

Land Acquisition for Public Interests: A Review from the Human Rights Context

Yesi Nurmantiyas Sari

University of Jember, Indonesia

Rizal Nugroho

University of Jember, Indonesia

Al Khanif

University of Jember, Indonesia

ABSTRACT. Land acquisition for public purposes is an activity intended for the public interest that uses community land. To be able to carry out development in the public interest, the government uses state land. If state land is not sufficient or cannot maximize development, the government can use land from individuals or groups by carrying out the land acquisition. In implementing land acquisition, the land acquisition team must pay attention to the rights of the people affected by land acquisition. Irregularities that often occur in the implementation of land acquisition are related to discrimination, intimidation, and violence. These rights are included in human rights, which must be upheld and protected because this is closely related to property rights. Human rights give an understanding that the right to own something is the right of every citizen, including the right to own land is one of the human rights inherent in each person per person in groups. While property rights must not be taken arbitrarily and against the law, such matters are regulated in Article 28H of the 1945 Constitution. This paper concludes that the construction activities of the New Yogyakarta International Airport (NYIA) carried out violated human rights; this is because the land acquisition team has committed violence, discrimination, and violence against the people affected by land acquisition. The form of legal protection provided by the government is proper compensation.

KEYWORDS: Land Procurement, Human Rights, Property Rights.

Submitted: 12/02/2020 Reviewed: 14/02/2020 Accepted: 10/03/2020



Copyright © 2020 by Author(s)
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions

* Corresponding authors' e-mail: yesinsari6@gmail.com

I. INTRODUCTION

The land is a significant component to carry out development. The intended development is development in the public interest. Land acquisition is a development activity intended for the public interest whose land takes land from the community by carrying out the land acquisition.¹ Therefore it can be said that land has a dual function, namely as social assets and capital assets as social assets land is a means of binding social unity among Indonesian people to live and live, while capital assets land is a factor of capital and development.² To be able to carry out development in the public interest, the government uses state land. If state land is not sufficient or cannot maximize development, the government can use land from individuals/ individuals or groups by carrying out the land acquisition. In order to determine the size and form of compensation in land acquisition, the land acquisition team conducts a consultation with the community whose land is affected by land acquisition. In determining the form and amount of compensation, there is often no agreement between the parties concerned, which causes the land acquisition process to become protracted or neglected. In principle, without a process of deliberation between the holders of land rights and the parties/government agencies that need land, land acquisition for the implementation of development in the public interest will not occur.³ As a result, a development which has been predicted to be in the public interest of the entire Indonesian community has not been realized.

In the process of land acquisition, when the determination of compensation or deliberation experiences a deadlock, the government has the right to revoke rights. To be able to revoke the rights of the government must pay attention to Article 18 of Law Number 5 of 1960 on the Basic Regulations

¹ Article 1 Number 2 of Law Number 2 of 2012 on Land Procurement for Development in the Public Interest is the activity of providing land with the appropriate and fair compensation to the rightful parties.

² Bernhard Limbong, *Land acquisition for development: regulation, compensation, law enforcement* (Margaretha Pustaka, 2011) at 133.

³ *Ibid* at 188.

on Agrarian Principles.⁴ From Article 18, it can be concluded that the revocation of rights can only be done in the public interest and pay attention to the interests of the holder of the rights to the land to be revoked and in the revocation of these rights a proper compensation must be given. Since all land rights have a social function, the public interest must take precedence, while individual interests as long as they do not preclude the public interest are still recognized as legal and absolute rights to third parties.⁵

The implementation of land acquisition in the public interest must pay attention to the rights of the holder of land rights. Given that land is an inseparable part of their lives. The intended rights are ownership rights over land. Property rights are fundamental rights for humans. In the 1945 Constitution Article 28H paragraph (4), it has been explained that every person has the right to own property rights without being taken arbitrarily.⁶ For this reason, every citizen's right to own something is the right to own land, as no one can contest a human right inherent in every individual and group.⁷

The definition of human rights based on General Provisions Article 1 number 1 of Law Number 39/1999 on Human Rights is a set of rights inherent in the nature and existence of human as being God's creature and gift that must be respected, upheld and protected by the rule of law, the government, and everyone for the sake of honor and protection of human dignity. From this understanding, the state with human beings must respect

⁴ Article 18 of Law Number 5 of 1960 on the Basic Regulations on Agrarian Principles. it is said that "in the interests of, including the interests of the nation and state and the common interests of the people, land rights can be revoked, by providing appropriate compensation and in a manner regulated by law" "Law Number 5 of 1960", online: <<http://www.bpn.go.id/Publikasi/Regulations-Legations/Undang-Undang/undang-undang-nomor-5-tahun-1960-920>>.

⁵ Limbong, *supra* note 2 at 212.

⁶ The 1945 Constitution Article 28H paragraph (4) states, "Every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone." Asa Computell, "State Law of the Republic of Indonesia" 12.

