

Legal Analysis of Land Acquisition for Public Interest in South Sulawesi Province

Dr.. Drs. H. Abd. DP Azis, SH, MH
Lecturer of Faculty of Teacher-UVRI Makassar Indonesia
* abd.azisdp@gmail.com

Abstract

This study aims to analyze and determine the procurement of land for public purposes in accordance with the legal principles that apply, and analyze the substance of the legislation either on the validity *Onteigeningsordonantie*, Law no. 20 of 1961, No. Permendagri. 15 In 1975, Presidential Decree. 55 in 1993, and Presidential Decree No.. 36 of Presidential Decree No. 2005 jo. 65 of 2006. This study uses a normative juridical approach with secondary data as the primary data source supported by research and primary data. Determination of the sample based on *purposive sampling* method by the number of respondents of 100 respondents. The specifications of the study is a descriptive analysis, while the data collected was analyzed qualitatively.

Key words: Land Acquisition Law, Public Interest

1. Introduction

Superiority must respect the public interest and the interests of individuals. Because private rights have been secured 1945 Constitution, particularly Section 28H and 28G. The public interest is defined by Article 1 of Law Repeal Land Rights, which categories "for the interests of the nation, the people and the interests of common interest development" without further elaboration, and what kind of interest of the nation and the country, what kind of common interests and the people's, especially what's in the interests of development or construction that how the public interest. Meaning the interests of the nation and the state, as well as the interests of the common people is exemplified in the explanation of the development of the Law Repeal Land Rights in figure 4 (b) as the construction of roads, ports, buildings for industry and mining, housing and health care facilities and other efforts in the implementation of national development plans. Translation of general interest must remain in the form of clear norms (*open normen*) is not just an example of the located the norm explanation.

The meaning of public interest established by the Constitution Revocation of Land be narrowed by Presidential Regulation No. 36 Year 2005, which simply states that the public interest is "the interests of the majority of people" with the criteria namely; conducted by Government / Local Government which then became 21 (twenty-one) type of development in the public interest.

Meaning vagueness interests of the nation, the people and the common interests of development adopted by Act of Revocation of Land hereinafter by Article 7 of Presidential Decree No. 36 of 2005 was about to be confirmed in a list of the types of development in the public interest (*Listing / enumerative*). The result is crisscrossed conception, the principle of ambiguity, vagueness and even the criteria of common interest between the adopted Law Repeal Land Rights adopted by Presidential Regulation No. 36 Year 2005, which was then narrowed again be only 7 (seven) types of development in the public interest by Presidential Regulation Number 65 of 2006, but added one more criteria (criteria: owned and / or may hereafter be owned by the Government / Local Government).

Furthermore, Maria SW Soemardjono say; when orientation is more focused on economic growth, the public interest tend to be broadly defined. Conversely, if economic growth is not the focus, the public interest tends to be narrowly defined.

Factors were economic differences that make the concept into widespread public interest-narrowing does not seem entirely appropriate, because of many factors and not only economics that make the meaning of the public interest to grow and shrink, such as political, legal, socio-cultural, including defense can also affect the meaning of the public interest.

Rampant practice of eviction in order to procure land for public purposes in some areas in the province of South Sulawesi as, among others, the construction *flay over* in Makassar. Widening construction Sultan Hasanuddin International Airport in Maros regency, construction of Bili-Bili dam reservoirs in Gowa did not rule directly contrary to the general principles of law that mengsyaratkan absence of legal protection and fair treatment to the holders of land rights. Therefore, the interests of the powers contained essentially guaranteed and protected by law. With the legal protection of the rights subject to demand their rights against any other

party, including disorders of the State. That is, the benefit is the right target, and therefore not only be protected by the law but also the recognition of rights.

1.1 Problem Formulation

Based on the above background, it is a problem in the study is: Does the procurement of land for public use is in conformity with the general principles of law that apply?, What is the substance of legislation governing land acquisition for public purposes in accordance with the principles of good governance?, What factors are affecting the mechanism of land acquisition for public purposes in the province of South Sulawesi?

