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Limitations of Public Interest Clause That Used in Land Acquisition Practices So That Land Rights Holders Can Retain Their Rights

Abstract:

The research, entitled limitations of public interest clause that used in land acquisition practices so that land rights holders can retain their rights, aims to see and analyze legal protection for land rights holders who lost their land rights due to public interest clause, whether for the benefit of the state or the private sector. Limitations must be applied to this clause, so that the use is not arbitrary, because even though the land rights is ownership rights, it can lose, since it is carried out by the government. The public interest clause is always the way and the answer from the government or private sector for those who refuse their land to be acquired. The results of this research is that public interests, which is actually needs of many people or broad goals, must pay attention to social, political, psychological, vindication and security aspects on the basis of the National development principle.

Keywords: Land, Public Interest, Acquisition

INTRODUCTION

The aim of the Republic of Indonesia is to promote general welfare and achieve social justice. development carried out by the Indonesian people as an effort to achieve a prosperous, just and prosperous life as determined normatively in Article 33 paragraph (3) of the 1945 Constitution (hereinafter written the 1945 Constitution) which determines that the earth and water and natural resources which is contained therein shall be

controlled by the State and used for the greatest prosperity of the people.

From the provisions of Article 33 paragraph (3) of the 1945 Constitution, it can be seen that the use of the earth (land), water and natural resources contained therein by the State is required to be used for the greatest prosperity of the people, not for the prosperity and welfare of certain groups or groups, especially for certain elites from government agencies who need land. State control rights as stated in Article 33 paragraph (3) of the 1945 Constitution have implications for: first, the State controls the earth, water and natural resources contained therein, second, the earth, water and natural resources contained therein (mining materials) used for the greatest prosperity of the people. The State's right to control or the right to control the State is a concept based on the power organization of the people and for the people. The right to control the State in addition to covering the authority to regulate, administer and supervise management also contains the obligation to use it for the greatest prosperity of the people.¹

One of the development activities for the public interest through Land Acquisition is Infrastructure Development. One important aspect of development is development in the physical and social fields. This can be realized through the improvement of existing infrastructure facilities. Where, infrastructure is one of the driving forces for economic growth. Infrastructure, like road facilities, is the modernization of the nation, the provision of which is an important aspect in order to increase the smooth productivity of the production sector and last but not least, this road

¹⁴ ¹ Umar Said, Suratman dan Noorhudha Muchsin, 2015, *Hukum Pengadaan Tanah*, Setara Press, Malang, p. 7.

infrastructure can also play a supporting role in creating and increasing access to transportation for people in their activities. The existence of good physical infrastructure such as roads and bridges is often associated as a trigger for development developments in various fields in an area. We can easily assess the differences in the welfare of an area only by looking at the infrastructure gaps that occur within it. In connection with the foregoing, for that in the future the acceleration of infrastructure development is increasingly important to pay more attention to, however, it is inseparable that land rights holders must also pay close attention to their welfare. In order to benefit from the existence of infrastructure such as roads, which can act as a means of opening the isolation of an area from the outside world so that it is expected to have an impact on improving the welfare of the community both in the economic, social and cultural fields.

However, there is a problem in society when land acquisition for development purposes is not carried out properly so that it does not provide legal certainty and protection for land rights holders, other than that land rights holders cannot take legal action when their land interests are designated for their interests. general.

PROBLEM FORMULATION

⁸ Legal protection of land rights holders in land acquisition using the public interest clause

RESEARCH METHOD

²⁸ This research is a normative legal research with a statutory approach.

DISCUSSION

¹⁸ In order to create a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution, the ³³ Government needs to carry out development. One of the development efforts within the framework of national development organized by the Government is development for the ² Public Interest. Development for the Public Interest requires land that the procurement is carried out by prioritizing the principles contained in the 1945 Constitution of the Republic of Indonesia and national land law, including the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony in accordance with the values of the nation and state.

²² Article 6 UUPA states that "All rights to land have a social function".

This explains that whatever land rights a person has, it cannot be justified that his land will be used or not used solely for his personal interests, especially if it causes harm to the wider community. In the sense that land functions not only for the holders of land rights but also for the Indonesian nation as a whole, with the consequence that the use of rights to a plot of ¹ land must also take into account the interests of the community. The use of land must be adjusted to the circumstances and nature of its rights so that it is beneficial both for the welfare and happiness of those who have it and also for the community and the State. However, this does not mean that a person's interests are constrained by the interests of the community or the State, and between the two interests must be balanced.²

² Boedi Harsono, 1971, *Sedjarah Penjusunan isi dan pelaksanaan Hukum Agraria Indonesia*, Djambatan, Jakarta, p. 575

activities involving public interests sacrificing individual interests, then these activities must continue to guarantee the maintenance of basic human rights and guarantees, namely the safety of religious beliefs, safety of soul, safety of reason, safety of family and descent, and safety of property rights. Activities for the public benefit must be truly for the public interest which are haqiqiyah (real) and not wahniah (hypothetical) must not be against the law, and must not sacrifice other public interests which are equal or greater.³

In the case of land acquisition for public purposes, it always creates excesses which have a large enough impact on the stability of the community. Various tensions arise in the community, due to disagreements between land owners or land rights holders whose land will be taken for the purposes of development projects and the authorities tasked with doing this. In addition, problems arise because of unclear rights status.

