

Legal Protection of Village Land for Infrastructure Development in Indonesia

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Abstract—Village land which is a source of income for village heads and village officials as well as village financial resources can be turned into infrastructure for the public interest. Control of changes in the use of village land for infrastructure development for public interest not only involves villages but also district / city governments and provincial governments. Legislation for land acquisition allows changes to the use of village land for development in the public interest but protects it with the obligation to provide replacement land. The implementation of provisions for the substitution of land has not been maximized due to the urgency of land requirements, replacement land requirements and limited land that can be used as replacement land. Harmonization of regulations regarding the use of village land and land to replace village land used for infrastructure development for public interest needs to be done so that legally the existence of village land is protected.

Keywords— *village land; legal protection; infrastructure development*

I. INTRODUCTION

One important factor in infrastructure development is the procurement of land to be used as a development site. The National Development Planning Agency of the Republic of Indonesia estimates that land for infrastructure development reaches 140,704 hectares. The land area will be used for the construction of waste and waste water, drinking water, energy and electricity, railways, toll roads, airports, ports, dams and new public cities. The Ministry of Industry estimates that industrial land needs in Indonesia reach 1,200 ha. In the field of public works and public housing, the need for land acquisition for 2015-2019 is estimated to reach 133,657 hectares, consisting of 21,172 hectares for the road sector, 111,437 hectares for water resources, 592 hectares for the field of copyright works, and 456 hectares for public housing. [1]

Land that is used to build infrastructure comes from village-owned land, which is consisted of bengkok land and titisara land [2]. Bengkok land is village-owned agricultural land allocated to village officials, in particular the villiage head, as recompense for the performance of their duties and obligations while they are in office. In general, this land is located in the fertile, strategic part of the village, for which reason it cn influence the industriousness of village officials. Titisara land is village-owned agricultural land that is usually sharecropped out or rented out in a routine way through an auction. This land is often refered to as village treasury land, and as such is regardid as a village as set that can be cultivated by local farmer, the purpose being to produce development funds and routine fund for management of the village. [3] Village-owned land is the land that is owned by village official as one of the original revenue stream for the village and/or national interest. [4] Therefore it could be stated that village-owned land is a land that is important for the village, which will be used to achieve villager welfare as the recompense for the village head and officials or as a revenue stream for the village's finance.

The shift of village land for infrastructure development has implications for the loss of the function of village land as a source of welfare for the village community. It is therefore important and necessary to reveal the protection of village land for infrastructure development. How is the legal protection of village land used for infrastructure development? Does the legal protection of the village land guarantee the sustainability of the function of village land as a source of welfare for the village community? This paper discusses the reality of the transfer of functions of village land for infrastructure development, legal protection of village land that is turned to infrastructure development and guarantees the sustainability of the function of village land as a source of welfare for village communities.

II. RESEARCH METHOD

This research uses a normative juridical apprach [5]. Sources of data in this research are secondary data Data was collected through a study of the content of the laws and regulations on land for infrastructure development and regulations on village assets in Indonesia. [6] Data analysis uses qualitative analysis.

III. RESULT AND DISCUSSION

A. REALITY OF THE CHANGE OF FUNCTION OF VILLAGE LAND FOR INFRASTRUCTURE DEVELOPMENT

According to Dominikus Rato [7] in terms of their use, village land consists of 3 types, namely lungguh land really, village treasury land, and pengarem-arem land. Lungguh land is the land that is the right of the village administrator to manage it as compensation for salary. Village treasury land is village land managed by the active village administrator to fund infrastructure development or village needs. Pengarem-arem land is a village land which is the right of the village apparatus

who retire to be managed as a pension. If the village apparatus dies, the land will be returned to the village management. Lungguh land by the community better known as the bengkok land. Bengkok land is part of village land given to villagers who are currently serving as village apparatus. The land grant is only temporary, i.e. as long as the person concerned is in charge of the village head or village apparatus, and the land is intended as a reward for the village head and village apparatus to fulfill his daily needs. Eman Ramelan explained that there were 4 elements in the definition of bengkok land, namely: (a) it becomes part of lands owned by village, (b) it is granted to villagers serving as village officers, (c) the grant is temporary as long as one is serving as village officer, and (d) the grant functions as compensatory fee to live his/her life. [8] The village treasury land is also called titisara land, which is village land which its revenue is used to finance village needs. Village treasury land is land that is controlled by the village either from the upper level government or obtained through village community self-help to be managed, the result of which is the original source of village income and used for village governance. Thus, seen from the function of the village treasury land is different from the bengkok land. Village treasury land functions as a source of village income for village administration, while bengkok land functions as official land, the results of which are intended for village heads and village officials.

