

Implications of the Deprivation of Land Rights in the Public Interest on Citizens' Property Rights

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Abstract

The purpose of writing this paper is to explain the regulations for implementing land acquisition for the public interest, which in writing this paper uses case studies on land acquisition for the new State Capital in East Kalimantan. Through writing this paper, the author tries to explain about the form and mechanism of compensation to the aggrieved party due to the occurrence of land acquisition based on Law no. 2 of 2012. The method used is normative juridical analysis. With the conclusion that the process of implementing land acquisition for public purposes is carried out by the Head of the Regional Office of the National Land Agency and the Head of the Land Office after receiving an assignment from the Head of the Regional Office of the National Land Agency with all duties and responsibilities starting from the implementation stage to the delivery of results with a term the time specified in the Land Acquisition Law for the public interest and its implementing regulations. 2. Assessment of the amount of compensation in the procurement of land for the public interest is carried out plot per plot of land, including: land, above-ground and underground space, buildings, plants, objects related to land, and other losses that can be assessed.

Keywords: Land Acquisition, Compensation



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INTRODUCTION

Revocation of land rights is a legal action taken by the government or an authorized institution to take back the ownership rights or use rights of a land from the owner. Revocation of land rights can be carried out for several reasons, including the land being used for public or national interests, landowners not fulfilling their obligations as landowners or violating applicable legal provisions, and land ownership disputes that require revocation of land rights. to finish it. In revoking land rights, the government or an authorized institution must pay attention to the procedures and legal provisions in force so as not to cause unnecessary losses to landowners. Therefore, before carrying out the revocation of land rights, usually the authorities will give notice or warning in advance to the land owner.

In the case of revocation of land rights for public interest, the government has established a public policy regarding the government's authority to revoke land rights for the public interest by issuing Government Regulation Number 19 of 2021 concerning land acquisition for the implementation of development for public interest which refers to the Law Number 20 of 1961 concerning the Revocation of Rights over Land and Objects on it. This law regulates a number of things, including the reasons for revocation of land rights, the process of revoking land rights, the rights owned by landowners and parties involved in the process of revoking land rights, as well as sanctions for parties who violate the provisions in the law.

According to Government Regulation Number 19 of 2021 concerning Land Acquisition for Implementation of Development in the Public Interest, the revocation of land rights is carried out by the President at the request of the National Land Agency (BPN) and the minister from the agency that needs the land as well as the Minister of Law and Human Rights. This was

created for the existence of conducive conditions to fulfill the government's development program agenda to accelerate the revitalization of rural agriculture, public housing, and development in the infrastructure sector which was hampered due to the land acquisition process. The issuance of Government Regulation Number 19 of 2021 invited criticism from various communities, who considered that people did not understand enough as a result of a lack of outreach activities, resulting in a lack of erroneous understanding. However, it is different from the Department of Public Works, which issued a favorable response to the issuance of this Presidential Regulation. The Public Works Department explained that this policy would facilitate and expedite the land acquisition process for infrastructure development.

Problem Formulation: What is the procedure for revoking land rights based on Government Regulation Number 19 of 2021 concerning Land Acquisition for Implementation of Development in the Public Interest for the protection of human rights? What is the responsibility of the government or authorized institution for losses from the revocation of land rights against land owners?

RESEARCH METHODS

The journal writing method this time is to use a descriptive analysis method in which later the author will present and describe the subject and object of the research based on the analysis and research conducted. The type of research in this paper will use the type or method of research by using a normative juridical approach as is done with an approach related to problems by examining various legal aspects and provisions in positive law regarding revocation of land rights in the public interest and seeking sources of information from statutory provisions, applicable invitations, reference books and jurisprudence related to the discussion of this paper. The types and sources of data that the authors use in this study consist of data obtained from various literary sources, through reference books, print media, electronic media, journals, opinions experts and experts as well as other sources of information.

Analysis of the data collected was carried out qualitatively, which means the process of systematically searching and compiling data obtained from the results of research literature or research literature by studying reading materials in the form of scientific books, newspapers, magazines and other library materials related to writing This paper.

RESEARCH RESULTS AND DISCUSSION

Revocation of Rights on Land and Goods on it for the Public Interest

In connection with the conception of revocation of land rights, it has actually been regulated in Law no. 5 of 1960 UUPA which in that article stated and explained that "The public interest includes the interests of the nation, the state and the common interests of the people, land rights can be revoked, by providing compensation or compensation as appropriate according to the method stipulated in the law". The same thing was also conveyed in Law no. 2 of 2012 regarding land acquisition for the public interest, in which the presence of Law no. 2 of 2012 is considered capable of being a legal instrument capable of creating justice and upholding human rights for citizens whose land is used as a public place. Besides that, in Law no. 2 of 2012 also stated that the procedures and steps for land acquisition for legal purposes must be carried out in a transparent and open manner.

