

**AS A RESULT OF THE STIPULATION LAW ON LAND IS DESTROYED
AS AN OBJECT OF DEVELOPMENT FOR THE PUBLIC INTEREST**

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ABSTRACT: Land as a source of human life, has economic value, apart from being a means of fulfilling housing as well as a source of life. Legal certainty for owners of land rights has been regulated for sure, but land can be lost or destroyed through natural factors and government regulations. The provisions for destroyed land have been regulated in PP 18 of 2021 and Ministerial Regulation of ATR/BPN NO 17/2021. The determination of destroyed land needs to be more careful, especially concerning the procurement of land rights for the public interest, if it conflicts with the rights of the community as a source of livelihood.

Keywords: Legal consequences; public interest; object; determination; Land destroyed;

INTRODUCTION

Land according to it can be interpreted as the surface of the earth or the earth's layer above, or the surface of the earth that is given a boundary. On the other hand, the land is a source of life and a source of livelihood for humans from birth until humans die. Soil as a source of life, that land is a source of life for:

1. Plants, plants can grow in the soil because the soil is a source of water and minerals contained in the soil
2. Humans, including:
 - a. Land to support health and provide human needs, for example as a means of sports, football, rugby, cricket, etc
 - b. For farmers, as agricultural land where they depend on harvests for their lives;
 - c. Build houses, Most are built on the ground;
 - d. Manufacture of building materials in the form of clay, such as tiles, bricks and ceramics
 - e. Clean water provider, found in the ground.¹

¹ Kemendikbud.go.id <http://sumber.belajar.kemendikbud.go.id>

3. Animals, some animals, especially herbivores, basically live and develop depending on the soil, for example, cows, horses, buffalo, worms, etc.

Land is a source of human life, that land plays an important role in human survival so the land has a very high economic value. The land has a high economic value because it is a means in human life to meet food needs. board and social which is a primary human needs. The fulfilment of human needs for the land is carried out by humans by utilizing the land in a direct form or using the land as a means only. The utilization of land can be carried out by humans in various forms of human needs, including the need for life, economic needs, social needs and cultural needs.

Regarding land use, there are land uses for individual/private interests and public/public interests. Individual interests include interests, for example, the use of constructing houses/buildings, and agricultural land, while public or public interests, such as roads, tourism, reservoirs, hospitals, sports and various other public facilities. The balance between individual interests and public interests is very important so that conflicts do not occur and cause land conflicts.

Arrangements regarding land so that there is no conflict between individual interests and public interests so that there is a balance between the two interests has been regulated in the Basic Agrarian Law (UUPA) Number 5 of 1960 along with several implementing regulations under it. Article 6 of the UUPA states that the ownership of land rights has a social function, meaning that every owner of land rights in the use and utilization of the land ownership is not allowed to cause harm to the community. The use of land must be adapted to the circumstances and nature of its rights so that it is beneficial for the welfare and happiness of those who own it as well as for the community and the state. This understanding does not mean that personal interests are set aside or pushed against the public interest. Concerning the public interest.

The implementing regulations of the UUPA regarding the procurement of land rights for development intended for the public interest have changed several times due to problems that arise in each of these regulations being implemented. Starting from the enactment of Law No. 20 of 1961 concerning Revocation of Rights to Land and the Objects above it, regulations that allow the government to revoke ownership of individual land rights with consideration for the interests of the nation, state and people that are intended to be used for development. Law Number 20 of 1961 also regulates the provision of compensation, in its article 6 it is stated: "giving compensation commensurate with the granting of rights". Providing adequate compensation.

Several regulations were then issued, the form of which was under the Act, namely: Presidential Instruction Number 9 of 1973 concerning the Implementation of Revocation of Rights to Land and Objects on it, Regulation of the Minister of Home Affairs Number 15 of 1975 concerning Procedures for Land Acquisition, Presidential Decree Number 55 of 1993 concerning the Procurement of Land Rights for Development in the public interest, Presidential Regulation Number 36 of 2005 yo. Presidential Regulation number 65 of 2006 concerning the Procurement of Land Rights for Development for the public interest. In 2012 the government renewed the regulation.

