

The Government's Responsibility for Compensation for Land Procurement in Infrastructure Development Based on Act No. 2 of 2012

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Abstract.

In the process of land acquisition, there will be many conflicts. In land acquisition, of course, the government will compensate landowners as a form of responsibility. Land acquisition in the process of construction for the public interest, basically must always sacrifice personal interests, with limited land availability. In the process of developing land acquisition on the Batang – Semarang Toll Road, there were several obstacles that hindered the smooth process of land acquisition, but with these obstacles the land acquisition team was able to handle it properly. This study aims to analyze the government's efforts in providing compensation for land acquisition, as well as countermeasures for communities who do not approve of the provision of compensation due to several things that deviate from Act No. 2 of 2012. The method used in this study is a normative juridical approach method. The results showed that the government in measuring land must be based on up to date data. The government should be more transparent to citizens about land valuation prices. In the case of the Batang - Semarang Toll Road, the government must still refer to Article 1 paragraph (2) of Act No. 2 of 2012 and Article 18 of the BAL. In the case of the Batang-Semarang Toll Road, the government must first negotiate by submitting compensation objections to the District Court and the Supreme Court. Then if you feel that you have not found an agreement, it can be taken by consignment based on Article 18 of the UUPA.

Keywords: Acquisition; Interest; Negotiations.

1. Introduction

Soil becomes an important thing in human life because most of life depends on land. Land acquisition is very vulnerable because it involves the livelihoods of many people, when viewed from the government's need for land for

development purposes.¹

The development of various infrastructures is one of the supports in developing the nation's economy, one of which is the construction of toll roads as stipulated in Article 10 point (b) of Act No. 2 of 2012.² Which in this development, of course, the need for land provides a great opportunity in carrying out land acquisition by the state for various projects on a large and small scale, as well as for public and private interests. The government in carrying out land acquisition is carried out by way of deliberation to reach a consensus with the land owner, namely the party who surrenders the land, which in this case is based on the principle that all land rights have a social function as stipulated in Article 6 of the UUPA.³ In Article 6 of the UUPA it can be concluded that in a person's property rights there are also community rights⁴.

Of course, the government will provide compensation or compensation to landowners whose land will be acquired for public purposes, as is the case for toll roads. Compensation for land that will later be used in the public interest will be carried out in a fair and proper manner where the amount of compensation for land will be determined based on the area of land to be acquired, and based on predetermined rules, the compensation is meaningless only land but can also be in the form of plants or buildings that are on the land also get compensation according to market prices.⁵ If it is later found that the land owner does not agree with the amount of compensation proposed and feels objections due to a discrepancy in the nominal value of the land to be acquired, the land owner can submit an objection to the local district court.

There is a government obligation to provide compensation according to the minimum market price, so it is very possible for landowners to charge a higher price than the average market price in general, for example, in the price of plants or buildings, if any. This will later trigger problems in land acquisition for public purposes that are used for toll roads. If there are landowners who do not agree regarding compensation and the due date for the transfer has not yet come, the landowner cannot be evicted by force as stipulated in Article 5 of Act No. 2 of 2012, which reads:

¹Sidiq, et.al. *Peran Notaris Dalam Transaksi Pengadaan Tanah Untuk Lokasi Pembangunan Komplek Perkantoran Pemerintah Kabupaten Sekadau*. Jurnal Akta, Vol. 5 No. 1 (March 2018). p.235.

²Article 10 point (b) Act No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

³State Gazette of the Republic of Indonesia (LNRI) Number 104 of 1960, Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 2043.

⁴AP. Parlindungan. (1994). *Bunga Rampai Hukum Agraria Serta Land Reform*. Bandung: Mandar Maju, 1994. p. 87.

⁵ <https://www.hukumonline.com/klinik/a/cepat-hukum-bila-tak-stakes-besar-ganti-rugi-pembebasan-tanah-lt5283c878ea908>, Accessed on Monday 04 April 2022 at 22.06 WIB.

"The party entitled to release their land at the time of implementation of Land Procurement for Public Interest after the award of Compensation or based on a court decision that has permanent legal force."