One example of a case of land acquisition for public purposes that occurred in Indonesia is the procurement in East Kalimantan for the National Capital. Where the implementation process must be carried out in a structured, planned, transparent and open manner and approved by all parties, especially the central government with the government and the people of East Kalimantan. In addition, the central government is also charged with explaining in a

transparent manner the impact on the welfare of local communities and the state community for the project to relocate the new State Capital in East Kalimantan. In addition, it is necessary to know together about the positive impacts of relocating IKN, which are as follows: Positive Impacts:

1. Reducing Gaps and Equitable Development. As we can see for ourselves that the distribution of development in Indonesia is still not evenly distributed, especially in several islands outside Java which still tend to be left behind. So that one of the government's goals in moving the capital city is to reduce inequality and represent development equity between the islands of Java and Kalimantan. With this plan, of course, it will be balanced with development on the island of Kalimantan as well as the existence of the economy or other sectors that are not only based on Jakarta or the island of Java.
2. Realizing a New National Capital (IKN) in Accordance with National Identity and Equal Society. Apart from being the center of government, the National Capital is also the identity of the nation, so it is very important to choose a capital city that is in accordance with the character of the Indonesian nation. Kalimantan itself is considered to be very representative of the character of the Indonesian nation, which has abundant natural resources, is not prone to disasters and is still of other age. Apart from that, the transfer of the national capital was also carried out to illustrate the growth and development of Indonesia and its evenly distributed society. Because basically the infrastructure for the capital city buffer zone will grow and develop along with the process of building a new capital city. Then, an even population comes from migration and urbanization, where there are some urban residents who will move to Kalimantan around the new IKN.
3. Activities that are more flexible and open up business opportunities. With the relocation of the capital city, Jakarta's traffic jams are also reduced and there are also vacant lands. With reduced traffic jams, the activities of the people of Jakarta will be much more relaxed and the land can be used to open businesses for people who are first-time entrepreneurs or entrepreneurs who want to open branches. In addition, tourism in Jakarta also has an impact with the arrival of tourists when traffic jams are reduced.
4. Improvement of Education and Health Facilities. With Kalimantan being made a new NIK, the education and health facilities will also receive improvements and enhancements from the government. Because the area that becomes the capital city will receive more attention in improving its facilities and infrastructure.

As for several principles of land acquisition regulated in presidential regulation no. 36 of 2005 Jo Presidential Regulation No. 65 of 2006 and Head of BPN RI No. 3 of 2007 which includes the following: Land acquisition for public purposes, such as for the construction of a new National Capital City, must first ensure the availability of land, not to override the welfare of the local community from the East Kalimantan region; The basic rights of the community over land taken for the public interest must be guaranteed to be protected; To the opportunity of the emergence of land speculation.

After all the principles have been fulfilled, then the process of procuring a new State Capital can be carried out, which based on Law no. 19 of 2021 there are several stages or procedures in carrying out land acquisition, which include planning, preparation, implementation and delivery of the results of the land acquisition project. The first stage is planning where land acquisition must be based on spatial planning and development priorities. Where in planning the agency that requires the land must involve the ministry or other agencies in the land sector. If the planning process for land acquisition has been completed, it can be proven by the presence of the DPPT. The DPPT is a land acquisition planning document whose contents include approval from the parties concerned, an agreement for compensation or

compensation to the people whose land is taken over or is harmed, budget costs, development plans and the like.

The next process is preparation, in which the land acquisition planning document (DPPT) is submitted to the local government and related technicians for verification. The verification process will take no later than 5 working days, after five working days and it has been declared verified, then it will enter the preparatory stage which will be carried out by public consultations to get approval and reassure that there are no parties who object. It should also be noted that the agency wishing to carry out land acquisition must also submit an application for the implementation of land acquisition by completing several necessary documents such as: Letter of determination of location; DPPT; Data of parties entitled to land acquisition; Data on local communities affected by land acquisition projects; Minutes of land acquisition agreement; Letter of statement for the installation of boundary markers for land parcels; Land release permit from the previous land owner; Letter of statement on the readiness of the participation of land acquisition project funds; Letter of statement of compensation to the affected community.

If all the documents are complete, then the agency that wants to carry out land acquisition can carry out the project. The last is the process of handing over the results of land acquisition. Based on the regulation of the Minister of Agrarian Affairs and the Head of the Land Agency No. 19 of 2021, it is explained that a maximum of 14 working days since the relinquishment of the land acquisition object rights. The form of submission of the results of the land acquisition process is in the form of minutes of land acquisition results and inclusion of land certificates that have been submitted and land acquisition implementation documents which must also be integrated electronically.

