Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.94, 2020

Settlement of Indemnification of Customary Community Land in Land Procurement for Developers for Public Interest

Dr.Adonia Ivone Laturette, SH, MH *
Lecturer, Faculty of Law of Unpatti University

Abstract
Research with the title Settlement of Indemnification of Customary Community Land in Land Procurement for Development in the Public Interest in principle the principle of customary law communities is very closely related to customary land, especially regarding patterns of control and use. However, over time and the strengthening of the role of the State in various fields, the role of indigenous peoples in its development has faced various challenges and is increasingly weakening before the State. The customary law community is a party that is very vulnerable to land acquisition for public interests. Under the pretext of public interest, often the rights of indigenous and tribal peoples are taken over without any attempt to replace them with other land ownership rights. Many problems have arisen between the central government and regional governments, investors and indigenous and tribal peoples related to the implementation of development and investment on land which is the property of indigenous and tribal peoples.
Keywords: Settlement of Indemnification, Customary Law Community Land, Public Interest
DOI: 10.7176/JLPG/94-01
Publication date: February 29th 2020

1. Introduction

Land has a very important position in community life. It is undeniable that the need for land continues to grow and is more complex, the area of land does not increase temporarily as one of the agrarian resources has a very important role in human life and development as the main means. Communities in the village and city community each take advantage of according to their needs. In order to realize a just and prosperous society, the government made a general plan regarding the supply, designation and use of agrarian resources for development needs in order to achieve the greatest prosperity of the people. Development as a form of growth and development of an area always has implications for the increasing need for land.

In Indonesia the use of land and other natural resources contained therein is regulated in the provisions of Article 33 paragraph (3) of the 1945 Constitution which states: "The earth and water and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people, "This article shows that:

a. The state controls the earth, water and natural resources contained therein.
b. The earth, water and natural resources contained therein are used for the greatest prosperity of the people.

The statement explains 2 (two) things, i.e

1) That constitutionally the State has strong legitimacy to control land as part of land as part of the earth
2) The mastery must be in order for the prosperity of the people.

Through this state of control, the State as the ruler will always be able to control or direct the management of the functions of the earth, water and space as well as the natural resources contained therein in accordance with existing regulations and policies, namely within the scope of juridical control which is public.[1] The state has power over land in the sense that the state has the authority to regulate all relations to land so that various dimensions of community needs individually or in groups can be met. In Article 18 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, it is explained that "for the public interest, including the interests of the nation and the State and the interests of the people, land rights can be revoked, by providing adequate compensation and in the manner regulated by law "

Furthermore, in Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian means that the State is given the authority to regulate, administer and use land, water and space. Therefore, in fulfilling the demands it is not uncommon that land owned or controlled by legal subjects as private rights is affected by the program to fulfill the designation and use of earth, water and space. Therefore through the laws and regulations made by the Government, the takeover of private rights is carried out on grounds for the public interest. There are 3 (three) ways that can be done by the State to meet these needs, namely the first is done in the usual way, namely buying and selling, exchanging and others, the second is done through land acquisition agencies, and the third is done through the revocation of land rights.

Kegiatam development is not only the responsibility of the government, but also the active role of the private

[1]Muhamad Bakri, *Hak Menguasai Tanah Oleh Negara* (*Paradigma Baru Untuk Reformasi Agraria*), Citra Media, Yogyakarta, Tahun 2007, P. 5

sector and the community in general is needed. To carry out development activities can not be separated from the need for land as a container of its activities.

Exemption or relinquishment of land rights is the release of legal relations between a person and the land he owns by way of compensation which is based on the basis of deliberation between the two parties. While the revocation of land rights is the forced take of land by the State on land owned by someone which results in the land rights being abolished. Land acquisition activities for the public interest are often known as the term Land Acquisition regulated in the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Government Regulation Number 40 of 2014 concerning Amendment to Presidential Regulation number 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest, Presidential Regulation Number 148 of 2015 concerning Fourth Amendment to Amendment to Presidential Regulation Number 71 of 2012 concerning Implementation of Land Procurement for Development in Public Interest , previously the arrangement of land acquisition for public interest was regulated in Presidential Decree Number 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest. Follow-up as the implementation of the Presidential Decree was issued by Regulation of the Minister of Agrarian / Head of National Land Agency Number 1 of 1994 concerning the provisions of the Implementation of Presidential Decree number 55 of 1993 concerning Land Procurement for Implementation of Development in the Public Interest.