There are quite a lot of village lands that functions have changed for infrastructure development in Indonesia, which among others are used for the construction of toll roads, power plants, airports, educational facilities. The village land used for the construction of the Semarang-Solo toll road section IV Salatiga-Boyolali covers an area of 53 plots of land covering 119,153 hectares [9]. Village land for the construction of the PLTU Batang covers 6 parcels of land area of 1,959 m² [10]. The village land used for the construction of the West Java Kertajati airport is more than 81 hectares located in three villages namely Bantarjati, Kertasari and Kertajati. The West Java international airport in Kertajati will also use 7500 Ha of agricultural land which will be used for the 1800 ha runway, Aero City of 3200 Ha and the surrounding environment development of 2500 ha.[11] Infrastructure development for toll roads, power plants, and airports is infrastructure for public use, although not all people use it directly. Village land has also shifted a lot of functions to the construction of infrastructure that is used or directly benefiting village communities, for example for village offices, village roads, school buildings, irrigation channels, sports fields, bus terminals, and village markets. Thus, in terms of its usefulness for rural communities there are two categories of village land conversion functions for infrastructure development, namely infrastructure that is directly beneficial and infrastructure that is indirectly beneficial.

In addition, seen from the presence or absence of compensation for village land used for infrastructure development there are also two categories, namely village land that received compensation and village land that did not receive compensation. Village land that is used for infrastructure development that is of direct benefit to the village community generally does not receive compensation, whereas that which is used for infrastructure development that

is not directly benefited by the village community generally receives compensation. Village land is converted and used for infrastructure development with compensation, is village land for infrastructure development that is acquired through land acquisition. Village land that was taken over by the government for infrastructure development received compensation in the form of replacement land or compensation in the form of money to be used to buy land for replacement of village land. The use of village land without compensation occurs directly or indirectly. The direct way is that the village land is directly transferred and used for educational buildings and offices, while the indirect way is that the village land is exchanged for land owned by the villagers, and on the land resulting from the exchange infrastructure will be built.

B. LEGAL PROTECTION OF VILLAGE LAND FOR INFRASTRUCTURE DEVELOPMENT AND FOR THE DEVELOPMENT

Legal protection is in principle a protection by using legal means or protection provided by law [12]. Thus, legal protection for village treasury land for infrastructure development can be interpreted as protection provided by law for village land used for infrastructure development. The existence of village land is recognized and protected by Indonesian land law. Legislation that protects village land includes: (a) Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Affairs, (b) Law of the Republic of Indonesia Number 6 of 2014 concerning Villages, (c) Government Regulation of the Republic of Indonesia Number 47 of 2015 concerning Amendment to Government Regulation Number 43 of 2014 concerning Regulations for Implementing Law Number 6 of 2014 concerning Villages, (d) Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 concerning Management of Village Assets, (e) Law Number 2 2012 concerning Land Procurement for Development in the Public Interest, and (f) Presidential Regulation No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.

Article VI Conversion Provisions The Basic Agrarian Law stipulates that village land is converted to Right of Use as referred to in Article 41 of the UUPA. With usufructuary rights are the rights to use and / or collect the proceeds from land that is directly controlled by the State or land owned by someone else, which gives the authority and obligations specified in the decision to grant it or in an agreement with the land owner, which is not a lease agreement or agreement land management, everything as long as it does not conflict with the soul and the provisions of the UUPA. Usufructuary rights can be granted for a certain period of time or as long as the land is used for certain purposes. Based on the provisions of Article VI of the UUPA and Article 41 of the UUPA, with the status of the Right to Use, the village has the right to use and / or collect the produce from the village land. Village land includes usage rights that are not limited in time, which means that village land can be used for village interests, both as compensation for village apparatus salaries and village

financial resources as long as the land is used for village purposes.

Village land based on Article 76 paragraph (1) of the Law of the Republic of Indonesia Number 6 of 2014 is declared as a village asset. Village land as a village asset shows that village land belongs to the village, not to individuals. Village land ownership is communal ownership managed by the village. Government Regulation of the Republic of Indonesia Number 47 of 2015 Article 34 paragraph (1) stipulates that village land management is one of the village's authorities, while Article 100 paragraph (3) stipulates that the results of village land management can be used for additional allowances for village heads and village officials. Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 concerning Management of Village Assets confirms that village land is a strategic village asset as the original wealth of the village.

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 also stipulates that village land as a village asset can be transferred to another party through an exchange. By other parties the village land can be used for public interest or not for public interest. Village land that is transferred to the public interest means that village land can also be used for infrastructure development that is useful for the community. One important principle in relation to the exchange of village land for public use including infrastructure development is that exchange is carried out in accordance with statutory provisions. In the concept of land exchange, there must be land to be exchanged. This means that village land that is transferred to another party must be exchanged for land owned by another party. Thus, village land that is transferred to another party will get a replacement land. Article 33 Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016 regulates that the exchange of village land is carried out after an agreement on the amount of compensation is in accordance with the price that benefits the village by using the fair value calculated by appraisers. If the replacement land is not yet available, the replacement land can be given in the form of money first. Reimbursement in the form of money must be used to buy an equivalent replacement land. The replacement land is preferably located in the local village, and if the replacement land location is not available in the local village, the replacement land can be located in one sub-district and / or village in another sub-district which is directly adjacent. Provisions regarding the location of the replacement land are intended so that the replacement land can be managed well by the village because of the easy access of the village to the replacement land.