1.2 Research Objectives

The objectives of this study were to: (1) Assess and explain on general principles of law that apply to the procurement of land for public purposes, (2) more aware and examine the substance of legislation governing land acquisition for the benefit public in relation to the principles of good governance, (3) Assess and identify the factors that influence the mechanism of land acquisition for public purposes.

2. Theory Study

2.1 The nature of Public Interest

Formulation of public interest has been known since ancient at the time the policy was getting most democratic form, with the understanding that the policy is no longer intended for the benefit of the elders (*res patricia*), but has been in the public interest (*res publica*). In fact, although the actual laws are made to control the powerful people that are winning. This means that the laws established in the name of public interest ultimately misconduct that became law.

Meaning of the public interest is not easily defined and is a vague sense (*vage begrip*), so it is not possible institutionalized into a legal norm, which if enforced would consequently become the norm fuzzy (*vage normen*).

JH Bruggink stated that the public interest as a "vague sense" means an understanding that their contents can not be determined precisely, so that its scope is unclear. Furthermore he said: "if it contains a definition of each border region is" not clear "the notions that" fuzzy "notions regarding the essence itself is unclear. Definition of "fuzzy" in the law that so we are very familiar with, since the legislators are sometimes used.

2.2 Principles and Theory of Land Procurement Law

2.2.1 Principles of Land Acquisition Law

Land Procurement for Development in the public interest or spirit must be based on the main points of wisdom for land acquisition. Principles of wisdom contained in the Presidential Decree. 55 Years of Presidential Regulation No. 1993 jo. 36 of Presidential Decree No. 2005 in conjunction. 65 of 2006 which needs to be addressed in the implementation of land acquisition for development purposes are:

- a. The existence of public interest;
- b. The release or transfer of rights;
- c. The principle of respect for the right;
- d. Accordance with this requirement RUTR or RW / K;
- e. Not for profit (Khoidin)

2.2.2 Land Acquisition Law Theory

In regard to the land question, the basic theory used is "legal system" of Lawrence M. Friedman. The following will set out the content of the theory. According to Friedman, W; Law is seen as a stand-alone. Linkages with other elements is a distinctive marker on the legal system. Another element is intended Friedman economics and politics. Picture of the relationship between these subsystems included in the description of the legal system in a society are part of the social system. The three main components of the present system of law is, *legal structure*, *legal substance*, and *legal culture*. These three components determine each other, as well as with respect to each other.

Terminology of the legal system as part of the social system, it implies that the legal system can not be isolated from the effects of social power. How and what are the effects of the social system into law and social unit through what the effect last? Posture social forces that are constantly working in the law can be shaped, "destructive," "continue," "refreshing." Choosing which parts of the law that will be used or not used, whether to replace, rotate (*detours*) or take shortcuts (*bypass*); did it open or closed, is a determinative effect on the operation of non-power law. All of which are best described as a *legal culture*. *Legal culture* is part of the culture in general (*the general culture*). The elements included in it is *custom*, *opinion*, way of working and thinking. It can be described as their attitude toward the law (*attitude of law*). (Friedman, W)

2.2.3 Conflicts of Rights and Interests

Essentially, the process of land acquisition is a waiver of the ownership of land and / or the objects that exist on it is done voluntarily in the public interest. When land acquisition for public purposes or in other words, the release of land rights does not happen voluntarily, or deadlock. Then the state may use coercion to enforce land revocation institutions as regulated in Law Number 20 Year 1961 concerning Revocation of Land and Bodies above It.

According to Fauzi N, that; dynamics in the development of the subject land occupies a special position as a factor of production and capital can not be substituted, are not transferable and can not be reproduced. Soil is also the base residence, even for the people of Indonesia are heterogeneous, meaning land of nationalist struggle, as reflected in the phrase "homeland". Diverse meanings and so important on the ground leads to the main essence of the land for the people's welfare.

