

Legal Protection Factors for Owner of Land Right in The Land Procurement That Still Not Giving Justice (Legal Case Study on Semarang-Solo Freeway Construction in Boyolali Regency)

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Abstract--*The research is conducted on an unsupported by the fulfillment of rights for land rights holders on the construction of the Semarang-Solo freeway in Boyolali. The purpose of this study is to identify the factors that lead the protection of landrights holders in the securing of land for development of unjustifiable public interest. The study is a sociolegal research, assessing the application of positive laws or norms in society and seeing the results of such laws. The approach used was a conceptual approach and legislation approach. The research resources include primary and secondary data. Legal collection techniques include interviews and literature studies. As a result of this study, the protection of land rights holders in the process of procuring land for the common good was weak and had not yet been brought to justice. The factor in the general factor was that the valuation of land prices based on NJOP count (the tax object's selling value) was relatively low and inadequate at market prices, resulting in a further equilibrium between land-rights communities was not fully guaranteed. The still existence of a consignment mechanism in terms of providing compensation also further obscures the legal protectionof land rights holders.*

Keyword- *justice; land acquisition; land rights holders; protecting the law; the common interest.*

I. INTRODUCTION

Soil problems are an interesting matter to consider because the soil touches various aspects of life. A problem faced by both developed and developing countries is the growing shortage of vacant lots used as a building tool. The implementation of national development in particular will require large tracts of land. On the other, these lands are generally reserved for a land

title. Without land, development would be strictly a plan. Such things make the land a source of conflict. One the other side, government needs land owned by the people for development purposes, on the other the local people need land for housing and livelihoods. So the issue of liberation and abolition of land rights is a matter of considerable complexity in the development of legal science today.

The making of land was done in a deliberate way between those who needed land and the possessor of land that was necessary for building interests. [1] Theoretically, land supply activity for the common good is based on principle and is divided into two sub-systems that are:[2]

- a. government procuring land because of public interest;
- b. the procuring of land by governments because it is not common (commercial) interests. The fundamental nature of the procuring of land was the government's action to obtain land for the common good followed by a deliberative way to reach an agreement on the release of rights and compensation before the taking of rights was completed. It was in these deliberations that laid the basis for refund.

Thus, land development for the public interest in its administration needs to be carried out in a good way and taking into account the role of land in human life and the principle of respecting land rights, because according to Article 6 number 5 of 1960

concerning agrarian principles land a side from economic value, also has social function.[3]

A land position of social function would have a consequence that any land rights belonging to a person could not be justified in its use or merely for personal gain. Land use must be tailored to the circumstances and properties rather than to the rights to benefit both the well-being of people and the country. Under certain circumstances, however, personal interests will not automatically be driven by the common ones. Individual interests are also noted by the central agrarian legislation. The common and individual interests must compensate for one another to achieve the basic objectives of prosperity, justice and happiness for all people (see act II as 1960).

The macro-government authority relating to land ruled in chapter 33 verses (3) of the 1945 Constitution of the Republic of Indonesia which states that all natural assets are controlled by the state and used for the welfare of the people. The chapter is then enlarged on the central agrarian law, chapter 18, which states: "for the public interest, includes the nation and state interests of a common interest of the peoples, land rights can be revoked by providing appropriate compensation and in a manner regulated by Law number 20 of 1961 about Revocation of rights to Land".

The definition of public interest is explained in Article 1 number 6 of 2012 law number 2, that "public interest is the interest of the nation, state and society that must be realized by the government and used as much as possible for the prosperity of the people".

