

LAND PROCUREMENT FOR PUBLIC INTEREST AND OBJECTION MEASURES ON COMPENSATION FOR COMMUNITY LAND RIGHTS IN THE CAPITAL TERRITORY OF IBU KOTA NEGARA NUSANTARA

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Abstarct

The relocation of the capital of the Republic of Indonesia affects all aspects of life in the Ibu Kota Negara Nusantara (IKN) area, especially in the land sector. Whereas individual community rights, customary rights and other rights which could be renounced for the sake of the aforesaid development. Land regulations related to procurement land for public interest has been regulated in Act No. 2 of 2012 regarding Land Procurement on Development for Public Interest and other concerning regulations that exists both in presidential regulations and ministerial regulations, land acquisition is a legal act carried out between two parties, namely the right holder and the parties who will use the land for development, both in the interests of the State or private companies, whose similar goal is for the public interest, relinquished the legal relation that originally existed between the right holder and his land required, with giving compensation either in the form of money or facilities or otherwise, through the legal procedures in order to relinquish rights in accordance with statutory regulations or deliberations to achieve an agreement. Procurement of land for development in the public interest is carried out through several stages, namely the stages of planning, preparation, implementation and delivery. Land acquisition often intersect with legal issues such as human rights, the principle of justice, the principle of balance between the interests of the state with the interests of society, both individually and in groups, thus arising objections which often also lead to conflict, the community who do not receive the compensation provided can file an objection effort at the eligible court.

Keywords: Land acquisition for public interest. Compensation, efforts to object

Introduction

January 18, 2022, is a historic day for Indonesians since the ratification of the bill on the State Capital (IKN) became a regulation by the Indonesian Parliament and the Government. Thus, Indonesia will have a new state capital or Ibu Kota Negara, and will be stated further in this research as IKN, replacing Jakarta. The transfer of IKN was first initiated by President Soekarno on 17 July 1957. Soekarno chose Palangkaraya as the IKN since the aforesaid area was positioned in the middle of the Indonesian archipelago and its vast territory. Soekarno has the desire to show to the international world that Indonesia is capable of building a modern IKN. Soekarno's idea never materialized. Instead, President Soekarno designated Jakarta as the IKN of Indonesia within Act No. 10 of 1964 on 22 June 1964. The transfer of IKN to a new region has been brought into a concrete realization by President Joko Widodo. On April 29, 2019, Jokowi decided to move IKN out of Java and include it in the 2020-2024 RPJMN. To realize these efforts, Act No. 3 of 2022 concerning IKN was approved on 15 February 2022.

According to Bappenas, the plan to move IKN from Jakarta to other areas is due to reasons as followed: The development gap between the western and eastern regions, The current location is prone to earthquakes. Jakarta is in the ring of fire, Traffic in Jakarta is congested, crowded, and slum areas are dominating., Flood-prone problems. This is due to flooding from upstream, land subsidence on the coast north of Jakarta and rising sea levels, Quality of heavily polluted river water and availability of clean water. 96% of river water quality in Jakarta is heavily polluted, a significant disaster for a human pandemic, The requirements of an adequate capital city reflects national identity, modernized and approved based on the international standard of an adequate state capital (smart, green, and beautiful city).

The relocation of the IKN affects all aspects of the lives of indigenous people in the soon-to-be IKN region in East Kalimantan, particularly, the land sector. The IKN area is not just a vacant land, instead the aforesaid area is a residential area, with locals depending on their cultivation livelihood. There are at least 7 native tribes inhabiting the IKN area, namely the Paser Tribe, Kutai Tribe, Bajau Tribe, Basap Dayak Tribe, Dayak Kenyah Tribe, Benua Dayak Tribe, and Tunjung Dayak Tribe. In principle, IKN is not entirely as the government claims. There exists 162 land concessions and between these concessions there are indigenous people who are still dependent on the agricultural lands they cultivate . Mining concessions contain at least 73,584 hectares of the total 180,965 hectares. Individual community rights, land concessions and adjoining customary lands or tanah adat triggers the potential of land conflicts.

Juridically speaking, the ownership of land rights is very necessary for the security and the ownership status of land rights. In the IKN area, 31% of the land owned by the community. already has a complete set of rights, while the remaining 66% of land parcels are only controlled physically but do not have any legal basis of rights.