Various problems arise related to land acquisition for development in the public interest, for example regarding compensation agreements, implementation, and land rights liberation. One of the problems that occur is regarding the destroyed land which is the object of land acquisition for development in the public interest. The regulation regarding destroyed land which is the object of land procurement from the public interest has been regulated in Presidential Regulation Number 52 of 2022 concerning Handling of Community Social Impacts on Land identified as destroyed land in the context of development in the public interest. Related to this regulation is the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Number 17 of 2021 concerning Procedures for Determination of Destroyed Land which is the implementing regulation of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Unit, and Land Registration. In principle, these regulations require caution and are based on real facts on the ground. The procedure for determining the destroyed land goes through several stages in the determination or determination as destroyed land as stipulated in Article 3 of the Minister of ATR/BPN n0.17/2021 which includes: In principle, these regulations require caution and are based on real facts on the ground. The procedure for determining the destroyed land goes through several stages in the determination or determination as destroyed land as stipulated in Article 3 of the Minister of ATR/BPN n0.17/2021 which includes: In principle, these regulations require caution and are based on real facts on the ground. The procedure for determining the destroyed land goes through several stages in the determination or determination of destroyed land as stipulated in Article 3 of the Minister of ATR/BPN no.17/2021 which includes:

- a. Location determination;
- b. Establishment of the Destroyed Soil Research Team;
- c. Socialization
- d. Identification, inventory and assessment; implementation of reconstruction or reclamation if the land owner declares that he will undertake reconstruction and/or reclamation; and/or;
- e. The issuance of the decree of the destroyed land.

The case that occurred was through case Number 23 P/HUM/2022, where the community, namely Munirul Hidayah and Samuri did not accept, that their land which was still actively used and was an object of land acquisition for development in the public interest was designated as destroyed land by the Ministry of Agrarian Affairs and Spatial Planning / BPN. The case reached the Supreme Court level and was reviewed by the Supreme Court on April 7, 2022.

The formulation of the problem in this discussion is about how the determination of destroyed land is determined by the government and that has been regulated in-laws and regulations and what are the legal consequences for the parties, namely the community and ATR / BPN after the Supreme Court decision.

METHOD

Discussion on: Legal consequences and Community social impact on Destroyed Land as an object of development for the public interest using a normative juridical approach, namely a discussion taken from material or materials from the library including journals, related literature and laws and regulations. The specifications of the writing of the discussion are analytical descriptive, the data sources are taken from secondary data with qualitative data analysis

DISCUSSION

1. Regulation of Destroyed Land in the Context of Development for Public Interest.

Individual land rights or legal entities are rights obtained from legal relations through various ways, for example from an inheritance, transfer of rights due to buying and selling, grants, will grant, auctions or directly from applications for state land. Utilization of land ownership rights by individuals and legal entities should maintain the land owned according to its potential. For non-agricultural individual owners, the owner of land rights should maintain the land he owns according to its potential, on the other hand, if the land he owns is agricultural, it must be worked on and increase fertility and prevent damage. Legal entities can also have land rights with the obligation to pay attention to the weak economy (Social Responsibility).

Legal certainty for owners of land rights is very much needed through the regulation of the registration of land rights. The Basic Agrarian Law number 5 of 1960 requires that every land right must be registered including property rights, business use rights, building use rights, use rights, land management rights, ownership rights to flat units, and state land. The implementing regulations are regulated in PP 10/1961 which was updated with PP 24/1960 and then PP 18/21 with online certification so that ownership of land rights can be given legal certainty. This legal

certainty is provided through the inclusion of land rights data into physical data and juridical data through measuring documents and land books.

The government has regulated and provided legal certainty legally for owners of land rights to be able to defend their rights, but in reality, the condition of land does not increase, it decreases, and land loss is very possible, due to natural processes, land is lost naturally or moved due to shifting places.² According to article 1 point 3 of the Presidential Regulation concerning the Handling of Social Impacts, community land is identified as destroyed land in the context of development in the public interest, destroyed land is land that has changed from its original form due to natural events and cannot be identified anymore so that it cannot be used. used and utilized as it should be. what is determined as destroyed land following the provisions of laws and regulations related to the procedures and determination of destroyed land? Understanding these natural events includes:

- a. Earthquake;
- b. Volcanic eruptions ;
- c. Tsunamis;
- d. Landslide
- e. Flood;
- f. Flash floods;
- g. Drought;
- h. Fire
- i. hurricane;
- j. forest fires;
- k. tidal waves and storms;
- l. Abrasion.³

According to Article 27 of the UUPA Number 5 of 1960, it is stated that if the land is destroyed, the land is erased, and the state does not guarantee the rights of the people whose land is lost due to natural events. Then in article 27 letter b of the UUPA, it is stated that if the ownership rights to the land are destroyed, there are no further regulations regarding the destroyed land.

