



Compensation For Land Affected By Public Road Construction In Deli Serdang Regency

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ABSTRACT

Before the land is used for public purposes such as roads, markets and others can be implemented through the procedures established by law is no exception to the acquisition of land destined for private interests. In land acquisition can be done as stipulated in Article 21 of the basic agrarian law. To do land acquisition, the land must have a person or legal entity that owns it. In the land acquisition, a person or legal entity has the right to receive monetary compensation or replacement of land located elsewhere. In addition, the land acquisition required the approval or agreement of both parties to be implemented by the committee that handles the so-called Land Acquisition Committee.

INTRODUCTION

Land is a material right that is very important for human life and is one of the natural resources that are vital and absolutely necessary for the development of society it self or the government. This land issue has had rules issued by the government since 1960 which are regulated in law No. 5 of 1960 which has been regulated and created land rights and now has been published Law No. 35 of 2005 which is controversial on the issue of land acquisition.

Abdurrahman who put forward the problem of understanding the land and its uses, namely " " the land is a place of settlement of most of humanity as well as a source of life for those who earn a living through the land and plantation businesses and in the end the land was also used as the final resting place for the dead"

Before the existence of the basic agrarian Law No. 5 of 1960 has also been regulated but there is land that applies legal dualism, namely customary land law that applies to the original group of bumi putra and European land law that applies to foreign European and Eastern groups. However, after the enactment of the National Agrarian law, it lost its dualism because it was replaced by one law and applied to all groups.

In this law, among others, it is stipulated in the article given to the public to have or process it, for example, which is regulated in Article 53 of Law Number 5 of 1960 which states that there are:

- a. Property rights
- b. Cultivation rights
- c. Building use rights
- d. Right of use
- e. Rental rights
- f. The right to open land
- g. The right to collect forest products
- h. Other rights that are not included in the rights mentioned above to be set forth in the law as well as the rights of a temporary nature as mentioned in this article.

The existence of rights that can be owned can be used to maintain if in the future there is interference or used for public purposes can be classified for example for markets, schools, roads and so on. If the land will be used for public purposes such as for roads, it is necessary to have land acquisition. In the acquisition of land for public purposes such as for the road will certainly also provide compensation to the owner of the land. Of course, in the provision of compensation for the lands that will be used for roads that will be freed, there will often be problems that will not have an

impact on the smooth construction of roads for the public interest.

In the replacement of compensation for the land that will be used to build roads for the smooth economic development does not mean that only the land will be compensated, but the plants and buildings contained on the land must be compensated in accordance with the price on the market. For owners of land and goods contained on the land to be compensated expect that the compensation in accordance with expectations and if it will be used to buy the land at least compensation received can be purchased land in accordance with the price of land released for public use as designated public roads.

With the necessity to provide compensation in accordance with the minimum market price, it is likely that the party who owns the land will set the price above is more expensive than the market price such as the price of plants, buildings if any. This will lead to a problem of land acquisition for the public interest earmarked public roads.

METHOD

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary data sources / data obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

RESULTS AND DISCUSSION

A. Legal Basis In Land Acquisition

Land acquisition is a serious problem that often occurs, both by the government and private sector. In the first land acquisition conducted by the government and private required a family approach or deliberation of the owner. And when there is already a dispute that is usually done by the owners or heirs.

In land acquisition so that there is no dispute, the rules or legal basis used must be definite and precise. The rules used for land acquisition include: Besluit number 7 dated July 1, 1927 which is contained in Bijblad 11372 which then changed on January 8, 1932 with the name Gouvernemenst Besluit this rule was first enforced in Indonesia, then the rules issued by the Minister of Home Affairs number 5 of 1974 which regulates the procedures for providing and granting land to

companies. And then the Minister of Internal Affairs issued a regulation on the procedure for land acquisition.

In the rules issued by the Minister of Home Affairs for mebnatur in land acquisition is not always fixed but always changing as Regulation No. 2 of 1976 which regulates the use of land acquisition for the benefit of the government and land acquisition by the private sector is no longer valid. Furthermore, the Minister of Home Affairs issued Regulation No. 12 of 1984 as a refinement of regulation of the Minister of Home Affairs No. 3 of 1984 and The Last Minister of Home Affairs issued Regulation No. 2 of 1985 which regulates the procedures for land acquisition for government purposes covering an area of not more than 5 hectares.

In addition to the rules that have been issued by the Minister of Home Affairs mentioned above, there is still a circular letter also issued by the Minister of Home Affairs including the Circular Letter of the Minister of Home Affairs cq Directorate General of Agrarian number Ba.12/108. 12/75 dated December 3, 1975 on land acquisition implementation instructions, Circular Letter of the Minister of Home Affairs number S.J.16/10/41 dated October 19, 1976 which regulates the implementation instructions PMDN.

From the regulations that have been issued both central and local are expected that the land acquisition and compensation to be provided by the landowner does not experience problems in the field, so that in the development undertaken by the government there are no obstacles in the field, especially land acquisition and compensation. When it comes to land, there are many problems he faces from the management of property rights which are considered by the community to be too difficult which is too bureaucratic to obtain such as certificates, inheritance rights issues on land and even buying and selling issues in liberation for the purposes of road projects or for the public interest. There are reasons that a person does not want to give up his land to be purchased for the public interest such as the land he owns has a history or maybe the land has a trust or maybe even the land is expensive compared to later getting compensation or even the person does not want to move even if his land will be bought at a very high price.