Massive development is a necessity that will occur in the region of IKN. The development will definitely take community land in various ways. This process threatens the status of rights therein, especially in the context of land ownership rights. Therefore the concept of land acquisition as the only way to utilize community land for public interest or development, could potentially trigger legal implications especially with indigenous and tribal peoples and communities that have individual land rights which have controlled the land for many years either with clear rights or only based on direct land tenure recognized by the customary law community

Notwithstanding the necessity of IKN, land is very closely related to human life. The amount of land that can be controlled by humans is very limited, while the number of people who need land for housing progresses and so economic, socio-cultural and technological developments also require the availability of land. In addition, this land issue concerns the values of humanity, there is no need for a solution which is only emphasized for the sake of national stability alone, with compromising what should not be compromised, namely human rights. Because even if stability can be established, the essence of welfare cannot be seen by a blind eye. Hence the urgent need for land tenure requires proper handling and a concrete overcoming, given the very sensitive nature of this land issue. The state already has a legal basis regarding land made by the nation itself namely Act No. 5 of 1960 concerning "Basic Agrarian Regulations" better known as UUPA, as well as laws/rules implementation such as Presidential Decree (KEPPRES), Ministerial Decree (KEPMEN) and etc., all of which are to organize and carry out development goals on a national level, particularly concerning land issues.

In general, land is no longer just an agrarian issue, which is usually synonymous with agriculture. The land has developed rapidly and became a problem as a place of livelihood, this is what causes unrest among the people at this time, especially the people affected by the impact of development as a result of the relocation of IKN Nusantara in East Kalimantan, in this case, that the government requires land owned by residents for development purposes, hence it leads to conflict. The aforesaid problem could arise due to the government, on one hand, needs the land and on the other hand, the people also need to maintain their own land either in the form of individual privately owned land or communal land as a source of livelihood (e.g. agricultural land) and a place to live.

In principle there are two forms of land acquisition in the Agrarian Law in Indonesia, namely carried out by way of relinquishment of land rights and by the revocation of land rights. The difference between the two can be seen in the revocation of land rights carried out by force while the relinquishment of land rights is carried out based on the principle of deliberation. The existence of KEPPRES No. 65 of 2006, emphasized that the way to revoke land rights is not to completely eliminate the aforementioned method, but the method of revocation is the last method taken if deliberation has failed.

In Article 18 of UUPA it is stated that for 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 regulated method by law. From the provisions of Article 18 of the BAL, it can be said that the revocation of rights over the land can be carried out as long as the land is intended for the public interest. As a further regulation, then issued Act No. 20 of 1961 Concerning Revocation of Land Rights and Property Items, State Gazette (LN) of 1961 No. 288, Supplement State Gazette (TLN) No. 2324. Not only that, but also the Basic Agrarian Law provide a legal basis for land expropriation by specifying for public interest, including the interests of the nation and state as well as common interests the people, rights to land can be revoked, by giving appropriate compensation according to the manner regulated by law in accordance with the provisions of Article 6 of the UUPA which stated that land provides a social function.

Land acquisition is an important factor in the process of moving the capital to a new area. The process of land taken over by the government in the context of implementing development for the public interest is referred to as land acquisition. Land acquisition in Indonesia, for the purpose of the public interest, is carried out by the government by means of revocation of land rights. This is regulated in Article 1 No. 3 of Presidential Regulation (Perpres) No. 36 of 2005 concerning Land Acquisition for General Interest. Perpres No. 65 of 2006 concerning Land Acquisition for General Interest, provides a legal basis for the government to overcome various difficulties relating to the development projects for the public interest, and to provide protection for citizens communities that hold land rights against the possibility of power abuse from the authorities and as a guide for relating parties to be knowledgeable by taking into account the role of land in human life. Then after the issuance of Act No. 2 of 2012 Concerning Land Procurement for the Development in the Public Interest, the guidelines, procedures and provisions for land acquisition must refer to this law where the procurement of land is strictly for public use. It has been regulated restrictively in this law. Other regulations contradicting, but regulating the same matter cannot be implemented according to this Act, but similar legal products regulating the concerning matter can be implemented according to other laws and regulations.

Regarding land acquisition for the purpose of building IKN, The Chief of Presidency Staff, Dr. Moeldoko requested that the issue of land acquisition for development of IKN has to be completed soon. Particularly the case to land compensation payments which has already been agreed upon. Moeldoko conveyed this when he met the Deputy for Social Affairs Culture and Community Empowerment of the IKN Authority (OIKN), Alimuddin, in the Bina building Graha Jakarta, Monday (10/4). "If the price has been agreed, compensation must be paid immediately. We must not delay the process. We should never ignore things like this,". Moeldoko admits, the compensation for land acquisition for the construction of the IKN is a serious and complex problem thus requires special attention. The Presidential Staff Office, he continued, would fully supervise the completion of land acquisition at IKN, including accelerating the process payment of compensation, and to ensure that the affected people actually receive the compensation agreed.

