

LAND PROCUREMENT FOR PUBLIC INTEREST IN LOCAL GOVERNMENTS WITH SMALL SCALE

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Abstract

This study has purposes to find out how the mechanism of land procurement for the public interest in local governments, find out the obstacles and solve the problem of land procurement for the public interest on a small scale. Land procurement by the local government sometimes always collides with the stages of land procurement which is a very long process, but the land is needed immediately to support development. Small-scale land procurement is carried out on an area of no more than 5 hectares. Land procurement on a small scale for the public interest can be carried out without going through the determination of the location. The legal consequences are not being able to deposit compensation in court. This study uses a sociological juridical method, namely the discussion based on the provisions of the legislation. The results of this study are that the mechanism for land procurement for the public interest is carried out with accurate research and socialization so that the community understands the positive impact of development for the public interest and counseling so that the community understands the benefits of the project and participates in the success of project development for the public interest. Another obstacle in the implementation of land procurement is the existence of incomplete land ownership data or documents or no land ownership rights, the bureaucracy that guarantees legal certainty that the settlement of these obstacles is carried out with the active role of agencies that require land.

Keywords : Development; Land Procurement; Small Scale.

A. INTRODUCTION

To realize a just and prosperous society as mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia (called the 1945 Constitution of the Republic of Indonesia), Indonesia needs to carry out development. Development is homework for every developing country, such as Indonesia. To realize this development, many things are needed by the government, including a large and strategic land. To meet these needs, the government conducts land procurement.¹ In the land sector, it is necessary to have an institution or legal instrument that can be trusted completely and clearly in order to obtain clear rights and legal certainty that favors the community.²

Land is very important and fundamental to people's lives. Land that socially has value in the field of life of course also functions as a social environment. Of course, this is sometimes sacrificed for the realization of the common public interest. In this case, the government's actions have been legalized by the state constitution, namely the 1945 Constitution Article 33 paragraph (3) which states that the earth and water as well as the natural resources contained therein are controlled by the state and are fully utilized for the welfare and prosperity of the people. In relation to the foregoing, the UUPA is guided by its stance that achieving what is stipulated in Article 33 paragraph (3) of the 1945 Constitution is not important and there is no place for the state to act as the owner of the land.³

In 2012 Law no. 2 of 2012 concerning Land Procurement for Development in the Public Interest issued by the government, it is hoped that this will guarantee the rights of each party concerned with development for the public interest, both from government agencies and the community. Judging from its development, the law issued by the government is considered more democratic because it is more measurable, planning, implementing and delivering results.

¹ Putri Lestari, "Pengadaan Tanah Untuk Pembangunan demi Kepentingan Umum Di Indonesia Berdasarkan Pancasila", *SIGn Jurnal Hukum* 1 (2), 2020, hal 71-86.

² Maria S.W. Sumardjono, *Tanah Dalam Perspektif Ekonomi, Sosial dan Budaya*, (Jakarta: Kompas, 2008), hlm. 280.

³ Citraningtyas Wahyu Adhie, "Pelaksanaan Pengadaan Tanah Untuk Jalan Lingkar Kota Oleh Pemerintah Kabupaten Wonogiri", Skripsi, (Surakarta : Fakultas Hukum Universitas Sebelas Maret Surakarta, 2010), hlm. viii.

Presidential Decree No. 40 of 2014 amendments to Article 121, Presidential Regulation No. 71 of 2012, for the sake of realizing efficiency and effectiveness, in the context of planning for land procurement for the public interest, the area of which is not more than 5 (five) hectares, can be carried out directly by the agency that requires land with the holder of land rights, by way of buying and selling or exchanging or any other method agreed by both parties. Land procurement by the local government sometimes always collides with the stages of land procurement which takes a very long time, but the land is needed immediately to support development. Small-scale land procurement is carried out on an area of no more than 5 hectares. Land procurement on a small scale for the public interest can be carried out without going through the determination of the location.

Regarding time, the provision for small-scale land procurement states that the agency that needs the land can make direct arrangements with the land owner, however, legalization of the required land is required. Of course, it involves other government agencies, such as the National Land Agency, because the required land area will be checked by the state auditor regarding the required land, this bureaucracy sometimes becomes an unexpected additional time. Especially for lands that have not been certified, although the conditions will be the same because of the real need for land to be used for land procurement for the public interest.