In practice, legal regulations regarding the release of land rights for government and private purposes do not work in accordance with the content and spirit of the provisions so that on the one hand the impression appears as if the rights and interests of the people who own the land do not receive legal protection. Meanwhile, the government or parties requiring land also experience difficulties in obtaining land to build their projects. In fact, the implementation of the release of land rights, for public interests with nuances of conflict, both from the standpoint of the different legal paradigms between the community and the authorities or the government, as well as the law enforcement of judges who have a very positivist nuance who ignore other social principles and living law and morals in society.

³ Acmad sodikin, 2013, *Politik Hukum agraria*, Konstitusi Press, Jakarta, p. 163

³² In Article 19 Paragraph (2) of the UUPA, controlling and using land individually is possible and permitted, this is emphasized in Article 4 Paragraph (1), and Articles 21, 29, 36, 42, and 45 of the UUPA which contain the requirements for land rights holders. also shows the principles of individual land tenure and use. However, the individual and private land rights in the UUPA contain an element of togetherness. This element of togetherness exists in every right to land, because all land rights directly or indirectly derive from the rights of the nation, which are collective rights. The personal nature of land rights which at the same time contains elements of togetherness in Article 6 of the UUPA has been confirmed, in which all land rights have a social function. However, one of the problems that are still faced in connection with the implementation of the public interest is determining the balance point between public interest and private interest in development.⁴

Community landowners as individuals or groups who have to give up their rights to their land for public interest or public activities, their socio-economic welfare must be guaranteed by the Government, in other words, landowners after releasing their rights to their land for the public interest cannot be worse than its original state, at least must be equivalent to the state before the land was released. However, in practice there are often clashes between the Government and the community, owners of land rights who feel they have been disadvantaged by the development of this infrastructure.

The national land law provides legal protection to land rights holders that the use and control of land by anyone and for anything must be based on land rights provided by the national land law. The control and use of land is legally protected against disturbances from any party, both fellow members of the community and even the authorities, if the disturbance is not based on the applicable legal basis. In other words, if the land is legally controlled by the right holder, if there is a need for land for development it must be preceded by prior deliberation with the legal owner.

Legal protection in land acquisition for public interest can be broadly interpreted as respect for individual rights to land. This is related to the consequences of State recognition of a person's land or a customary law community, the State is obliged to guarantee legal certainty for the land rights so that it is easier for someone to defend their rights against interference from other parties.⁵

For more than half a century, land acquisition for development was only regulated by regulations and / or Presidential Decrees which were inadequate and unattractive and it was only in 2012 that Law no. 2 of 2012 concerning Land Acquisition for Development for Public Interest. Aside from the issuance of the Law on Compensation, the UUPA has not yet been revised. In fact, the law must be able to reflect the values of living money in society and the law must be able to answer the demands of society's needs.⁶

In Law No. 2 of 2012 legal remedies that can be taken by holders of land rights include legal measures in the context of land acquisition and legal remedies in calculating the amount of compensation. The existence of

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⁵ Maria S.W. Soemardjono, 2006, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Edisi 7 revisi, Kompas, Jakarta, p. 159.

⁶ Lili Rasjidi dan Ira Thania, 2007, *Dasar-Dasar Filsafat dan Teori Hukum*, Citra Aditya Bakti, Bandung, p. 130-135

Law No. 2 of 2012 is an appreciation of the human rights of citizens as stipulated in the 1945 Constitution. It is listed as follows:

- 1) Legal Remedies for Rightsholders in the Context of Land Acquisition in Article 23:
 - a. After the determination of the construction location ²⁹ as referred to in Article 19 Paragraph (6) and Article 22 Paragraph (1) there are still objections, the party entitled to the location determination can file a lawsuit at the local ²⁷ PTUN no later than 30 working days from the issuance ^{of} the location determination..
 - b. PTUN decides whether to accept or reject the lawsuit as referred to in Article 23 Paragraph (1) ³¹ within 30 working days from the receipt of the lawsuit.
 - c. Parties who object to the PTUN decision ²³ as referred to in Article 23 Paragraph (2) within 14 working days can file an ¹³ appeal to the Supreme Court of the Republic of Indonesia.
 - d. The Supreme Court ³⁰ is obliged to issue a decision within 30 working days from the time the appeal is received.

Giving boundaries regarding the public interest is not easy considering that the judgment is very subjective and too abstract to understand.⁷ In addition, the term public interest is a concept that is so general in nature and there is no more specific and detailed explanation for its operation in accordance with the meaning contained in the term.

However, in the context of taking community lands, the affirmation of the public interest which will be the basis and the criteria need to be

⁷ A.A. OK. Mahendra, *Op.Cit*, p. 297

clearly determined so that the acquisition of the land is in accordance with the applicable legal basis.⁸ If the criteria are not formulated or given explicitly, it is feared that this can lead to various interpretations.