If there is a person or legal entity who does not want to be compensated while the other party has no problem, then the committee should provide understanding and clarity and that can be understood by the person concerned as stated by

his opinion K. Wantjik Saleh, who stated that: "for the public interest, including the interests of the nation and the state as well as for the common interest of the people, the rights to land can be revoked by providing appropriate compensation provided by law.

In addition to these problems, problems may arise because the land is taken away without proper compensation for reasons of public interest. Permasalahan like this often arises in the community in the past, thus violating human rights but the problem can be done on the basis of Article 18 of the basic agrarian law and Law No. 20 of 1961 which has the right to revoke these rights is the President.

In principle, revocation by force of the right to land owned by a person or legal entity can be done but it should be treated before the Land Acquisition Committee approaches so that the land can be purchased or exchanged for other land in accordance with the wishes or agreement of both parties. The amount of compensation for the benchmark is adjusted to the market price and if the benchmark market price has no meeting point, then the landowner can make a civil lawsuit such as stating that " " the decision regarding the amount of compensation that cannot be accepted because it is less feasible, in connection with the revocation of land rights and objects on it can be appealed to the High Court. And only the High Court will decide the amount of such damages".

In addition to the above problems in the settlement does not produce a decision at the time of settlement in the field, then the problem is forwarded to a higher level as the author explains above that can the president and Governor as head of regional level I which is accompanied by reasons and constraints faced in the field.

B. The role of government on land affected by road construction if there is no agreement on the price

Land is a very important human need in addition to producing foodstuffs can also be used for businesses and residences, so that everyone will want to have even if the land is only an important inch of the land can be occupied or can be used business, so that if there are problems concerning the land it occupies then the person will defend to death. Even the land issue is very complicated because of the difficulties of evidence that there is also someone occupying people's land for years, so that when told to leave, they will rebel as we see in electronic media such as television.

The land issue is very complicated even the issue of land acquisition for the road, this is because

the property rights owned by people and legal entities are very different in character even some agree and some oppose or disagree. With the diverse interests and willingness of the parties who own the land, it will also be difficult in the release, so that the Land Acquisition Committee is required that has been set in law. As stipulated in Article 1365 of the Civil Code where it is stated that every unlawful act that causes harm to others, requires people because of their harm to discipline the loss, replace the loss.

The central government can be in the form of compensation in the form of money or land exchange in which the exchange of land the government provides the same nature and amount of land to be exchanged, so that people who have land can receive it, besides that the land provided can be wider as the lands that will be affected by the project. If there is no meeting point on the price offered by the government, then the committee approaches with local community leaders to do a price Agreement and if there is no agreement the committee remains to continue but the governor gives the decision.

The development of a very rapid development, especially the construction of road expansion and road surface to support the smooth transportation. In the field of economic development can not be separated also means of transportation that must be smooth, this is because the smooth transportation of goods is expected to be under the destination will soon arrive. With the support of Transportation is also offset by road repairs or can also pave the way to be used for transportation. Repair of existing roads is not as complicated as the opening and widening of the road, this is because the widening and opening of the road has to do with the lian such as land acquisition that will be used for roads and road widening and in the event of land acquisition allocated by the road will have legal consequences for the land it self.

In doing land acquisition, most of which are property rights owned by someone and have different properties and characters, it will have difficulty in land acquisition, therefore the government needs to form a committee in land acquisition to overcome the problems that will arise such as the amount of compensation and land replacement. If the land acquisition will experience obstacles such as the amount of compensation so that the parties who own the land do not want to sell it, then the problem will be forwarded to the governor with the accompanying reasons or

considerations and later the governor himself will decide the amount of compensation to be received by the landowner. In addition to the problems faced by the Land Acquisition Committee is the problem of the magnitude of the compensation, then here it is possible that in receiving compensation for the freed land that received it is not the person who is entitled but someone else. To avoid problems like this, the committee requires the owner of the land to bring proof of ownership and that later after the payment of compensation the land letters are given to the Indemnified.

After the land to be used by the government to build the Southern Cross Road in the city of Tulungagung is no existing permasalahan, then followed by the release of rights made by the owner of the land submitted to the Land Acquisition Committee by submitting evidence of legitimate land ownership. After the proof of ownership has been submitted to the committee for the release of land rights, the status of the land will change to state land. From the description above, the land that has been released will have legal consequences such as state land but if the owner does not want to release it, then this problem is submitted to the governor to do whether it is decided to be released or not.

CONCLUSION

Land acquisition conducted by the government that has been formed is expected to work with the approaches that arise. In forming the land acquisition committee to be released need to involve one of the influential community members, this is to facilitate the smooth process of land acquisition. In land acquisition involving community leaders is a very necessary thing to do because who knows the character and nature of the community is the community itself that begins by his influential character. the government that has succeeded to approach and carried out the liberation, the status of the land will change where the land is burdened by the right of both property rights, cultivation rights and other rights, then after the land is released by those who have the right to change the status to state land. The problems faced in land acquisition such as there is a person who does not want to let go of his land may be because the land has a history for the family, the lack of large compensation or replace the land contained in other areas does not fit both the area and fertility.

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