The previous research examined small-scale land procurement which was studied by Setia budhi with the title "The Urgency of Setting Small-Scale Land Procurement for Development for Public Interest in the City". This study aims to determine the implementation of small-scale land procurement in Manado along with the obstacles faced in its implementation and the urgency of regulating small-scale land procurement for development for the public interest in Manado City. The results of this study state that the implementation of small-scale land procurement in Manado is not optimal because there are obstacles in its implementation, namely the regulation of land procurement for small-scale does not clearly regulate the planning and preparation stages, does not regulate the mechanism for determining appraisal, does not regulate the mechanism for

resolving objections or disputes. in land procurement which can lead to uncertainty, injustice and reduced benefits from land procurement for all parties.⁴

Subekti (2016) in his research with the title "Policy of Compensation in Land Procurement for Development in the Public Interest" raised the issue of the policy of providing compensation in land procurement for development in the public interest. The results of this study explain that land procurement for development in the public interest is an activity to provide land by providing appropriate and fair compensation to the entitled party. This study only focuses on examining the policy in the provision of compensation used for the public interest.⁵

While the research by Arobi (2021) with the title "Implementation of Article 121 of Presidential Regulation Number 148 of 2015 concerning the Implementation of Land Procurement for Development in the Public Interest" aims to find out how the implementation of Article 121 of Presidential Regulation Number 148 of 2015 on land procurement for animal markets in Aengsareh Village Sampang District, Sampang Regency, and find out how the obstacles are in the procurement of land for the animal market. In practice, the Sampang Regency Government carries out land procurement directly without stages such as large-scale land procurement which must involve the governor and without determining the location of the land. The obstacles found in this study are the existence of certificates of property rights (SHM) that have not been renamed and there are rejections from traders.⁶

The difference between this research and the research on small-scale land procurement by Setiabudhi is more focused on examining the rules and obstacles found in small-scale land procurement in Manado City. Subekti's research only examines how government policies provide compensation in land procurement for development. Meanwhile, Arobi's research is almost similar to Setiabudhi's research which examines land procurement rules but is more specific in examining the process of land procurement for the animal market in Sampang Regency. Meanwhile, this research focuses more on examining how the mechanism of land procurement for the public interest in the local

⁴ Donna Okthalia Setiabudhi, "*Urgensi Pengaturan Pengadaan Tanah Skala Kecil Untuk Pembangunan Bagi Kepentingan Umum Di Kota Manado*", *Lex et Societatis* 4 (9), 2016, p. 34-43.

⁵ Rahayu Subekti, "*Kebijakan Pemberian Ganti Kerugian Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*", *Yustisia* 5 (2), 2016, p. 376-394.

⁶ Yusri Akbar Arobi, Isdiyana Kusuma Ayu, Benny Krestian Heriawanto, "*Pelaksanaan Pasal 121 Peraturan Presiden Nomor 148 Tahun 2015 Tentang Penyelenggaraan Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*", *Dinamika, Jurnal Ilmiah Hukum* 27 (5), 2021, p. 635-653.

government and how the constraints and solutions for land procurement for the public interest in the local government on a small scale which is also the purpose of this research.

B. PROBLEMS

The problems raised in this study are as follows:

1. What is the mechanism for land procurement for public interest in local governments?
2. What are the constraints and solutions for land procurement for the public interest in small-scale local governments?

C. METHODS

The method used is the sociological juridical method, which is a discussion based on the provisions of the applicable legislation and is associated with legal theories relating to problems that are developing in society.⁷ This research is more descriptive analysis, namely a study that provides a comprehensive, in-depth picture of a situation or phenomenon under study, in this case the author provides a detailed and systematic description.⁸

D. RESULT AND DISCUSSION

1. Mechanism of Land Procurement for Public Interest On Local Government

Article 33 paragraph (3) of the 1945 Constitution Article 2 of the LoGA has determined the principle of the function of land rights as stipulated in Article 6 of the UUPA, then land procurement for development for the public interest can be carried out as long as it is in accordance with the basic principles of development, namely to create a just, prosperous society. and prosperous. This is implemented through the Land Procurement Law in Law no. 2 of 2012 concerning land procurement for development in the public interest. The mechanism for land procurement for development in the public interest was previously regulated by Presidential Decree No. 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest which was later amended by Presidential Decree no. 36 of 2005 in conjunction with Presidential Decree No. 65 of 2006 which one of the articles applies "revocation of rights" is no longer valid. The mechanism for land procurement for the public interest currently refers to the law on land procurement by eliminating the article "revocation of rights", because the

⁷ Bambang Waluyo, *"Penelitian Hukum Dalam Praktek"*, (Jakarta: Sinar Grafika, Jakarta, 2007), p. 6.