The granting of compensation for land acquisition in the public interest is often the problem and is an obstacle to land acquisition because the compensation is considered too low and is considered unable to guarantee further welfare. Moreover, the assessment of compensation prices is based on the calculation of the Tax Object Sales Value hereinafter referred to (NJOP) against The land that will be used as the object of development is considered very low, not according to the prevailing land price in the community.

The problems that will be examined in writing this article are; How to settle compensation for customary community land for the acquisition of land for development in the public interest?

2. Research Methods

Research Methods This study uses normative legal research methods based on secondary data sources consisting of primary, secondary and tertiary legal materials (Soekanto&Mamudji.[1] The legal research methodology basically covers descriptions of the method used, the type of research to be carried out, the method of data collection, as well as the elaboration of data and data analysis. The legal material collection technique used in this legal research is through literature study which is based on secondary data / secondary sources by reviewing positive legal provisions and general legal principles, in relation to the issues under study. The data processing and analysis technique used by the author in this study is a qualitative data analysis technique, which is a description of the methods of analysis in the form of collecting data and then edited to further be used as qualitative analy.

3. Results and Discussion

3.1. Public Interest in Land

The conception of the right to control by the state in the LoGA then gave birth to the policy of "revocation of rights to land and objects thereon" contained in Law Number 20 of 1961, State Gazette of 1961 No. 288, September 26, 1961, contained in article 1, namely:

"For the public interest including the interests of the Nation and the State as well as the common interests of the people, thus the interests of development. The President is in a state of compulsion after hearing that the Minister of Agrarian Affairs, the Minister of Justice and the Minister in question can, can revoke the rights to the land and the objects that are on it. "

To carry out the provisions of Law Number 20 of 1961, Government Regulation No. 39 of 1973 concerning the Determination of Indemnity of Damages by the High Court in connection with the Revocation of Rights to the Land and Objects Above and Presidential Instruction of the Republic of Indonesia No. 9 of 1973 Concerning Implementation Revocation of Land Rights and Objects Above.

More technically the juridical provisions were followed up with Presidential Decree of the Republic of Indonesia Number 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest. Follow-up as the implementation of the Presidential Decree was issued Regulation of the Minister of Agrarian / Head of the National Land Agency Number 1994 concerning the provisions of Implementation Number 55 of 1993 concerning Land Procurement for Development in the Public Interest.

It cannot be denied that the community's need for land continues to grow and is increasingly complex, the area of land does not increase while land as one of the agrarian resources has a very important role in human life

[1]La Ode Angga, Barzah Latupono, Muchtar Anshary Hamid Labetubun, Sabri Fataruba, 2020: Implementation Of Precautionaryprinciple In Gold Mine Exploitation In Romang Island, Southwest Maluku Regency By PT. Gemala Borneo Utama Based On Law Number 32 Year 2009 P. 3625) International Journal Of Scientific & Technology Research Volume 9, Issue 01, January 2020 Issn 2277-8616 -3622 Ijstr©2020 Www.Ijstr.Org

and development as the main means. Communities in the village and city community each take advantage of according to their needs. Development as a form of growth and development of an area always has implications for the increasing need for land. Therefore it is precisely what was stated by Abdurrahman, that:[1]

> "Land can be valued as a property that is permanent in nature, and can be reserved for life in the future. Land is the place of settlement for most of humanity, aside from being a source of livelihood for those who make a living through farming and plantations, and in the end it is land that is the last place for people to die. "

In the process of sustainable development, the need for land increases, while the land does not increase. This continues to develop so that it often creates difficulties in the provision of land for development purposes which results in the value of the land increasing so that control of the land at present experiences a shift in value from social functions to economic functions. As a result of the different functions and interests of the land, this causes many problems in land use. This situation is further exacerbated by land law policies, both at the national level and at the regional level, which do not heed the growing reality in society.