If there is no consent from the land owner and a court decision has not been issued with permanent legal status, the land owner is not obliged to relinquish his land rights. In this case, we can relate it to the case of the construction of the Batang - Semarang toll road, which expects proper and fair compensation. The confirmed eviction process will be carried out on April 20-23 2018, this is of course troubling local residents. That in this development it is known that the government did not carry out the stages in the land acquisition process, and was not in accordance with Article 2 of Act No. 2 of 2012 for ignoring the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony.⁶

In the case of widening the Batang-Semarang toll road, there is a discrepancy in land measurement, and the concept of gender-responsive and inclusive development has been neglected. Where in this national development the goal should be to improve the welfare of the community, but in this case it actually provides harm and disadvantage to the community because there are differences in land measurement and the community is also forced to agree to compensation for the construction of the toll road which in fact is not in accordance with applicable regulations.⁷

Therefore, further discussion is needed regarding the government's efforts to provide compensation for land acquisition, as well as countermeasures for people who do not agree with the provision of compensation due to several things that deviate from Act No. 2 of 2012.

2. Research Methods

The approach method used in this study is a normative juridical approach. Where this method focuses on examining the implementation of positive legal principles or norms, which refers to the applicable laws and regulations and still prioritizes legal principles and case studies or commonly referred to as library law research.⁸ The specification of the research used is Analytical Descriptive, namely the research provides a detailed description, by writing systematically and thoroughly related to solving the problem under study, then draws general

⁶ <https://pattiro.org/2018/04/akan-digusur-warga-terdampak-pempembelian-jalan-tol-batang-semarang-harapkan-ganti-rugi-yang-adil-layak/?lang=en>, Accessed on Monday 04 April 2022 at 22.45 WIB.

⁷ <https://spi.or.id/pempembelian-infrastruktur-berbuntut-konflik-agraria-spi-kendal-jawa-tengah-tolak-ganti-rugi-yang-ntak-adil-tol-batang-semarang/>, Accessed on Sunday 03 April 2022 at 21.00 WIB

⁸Soekanto, Soerjono and Sri Mamudji. (2004). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: PT. Raja Grafindo Persada., p. 13.

conclusions.⁹ Which is analytical descriptive by describing the government's responsibility for compensation for land acquisition in infrastructure development which is to be analyzed using applicable laws and regulations, then associated with theories, knowledge and the opinion of the author himself who wants to find conclusions from the case above. The method used in analyzing the data that has been collected is the qualitative analysis method. In normative juridical research which is qualitative in nature, it emphasizes the existence of legal norms that have been applied in laws and regulations, court decisions and norms that have been in force and developed in society.

3. Results and Discussion

3.1. Forms of Government Accountability in the Event of Inconsistencies in Land Measurement Data with the Facts by the Land Owner

Land is a very complex thing, especially in Indonesia, because it is the main production resource that cannot be separated from various aspects of human life, which will always be needed both for development and for the daily needs of community members, especially land in the community that is used for the source of life. Acquisition of land or land, especially in the construction of this toll road, is one thing that has surfaced where not everyone agrees on this.¹⁰

In the implementation of land acquisition there are often several obstacles, one of which is the difference in the results of land measurements between the BPN *Satker* and the measurements in accordance with the facts. If there are mistakes and negligence in actions, this can lead to conflicts for landowners who think the government is unfair and not transparent in land surveying and make landowners think that the government is taking advantage of land acquisition on behalf of the public interest. If the act is carried out by state apparatus, in this case, namely BPN, the act can be grouped in "*onrechtmatigedaad*", which means abuse of authority from TUN (State Administration) officials. This of course will also result in creating disorder in land administration. In addition, if there is an error in land measurement, it will result in a land area that is not in accordance with what is written on the measurement letter as well as the facts on the ground.

As in the case of the Batang - Semarang Toll Road in the measurement of land and buildings owned by residents who were affected by land acquisition for the construction of the toll road. At the time of measuring the land by the BPN Work Unit (*Satker*), there was a discrepancy in the size of the area with the actual field

⁹Sulchan Achmad. *Implementasi Penundaan Pembayaran Cukai Dengan Jaminan Excise Bond*. Jurnal Akta, Vol. 4 No. 4 (December 2017). p.603.