The land acquisition mechanism for infrastructure development which states that it is in the public interest is regulated by Law no. 2 of 2012. In connection with the implementation of Toll Road construction, it is carried out based on the ¹⁶ [Regulation of the Head of BPN RI Number 5 of 2012](#) Jo Head of BPN Regulation Number 6 of 2015 and Presidential Decree Number 71 of 2012 Jo Perpres Number 40 of 2014 Jo Perpres Number 99 of 2014 Jo Perpres Number 30 of 2015 in conjunction with Presidential Decree Number 148 of 2015 as follows:

¹⁶ [Land for development using the arguments of public interest](#) is regulated in Article 10 of the Law. No. 2 of 2012 includes:

- ⁴ a. [national defense and security;](#)
- b. [public roads, toll roads, tunnels, railways, train stations, and railway operating facilities;](#)
- c. [reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures;](#)
- d. [ports, airports and terminals;](#)
- e. [oil, gas and geothermal infrastructure;](#)
- f. [electricity generation, transmission, substation, network and distribution;](#)
- g. [Government telecommunications and informatics networks;](#)
- h. [waste disposal and processing sites;](#)

⁵

⁸ Abdurrahman,1994, *Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum*, Citra Aditya Bakti, Bandung, p. 36

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- i. Government / Regional Government hospitals;
- j. public safety facilities;
- k. Government / Regional Government public burial places;
- l. social facilities, public facilities, and public green open spaces;
- m. nature reserve and cultural heritage;
- n. government / regional / village government offices;
- o. arrangement of urban slum settlements and / or land consolidation, as well as housing for low-income people with rental status;
- p. government / regional government educational infrastructure or schools;
- q. Government / Regional Government sports infrastructure; and
- r. public markets and public parking lots.

Types of land acquisition for public interest must be carried out by the ²⁵ Government and the land is subsequently owned by the Central Government or Regional Government. For agencies requiring land which later belongs to the land, BUMN, except as stated in letters b to r, the Government can cooperate with BUMN, BUMD, or private business entities. Then specifically for point a the construction is carried out in accordance with statutory regulations. Prohibition regarding the product itself, which does not meet the requirements and standards suitable for use or use or exploitation by consumers;

There are 3 (three) principles that can be drawn, so that an activity is truly for the public interest:

- 1) These activities are actually owned by the Government: contains a limitation that public interest activities are not owned by individuals or the private sector. In other words, the private

sector and individuals cannot have the types of activities of public interest that require the acquisition of land rights or the State.

- 2) Related development activities are carried out by the Government: providing a limitation that the process of implementing and managing an activity for the public interest can only be played by the government
- 3) Not seeking profit: limiting the function of an activity for the public interest so that it is completely different from the private interest which aims to seek profit, thus qualifying that activities for the public interest must not seek profit.⁹

¹⁰ Land acquisition for the implementation of development for the public interest can only be carried out if the stipulation of the development plan for the public interest is in accordance with and is based on the previously determined Regional Spatial Planning General Plan. Acquisition of rights to land is carried out by taking into account the role of land in human life, as well as respecting legal land rights.

Regarding the general interest, it can be concluded that the public interest is the need, need, or interest of many people or a broad goal by taking into account social, political, psychological, and defense and defense aspects on the basis of the principles of national development and the principle of the public interest is to prioritize the public interest. without neglecting personal or group interests, including land acquisition for the development of public interests, must pay attention to two elements of

interest, namely private and public interests, and it cannot be just one interest.

CLOSING

Conclusion

⁸ Legal protection of land rights holders in land acquisition for public purposes can be broadly interpreted as respect for individual rights to land.

Regarding the legal protection provided, in general the 1945 Constitution has provided protection for land rights as regulated in Article 28 letter h paragraph 4. Other arrangements are regulated in several statutory regulations, namely regulated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 38 paragraph (2) UUPA, TAP-MPR RI Number IX Year 2001 points b and j, Law ¹³ Number 39 Year 1999 concerning Human Rights, and Law No. 2 of 2012 has provided legal protection to land owners.

There are three principles that can be said that a toll road infrastructure work activity is truly for the public interest, namely: The activity is actually owned by the Government; Related development activities carried out by the Government; Not Seeking profit. Public interest is the need, or interest of the public or broad goals by taking into account social, political, psychological, and defense and defense aspects on the basis of the principles of National development and the principle of the public interest is to prioritize the public interest itself without neglecting personal interests. or group, including land acquisition for the development of public interests, must pay attention to two elements of interest, namely private and public interests, and it cannot be just one interest.

Recommendation

To provide maximum ⁸ legal protection to land rights holders in land acquisition by the Government in toll road infrastructure work for the public interest, the Government should play an active role and pay more attention to implementation in the field and supervise those who need land. The existence of the government in this case is very necessary so that in the implementation of land acquisition carried out by agencies that require land, it is not carried out arbitrarily by taking rights to land belonging to the community without providing fair and appropriate compensation. The land acquisition team at the time of carrying out the socialization must really explain what is meant by the future steps of infrastructure development activities so that the good objectives of Law no. 2 of 2012 is not polluted by irresponsible parties so that land rights holders feel that their rights are considered by the Government.

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