Based on the problems stated above, land has a social function and there is a guarantee against individual rights, which are binding for the compensation in exchange for the land used for public purposes, the authors of this research are interested to find out what is the concept of land acquisition for development purposes and what are the efforts to object the compensation in land acquisition cases?

Methods

In studying this problem, the writer uses descriptive and qualitative methods to describe and map the concepts and the related analysis of land procurement for public interest or infrastructure development in the concept of agrarian law. Apart from the matters mentioned, This research also uses a normative-juridical

approach, namely a disciplinary approach and legal theory based of the principles of agrarian law that functions as an effort of settlement of legal issues regarding the compensation system in the land procurement for public interest as known in civil law and agrarian/land law. The method will prove the factors as follows: with how to gather, evaluate, verify, and to synthesize evidence in order to further support the facts to obtain a valid conclusion

This research writing method is descriptive, in the sense that in this writing the authors intend to describe and report in detail, systematically and thoroughly regarding everything related to land acquisition and the objection efforts to land acquisition according to the law that has been applied in the land procurement for public interest related to the transfer of the IKN to East Kalimantan to determine the position of each party which are the government and the people of the aforementioned area

Legal research can be defined as the type of research that refers to legal studies, existing legal literature or other related secondary data. While normative research means legal research that aims to acknowledge the relationship between one regulation and another, and its application in the field. The method of collecting writing materials that the author uses includes:

1. Literature study, namely by reviewing various laws and regulations or literature related to research problems.
2. Documents study, namely by examining various official institutional documents in the form of jurisprudence and other necessary documents.

The analytical method used in this paper is descriptive qualitative, namely by discussing and analyzing the legal materials, obtained related to the matters discussed in this research and then to be presented in a descriptive form. Legal materials are analyzed using a qualitative descriptive method, which describes a state of an event obtained from research and then to be analyzed further with laws or regulations related to the focus of writing.

Findings dan Discussion

After experiencing several changes to regulations regarding land acquisition for public interest, Act No. 2 of 2012 concerning Land Procurement for Public Interest was valid on January 14, 2012. Then the additional legal product of the aforementioned regulation was enforced on August 7, 2012, namely the Perpres No. 71 of 2012 concerning the same matter. Article 125 of Perpres No. 71 of 2012 states that at the time the Presidential Regulation came into effect, Perpres No. 36 of 2005 concerning Land Acquisition for Public Interest has been amended by Perpres No. 65 of 2006 and other regulations related to the latter is revoked hence declared invalid except for the land acquisition process as referred to in Article 123 namely the process of Land Procurement in progress carried out before the enactment of Perpres No. 71 of 2012 was completed based on provisions before the Perpres came into effect.

The meaning of "Land Procurement" has changed. In Article 1 point 2 Law Number 2 of 2012 that land acquisition is an activity of providing land by providing proper and fair compensation to the rightful party. Furthermore, the implementing regulations are in Article 1 number 2 of Presidential Decree Number 71 In 2012 it was stated that land acquisition is an activity of providing land with how to provide proper and fair compensation to the rightful party. In relation to the notion of public interest in Article 1 paragraph (6) Law Number 2 of 2012 that the public interest is the interest of the nation, In relation to the notion of public interest in Article 1 paragraph (6) Law Number 2 of 2012 that the public interest is the interest of the nation, state, and society that must be realized by the government and used as much as for the prosperity of the people. Procurement of land for development for the benefit of public interest in the law does not provide limitations on public interest criteria clear. The limitation of criteria for public interest is contained in Article 5 paragraph (1) Presidential Decree No. 55 of 1993 concerning Land Acquisition for Development Implementation for the Public Interest states that "development is in the public interest based on this Presidential Decree is limited to development activities carried out and subsequently owned by the government and not used for profit ...".

Thus the concept of public interest in Law Number 2 of 2012 has a broad meaning, namely by not providing a limitation of interest criteria public whether land acquisition for development is purely for the public interest, owned and controlled by the government are not used for profit (non-profit). oriented) or land acquisition for development to seek profit is carried out by private sector (profit oriented).