The government limits the abolition or destruction of property rights from several government regulations as follows:

1. The abolition of property rights due to revocation of rights. The revocation according to article 18 of the UUPA is due to the public interest, including the interests of the nation and state together with the people;

² Asyer Andawan, Revitalisasi Ha katas tanah Yang Hilang Akibat Abrasi Menurut Undang Undang No 5 tahun 1960, 2017.

³ Liputan 6.com, <https://m.liputan6.com: News>

2. According to Presidential Decree 55 of 1993 concerning the Procurement of land rights for development in the public interest, with the Minister of Agrarian Affairs No. 1 of 1994, the abolition of property rights due to voluntary surrender;
3. According to PP No. 36 of 1998 concerning the control and utilization of abandoned land. , the abolition of property rights due to neglect.
Abandoned land is land that is not used and maintained properly and land that is not used according to the nature or purpose of the grantor of the right;
4. According to Article 21 paragraph (1) of the UUPA, it is determined that only Indonesian citizens are entitled and can obtain ownership rights to land. Ownership rights will be removed if the land is owned and controlled by legal subjects who are not entitled, such as foreign nationals.
5. Ownership rights, delete if the land is destroyed due to natural factors

Determination of destroyed land is regulated in-laws and regulations.

Determination of destroyed land according to statutory regulations by the authorized agency requires a series of processes, namely identification, inventory and in-depth assessment so that destroyed land is identified. Concerning the determination of the procurement of land rights for development in the public interest, it has been regulated in the latest Law, namely Law No. 2 of 2012 with implementation regulations of PP No. 19 of 2021. This Law is an implementing regulation of the 1960 LoGA, article 6, namely that ownership of land rights has a social function and article 18, namely that for the public interest including the interests of the nation and state as well as common interests, land rights can be revoked, by providing appropriate compensation as regulated in law. The criteria regarding the public interest are contained in Article 10 of Law Number 2 of 2012 which includes: a. Defense and social security; b. Related roads and railways include toll roads, tunnels, railway lines, train stations, railway facilities; related public water facilities including reservoirs, dams, bending, irrigation, drinking water channels, water sewers, and sanitation, and other water structures; related to public station facilities including ports, airports, and terminals; e. related to infrastructure including Oil, gas and geothermal infrastructure; f. related to electricity facilities including generation, transmission, substation, network, and distribution of electric power; g. related to air networks, including telecommunications and government information networks; h. related to public waste facilities including waste disposal and treatment network; I. related to hospitals, including Government Hospitals/local governments; j. related to public safety facilities, the forms vary; k. related to grave facilities including government/local government public burial places; l. related to public spaces include social facilities, public facilities, and public green open spaces; m. related to nature reserves include nature reserves and cultural reserves; n. related to offices include Government Office/Regional/Village Government;o. related to housing is limited to z management of urban slum settlements and/or land consolidation, as

well as housing for low-income communities with rental status; p. related to Education include: Educational infrastructure or schools Government/Local Government; q. related to sports include: Government/regional government sports infrastructure; r. related to market facilities include public markets and parking lots. The 18 criteria are added to the 6 criteria contained in Article 2 PP 19 of 21 which includes several areas, namely s. Oil and gas upstream and downstream industrial areas; t, special economic zones; u industrial zones; v. tourism area; food security area; Technological development areas, all of which are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises and Regional-Owned Enterprises. special economic zones; u industrial zones; v. tourism area; food security area; Technological development areas, all of which are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises and Regional-Owned Enterprises. special economic zones; u industrial zones; v. tourism area; food security area; Technological development areas, all of which are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises and Regional-Owned Enterprises.⁴

