

**LEGAL BASIS FOR TAKING THE LAND OWNED AND COMPENSATION
FOR THE AFFECTED LAND**

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ABSTRACT : Indonesia always been active in carrying out development activities such as public development. The government has a duty to make Development for the public for the welfare of the people. The problem of land acquisition is considered vulnerable handling because it covers the lives of people. Currently, it is considered very difficult to carry out development for the public interest on state-owned land. The purpose of this research is to find out that the taking of rights to land due to the widening by the government of private land rights to realize national development have laws underlie it. The government compensation for freehold land taken from the community with an agreement that has been deliberated beforehand. The process of providing compensation must be balanced so that the owners of land rights are not harmed. In this research, the library research method is used by examining through books, journals, laws, and other written documents related to the issues to be discussed. The results showed that the process of taking over land rights due to widening by the government was based on Law Number 2 of 2012. The compensation provided is also further explained in Presidential Regulation No. 65 of 2006.

Keywords: Acquisition of land; legal basis; compensation.

INTRODUCTION

To improve all aspects of social life as a form of national development that stated in the preamble to the 1945 Constitution, Indonesia always active in carrying out development activities, such as development for the public. The government has a duty to make Development for the public for the welfare of the people.

The land is a natural resource that supports human life. Apart from economic value, the land also has a social function, such as sacrificing personal interests overland to realize public interests. This problem is a fundamental problem with the function of the land.

The problem of land acquisition is considered vulnerable in its handling because it covers the lives of people. Currently, it is considered very difficult to carry out development for the public interest on state-owned land. The State land that available for development is less than proportion to its needs. From this problem, the government can only take land belonging to

private communities by acquiring land owned by the community, whether it is already controlled by customary rights based on customary law or other rights according to the UUPA.

Land attached to private property rights is one of the lands used for public development that often creates conflicts between the government and residents who hold land rights. Ownership rights to land are the strongest, most fulfilled, and hereditary characteristics of the land. The strongest means land that has a stronger right than other land rights, doesn't have a time limitation, can be maintained by other people, and cannot be easily eliminated.

Construction of public facilities such as road widening requires a large area of land for construction. The remaining state land in the present will certainly not be sufficient to carry out the road widening, so it is necessary to acquire private land in the vicinity. Owners of the land title will certainly ask for compensation from the government for taking their private land.

RESEARCH METHODS

To get a result of the problems that have been stated that the legal basis for taking the land that had owned rights by the road widening plan and the compensation of the affected residents for taking the land, in this study, the authors use the library research method by examining through books, journals, laws, and regulations. As well as other written documents relating to the issues to be discussed.

DISCUSSION

1. The Legal Basis For Taking The Land That Had Owned Rights By The Road Widening Plan

In Article 20 of the UUPA, it is stated that the Right to Own is a hereditary, strongest and fullest right that can be owned by people over land.¹ Property rights can be transferred or transferred to other parties. It can be said that the character of property rights is hereditary, strongest, fulfilled. Rights that do not have all three characteristics are not property rights. Hereditary means that property rights do not only last for the lifetime of the person who owns them but can be continued by their heirs if the owner dies.

Releasing land rights is an activity to release the legal relationship between the holder of land rights and the land controlled by providing compensation based on deliberation.² With the problems resulting from the release or transfer of land rights for public development, it is hoped that the owner as the right holder will not experience a setback either at the economic or social level. Land acquisition is any activity to acquire land by giving compensation to those who

¹ Indri Hadisiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah," *Ahkam: Jurnal Hukum Islam* 2, no. 1 (2014).

² Barang Milik Negara, "Vol.III/No.9/Agustus /2016 *Jurnal Ilmu Hukum Koloay R.N.S : Dampak Positif Dan Negatif....*," no. 9 (2016): 39–47.

release or hand over land, buildings, plants, and objects related to the land.³ Land acquisition for development for public purposes, such as road widening, must be carried out through deliberations conducted between the owner of land rights with government agencies requiring land. The existence of land for development cannot be separated from the problem of land acquisition.

The legal basis for taking freehold land by the government for implementation of public interest development such as road widening is Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest. As referred to in Article 1 paragraph 6 of Law Number 2 of 2012, the public interest is the interest of the nation, state, and society that must be realized by the government and used to the maximum extent possible for the ability of the people. Public interest is the interest of many people. The development activities for the public interest are limited by the development activities that are owned by the government and are not used for profit. Thus, activities included in the category of Public Interest are limited to the fulfillment of three elements.

In article 10 of Law Number 2 of 2012, land intended for development in the public interest is the land that will be used for:

- a. national defense and security;
- b. public roads, toll roads, tunnels, railways, train stations, and railway operating facilities;
- c. reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures;
- d. ports, airports, and terminals;
- e. oil, gas, and geothermal infrastructure;
- f. electricity generation, transmission, substation, network, and distribution;
- g. Government telecommunication and information networks;
- h. waste disposal and processing sites;
- i. Government / Regional Government hospitals;
- j. public safety facilities;
- k. Government / Regional Government public burial places;
- l. social facilities, public facilities, and public green open spaces;
- m. nature preserve and cultural heritage.