2.2.4 Patterns in Land Acquisition Compensation

The term compensation in the laws and regulations in Indonesia are not consistent, both in usage and meaning, for example, Article 18 of the BAL and Law No. 20 of 1961 uses the term "compensation", while the Minister of Home Affairs Regulation No. 15 of 1975 uses the term "compensation", and Presidential Decree No. 55 of 1993 uses the term "compensation" in the next Presidential Regulation Number 36 of 2005 Jo. Presidential Regulation No. 65 of 2006 uses the term "compensation".

BAL and Act No. 20 of 1961 does not define the meaning of compensation, but the meaning of the new compensation formulated by Presidential Decree Number 55 Year 1993 as "reimbursement for the value of land and buildings, plant and / or other objects related to the soil as a result of the release of rights over land".

Meaning compensation reformulated by Presidential Regulation No. 36 of 2005 as "substitution of both physical harm and / or non-physical as a result of the land acquisition that has land, buildings, plants, and / or other objects relating to land can provide better survival and socio-economic levels before exposure to land acquisition".

3. Methodology

The approach used in this study is the approach to legislation (*statute approach*), arguing that the issue of land acquisition for public purposes has been provided for in Presidential Decree No. 36 of 2005 Jo Presidential Regulation Number 65 of 2006. However, do not ignore the case approaches the empirical study, in order to deepen the normative studies. Thus, this type of research emphasis on the study of normative legal research.

The research was conducted in the province of South Sulawesi, especially the city of Makassar, Gowa, Pare-Pare and Tana Toraja. choosing the location of this study was based on the consideration that South Sulawesi is being Actively carry out development in all areas of development and in the realization of the large land area required to meet development needs.

4. Discussion

4.1 Implementation of Land Acquisition for Public Interest and Relation With Principles Applicable Law

To meet the demands of local government development in South Sulawesi need for the implementation of land development for public interest in a fairly extensive amount, such as, among others:

- Land for the construction of a regional terminal;
- Land for the construction of commercial centers;
- Land for waste disposal;

Land acquisition activities, local government in South Sulawesi province to the provisions of the applicable legislation committee formed land acquisition for public purposes, in Article 6, paragraph (1) Presidential Regulation. 36 of Presidential Decree No. 2005 in conjunction. 65 of 2006 stated that the land acquisition for public purposes in the district / city done with the help of land procurement committee, district / city established by the regent / mayor.

4.2 Substance Legislation Land Acquisition for Public Interest and Principles of Good Governance

1) Before independence an

In the days of the Dutch East Indies, the problem of land acquisition for public purposes set out in legislation, namely (1) *Bijblad* No. 11372 jo. *Bijblad* No. 12746, and (2) jo *Onteigeningsordonnantie Gazette* No. 574 in 1920. *Bijblad* the load and set the matter acquisition of land rights by the two parties, meaning that a meeting between the parties will require the owner of land with land rights. Instead *Onteigeningsordonnantie*

governing land acquisition unilaterally, meaning that the will of the authorities (*overheid*) which is enforceable or regulations relating to the issue of revocation of land rights (Article 133 *Indische Staatsregeling*).

2) After independence

a. Law No. 20 of 1961 on the revocation of Land and Existing Objects In Thereon

After independence provisions with regard to legislation governing the revocation of land rights established by Law No. 20 of 1961 Revocation of Land and Historic thereon (State Gazette No. 1961. 288) and The explanation (Supplement No.. 2324).

In closing the provisions of this law, asserted that the enactment of this law, then *Onteigeningsordonantie* otherwise revoked. Regarding the revocation of land rights, in Article 1 of Law No. 20 of 1961 established that:

In the public interest, including the interests of the nation and the State as well as the common interests of the people, as well as the interests of development, then the president was forced, after hearing the Minister of Agrarian Affairs / Head of National Land Agency, the Ministry of Justice and the Minister concerned, can revoke rights to land and objects that exist on it.