About reclamation, reclamation is an activity to change coastal waters into the land.⁵ Reclamation is intended as an effort to change a low land surface (usually affected by standing water) to a higher one (usually not affected by standing water).⁶ Based on this definition, reclamation can be interpreted as changing from a bad/damaged area to a useful area. The new area can be used for residential areas, business industries, shops, agriculture and tourism objects. Besides that, Reclamation can form a new land area, either in the coastal area or in the middle of the ocean, the new land becomes an area of urban expansion to develop a new city which is felt that the mainland area can no longer accommodate global regional development. The expansion of the city that has been carried out through reclamation is a special area for the capital city of Jakarta. These impacts lead to reclamation not only in contact with environmental problems but directly or indirectly reclamation can come into contact with industrial, forestry, marine and fishery issues. It can even come into contact with regional boundaries, such as in Singapore.⁷ Reclamation is included in the territory controlled by the state and is intended for the procurement of land rights for development for the public interest, although it has not been comprehensively regulated specifically regarding land reclamation.

⁴ Widyariini Indriasti Wardani, 2021, Hukum Pertanahan, Penerbit, Fak. Hukum Untag

⁵ Sri Heruwati Susilo, Tanah Hasi Reklamasi Kaitannya dengan Hukum tanah Nasional, View metadata, citation and similar papers at core.ac.uk ,jurnal universitas 17 Agustus 1945 Jakarta

⁶ Wisnu Suharto dalam Maskur, 2008

⁷ Ibid, Sri heruwati Susilo

Determination of destroyed land, which is the object of land rights procurement for development for the public interest, for example, reclamation areas, needs to be more careful because it is in contact with the community related to livelihoods as fishermen.

2. The Supreme Court won the community in the determination of the destroyed land case by ATR/BPN.

The process of determining destroyed land by the government has been regulated in the Minister of Agrarian Regulation Number 17 of 2021 which goes through the following:

a. Location determination.

1. The initial step is for the Head of the Land Office to determine the area or location identified as land that will be designated as destroyed land, this is based on:
 - Results of monitoring and evaluation activities;
 - Based on information from various parties.
2. Making a location map of the initial indicated soil data
3. Preparation of an inventory list indicated that the land was destroyed, including the name of the right holder, type and number of title, and the number of measuring documents. identification number Land parcel, village/ward, sub-district where land is located, land area, land use/utilization and/or land registration records

b. The formation of a team of researchers for destroyed lands is determined by a decree.

Its membership consists of the Head of the Land Office, Assistant to the Regent/Mayor in government or other fields, Head of the survey and mapping section of the Land Office, Head of the section on determining rights and registration of the land office, Head of the section on land management at the Land Office. The marine/fishery sector office and related agencies, the head of the village/ward area of land, the coordinator of the maintenance of land data or an official appointed as secretary.

The formation of the team is made according to the format that has been made.

c. The socialization of destroyed land is carried out by the Research Team by informing all holders of Management rights and/or rights to land indicated as destroyed or to parties with an interest in the land indicated by the destroyed land.

d. Identification, inventory, and assessment of land indicated by land being destroyed are carried out by the research team through a field inspection. It includes types of rights, land ownership evidence (certificate), ownership/control, use/utilization, current state of the land, land area, and boundaries of land parcels. The data is written in the minutes which are written based on the conditions and facts. The minutes and data are attached which form an inseparable part.

The data is then reviewed by the research team based on physical data and juridical data on land parcels through the coordination meeting of the Musnah Land Research Team.

The Destroyed Land Research Team compiles a treatise containing: Legal Basis, a description of the rights designated as destroyed land, supporting data, studies, conclusions, and recommendations on land parcels designated as destroyed land.

e. The announcement is made by the Head of the Land Office, which is intended to give priority to the holders of Management rights and/or land rights to carry out reconstruction or reclamation.

The announcement contains a serial number of land parcels, right holders, land stats, description of objects; use/ utilization; registration records; and or results of field research.

