government's expropriation of privately owned land for the public good is known as land acquisition, and it is one of the procedures for implementation carried out in accordance with the provisions of Law No. 2 of 2012, as amended by Law No. 11 of 2020.

According to Article 1 of Law No. 2 of 2012, "Land Procurement is an activity of providing land by providing proper and fair compensation to the entitled party." Still, what kind of remuneration is appropriate and equitable? This law, like Law No. 11 of 2020, makes no mention of how to deal with it.

In terms of language, the word "proper" means "reasonable, appropriate, noble, honorable," whereas the word "fair" means "unbiased, impartial."

The term "property" is used as a compensation principle in the context of land acquisition for the first time in Article 18 of Law No.5 of 1960. (fundamental agrarian law). However, the definition of "appropriate" is not expanded upon. The "proper" principle is also stated in the explanation of Article 5 of Law No. 20 of 1961, which states that "appropriate losses will be compensated based on the real value of the land or object in question." Because the general price can be a "hook-up" price, the price based on the real/actual value does not have to be the same as the price based on the real/actual value. However, a low price does not imply a low price..."

According to the above explanation of Article 5 of Law No. 20 of 1961, the "proper" principle regarding compensation for land acquisition is related to the value or amount of compensation that must be given to those entitled. According to Arie S. Hutagalung (Professor of Agrarian Law, University of Indonesia), the most important criterion for eligibility is emphasizing provisions related to the amount of compensation that is outlined in such figures so that the economic and social conditions of those affected by development do not deteriorate. According to Maria S. W. Sumardjono (Professor of Agrarian Law, Gadjah Mada University), proper compensation is the amount of compensation necessary to acquire land, buildings, and plants elsewhere.

Meanwhile, since the passage of Law No. 2 of 2012, the "fair" principle has been applied to land acquisition for the public good. The "fair" code is used in this law to supplement the "proper" direction, so that the focus of compensation for land acquisition for the public good is entirely "fair and just." However, neither Law No. 2 of 2012 nor Law No. 11 of 2020 define what is meant by "fair." The only thing that can provide a brief explanation is the definition of the principle of justice in Article 2 letter b of Law No. 2 of 2012, which states, "What is meant by "principle of justice" is to provide a guarantee of adequate compensation to the Entitled Party in the Land Procurement process so that they can carry out a better life."

The explanation of Article 2 letter b of Law No. 2 of 2012 leads to the conclusion that the "fair" principle is related to guarantees for those who are entitled to a better life. According to Maria SW. Sumardjono, fair compensation is compensation

that does not make a person richer or poorer than their original situation. In relation to this, AP. Parlindungan (Professor of Agrarian Law) believes that the person deprived of his rights is not in a worse situation and will not become poor in the future because the compensation money has been spent; at the very least, he must be in an economic situation that is at least the same as before his rights were revoked, thanks if it improves, or he should receive a reasonable replacement. For example, by providing compensation, the individual can purchase land in another location, allowing him to rebuild his home and live in a new location.

The current land acquisition practice in Indonesia demonstrates that the party with full authority to determine compensation has met the "fair" and "fair" principles is the Appraiser. According to Article 1 point 11 of Law No. 2 of 2012, an appraiser is a person who conducts an independent and professional assessment and has a permit to practice appraisal from the Minister of Finance as well as a license from the Land Agency (Ministry of Agrarian and Spatial Planning/Head of National Land Agency) to calculate the value/price of the object of land acquisition. So the "fair and equitable" compensation is contingent on the appraiser's assessment, even though it is reasonable to suspect that the appraiser will not be able to be independent in making the assessment based on who the appraiser is.

Furthermore, the appraiser is bound by a contract with the agency that requires the land when performing the assessment. This condition makes it difficult for the appraiser to conduct an independent and professional assessment, making it difficult to ensure that the appraisal result is "decent and fair," especially for those who are entitled to land. This situation is exacerbated by the lack of regulations governing efforts to ensure that the entitled parties' living conditions will be better than before after the land acquisition. When the government has paid compensation, land acquisition is considered complete. It is up to the victims of land acquisition to determine whether the compensation provided will improve their lives.

The acquisition of land for the Meninting Dam in West Lombok Regency, West Nusa Tenggara Province, which resulted in the acquisition of an area of 897,273.10 M2 or 89.73 Ha, demonstrates that after compensation is paid,

the government makes no effort to ensure that the lives of the victims of land acquisition are better than before. In the absence of such actions, there is no guarantee that the victims of land acquisition will have a better life in the future, especially when the compensation money has run out. This can create new issues, such as increased unemployment and poverty.

According to the author, Indonesia should learn from other countries' land acquisition practices, such as China, which uses "land for land" compensation, which the World Bank considers the best land acquisition practice. Land acquisition for the Jiangya reservoir project in 1994-2000 is one of China's most successful land acquisitions regarding resettlement and restoration of community life after land acquisition. The project resulted in the relocation of a large number of farmers, totaling 13,514 people from 3,327 households. This land acquisition is successful because the people who were victims of the land acquisition now have a better life than before.

This is accomplished through the government's and researchers' monitoring and evaluation efforts. Several studies using community welfare indicators measured for approximately three years after relocation resulted in the success of post-relocation recovery. The community's resettlement and livelihood restoration efforts in the project were deemed quite successful due to the policies adopted by adopting the community's previous life based on the wishes and conditions of the relocated community. This success was achieved as a result of the Chinese government's policy of:

1. Land is replaced with the land.
2. Settlements are replaced by settlements that provide a humane and even higher standard of living and quality of life.
3. Provide assistance
4. Job opportunities in secondary and tertiary industries;
5. Entrepreneurship assistance;
6. The existence of social security.

India also applies a concept similar to China, namely "Rehabilitation and Resettlement," which is governed by the LARR (Land Acquisition, Rehabilitation, and Resettlement Act). According to LARR, no one's land may be confiscated unless all payments have been made and alternative sites for resettlement and rehabilitation have been prepared.

This law even specifies infrastructure facilities such as schools, playgrounds, health centers, roads, electricity connections, and safe drinking water that must be provided in new settlement areas for displaced people.

IV. CONCLUSION

Based on the preceding discussion, for compensation in land acquisition for the public interest in Indonesia to meet the desired "proper" and "fair" principles, the compensation system must be rebuilt to include the following elements:

1. All physical and non-physical losses are included in the compensation component.
2. The compensation evaluation institution must be completely independent and professional.
3. The mechanism or process by which the value and form of compensation are determined relatively and without coercion through deliberation.
4. The right of parties to determine their attitude, agree or disagree with the land acquisition and development plan, including the right to accept or refuse compensation.
5. It is the government's responsibility to provide legal protection guarantees to those entitled to land so they can live in better conditions than before.

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