Based on the article above, when an individual lose their rights to land in the framework of development for the public interest, then the holders of land rights should receive appropriate compensation. Thus, when the community who loses their rights does not get compensation, it is not a form of land acquisition but the confiscation of land rights by parties in need.[4]

Providing compensation by the government to the community holding land rights affected by land acquisition in the framework of development for the public interest is an absolute rights whose rights are owned by the community holding the land rights. This policy regarding compensation is a major problem in land acquisition. It is not uncommon for the issue of compensation to often hinder the land

acquisition process.[5] The problem of compensation also occurs in the construction of the Semarang-Solo freeway in Boyolali Regency. The community can not accept the land price that has been set by the government through appraisal because it is considered too low and can not guarantee the welfare of the community for the next life. The valuation based on the NJOP count (the tax object's selling value) of land is relatively low and does not match the market price.

Deliberations were made in which communities and governments had not yet found common ground pricing points. Deliberation would be an effective way of rendering justice to the community when pricing could be agreed upon in such deliberation by involving both sides in the pricing process. But the fact in the field indicates a sense of justice is still far from the reach of the public. Inadequate and fair remuneration and the presence of consigned mechanisms illustrates that legal protection for land rights communities is still often ignored.

II. PROBLEMS

Look at the issues as they have described in the introductory chapter, the problem with this research is:

1. How does the legal protection of land rights holders in land acquisition for development for public interest?
2. What are the factors that cause the protection of land rights in the construction of the Semarang-Solo freeway in Boyolali in not justified?

III. RESEARCH METHODS

Research conducted is a study of socio legal (socio legal research).[6] Wheeler and Thomas in Sulistyowati Irianto explain, a legal socio study is an alternative approach that tests doctrinal studies of the law. Socio legal research done by reviewing. Implement the application of the rules or norms in positive laws in society and see the results of the laws that are brought forth. Research refers to implementation of existing law codes, applicable legislation in society, and policies based on government action policies. Such prevailing law norms are those of positive laws established by good

authorities as legislation, the presidential rule to the national head of property.[7]

The study adopted the conceptual approach and the legislation approach. A conceptual approach is aimed at getting to know thoughts, statements and insights that are interrelated in explaining land supply concepts, public interests and judicial justice by studying the views of law scholars. Approach to building concepts that make up a model in research by relying on the doctrines and views that developed in law science.[8] The invitational law approach is used to find ratios and ontological grounds the birth of legislation on research issues. As a result of the law's flow and ontological basis, it is possible to find filosofis' cause of birth. Understanding the filosofis content behind the law, it can be determined that there is a discrepancy between the law and the issue faced and used as a basis for building legal argumentation to answer the legal issues.[8]

The source of data used in the study is primary and secondary data. Primary data was obtained by direct interview with the informants related to land acquisition for the Semarang- Solo freeway in Boyolali. Where as a secondary source of data is obtained with library studies. Here are the informants who were successfully interviewed in obtaining primary data:

Table 1. List of Informants interviewed

No	Information	Position of Informants
1.	Prof. Dr. Nur Hasan Ismail, S.H, M.Si.	Professor of Law Faculty, Gajah Mada University, agrarian law expert
2.	Wiradya Agung Utama	Head of Land Acquisition Division of ATR Office, Boyolali Regency
3.	Amin	Project Implementer, PT. Trans Marga Jateng
4.	Prihadi, S.H	Non-Governmental Community Care

		Organization in Boyolali Regency
5.	Drs. Tri Martono	Affected Communities
6.	Hasal	Affected Communities
7.	Sri Mintarsih	Affected Communities

Source: Author, 2019

IV. DISCUSSION

1. Legal Protection of Land Rights Holders in Land Acquisition for Development in Public Interest

The land basis for land acquisition is regulated in Law number 2 of 2012 about Land Acquisition for Development for Public Interest. Land acquisition in Law Number 2 of 2012 is defined as the act of providing land by providing appropriate and fair compensation to the Entitled Parties. This law contains the spirit that in implementing land acquisition, human rights are upheld by respecting the position of land rights holders. This is realized by providing adequate and fair compensation.[5]

Referring to the view of Maria Sumardiono, in the policy of land acquisition, must pay attention to the principles of democracy and uphold the human rights, namely by observing the following matters:

- a. land acquisition is a legal act which results in the loss of the rights of a person both physical and non-physical in nature and loss objects for a certain period or forever)
- b. compensation for losses given to holders of land bag rights must take into account:
 - 1) loss of rights to land, buildings, plants;
 - 2) loss of income and other sources of life;
 - 3) assistance to move to other locations by providing alternative new locations that are equipped with appropriate facilities;
 - 4) assistance for income recovery in order to achieve the same or equivalent condition as before;
- c. people displaced by land acquisition must be calculated in the form of compensation;
- d. to get accurate data on disbursed societies and the high cost value recompense should

- be carried out by a basic and social survey of economic;
- e. instaon of a responsible takeover and resettlement will have to be applied. For executing;
 - f. the ordinances of discussion expanded; To reach a consensus must be
 - g. there needs to be an instrument to file complaints and settle disputes out of the process transcription.

The general arrangement for building land for construction would require a balance between development interests and community interest. In this case the government and/or local government as the officer in charge of providing land for use to the common good. The government has the authority to regulate and ensure that land can be obtained later from its procurement can be benefited by the general public.[9]

Public interest is defined as the interest of all levels of society. In connection with this, construction activities for the common good are limited to construction activities carried out and, in turn, are owned by governments and not used for profit. Thus, development can be categorized a public interest when it fulfills these three elements.[1]

In line with the description above, Article 5 of the Presidential Decree Number 36 of 2005 in conjunction with the Presidential Regulation of the Republic Indonesia Number 65 of 2006 also stipulates that the use of land for public purposes is carried out by the government or the regions which are subsequently owned by the government or regional governments included:

- a. public roads and freeways, railways (both above ground in an upper chamber and basement), drinking/clean water channels, sanitary water building channels.
- b. reservoirs, dams, irrigation dams, and other body of water
- c. ports, airports, train stations and terminals. Conceptually, common-interest issues are difficult According to operational design. Even so, in order of takeover of community land, emphasis on importance.

Issues related to public interest are conceptually difficult to formulate, especially when viewed operationally. Even so, in the context of expropriation of community land, it is necessary to

clearly define public interests as the basis or criteris so that the intended land acquisition is based on the applicable legal basis.[10]

A legal foundation would play a role in establishing boundaries that should not be violated on the administration of the land supply for the public interest. In this case there are the two parties involved: the common interests represented by governments and the interest of community land rights as individuals or groups. Land acquisition for the public use must be done through a procedure guaranteeing the absence of any coercion of will from either side.

Land rights as those who should forego their land to build public interests should be worked out and guaranteed their welfare. No holder of the land that relinquish his land rights to its land, its socio-economic conditions, would become worse than ever because the land supply upholds humanitarian principles, justice, civility, certainty, openness, agreement, participation, welfare, sustainability and harmony.[11]

As for the assessment of the resulting cost repayments, the 2012 rule number 2 dictates it must be made by an independent appraisal. This harmonizes with the view of Maria S. W. Sumardjono as saying that an independent, professional land-assessors should be held in view of the difficulty in determining land loss. Not only NJOP, location, land rights type, land mastery status, soil disbursement, suitability with stake layout, infrastructure, facilities and facilities, environment and other factors must also be considered. The existence and role of professional private assessor institutions has the authority and the ability to establish the real value of the soil objectively and fairly.

Appraisal of the damage made by appraisal covers not only the land, the upper and cellar, the buildings, the plants, the materials related to the soil, but also other assessments. The explanation of article 33 letter f of law number 2 in 2012 explains what constitutes what can be valued are nonphysical costs which can be equated with money, such as unemployment or loss of a job or a business, housing costs, professional costs and the residual value of property. It stipulates that the protection of the law is against the landowner was not only based on an appraisal of the material damage, but also pay attention to losses arising from termination of legal

relationship between the holder of land rights and the land.