Affirmation of Article 1 of Law no. 20 of 1961 indicate the presence of indicators that can be qualified as the public interest and the interests of the nation state, the common interests of the people and the interests of development. Public interest is an indicator that can be used as the basis for the revocation of land rights.

Similarly in figure 2 Company Law. 20 of 1961, provides that:

In principle, then if necessary, land and / or other objects belonging to someone else for something needs to be arranged in advance so that the land can be acquired on the basis of buying and selling, exchanging or others.

Based on the confirmation of the foregoing, it can be seen that to be able to do the revocation of land rights can only be implemented if it meets certain criteria, namely:

- a. In the public interest;
- b. The existence of force majeure;
- c. Any attempt to acquire land by way of sale or exchange.

This, when compared with land revocation settings as in *Onteigeningsordonantie*, the government burdened with the obligation to declare in advance the public interest (*nutsverklaring*) in a *ordonantie*, before settling on the ground unilaterally repeal. Provisions such as these, are not found in Law No. 20 of 1961 which regulates the same thing. Result in the determination of interest that can be considered, including the public interest, subjectively determined by the government itself, without any information to the public, especially for.

The above provision shows that the consideration of regional heads and the committee did not estimator is a must. Despite understood that everything pertaining to the land, both on the sales price and the purchase price, required the involvement of actuaries committee and head of the region, the party is seen as much more to know.

Furthermore, in Article 6 of Law No. 20 of 1961 also stipulated that:

Notwithstanding Article 3, then in a very urgent situation that requires acquisition of land and / or objects in question immediately, the request concerned Chief Agricultural Inspection submit a request for revocation of the rights in Article 2 to the Ministry of Agrarian, without Estimator estimated compensation committee and if necessary also with receipt of consideration not wait Regional Head.

Affirmation of Article 3 above, the term "very urgent" did not get a clear sense of the formula and indicators. In the explanation of Article 3 of Law No. 20 of 1961 is given only one example, the case of an outbreak or natural disaster victims who need shelter immediately.

Revocation of land rights in Article 1 of Law No. 20 of 1961 determines only be made by the President if "in a state of force". In the elucidation of Article 1 stated that the reason for holding land revocation, because the possibility of landowners asking price is too high, or not at all willing to give up their land.

4.3 Factors Affecting Mechanism of Land Acquisition for Public Interest in South Sulawesi Province

The factors that influence the mechanism of land acquisition for public purposes, can be expressed as follows:

1. Bureaucracy In Land Acquisition for Public Interest

To be able to carry out the land acquisition for public use, required the existence of a land procurement committee formed by the government or a local government district / municipality.

Membership of this committee, composed of elements from various agencies. In addition, the implementation of land acquisition for public purposes required also the Spatial Plan (Spatial).

In Section 4 of Presidential Decree No.36 of 2005 jo. Perpres. 65 of 2006 confirmed that the procurement and fulfillment of the plan of land, which is necessary for the implementation of development for the public interest can only be done if, based on the Spatial Plan which has been set in advance. For those areas not yet set a spatial planning, land acquisition as mentioned, is based on spatial planning or existing city.

2. Deliberation Factors In Land Acquisition for Public Interest

One mechanism by which the public interest is most decisive deliberation, because at this stage on whether obtained agreement on the realization of the development projects that have been determined. Moreover, in these deliberations will also agreed on the shape and magnitude of compensation. deliberations are conducted to reach an agreement that is so vital to all land acquisition activities, ranging from the determination of the land to be diverted , location permits, granting compensation and so on. (Sofwan Ali Hussein).

Regarding this discussion, the settings contained in Article 1 (10) Presidential Decree No. 36 of Presidential Decree No. 2005 in conjunction. 65 of 2006 provides that:

Deliberation is an activity that contains a process of mutual listening, giving and receiving mutual opinions, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on a voluntary basis and equality between parties who have land, buildings, plant and other objects relating to the land to those who need land.