Control of ideas and implementation of development by the state finally puts the people in a position opposite the state, both in the sense as the subject of development and as victims of development designed or determined by the state.[2] Not surprisingly, land conflicts occur, especially between community groups and the government as the ruler. Often the government takes people's land with a reason for development. According to,[3] in practice there is often a clash of substance and method of regulation between state law on the one hand with customary law and religious law on the other, due to fundamental differences regarding the source of authority, regulatory authority, substance of the rules, regulatory procedures and regulatory objectives whereby state law is sourced from the authority of the state authority, created through formal mechanisms and set forth in the form of formal rules in the form of "Top Down" legislation whereas customary law is sourced from the authority of community authorities, its existence is in line with the existence and development society is "Bottom Up".

Facing the need for land in development activities which of course requires extensive land, customary lands that have been controlled by indigenous peoples have begun to be looked after to meet these development needs. Especially if the content of natural resources in or on customary land is considered vital to meet the needs of the lives of many people as stipulated in the basic concept of controlling land by the state in Indonesia contained in Article 33 paragraph 3 of the 1945 Constitution and various laws other regulations not to hesitate to take the land. In such a situation, the indigenous community did not necessarily give the traditionally-held customary land to be converted, controlled and managed by the state in mcollaboration with other parties who have capital

3.2. Land Procurement for Public Interest

Land acquisition for development in the public interest in Indonesia often causes turmoil in the community. Often the land acquisition that is followed by the acquisition of community-owned land causes disputes that result in violence. Disputes over land acquisition are basically due to very significant differences in compensation for land acquisition itself. while the government considers that the compensation given to the public is in accordance with applicable regulations.

Problems that cause disputes in land acquisition often occur due to land acquisition under the pretext of public interest, sometimes injuring the community including the customary law community, because the use of land taken by the government is not as originally planned, which causes suffering for the community who were originally holders right. Sometimes this takeover of land leaves legal issues. According to Gunanegara, problems related to land acquisition are not only juridical issues, but also develop into socio-cultural and political economy problems.[4]

Land acquisition activities for public purposes are often known as the term Land Procurement using the legal basis of Law No. 2 of 2012 concerning the acquisition of Land for Development in the public interest. In Article 1 paragraph (90) of Law Number 2 of 2012 it states that the release of land rights is an activity of terminating legal relations from parties entitled to the State through land institutions. Revocation, release and release of land rights are not only carried out by the government for the construction of various development projects in the public interest by the private sector but the implementation is carried out in other forms.

Various problems often arise in the process of land acquisition, both in terms of land status and the form and amount of compensation to be given to the community. In the context of land acquisition for the implementation of development in the public interest, many problems arise due to regulatory weaknesses.

---

[1]Abdurrahman, *Masalah Pencabutan Hak Atas Tanah da Pembebasan Tanah di Indonesia, Seri Hukum Agraria I***,** hal 1, Alumni, Bandung
[2]Mahanani Subekti, Kedudukan *UUPA 1960 dan Pengelolaan Sumber Daya Agraria di Tengah Kapitalisasi Negara (Politik Kebijakan Hukum Agraria Melanggengkan ketidakadilan*), Jurnal Analisis Sosial, hal 21. vol. 6, no. 2 Juli 2001
[3]Basuki Rekso Wibowo**,** *Hukum Adat & Hukum Negara di Bidang Pertanahan, Sumber daya Alam & Kewarisan : Perbandingan, Perbeturan & Solusi.*, Pelatihan Mediator Tingkat Lanjut (Masyarakat Adat, Tokoh Agama, dan LSM), Batu – Malang, 3 Desember 2007
[4] Gunanegara, *Rakyat & Negara, Dalam Pengadaan Tanah Untuk Pembangunan,* Tatanusa, Jakarta, 2008. p. 5

3.3. The Rights of Indigenous Peoples in Land Procurement for Public Interest

A society from its simplest to the most modern form, will always have a legal code that guides the life together. Because where there are people, including customary law communities, there will always be a set of rules called the rule of law. A set of rules called the rule of law is essentially a concrete translation of a pair of values that are harmonized. For this reason, it is very important to have a strong legal system.