The implementation of land acquisition for the public interest also takes into account legal protection in the deliberation process in determining the form and amount of compensation. Law number 2 of 2012 also provides legal protection against those who disagree with the size and magnitude to make amends. In this case “if there is no consensus as to the shape and/or magnitude of compensate, then the district court decides the form and/or amount of compensation within a maximum periode of 30 (thirty) working days after the objection is received. If there are parties who object to the decision of the district court, then within 14 (fourteen) working days can file an appeal to the Supreme Court of the Republic of Indonesia and the Supreme Court is obliged to issue a decision within 30 (thirty) working days from the time the appeal is” (38 chapter number 2 year 2012).

2. Factors That Could Lead to The Protection of Land Rights for Protection Against the Semarang-Solo Freeway in Boyolali

Based on direct interviews with project implementers, PT. Trans Marga Central Java, represented by Mr. Amin in making the Semarang-Solo freeway, 72,611 KM requires a construction fee of 7.2 trillion Rupiah. As for the cost of land acquisition, the community will spend as much 3.357 trillion Rupiah. Data regarding the amount of land affected in Boyolali district for the construction of the Semarang-Solo Toll Road in Boyolali Regency as many as 1748 field (interview with Mr. Wiradya Agung Utama, Head of Land Procurement Section Boyolali Regency ATR Office).

Article 8 Presidential Regulation of the Republic of Indonesia Number 36 of 2005 states that “land acquisition for development in the public interest is carried out through deliberations to reach an agreement on the implementation of development for the public interest in that the location and regarding the form and amount of compensation”.

Deliberation as one of the stages in land acquisition has a very important role in formulating the amount of compensation that will be received by the community holding land rights. In Article 1 number 10 of the Presidential Regulation of Republic of Indonesia Number 36 of 2005, the definition of deliberation as an activity that includes the process of listening, giving and receiving

opinions, and the desire to reach an agreement regarding the form and amount of compensation and other issues related to land acquisition activities, buildings, plants, and other objects related to the those who need land.

Based on the provisions of these Article, the determination of the amount of compensation must be carried out by deliberation which is attended directly by the holders of land rights and government agencies requiring the land. However, the deliberation process often does not provide a sense of justice for the communities who hold land rights. The position between the goverment and the community who hold land rights is not in a balanced position. The government is in a strong weak position. This can be seen in the small opportunity provided by the government to land rights holders to voice their will in the process of determining the amount of compensation.

Therefore, legal protection of land rights holders whose land is used for development for public interests must receive serious attention. The position of holders of land rights tends to be in a weak position compared to the goverment. Legal protection for land rights holders means those owned by holders of land rights have the rights to protect their rights in relation to land acquisition carried out by government agencies requiring land.

Regarding compensation assistance, Article 36 of Law Number 2 of 2012 states that the provision of compensation can be provided in the form of:

- a. money;
- b. replacement land;
- c. resettlement;
- d. possession: or
- e. other forms are made up by both sides (such as the combination of two or more losses as represented by the letter a, the b letter, the c, and the letter d)

However according to the description by Drs. Tri Martono, the affected who owns the land in Candimulyo, Kiringan Village, Boyolali District, deep the process of making compensation is not offered regarding forms of making compensation but is directly defined as making compensation in money.

As for the value of restitution covering land and buildings should be deliberated with affected communities. Indentures should not be below NJOP value. The value of compensation depends on the

status of land, usually for the status of land with title certificate (HM) are reimbursed by 100% of NJOP, HGB 80%, 60% of charge while non-certificate rights are given 40% of NJOP in addition to land, plant or building (objects) on it are considered to be judged.[12]

In determining the cost of land release or compensation, freport administration said that there was a difference in assessments based on active and passive soil. The land on which it is used as the life of the economy will be judged higher than passive soil. In the case of an area that is affected by land supply is a remnant that can no longer function according to design and usage, those who rightfully can request a full replacement of the land.[12] That was the case with half of brother Hasal's home, from the village of Mudal, Boyolali, who was exposed to providing land for the Semarang-Solo toll road in Boyolali, made up for the losses that only the affected part of the building received. Of course it was unjust because some of the buildings that were not affected could not be made a home. Nevertheless, after the landlord's claim to the ground filed a protest, the landscaping committee made up a full loss to the entire building of vana was justifiably booked.