2. Compensation for residents affected by the taking of the land.

Law Number 5 of 1960 or known as UUPA states that every land right has a social function. The social function inherent in property rights over land does not mean that ownership rights holders must always be willing to give up their rights when dealing with the interests of the

³ Achmad Wirabrata and T Ade Surya, "Masalah Kebijakan Dalam Pengadaan Tanah Untuk Pembangunan Infrastruktur," *Jurnal Ekonomi & Kebijakan Publik* Vol. 2, No (2011): 729–752.

⁴ Dede Yusuf, "Asas Kepentingan Umum Dalam Pengadaan Tanah Untuk Kepentingan Negara," *Logika : Journal of Multidisciplinary Studies* 10, no. 02 (2019): 100–105.

community. When holders of land rights have to give up their rights for the public interest, there must be appropriate compensation so that the holders of land rights are not harmed.

The term compensation is the provision of compensation for losses suffered by the holder of land rights upon the transfer of rights. The issue of compensation is the most sensitive component in the land acquisition process. Waiving the form and amount of compensation is often a lengthy and time-consuming process due to the absence of agreement between the parties concerned. Meanwhile, in the civil sector, compensation is characterized as the provision of an achievement that is commensurate as a result of an act that causes loss to be suffered by one of the parties making the agreement/consensus. In short, compensation is the imposition of compensation as a result of the use of the rights of one party to fulfill the needs and interests of another.⁵

The legal basis for claiming compensation is article 1 point 3 Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest. Land acquisition cannot be separated from the problem of offering compensation as regulated in Article 13 of Presidential Regulation Number 65 of 2006, in the form of money, residential land, resettlement, or other forms approved by the competent authorities. One of the development activities for the public interest in the construction of public roads. For that, road widening is included in it. The general term that exists in the community for land acquisition is the land exemption.

Based on article 15 of Perpres No. 65 of 2006, the basis for calculating the amount of compensation is based on:

- a. Sales Value of Tax Objects (NJOP) or real/actual value by taking into account the Sales Value of Tax Objects for the current year based on the assessment of the Institution / Team of Land Price Appraisal appointed by the committee;
- b. The selling value of the building is estimated by the regional apparatus responsible for the building sector;
- c. The selling value of plants is estimated by regional officials who are responsible for agriculture.

Providing compensation for affected residents or known as compensation in Law Number 2 of 2012 Article 40 of compensation, compensation is given directly to the entitled party. If unable to do so, the Eligible Party by-law may authorize other parties or the heirs. The people who got

⁵ Agus Yafli Tawas, "Pengadaan Tanah Untuk Kepentingan Umum (Studi Kasus Pelebaran Jalan Martadinata PAAL DUA Di Kota Manado)," *Jurnal Hukum Universitas Sam Ratulangi* 1, no. 6 (2013): 64–76, <http://repo.unsrat.ac.id/440/>.

attorney can only receive power attorney from one person who is entitled to Compensation, the people who have rights include:

- a. Land rights holders;
- b. management rights holder;
- c. nazir, for waqf land;
- d. owners of land formerly owned by adat;
- e. customary law communities;
- f. parties who control state land in good faith;
- g. the basic holder of control over land; and/or
- h. owner of buildings, plants, or other objects related to land.

In Article 41 paragraph (1) it is stated that compensation is given to entitled parties based on the results of the assessment stipulated in the deliberations as referred to in Article 37 paragraph (2) and/or the decision of the district court / Supreme Court as referred to in Article 38 paragraph (5). (2) At the time of giving Compensation, the party entitled to receive compulsory compensation shall waive the right and submit proof of control or ownership of the Land Acquisition Object to the agency requiring land through the Land Agency. (3) The evidence as referred to in paragraph (2) letter b is the only valid evidence according to law and cannot be contested at a later date. (4) The party entitled to receive compensation is responsible for the validity and validity of evidence of possession or ownership submitted. (5) The demands of other parties on the object of land acquisition which have been submitted to the agency requiring the land as referred to in paragraph 2 shall be the responsibility of the party entitled to receive compensation. (6) Every person who violates the provisions as intended in paragraph 4 shall be subject to criminal sanctions by the provisions of the statutory regulations.⁶

CONCLUSION

Acquisition of government-owned land to the land that will affect road widening plans is not carried out independently of a legal basis. The legality of land used for the public interest is necessary for the government to carry out its work. The legal basis that underlies it is permissible to take privately owned land for road widening in the public interest, namely Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest. Compensation for residents affected by land acquisition is further in Presidential Regulation No. 65 of 2006, which states that compensation must be appropriate so that land rights holders are not harmed. The form of compensation offered can be money, resettlement, or other forms agreed upon by the parties concerned. In principle, the provision of compensation must be submitted directly to the party entitled to the loss.

⁶ Roy Frike Lasut, "Pelaksanaan Bentuk Ganti Rugi Atas Tanah Menurut UU Nomor 2 Tahun 2012," *Jurnal Lex et Societatis* Vol. I/No., no. 3 (2013): 118–128.

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