In relation to the implementation of development, the law has a function as a guardian of order and security, as a means of development, as a means of enforcing justice, and as a means of public education.[1] Recognition of the rights of indigenous and tribal peoples varies widely from various dimensions. The customary rights of the customary law community in the constitution in the elucidation of article 18 of the 1945 Constitution (before the amendment) have made recognition of indigenous peoples who are an integral part of the Republic of Indonesia that must be recognized and protected.

In the reform era that began in 1989, recognition, respect and protection of customary rights continue to be regulated in the 1945 Constitution (after the amendment) article 18 B as follows:

(1) The State recognizes and respects special local government units that are regulated by law.
(2) The State recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the Principles of the Unitary State of the Republic of Indonesia as stipulated in the law ”as well as in Article 28I paragrap
(3) as follows: Cultural identity and traditional community rights are respected in line with the times and civilizations.

However, there is no explanation as to what is meant by the State recognizing and respecting the unity of customary law communities and their traditional rights. Even though there is no explanation about it, the rights of indigenous peoples must be recognized and respected as long as it still applies to the community as contained in the 18B of the 1945 Constitution. must be based on the sovereignty of the customary law community over the area or land that is the source of their lives.

The legislation stated above clearly shows the recognition of the rights of indigenous peoples to natural resources (customary land). Article 6 of Law No. 39 of 1999 concerning Human Rights which among other things said

(1) In the context of upholding human rights, differences and needs in the customary law community must be considered and protected by the law, the community and the government.
(2) The cultural identity of the customary law community, including on customary land is protected in harmony with the times.

Article 6 of Law No. 39 of 1999 provides legal protection to the cultural identity of indigenous and tribal peoples, including the culture of their rights to customary land that is harmonized with the times, "indigenous peoples who in reality still exist" as formulated by the LoGA or in laws that provide protection for indigenous peoples who in reality still exist, are protected by law, the community and the government rather than the adat community, which still exists and with all its limitations and backwardness. However, what needs to be seen and protected by customary law communities who have customary rights to their land is customary law communities which are loaded with their customary culture which are lived and respected in accordance with the development of the times. With regard to human rights, the Protection of Human Rights in Indonesia is clearly regulated in the 1945 Constitution after the amendment, which is contained in Article 28 A-28 J. So there is constitutional protection of human rights. The enforcement and protection of human rights law must be in accordance with the principles of a democratic rule of law.

For this reason, there is a need for legal protection of indigenous and tribal peoples from arbitrary actions that may occur by the government.

Legal protection of human rights clearly demands equality before the law without discriminating against anyone. With the similarity will avoid the attitudes and actions of arbitrary parties who feel higher position, because if this is allowed to occur violations of human rights and cause what is regulated by the Act becomes meaningless.

For indigenous peoples, land has a very important meaning and cannot be separated from their lives and has a religious meaning. Besides having an important meaning for land humans also has a strategic position for the development of a nation (because it is not only a factor of production in the economic sense but also contains social, political, cultural significance as a whole and even tends to have a religious meaning). Initially, it must be recognized that indigenous peoples have authority that can be said to be very autonomous and absolute in the management and use of customary land and various natural resources within it. In the customary law system, land is the common property rights of the customary law community or known as ulayat rights. This right is the highest right.

[1] Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, Banacipta, Bandung

3.4. Provision of compensation for development in the public interest

Land that is needed by the government for the public interest requires collateral, both for citizens and for the government, because basically land issues cannot be considered normal, this is because land is a potential need in development.

The thing that needs important attention in the acquisition of land in the public interest is related to the problem of determining compensation. Compensation is as a form of recognition, respect and protection of human rights, for the private sector the acquisition of land rights is carried out in a direct approach with the holders of land rights and will be obtained through the process of buying and selling, exchanging and others in accordance with the agreement.[1]

For customary law communities or holders of land rights, the legal relationship with land is an important legal relationship. The eviction of land rights or the transfer of these rights in the public interest should be done carefully and with a sense of justice so that no one feels disadvantaged. Therefore, the most important thing is that there is an agreement that the customary law community or land rights holders feel that they are not disadvantaged and forced to release their land.