¹⁰Surjanti & Rendra Eka Sanjaya. *Pemberian Ganti Rugi Terhadap Tanah Yang Terkena Pembangunan Jalan Umum di Kabupaten Tulungagung*. Jurnal Tulungagung, Vol. 6 No. 2 (December 2020). p.3.

conditions, which then led to conflicts for landowners. The land area that has been measured by the Kendal BPN *Satker* is only 69.201 m², while the land area in the original land certificate is 73586.79 m². In this case, it is known that the *Satker* Team in carrying out land measurements also looked at existing data from the government in 2008-2012, while the construction of the Batang - Semarang Toll road began in 2018 so that in this case there is a mismatch in size between the land certificate and the one in the field. With this size difference, of course, it also raises low land prices which are not in accordance with the standard land prices in general. Because of this, many residents and farmers filed protests and objections to the inappropriate measurement results, starting from the Village Head, up to the *Satker* led by the Kendal National Land Agency (BPN).¹¹

The actions taken by the *Satker* Team in the appraisal were very troubling and detrimental to residents because they used data that was not up to date in appraising the residents' land so that the price was lower and far from the standard price of land in general. Appraisal should use the data currently running. In resolving this conflict, the land acquisition team re-measures the land again, but if the condition of the stakes in the first measurement has been lost, then the land acquisition team resolves it by adjusting the size of the land based on the size written on the land certificate.

If we look at the problems that occurred on the Batang – Semarang toll road where the obstacles were in land acquisition, we can use the negotiation process to reach an agreement or to achieve the expected goals. Such as discrepancies in measurement results, refusal of compensation, lack of public understanding of land acquisition regulations for development in the public interest. Some of these problems must be resolved by means of negotiations based on regulations, law, providing understanding or understanding and carried out by deliberation to reach an agreement from both parties, namely the land owners and land buyers so that later on or during the land acquisition process there will be no misunderstandings or feel aggrieved again.¹²

3.2. The Government's Role in Land Acquisition If There Is No Agreement in Compensating Land Prices

Compensation given in an effort to respect and appreciate the rights and interests of someone who has sacrificed his land for the public interest can be said to be fair if the right does not make someone richer, or vice versa, and does

¹¹ <https://spi.or.id/pempembelian-infrastruktur-berbuntut-konflik-agraria-spi-kendal-jawa-tengah-tolak-ganti-rugi-yang-ntak-adil-tol-batang-semarang/>, Accessed on Wednesday 21 December 2022 at 12.21 WIB

¹²Hassan, H., & Abdurrahman, W. *Manajemen Konflik Dalam Pengadaan Tanah Bagi Pembangunan Jalan Tol Batang – Semarang*. Journal of Politic and Government Studies, Vol. 8 No. 1 (January 2019). p.13.

not make someone poorer than before.¹³

In the world of land, there are many problems that it faces, from the management of property rights, problems of inheritance rights, even to the problem of buying and selling in land acquisition for the public interest. There are many reasons for people not wanting to let go of their land to buy it for the public interest, such as land that is considered to have its own history or has trust or even because the price of the land has skyrocketed, compared to having to get compensation that is not much, and there are also several people don't want to move because they feel comfortable with the place and don't want to move places anymore.

In addition, in terms of implementing land acquisition, there are also obstacles from community psychological factors, which arise due to limited funds. This is the main factor in the delay in the implementation of land acquisition, but there is also uncertainty about the status of land ownership which can lead to mutual claims between several parties who feel they are the owners, there are difficulties in replacing land where the replacement is not using money, especially if it is implemented later. UU no. 2 of 2012 which provides an opportunity to provide compensation in various forms, besides that it is less orderly and complete in managing land acquisition records at the BPN and the Administrative Section of the District Secretary.

In principle, revocation by coercion of land rights owned by a person or legal entity can be done, but before that it needs to be done first by the land acquisition committee by making approaches so that the process of buying and selling land is in accordance with the wishes or agreement of both parties. The standard for the amount of compensation is adjusted to the market price, but if there is no common ground in the price of the land, landowners can file a civil lawsuit by stating that:

"Regarding the decision regarding the amount of compensation that is unacceptable because it is not appropriate, in connection with the revocation of rights to land and objects that exist *above can be appealed to the High Court. And only the high court will decide the amount of compensation*".