⁸ Roni Hanitjo, *"Metodologi Penelitian Hukum dan Jurimateri"*, (Jakarta: Ghalia Indonesia 1990), p. 58.

revocation of rights has also been regulated separately in Law no. 20 of 1961 concerning the revocation of rights to land and objects on it.⁹

The public interest must take precedence over personal interests, in accordance with the legal principles that apply to the implementation of living together in society. But even so, individual interests are also not ignored, because as stated above, individual rights to land are respected and protected by law. So if the public interest requires that individual interests be pushed, until the latter suffers a loss, then compensation must be given to him. UU no. 26 of 2007 concerning spatial planning, LN 200768 there is a provision in article 61a, that "Everyone is obliged to obey the spatial plan that has been determined". However, if the development activities carried out in accordance with the predetermined spatial plan, result in a loss to a person who owns the land, he is entitled to an appropriate compensation in accordance with the provisions of Article 60c. According to Article 18 of the UUPA, for the public interest, including for the interest of the nation and state as well as the common interest of the people, land rights can be revoked by providing appropriate compensation and according to the method regulated by law, namely Law no. 20 of 1961 concerning Revocation of Rights to Land and Objects on it.

The mechanism of land procurement, according to Law No. 2 of 2012 concerning Land Procurement:

a. Land Procurement Planning

Land procurement planning for public interest should be based on the Regional Spatial Plan and development priorities listed in the Medium Term Development Plan (RPJAM), Strategic Plans, Work Plans by Government Agencies. Planning land procurement for public purposes is based on documents and feasibility studies were carried out in accordance with the provisions of the legislation and are set by the agency require a land which was then submitted to the Provincial Government.¹⁰

b. Preparation of Land Procurement

⁹ Budi Irawan, "Pengadaan Tanah Berdasarkan UU. No. 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum (Studi Di Kabupaten Cilacap)", *Jurnal Idea Hukum* 1(2) 2015, p. 137.

¹⁰ Hery Zarkasih, "Pelaksanaan Prinsip Keadilan Dalam Pemberian Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum (Studi Kasus Pelebaran Jalan Raya Di Kota Praya Kabupaten Lombok Tengah)", *Jurnal IUS (Kajian Hukum dan Keadilan)*, 3 (2), 2015.

Parties and agencies that require land with the provincial government should be based on the land procurement planning document. Parties and agencies that require land with the provincial government must based on the land procurement planning document :

- a) Notification of development plans.
- b) Preliminary data of the development site plan
- c) The public consultation for the development plan.¹¹

c. Implementation of the Land Procurement

After obtaining the land and assigned to the construction site in the public interest, the agency shall submit the procurement of land to the National Land Agency (BPN). Then the assessment of the value of compensation by the appraiser is carried out in plots of land, including: land, aboveground and underground space, buildings, plants, objects related to land, and/or losses that can be assessed.

Compensation can be given such as: money, replacement land, resettlement, share ownership, or something agreed by both parties.¹²

2. Constraints and Solutions of the Land Procurement for Public Interest in Small-Scale Local .

To support prosperity and welfare for the people, the Government of Indonesia carries out national development aimed at the public interest. In Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), it stipulates that "land rights have a social function". The land ownership rights are limited by social functions to avoid excessive use regardless of the public interest. This is also emphasized in Article 18 of the Basic Agrarian Law which stipulates that "in the public interest, the interests of the nation and state as well as the interests of the people, land rights can be revoked, by providing appropriate compensation and in a manner regulated by law. " Article 18 of this Basic Agrarian Law with Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects On It.¹³

The stages of land procurement do not fully apply to small-scale land procurement as regulated in Law Number 2 of 2012 . Small-scale land procurement is land

¹¹ Widyarini Indriasti Wardani, "Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum", Jurnal Hukum Dan Dinamika Masyarakat 10(2), 2013.

¹² *Op.cit.*, Hery Zarkasih

¹³ F. Kristifani Haryanto and Hanafi Tanuwijaya, "Pemindahan Rumah Ibadah dan Fasilitas Umum Akibat Pengadaan Tanah untuk Pembangunan Jalan Tol berdasarkan Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum", Jurnal Hukum Adigama 2 (1), 2019.

procurement on an area of no more than 5 hectares. in Law Number 2 of 2012 land procurement must use location determination, but in practice it is not more than 5 hectares, Presidential Regulation Number 148 of 2015 does not require application for location determination.¹⁴

According to Presidential Regulation Number 148 of 2015 that: "Location determination is the determination of the location of development for the public interest by a governor's decision, which is used as a permit for land procurement, changes in land use, and transfer of land rights in land procurement for development in the public interest." "Land procurement on a small scale for the public interest without going through a location determination will have legal consequences if there is no agreement in the compensation process, then compensation cannot be carried out at the local court as regulated in PERMA No. 3 of 2016.