The compensation can be given in the form of money, replacement land, resettlement, share ownership, other forms agreed by the parties. However, the problem is if the holder of land rights does not approve all forms and types of compensation and does not want to release the rights even though there is compensation.

4. Closing

Basically, customary law communities have a very close relationship with customary land, especially regarding patterns of control and use. However, over time and the strengthening of the role of the State in various fields, the role of indigenous peoples in its development has faced various challenges and is increasingly weakening before the State. The customary law community is a party that is very vulnerable to land acquisition for public interests. Under the pretext of public interest, often the rights of indigenous and tribal peoples are taken over without any attempt to replace them with other land ownership rights. Many problems have arisen between the central government and regional governments, investors and indigenous and tribal peoples related to the implementation of development and investment on land which is the property of indigenous and tribal peoples.

In Law Number 2 of 2012 concerning Land acquisition for development in the public interest includes several stages through the stage of land acquisition planning, the stage of preparation for procurement, the stage of implementation of land acquisition. So that tenure, land ownership, use and utilization of land can be identified and inventoried so that the valuation in providing compensation. Provision of compensation can be given in the form of money, replacement land, resettlement, ownership of shares and other forms agreed by the parties.

References

Book and Journal

La Ode Angga, Barzah Latupono, Muchtar Anshary Hamid Labetubun, Sabri Fataruba, ***Implementation Of Precautionaryprinciple In Gold Mine Exploitation In Romang Island, Southwest Maluku Regency By Pt. Gemala Borneo Utama Based On Law Number 32 Year 2009 International*** Journal Of Scientific & Technology Research Volume 9, Issue 01, January 2020 Issn 2277-8616 -3622 Ijstr©2020 Www.Ijstr.Org

Abdurrahman, ***Masalah Pencabutan Hak Atas Tanah da Pembebasan Tanah di Indonesia****, Seri Hukum Agraria I***,** Alumni, Bandung

Basuki Rekso Wibowo***, Hukum Adat & Hukum Negara di Bidang Pertanahan, Sumber daya Alam & Kewarisan : Perbandingan, Perbeturan & Solusi.***, Pelatihan Mediator Tingkat Lanjut (Masyarakat Adat, Tokoh Agama, dan LSM), Batu – Malang, 3 Desember 2007

Gunanegara, ***Rakyat & Negara, Dalam Pengadaan Tanah Untuk Pembangunan****,* Tatanusa

Mahanani Subekti, ***Kedudukan UUPA 1960 dan Pengelolaan Sumber Daya Agraria di Tengah Kapitalisasi Negara (Politik Kebijakan Hukum Agraria Melanggengkan ketidakadilan***), Jurnal Analisis Sosial vol. 6, Juli 2001

Muhamad Bakri, ***Hak Menguasai Tanah Oleh Negara* (*Paradigma Baru Untuk Reformasi Agraria*),** Citra Media, Yogyakarta, Tahun 2007.

]Maria. S.W. Sumardjono, ***Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*,** Kompa Media Nusantara, Jakarta, 2008

Sunaryati Hartono*, Hukum Ekonomi Pembangunan Indonesia*, Banacipta, Bandung

Sri Hajati, ***Pengaturan Hak Atas Tanah Dalam Kaitannya dengan Investasi***, Disertasi. Program Pascasarjana Universitas Airlangga, Surabaya, 2003

[1]Maria. S.W. Sumardjono, ***Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*,** Kompas Media Nusantara, Jakarta, 2008, p. 3.

Laws

Undang-undang Dasar Negara Republik Indonesia Tahun 1945
Undang_undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok Agraria (UUPA)
Undang_Undang Nomor 2 Tahun 2012 Tentang Pengadaan Badi Pembangunan Untuk kepentingan Umum
Peraturan Presiden RI Nomor 71 Tahun 2012 Tentang Penyelenggaraan Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.