As explained above, in solving these problems, if there is no decision in the field, then the problem can be forwarded to a higher level, namely through the President or the Governor as the Head of the Level I Region which must be accompanied by the reasons and obstacles encountered in the field.¹⁴

In the explanation above, we can relate it to the case that occurred in the

¹³Maria S.W. Soemardjono. (2006). *Kebijakan Pertanahan Antara Regulasi Dan Implementasi*. Jakarta: Kompas. p. 95.

¹⁴Surjanti & Rendra Eka Sanjaya, Op. Cit., p. 11.

clearing of the Batang - Semarang toll road, as many as 286 residents of Kendal, Central Java, refused compensation because the price of compensation given was too low compared to the general market price. In deliberations held by the government, the residents were only given an envelope in which there were details of the price of compensation, but the detailed explanation regarding the amount and area of the land was not explained in detail so that many residents did not know and refused the compensation and chose to remain defend the land. The government values the land at IDR 400,000/m², whereas if you look at the current land price it has reached IDR 900,000/m². In this case,¹⁵

Due to the lack of justice in the awarding of compensation prices that did not match market prices in the case of the Batang - Semarang toll road, it caused some residents to refuse to release their land and refuse to be given compensation, the role of the committee in this case was to provide an explanation that was easy for the public to understand the landowners who do not agree to the compensation¹⁶as stated in Act No. 2 of 2012 Article 1 paragraph (2) describes Land Procurement, namely:

"Land acquisition is the activity of providing land by providing proper and fair compensation to the rightful party".

In Act No. 2 of 2012 it is not explained in detail regarding the basis used in determining the amount of compensation, but the determination is based on the results of the appraisal team's assessment, which is then stated in the Minutes of Deliberation.

Apart from that, there are also many problems that are made possible due to land being taken by force without proper compensation being given on the grounds that it is in the public interest. Which problems arose in the community in the past, so that this violated human rights based on Article 18 of the UUPA which regulates the revocation of land rights, namely:

"In the public interest, including the interests of the nation and state as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation and according to the method regulated by law."

So in the case of the Batang - Semarang toll road it can also be linked to article 18 which explains that revocation of land rights can be done at any time provided that the land is used for public purposes, and not for other things in order to seek an advantage. Therefore, regardless of the construction of a toll road that is used for public purposes, the people who own the land cannot refuse and inevitably the people have to give up their land for that purpose in order to make

¹⁵ <https://properti.kompas.com/read/2017/07/25/210000421/286-warga-kendal-menolak-ganti-rugi-pembebasan-lahan-tol?page=2>, Accessed on Tuesday 27 December 2022 at 14.46 WIB.

¹⁶Ibid.

the government's program in building toll roads successful.

Prior to referring to Article 18, if no agreement is reached, such as in the case of the Batang – Semarang toll road, the role of the government in resolving the case can be carried out by asking residents to negotiate first by filing objections regarding the amount of compensation to the District Court and the local Supreme Court. However, if this has been done and you still disagree with the local District Court and Supreme Court decisions, then a consignment can be reached where this can be linked to Article 18 of the UUPA.

Issues regarding land are indeed complicated, even in terms of land acquisition that is used for road widening, this is because property rights owned by a person or legal entity have different characters and characteristics, some immediately agree without any debate but some are against or disagree. . With the diversity found, it is also very difficult to release it, so it is necessary to have a committee that has been regulated in the law. As regulated in Article 1365 of the Civil Code which states:

"That any unlawful act that results in a loss to another person, obliges the person because he was wrong to arrange the loss, to compensate for the loss."

4. Conclusion

In the implementation of land acquisition there are often obstacles, one of which is the difference in the results of land measurements between the *Satker* and the facts in the field. For example in the case of the Batang – Semarang toll road, the land area measured by the Kendal BPN Working Unit is 69.201 m², while the land area in the land certificate is 73586.79 m². This was very troubling and detrimental to residents because the *Satker* Team used government data for 2008-2012 which caused many residents to file protests and objections. So in resolving the conflict, the *Satker* Team re-measured the land, but if the condition of the stakes had disappeared, the land acquisition team resolved it by adjusting the measurements based on what was written on the land certificate.

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