However, there is an exception in Article 15 of Permendagri ATR/BPN No. 17 of 2021 which states that for holders of management rights and/or land rights used and/or for reconstruction and reclamation by the central government/regional government or other parties in the context of development for the public interest, then the holders of Management Rights and/or land rights are not given priority to carry out reconstruction or reclamation. The plot of land is designated as destroyed land, after which the holder of the management rights and/or land rights is assisted with spiritual funds as regulated in-laws and regulations.

In connection with case Number 23/P/HUM/2022, the Supreme Court granted the request of the community (Munirul and Samuri) who claimed that the land on the coast was used as a fish, shrimp and shellfish pond business as a source of livelihood, because it was designated as destroyed land. by the Ministry of ATR/BPN.

Consideration of the judicial review states that in the provisions of Article 66 of Government Regulation Number 18 of 2021 which specifically regulates land destroyed, namely that before the stipulation of destroyed land, the holder of management rights and/or land rights is given priority to carry out reconstruction or reclamation of land use, while the object of the dispute does not give the priority rights. (According to the Deputy Chairperson of the Supreme Court for Judicial Affairs, Andi Samsan Nganro). The conclusion of the decision is: "Reject the rest of the applications because the object of the dispute is in the form of the provisions of Article 15 paragraph (2) and paragraph (3) of Ministerial Regulation No. 17 of 2021 does not conflict with Government Regulation No. 18 of 2021 article 66.

The legal consequence of the Supreme Court's judicial review decision is to give full rights to the community to be able to reclaim the plots of land that are still land for daily livelihoods that were previously designated as destroyed land. For the Ministry of ATR/BPN, who thinks that the object of the dispute is the object of the procurement of land rights for the public interest, according to the provisions of Article 15 paragraphs (2) and (3) state that no priority is given to the holder of Management rights/land rights, it is considered inappropriate in Judicial review decision of the Supreme Court.

According to Gustav Redburch, the operation of law in society must contain 3 (three) identity values, namely:

1. The principle of legal certainty (*rechmatigheid*), this principle is reviewed from a juridical point of view;
2. The principle of legal justice (*gerechtigheid*), this principle reviewed from a philosophical point of view, where justice is the guidance of all people in court, namely equal rights;
3. The principle of legal expediency (*zwecht matigheid* or *doelmatigheid* or utility)

Each of these principles has a meaning that cannot be excluded from one another because it contains meanings that must be accountable to one another. The best decision for the judge is if the decision contains these 3 (three) elements, so that it can reflect a definite, fair, but still a human decision. The principle of "legal benefit" is the principle that accompanies the principle of justice and legal certainty, in implementing the principle of legal certainty and the principle of justice, the principle of expediency should be considered. The analysis that can be developed is that the judicial review decision from the Supreme Court emphasizes the principle of benefit for the community by considering.

CONCLUSION

1. There are several types of land designated as destroyed land:
 - a. Due to natural factors that do not get legal protection, the state does not guarantee if the land is lost due to natural factors, including:
These natural factors are earthquakes, volcanic eruptions, tsunamis, landslides, floods, flash floods, droughts, fires, tornadoes, forest fires, tidal waves and storms, and abrasion.
 - b. Due to government stipulations, including:
The abolition of property rights due to revocation of rights. The revocation according to article 18 of the UUPA is due to the public interest, including the interests of the nation and state together with the people;
According to Presidential Decree 55 of 1993 concerning the Procurement of land rights for development in the public interest, with the Minister of Agrarian Affairs No. 1 of 1994, the abolition of property rights due to voluntary surrender;
According to PP No. 36 of 1998 concerning the control and utilization of abandoned land. , the abolition of property rights due to neglect.
According to Article 21 paragraph (1) of the UUPA, it is determined that only Indonesian citizens are entitled and can obtain property rights to land. Ownership rights will be removed if the land is owned and controlled by legal subjects who are not entitled, such as foreign nationals.

2. The legal consequence of the decision of the Judicial Review of the Supreme Court is to give full rights to the community to be able to reclaim plots of land that are still land for daily livelihoods that were previously designated as destroyed land. For the Ministry of ATR/BPN, who thinks that the object of the dispute is the object of the procurement of land rights for the public interest, according to the provisions of Article 15 paragraphs (2) and (3) state that no priority is given to holders of management rights/land rights, it is deemed inappropriate in Judicial review decision of the Supreme Court.

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