Provisions regarding village land transferred to other parties for infrastructure development as stipulated in the Minister of Home Affairs Regulation of the Republic of Indonesia Number 1 of 2016 is an improvement to the Minister of Home Affairs Regulation of the Republic of Indonesia Number 4 of 2007 concerning Guidelines for Management of Village Wealth. Article 15 (1) Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 4 of 2007 has also stated that village assets in the form of village land are not permitted to release ownership rights to other parties, unless necessary for public interest. The

release of village land ownership rights is done after receiving compensation according to the price that benefits the village by taking into account the market price and the Selling Value of the Tax Object (NJOP). Compensation in the form of money must be used to buy other land that is better and is located in the local village. The release of village land ownership rights is determined by the Decree of the Village Head, which is issued after obtaining the approval of the Village Representative Body and obtaining written permission from the Regent / Mayor and Governor.

The mechanism or stages of exchange of village land for the development of public interests is regulated in Article 34 of the Minister of Home Affairs Regulation of the Republic of Indonesia Number 4 of 2007. The stages of exchange are differentiated for replacement land located in the local village and replacement land located not in the local village. For replacement land located in the local village, the steps are as follows:

1. The Village Head submits a letter to the Regent / Mayor regarding the results of the Village Deliberation regarding the exchange of land belonging to the Village with the prospective location of the replacement land being in the local village.
2. The Village Head submits the permit application to the Regent / Mayor, henceforth the Regent / Mayor continues the permit application to the Governor.

For replacement land where the location is not available in the local village, this is done in stages:

1. The Regent / Mayor conducts a field review and data verification to obtain material and formal truth as outlined in the official report.
2. The results of the field review and verification of data were submitted to the Governor as consideration for granting approval.
3. Prior to granting approval, the Governor can conduct field visits and verify data.
4. After the Governor gives his approval, the Village Head then establishes a Village Regulation regarding the exchange of land belonging to the village.

Provisions regarding village land that are transferred to other parties for infrastructure development as regulated in the Minister of Home Affairs Regulation of the Republic of Indonesia Number 1 of 2016 are in accordance with Law Number 2 of 2012 concerning Land Procurement for Development for Public Interest. Article 36 states that compensation for land taken over by the government can take the form of money, substitute land, resettlement of shares ownership and other forms agreed upon by the two parties.

Elucidation of Article 40 of Law Number 2 of 2012 confirms that compensation for customary land rights is given in the form of replacement land, resettlement, or other forms agreed upon by the traditional law community concerned. Based on the explanation in Article 40, it can be stated that the spirit contained in the granting of compensation for ulayat land, including village land, is compensation in the form of replacement land. Other forms of compensation for village land, namely in the form of money, are temporary, in the sense that the compensation money will be used to buy replacement land. The mechanism for compensation in the form of replacement land is regulated in Presidential Regulation No.

71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest. Article 77 Presidential Regulation Number 71 of 2012 regulates the following matters:

1. Compensation in the form of replacement land is provided by an agency that requires land through the Land Acquisition Officer.
2. The compensation is provided by the agency that requires the land after receiving a written request from the Chairperson of the Land Acquisition Officer.
3. Substitution land is given for and on behalf of the Rightful Party
4. Provision of replacement land is done through buying and selling or other methods agreed in accordance with statutory provisions.
5. Giving compensation is carried out simultaneously with the release of rights by the rightful party without waiting for the availability of replacement land.
6. During the process of providing replacement land, the funds for providing replacement land are deposited in the bank by and on behalf of the agency that requires the land.
7. Implementation of the provision of replacement land shall be carried out no later than 6 (six) months after the determination of the form of compensation by the Implementing Land Acquisition

Based on this regulation, it can be stated that village land used for infrastructure development is compensated in the form of replacement land, so that the sustainability of the function of village land is guaranteed.

IV. CONCLUSION

Legislation that provides protection for village land taken over for infrastructure development is Law of the Republic of Indonesia Number 5 of 1960, Law of the Republic of Indonesia Number 6 of 2014, Government Regulation of the Republic of Indonesia Number 47 of 2015, Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2016, Law of the Republic of Indonesia Number 2 of 2012, and Presidential Regulation of the Republic of Indonesia Number 71 of 2012.

These various laws and regulations stipulate that village land used for infrastructure development is compensated in the form of replacement land. How to replace is done by swapping. The stages of exchange have been regulated in detail with the aim of obtaining village land whose quality is equivalent to village land taken over, while still ensuring access by the village community to the land resulting from the exchange. The regulation also stressed that village land that was taken over for infrastructure development must be replaced with land and not money.

V. REFERENCE

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