The Government's Responsibilities to Communities Who Are Disadvantaged of Land Acquisition for Public Interests

The form of compensation for land acquisition is regulated in Law no. 2 of 2012 in article 40 to be precise. In Article 40 it is explained and emphasized many times that the provision of compensation to parties who are aggrieved from land acquisition must be given directly to the rightful party. However, if the entitled party is unable to attend, the entitled party must give power of attorney to another person, such as an heir or a person who has been sent through a power of attorney. Where the recipient of the power of attorney can only receive power of attorney over one person who is entitled to compensation, the following are the people who are entitled: Holders of land rights; Classification right holders; Nadzir on waqf land; Customary land owners; Local people; Parties who control state land on the basis of good faith; The owner of the building on the land.

In Article 41 paragraph 1 it is also explained that compensation from land acquisition is given to the parties who are entitled on the basis of the results of the assessment determined in the deliberation as referred to in Article 37 paragraph 2. In addition, the Supreme Court Decision also explains that the party entitled to compensation Losers must release rights and include proof of control and ownership of land objects that are transferred to the competent authority for land acquisition. This is done to minimize things that are not desirable at any time.

As has been explained, the determination of the amount of compensation is determined based on the deliberations that have been carried out. So that if there are parties who object or refuse the amount of compensation from the results of the deliberations, the party concerned can submit an objection. And if the objections that have been filed are ignored, then the party concerned in submitting a lawsuit to court. In Article 73 paragraph 1 of Presidential Decree No. 71 of 2012 concerning Implementation of Land Acquisition for Development in the Public Interest. In paragraph 2 of the article it is further explained that the District Court has the right

to decide on the form and/or amount of compensation within a maximum period of 30 working days from the receipt of the objection. While paragraph 3 explains that a party who objects to the decision of the District Court as referred to in paragraph 2 can submit an appeal to the Supreme Court within a maximum period of 14 working days. Paragraph 4 explains that the Supreme Court is required to render a decision within a maximum period of 30 working days from the time the cassation request is received.

The form of compensation is regulated in Article 36 of Law Number 2 of 2012 which states that: Compensation can be given in the form of: money; replacement land; resettlement; shareholding; other forms agreed by both parties. Explanation of Law Number 2 of 2012 Article 36 what is meant by "Resettlement" is the process of providing replacement land to the entitled party to another location in accordance with the agreement in the Land Acquisition process. Furthermore, the elucidation explains what is meant by "Form of Compensation Through Share Ownership" is the participation of shares in development activities for the related public interest and/or their management based on an agreement between parties.

Concerning compensation in terms of form and amount received confirmation through Presidential Regulation Number 71 of 2012. From the aspect of understanding compensation according to the provisions of Article 1 of the Presidential Regulation it is stated as "Proper and fair compensation to the party entitled to the Land Acquisition process". In Article 65 the Appraiser is tasked with evaluating the amount of Compensation per plot of land, including: land; above ground and underground space; building; plant; objects related to land; other loss that can be assessed. As for the forms of compensation that can be given in the land acquisition process for the public interest, based on Article 74 of Presidential Regulation Number 71 of 2012 are as follows: money; replacement land; resettlement; shareholding.

CONCLUSION

Based on the explanation that was conveyed in the previous discussion, there is a common thread that we can make a conclusion in writing this paper, namely based on Law no. 19 of 2021 it is explained that there are 4 processes that must be taken in land acquisition, namely planning, preparation, implementation and delivery of results. Where in the process of implementing land acquisition for public purposes it must be carried out by the Head of BPN RI and marked by the validity of a complete and verified DPPT. In addition, we need to know together that the land acquisition process certainly involves many parties involved. For example in the process of land acquisition for the State Capital in East Kalimantan, where many indigenous peoples or local communities had their land and even the buildings on it had to be evicted to make way for the IKN development project. So that in order to represent justice for all Indonesian people, a compensation program was created for the parties who were harmed by the land acquisition, in which the assessment of the amount of compensation in the acquisition of land for the public interest was carried out in plots per plot of land, including: land, space above ground and below. land, buildings, plants, objects related to land, and other losses that can be assessed.

Finally, there is a suggestion that the author wants to convey where people who have land rights that want to use it for the public interest are expected to be cooperative because actually land ownership rights also have a social function, especially seeing the positive impact of land acquisition. Apart from that, the government is also expected to pay more attention to social welfare, the principle of order, the principle of humanity so that it can minimize all the problems of land acquisition which is about to be carried out.

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