Not only that, the polemic regarding compensation also occurred to Mrs. Sri Mintarsih as the community affected by the construction of the freeway in Boyolali Regency, located in Candirejo Village, felt disadvantage because the amount of compensation received was insufficient if land was bought back. While land is an asset that is owned by inheritance from parents. Whereas land is an asset that belongs to a parent's legacy. Especially if they are affected by small communities, thus revealing the difficulty of finding a place to live and losing one's workplace.

Professor Dr. Nur Hasan Ismail, S.H., M.Si., Professor of Law Faculty, Gajah Mada University, agrarian law expert, explains the size of responsible and fair recompense when people with acceptable losses can retain the existing prosperity or what was once enjoyed. That would be fair, because there was an equilibrium, with recompense received by the people and the prosperity enjoyed by the value of restitution.

Good profit from good appraisal was made in deliberation. At a time when making amends for those who receive compensation must be relinquished the right and submitted proof of

ownership of land items to an institution that needed land. In principle the pay for the crackers should be given to those who are entitled to make damages. But when indisposed, the legal party could give power to another designated party or his.[5]

Compensation at the implementation level often results in dispute. Holders of land rights consider that the compensation provided by the government is considered inadequate and fulfills a sense of justice because land rights holders want a high price. The issue of land prices, which each year has increased prices, sometimes causes land acquisition for development for the public interest to not run well.

It is necessary to have clarity in proper and fair compensable damages, so proper and fair measures are not limited to government standards, but also addressed by the holder's side of the land in order to achieve balance. That way the government can't judge as freely as possible without a consensual or agreement with landowners. In the first half of this year, there was no need for an agreement to do everything possible to prevent the burden of claim to the landowners from relinquishing their claim rights to consignment or damage control through the courts.

The same was true of the toll road arrangement Semarang-Solo in Boyolali. Based on a live interview with Prihadi, S. H, who represented the Non Governmental Organization Caring for the Nation in Boyolali Regency, people who disagreed or objected were forced through a consignment mechanism so that the project could continue.

It cannot be justified a government agency that requires land to take the land of the holder's property before an agreement is made deliberations regarding the form of damages using the consignment mechanism. Conscriptio can only be justified when the right holder of the land has signed a release or submission but is not willing to receive damages. But if an agreement has not yet taken place, I cannot be viewed as an excuse for taking land rights by governmental agencies, since this does not reflect legal protection for land rights holders.[13]

The judiciary repayments in the form of money in the rupiah. After the administration of restitution and the administration of rights was performed or submitted to the lower courts, the possession of the land rights became void and the proof was declared

unlawful and the land became directly controlled by the state.[14]

V. CONCLUSION

The protection of the land rights holder in the regulations of legislation associated with the securing of land for the building of public interests has not yet been fully enabled to accommodate the interests and the legal protection of the land rights holder. In accordance with this, the proposed land protection of the Semarang-Solo toll road in Boyolali Regency has not made possible the legal protection of the land rights community. The resettlement of land supplies for the public good became a concern for the construction of the Semarang-Solo freeway in Boyolali. When restitution is a form of respect for land rights. But in reality there is an inadequate and fair recompensating as mandated from act number 2 of 2012. Land price assessments based on NJOP calculations (the value of tax objects) on land are relatively low and incompatible with market prices and thus cannot guarantee public welfare for future life. Consignment mechanisms are also found in the procurement of this land that increasingly obscure the legal protection of landowners.

Noting the results of the conclusion of the study, the writer suggests that regulation governing the propping of land for construction of the common good may set forth a clear and definite rule in guaranteeing legal protection against the land rights holder. Government agencies that need land also have to pay due and fair damages to be given to land owners in order to ensure the welfare of those who retain the land's minimum of social life equal to the original conditions.

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