Article 1 point 2 of Law Number 2 of 2012 states Land Procurement is the activity of providing land by providing proper and fair compensation to those who are entitled. Compensation is a proper and fair compensation to the parties who are entitled in the process of land acquisition. the rightful party is the controlling party or own land acquisition objects.

Regulation of the President of the Republic of Indonesia number 65 of 2022 concerning land acquisition and management of land in the capital city of the archipelago emphasizes Land Procurement

Article 4:

Land Procurement as referred to in Article 2 letter b is carried out through mechanism:

- a. Land Procurement for development in the Public Interest; or
- b. Direct Land Procurement.

(2) Land Procurement as referred to in paragraph (1) is carried out for support preparation, construction and relocation of the State Capital, as well as its administration government of the Special Capital Region of the Archipelago.

(3) Land Procurement as referred to in paragraph (1) is carried out with due observance

community HAT and indigenous people's HAT.

Direct Land Procurement Article 10 (1) In the framework of efficiency and effectiveness, the acquisition of Land in the Capital City of the Archipelago can be done through Land Procurement directly as referred to in;

Article 4 ; Paragraph (1) letter b by the Archipelago Capital Authority with the party entitled to

by means of buying and selling, grants, voluntary releases, ruislag, or other means agreed.

Paragraph (2) In the case of direct Land Procurement as referred to in paragraph (1) an agreement is not reached, the acquisition of Land in the Capital City of the Archipelago use the Land Procurement mechanism for development for Interests General.

According to Maria S. W. Sumardjono there are two ways of determining doctrine

public interest in matters of land, namely:

- a. General guidelines, which generally state that land acquisition must based on public interest reasons. Terms that are frequently used take turns to express the meaning of 'general', for example: public or social, common or collective. As for the term 'interest' or purpose often replaced by need, necessity, interest, function, utility, or use. In accordance with the its nature as a guideline, then this gives freedom for the executive to declaring a project meets the requirements for the public interest by interpreting it these guidelines
- b. Mention of public interest in a clear list of activities identify its purpose: schools, roads, government buildings, and etc., which according to laws and regulations are deemed useful for general. All activities other than those listed on the list cannot used as a basis for land acquisition

Procurement of land for the public interest needs to be handled properly as well as possible and carried out by paying attention to the role of land in human life as well as the principle of respect for legal rights to land. Land, besides owning economic value, also has a social function. As for what is meant by interests public interest is the interest of the State and the people of the government and is used as much as possible for the prosperity of the people.

Land Procurement is the activity of providing land by giving compensation decent and fair loss to those who are entitled. This activity is carried out with a purpose provide land for the implementation of development for welfare and prosperity, nation, state and society while still guaranteeing the legal interests of the parties entitled.

Compensation is a compensation in the form of money or other goods to someone who feel aggrieved because his property was taken and used for the benefit of others Lots. The issue of compensation is the most important thing in the procurement process land. Compensation is the provision of compensation for losses suffered by the holder of the right to land land upon the transfer of said right. Article 1 of Law Number 2 of 2012 declare Compensation is a proper and fair compensation to the party who entitled to participate in the land acquisition process. Determination of the amount of the value of compensation is carried out by the Chief Executor of Land Acquisition based on the results of the appraiser's or appraiser's services public. Compensation is given to the rightful party based on the results of a valid assessment stipulated in deliberations on the determination of compensation and/or court decisions State/Supreme Court.

Compensation is given to the rightful party based on the results of a valid assessment stipulated in deliberations on the determination of compensation and/or court decisions State/Supreme Court. The party entitled to receive compensation is responsible on the correctness and validity of the submitted evidence of mastery or ownership. And for anyone who violates this, will be subject to criminal sanctions in accordance with the regulations legislation

Two important elements in land acquisition, first, the willingness of land holders and the building above it, secondly, giving compensation based on an agreement. These provisions are regulated in Article 1 paragraph (2) of Law No. 2 of 2012 states, Land Procurement is the activity of providing land by way of compensation appropriate and fair to the rightful party. The issue of compensation is a thing sensitive in the land acquisition process, particularly regarding the form and amount of compensation loss. Basically compensation as an effort to realize respect for individual rights and interests that have been sacrificed for the public interest.

The process of awarding compensation is often a long and drawn-out process there is no agreement between the parties concerned.