⁷ Nurus Zaman, *Politics of Land Procurement Law Between Public Interest and Protection of Human Rights* (Bandung: Refika Aditama, 2016) at 183.

each other and uphold human rights related to the honor of every human being. Besides, it is not only humans as persons whose rights must be protected, respected, but the state as a representative of its people also has their right to determine where the country will be taken.⁸ Therefore in the implementation of land acquisition, the government must not ignore the value of existing human rights even in the public interest. Neglected human rights values can occur when the land acquisition team ignores the elements of land acquisition. One element that is neglected by the land acquisition team following the statement above is the release of land rights in the public interest.

The example of the implementation of land acquisition that ignores human rights is the construction of the New Yogyakarta International Airport (NYIA) mega project. The mega project is reaping various pros and cons that cause a very long conflict. It emerged because the people affected by the land acquisition did not agree on the development plan, and the land acquisition team committed acts that could be said to violate human rights. Human rights violations in question are physical violence, discrimination, and intimidation, which can be detrimental to communities affected by land acquisition. Concerning the case examples above, there is often no synergy between the public interest and the interests of the community. The conflict between the public interest and the interests of the community arose, which triggered human rights violations.

In this case, the first problem is the compatibility between the implementation of land acquisition and human rights in the case of the construction of the New Yogyakarta International Airport (NYIA). The implementation of land acquisition of human rights has always been a prolonged conflict. It happened because the people affected by land acquisition feel that their rights have been ignored. Also, the implementation of land acquisition in this mega project is characterized by acts of violence, intimidation, and discrimination committed by the land acquisition team so that this results in disharmony between the relationship between land

⁸ *Ibid* at 177.

acquisition and human rights. Then the second problem that arises is legal protection for people affected by land acquisition. This legal protection can protect the rights of the community itself. It also can provide certainty, usefulness, and justice for the people affected by land acquisition.

II. SUITABILITY OF LAND PROCUREMENT FOR GENERAL INTERESTS WITH HUMAN RIGHTS

Land acquisition, in its implementation, is always associated with problems that arise. According to Maria SW Sumardjono, the three main issues in question are the limitation or definition of public interest, the mechanism for valuing land prices and compensation, and the procedures for land acquisition that must be adopted.⁹

Three principles must be applied in carrying out activity acquisition land in the public interest, namely, the¹⁰ The government owns the first activity, in which it contains a limitation that individuals or the private sector cannot own public interest activities; in other words, private and individuals cannot have the types of public interest activities that require the acquisition of land rights and the state. Second, related development activities carried out by the government means that this sentence provides a limitation that the government can only play the process of implementing and managing activity for the public interest. Because the purpose of the sentence is unclear, the question arises: what if the implementation and management of activities in the public interest are tendered to the private sector. Because in practice, many activities are in the public interest, but the manager of the activity is the private sector. Third, not looking for profit means that this sentence limits the function of activity in the public interest so that it is entirely

⁹ *Ibid* at 130.

¹⁰ Adrian Sutedi, *Implementation of Public Interest Principles in Land Procurement for Development* (Jakarta: Sinar Grafika, 2008) at 75.

different from the private interest, which aims to make a profit so that it is qualified that the public interest is not allowed for profit at all.

Land acquisition is interrelated with spatial planning. This is because objects in the land acquisition are included in space. This statement has been stated in Article 1 General Provisions Number 1 of Law Number 26/2007 on Spatial Planning.¹¹ In organizing spatial planning must pay attention to nine principles regarding the principles of spatial planning. This relates to the rights and obligations of spatial planning. Thus, the rights and obligations of spatial planning are stated as follows,¹² each person has the right to enjoy the benefits of space, including the added value of space as a result of spatial planning, everyone has the right to know the spatial plan, participate in spatial planning and spatial control, and get a replacement that is feasible for the conditions experienced as a result of the implementation of development activities under the spatial plan. In the third point, the implementation of land acquisition for development in the public interest is closely related to spatial planning. Land acquisition activities for development for public use must be carried out based on spatial and regional planning¹³. It is intended that the land acquisition team uses land following its designation. When the use of land in land acquisition is not by the spatial and territorial plans, the land cannot be expanded and developed, meaning that it is a form of activity intended for public interest or the interests of the community not under its designation.

The procedure for land acquisition is taken. The implementation of land acquisition for development in the public interest does not always go according to plan. In practice, some agree or hold rights over land or those

¹¹ Article 1 General Provisions Number 1 Law Number 26/2007 on Spatial Planning is a container that includes land space, sea space, and air space, including space in the earth as a single territory, where humans and other creatures, carry out activities and maintain its survival "Law Number 26/2007", online: *Ministry of Agriculture and Spatial Planning for Land Affairs Nas* < number-26-year-2007-1849>.

¹² Supriadi, *Agrarian Law*, sixth edition ed (Jakarta: Sinar Grafika, 2015) at 286.