3. Form factor and size of Compensation

In regard to the parameter values of price compensation, according to Maria SW Sumardjono that in Brazil, the estimated factor values for taxation purposes, the location and soil conditions (preserved or not), and market value during the past five years than any other land rights comparable , taken into consideration the determination of compensation. Meanwhile, in India, the things to consider in the determination of compensation is the market value of the land at the time of the announcement of land acquisition, losses due dispart certain parcels of land, compensation as a result of the loss of expected profit from the land, since the announcement of the takeover ground up to completion of the entire process. While the increase in land value associated with its use in the future and any improvements made after the announcement of the takeover of the land, is not considered as a determining factor compensation.

5. Conclusion

Land acquisition for public purposes in the implementation is not consistent with the principles of law, the principles of justice and the principle of equal rights and duties before the law (*equality before the law*), consensuality principle, the principle of legal protection of private property and the protection of the law against the people. The substance of the legislation governing the issue of land acquisition for public interest has not been reflected or not in accordance with the principles of good governance (*good governance*), especially not the accommodation of the principle of transparency and openness, so the committee as a result of land acquisition for public purposes in fact be no transparent and open in the determination and the amount of compensation given to the holders of land rights. In the implementation of land acquisition for public interests affected by bureaucratic committees factors, factor levels and factor compensation deliberations.

Bibliography

- Ali Sofwan Husein, 1997. *Konflik Pertanahan*, Pustaka Sinar harapan, Jakarta
- Bruggink, JJH, 1999, *Reflections on the Law*, Arief translation Sidhartha, Citra Aditya, Bandung
- Friedman, Lawrence M, 1975. *The Legal System. A Social Science Perspective*. Russet Sage Foundation, New York
- Friedmann, Wolfgang. , 1972. *Law in Changing Society*. Penguin Books, Ltd.Hardmon Wort
- _____, 1984, *the American Law*, WWNorton & Company, New York-London
- _____, 1994, *Theory and Philosophy of Law, Law and Contemporary Problems*, PT translation. King Grafindo Persada, Jakarta
- Maria, SW, Sumardjono, 2006, *Kebijakan Pertanahan, Antara Regulasi dan Implementasi*, Penerbit Buku Kompas, Jakarta
- _____, 2000, *Hukum Pertanahan Dalam Berbagai Aspek*, Bina Media, Medan
- _____, 2008, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Penerbit Buku Kompas, Jakarta

Life History Author: Dr. Drs. H. Abd. DP Azis, SH, MH. He was born in Pare-Pare on February 4 1960. Bachelor (S1) 1985 Diploma in Guidance and Counseling-UVRI Makassar Civics Department of Law, Bachelor (S1) in the Faculty of Law in 1998 Univ.Satria Diploma, Magister (S2) in 1998 PPS-UNHAS Diploma, Doctoral (S3) Diploma in 2011 PPS-UMI. His occupation Dean of the Faculty of Teacher UVRI Makassar in 2005, Vice Rector for Cooperation UVRI 008 Makassar, Vice Chancellor for Academic Affairs UVRI Makassar 2008. Scientific Work : *Land Acquisition Leads to Conflict* (Publisher Fahmi Cet.I Library, ISBN No. 979-15726-8-2), your analysis of *Land Acquisition for Public Interest in Sulawesi* (Ishlah Journal, ISSN No.. 1410-9328), *Existence Change Loss in Land Acquisition for Public Interest* (Journal Gratia, ISSN No.0216-7549), *Analysis of the Law No.23 of 2009 on the Protection and Management of the Environment* (IDTEK Journal, ISSN No.1907-0780), *Implementation of Corporate Social Responsibility According to Indonesian law* (Journal ISSN No. prospects. 0852-8780), *Corporate Social Practice Principles Responsibility For Mining Business Actors in Indonesia* (Gratia Journal No.0216-7549)