The problem of the amount of compensation based on the Value of Tax and Building Objects (NJOP) or based on market or buying and selling prices, the committee has a tendency to use NJOP, on the other hand, landowners tend to use market prices, often even demanding compensation of 2 or 3 times the market price, plus other demands from the land owner compensation for other non-physical losses that must be calculated, even though the budget planning NJOP-based land acquisition, so land acquisition has the potential to stop or stagnate. The polemic about the amount of compensation is based on the calculation of the compensation based on market value or by taking into account the Selling Value of Tax Objects and Buildings

(JOP). According to Maria S.W. Sumardjono, when compared with compensation for buildings and plants, compensation for land is more complicated to calculate because There are various factors that can affect the price of land. For Indonesia, presumably the factors.

Factors that can be considered in determining compensation, in addition to the NJOP of the Earth and Buildings in the last year, are: (1) location/location of land (strategic or less strategic); (2) status of land tenure (as a legal right holder/cultivator); (3) the status of rights over land (property rights, building use rights, usufructuary rights, etc.); (4) completeness of facilities and infrastructure; (5) the state of land use (maintained/not maintained); (6) loss as a result dissolution of one's land rights; (7) the cost of changing

places/jobs; (8) loss against due to a decrease in the income of the right holder. Assessment of compensation based on Articles 31-36 of the Land Acquisition Law states that the Land Agency determines an appraiser in accordance with regulatory provisions legislation. The large assessment of compensation is carried out per land parcel covering ground, above ground and underground space, buildings, plants, related objects land, and/or other losses that can be assessed. Compensation can be given in the form of: a.. money; b replacement land; c. resettlement; What is meant by "resettlement" is the process of providing replacement land to the Party the Entitled to another location in accordance with the agreement in the Land Acquisition process. D. shareholding; What is meant by "forms of compensation through ownership stock" is the participation of shares in development activities for the public interest related and/or management based on an agreement between parties. E. other form that agreed by both parties Another form agreed by both parties eg a combination of 2 (two) or more forms of Compensation as referred to in point a until D Compensation is given to the Entitled Party based on the results of a valid assessment determined in consultation. Compensation in principle must be submitted directly to the Party Entitled to Compensation. In case of absence, Parties Entitled by law can give power of attorney to other parties or heirs.

The power of attorney can only receive power of attorney from one person who is entitled to Change Loss. Those entitled include:

- a. holder of land rights;
- b. holder of management rights;
- c. nadzir, for waqf land;
- d. owners of former customary land;
- e. customary law community;
- f. parties who control state land in good faith;
- g. holder of basic control over land; and/or
- h. owners of buildings, plants or other objects related to land.

In general, Article 38 of the Land Procurement Law states in the event that this does not occur agreement regarding the form and/or amount of Compensation, the Entitled Party may file an objection to the local district court within a maximum period of 14 (fourteen) working days after deliberation on the determination of Compensation and it must be decided by the district court within a maximum period of 30 (thirty) working days since receipt of objections and if there are parties who object to the decision district court then the party has the right to appeal to Supreme Court of the Republic of Indonesia and must be decided within 30 (three) days twenty) working days after the appeal is received.

Decisions of district courts/Supreme Courts that have obtained force law remains the basis for payment of compensation to the party submitting objection (binding only the party filing the objection/the decision is not erga omnes). In more detail, the Supreme Court issued a Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Custody of Compensation To the District Court in Land Procurement for Development for the Interests General (hereinafter referred to as Perma No. 3 of 2016). Article 2 Perma No. 3 of 2016 states that the court has the authority to examine, try, decide and resolve objections to the form and/or amount of compensation determined based on the Deliberation Determination of Compensation. An objection to compensation is filed in the form of an application and can be submitted by: a. the entitled party or its attorney attended but rejected the results of the Deliberation on the Determination of Compensation; and/or b. which party entitled who is absent and does not provide power of attorney to reject the results of the Deliberation Determination of Compensation

Conclusion

The relocation of the new capital city in East Kalimantan will certainly have an impact on land rights that exist around the area, Development that occurs in the area IKN will certainly take place and acquire community land in various ways the status of rights in it, because of that in the land acquisition process there are two elements First, the willingness of land and building holders on it, second, compensation based on the agreement. The issue of compensation is a thing sensitive in the land acquisition process, particularly regarding the form and amount of compensation loss. hence the concept of land acquisition is the only way to utilize the land community for the public interest or development, but if this does not occur agreement regarding the form and/or amount of Compensation, then the party entitled can submit an objection to the

local district court within a maximum period of 14 (fourteen) working days after deliberation on the determination of Compensation and it must be decided by the district court within a maximum period of 30 (thirty) working days since receipt of objections and if there are parties who object to the decision district court then the party has the right to appeal to Supreme Court.

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