In addition of guaranteeing compensation, location determination is required by those who are present or not present, if they refuse the results of the deliberation on the determination of compensation, they can file an objection. The process of land procurement for the public interest on a small scale without going through a location determination sometimes has problems in the procurement process. This needs to be observed by the government so as not to interfere with the development process.

In fact, in the process of land procurement for development, there will be various problems that arise as a result of development in the public interest. The increasing demand for land can have consequences for competition for land in various ways. In every activity of the land procurement process (also known as land Acquisition) either by means of release, transfer or compensation and land consolidation will involve many parties called stakeholders and stakeholders, even stakeholders who are not interested, such as those familiar with NGOs , thuggery, agency and broker.¹⁵

In policy implementation, the policy implementation process has obstacles. These obstacles arise from various factors. Another obstacle is the existence of incomplete land ownership data or documents or land without ownership rights. This makes it very difficult for the team to complete the payment of compensation because there is no valid evidence/documents that are used as evidence for land Acquisition, even though the land

¹⁴ Pasal 121 ayat (3) Peraturan Presiden Nomor 148 Tahun 2015.

¹⁵ Setiyo Utomo, "Problematika Proses Pengadaan Tanah", Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial 5 (2), 2020, p. 20-36.

is land that will be used for the Acquisition of public interests. Indirectly, the obstacles that occur will delay the Acquisition of public interests.

The issue of compensation in land procurement is a problem that can hinder land procurement, people often cannot accept the land price that has been set by the government because it is considered too low and cannot guarantee further welfare.¹⁶ Pada setiap kendala atau hambatan, pasti ada upaya penyelesaiannya agar proses tersebut tetap dapat terlaksana sesuai dengan tujuan yang hendak in every obstacle or obstacle there must be an effort to solve it so that the process is in accordance with the objectives to be achieved. The settlement of these obstacles is carried out with the active role of agencies that require land by taking a persuasive approach to land owners who insist they do not want to relinquish their land rights because they do not agree with the results of the deliberation regarding the value of compensation to be given. If the land owner persists in not giving up their land, the solution taken by the agency that requires the land is by way of a consignment or deposit of compensation money to the court. The deposit of compensation in this court is carried out if there is no agreement on the value of compensation while the deliberations have passed the 120 day period, the right to compensation cannot be identified and the ownership of the land is still disputed.

So, at a temporary conclusion, the mechanism for land procurement with a scale of less than 5 (five) hectares should use a location determination whose mechanism is as regulated by Law No. 2 of 2012 with the same mechanism, namely: planning, preparation, implementation and delivery of results.

The establishment of a special agency in the local government that specifically handles land procurement for the public interest under 5 (five) hectares by the Cilacap Regency Government should be a consideration for other local governments in facilitating and focusing on their respective government areas considering that infrastructure development is growing rapidly..

Regardless of the substance of land procurement arrangements in the legislation, the government and local governments should be wise by accommodating the interests of

¹⁶ *Ibid.*

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the people who own land rights and land cultivators as a form of recognition and respect for their human rights.¹⁷

E. CONCLUSION

According to Law no. 2 of 2012 Land procurement mechanism for the public interest begins with land procurement planning, land procurement planning for the public interest must be based on the Regional Spatial Plan and development priorities listed in the Medium Term Development Plan (RPJAM), strategic plan, work plan of the government agency concerned. Furthermore, in the form of preparation for land procurement, the parties and agencies that require land with the provincial government must be based on the land procurement planning document. After obtaining land for the location of public interest development, the agency submits the implementation of land procurement to the National Land Agency (BPN) and proceeds with the process of assessing the compensation fund. Obstacles to land procurement for small-scale public interest are incomplete land ownership data or documents or land that has no ownership rights, the issue of compensation in land procurement is a problem that usually hinders land procurement, people often cannot accept the price of land that has been determined. determined by the government because it is considered too low. The solution is that the settlement of obstacles is carried out with the active role of agencies that require land by taking a persuasive approach to land owners. If the land owner persists in not giving up their land, the solution taken by the agency that requires the land is to deposit the compensation money in court. the mechanism for land procurement with a scale of under 5 (five) hectares should use location determination whose mechanism is as regulated by Law Number 2 of 2012 with the same mechanism, namely through the stages: planning, preparation, implementation and submission of results.

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¹⁷ Ade Arif Firmansyah, “*Pembaharuan Substansi Hukum Pengadaan Tanah Yang Berkeadilan*,” *Kanun Jurnal Ilmu Hukum* 16 (2), 2014, p. 329–46.

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