¹³ Urip Santoso, *Agrarian Law*, first edition ed (Jakarta: Kencana Prenada Media Group, 2012) at 297.

who disagree concerning development regarding their land. Owners/holders of land rights who agree will be given compensation under a mutual agreement in a discussion between the land acquisition team and the holders of land rights, whereas those who disagree will experience a complicated conflict with the party implementing the land acquisition. The conflict arises when the holders of land rights do not agree to surrender their land to the party implementing the land acquisition because, according to them, the compensation given is not feasible, the land occupied is the inheritance of their ancestors and so on. Conflicts often occur so far as coercion from two parties, namely the government, to set prices unilaterally while landowners demand prices that are considered unnatural and too high. Meanwhile, the existing legal instruments have not been able to accommodate these two different interests so that what is used are ways of coercion and intimidation that cause violence in the community in every process of land acquisition for development in the public interest.¹⁴

Kulon Progo realized the airport development plan by making a regulation in the form of a regional regulation (perda). Kulon Progo Regency Regulation Number 1 of 2012 on Spatial Planning for the Kulon Progo Regency Year 2012 - 2013. In the regional regulation, precisely in Article 18 states that "The air transportation network as referred to in Article 11 letter c is in the form of an airport with plans to construct a new airport in Temon Subdistrict, Wates Subdistrict, Panjatan District, and Galur District ". Of the four regions that have been listed in Regional Regulation No. 1 of 2012 on the Regional Spatial Planning of Kulon Progo Regency in 2012-2013, Temon District is considered the most strategic for being an airport. The decision reaped the pros and cons, and this is where the complicated conflict began. Based on number 3 Announcement of the Secretary of the Special Region of Yogyakarta Number 593/3145 on Designation of Development Locations for the Development of New Airports in Yogyakarta Special Region Palihan Village, Kebonrejo Village, and Glagah Village, Temon District, Kulon Progo Regency. The land area needed for development for

¹⁴ Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum* (Pusderankum dan Bayumedia Publishing, 2007) at 12.

the Development of the New Airport in the Special Region of Yogyakarta is ± 645,63 ha". Construction of New Yogyakarta Airport International Airport was built to replace Adisutjipto Airport, which is currently overcapacity.

In this case, the party involved in the conflict over the megaproject development of the New Yogyakarta International Airport (NYIA) is the local government, PT. Angkasa Pura I, and the local community. This conflict caused the community to split into two, namely the people who supported the construction of the new NYIA airport and those who refused to build the new NYIA airport. The people who support the mega project are those who have held consultations with the land acquisition committee and agreed on the decisions reached. Besides, they have also participated in socialization, receipt of compensation, and relocation. Those who refuse the construction of the airport are members of the Wahana Tri Tunggal (WTT). Wahana Tri Tunggal (WTT) is an organization formed to fight for the interests of the community and defend their land rights from PT. Angkasa Pura I and the local government. In fighting for the interests of the Temon District community, Wahana Tri Tunggal (WTT) received support from the Yogyakarta Legal Aid Institute (LBH). PT takes action. Angkasa Pura I related to land clearing is a violation that violates the rights of the community itself. In addition to violence, local people often accept intimidation, especially those who refuse to deal with the construction of a new airport, the New Yogyakarta International Airport (NYIA). Even a resident named Fajar Afandi, a resident affected by the construction of the airport in New Yogyakarta International Airport (NYIA), received inappropriate treatment by the authorities in charge of securing the land clearing execution, he claimed to be strangled from behind, dragged and then kicked in the calf by the authorities while in the form of defending the ground and his house from a backhoe hit (heavy equipment to do the excavation) as a result he suffered injuries to the neck, calves, and some points

on his body.¹⁵ In this case, the process of implementing land for development in the public interest does not follow existing regulations because the implementation process uses actions that are detrimental to the people affected by land acquisition.

Human rights are very basic rights that are owned by every human being and as one of the symbols that distinguishes humans from other creatures. The definition of human rights itself is contained in Article 1 General Provisions number 1 of Law Number 39 of 1999 on Human Rights.¹⁶ Based on the understanding of human rights, the state and human beings with one another respect each other and understand each other that human rights are related to the honor and existence of human identity in carrying out their lives.¹⁷ In relation to land acquisition activities, human rights must be respected, protected, and protected. It is intended that the people affected by land acquisition do not feel disadvantaged in physical or financial form after development. The procedure for the implementation of land acquisition for development in the public interest is generally carried out based on the procedures set out in the legislation. This is done so that people affected by land acquisition get justice based on human rights. Human rights in carrying out land acquisition activities must always be considered to minimize conflicts between the party implementing acquisition land and the people affected by land acquisition.

In its implementation, land acquisition activities must not be carried out arbitrarily, which can trigger human rights violations. Human rights violations in question are violations committed by the party implementing land acquisition against people affected by land acquisition through physical violence, coercion, and intimidation relating to the release of land rights. In

¹⁵ Tribunnews Jogja, "Pengakuan Seorang Warga Terdampak Bandara NYIA: Saya Dicekik, Dipukul dan Diseret," online: <<http://jogja.tribunnews.com/2017/12/05/pengakuan-seorang-warga-terdampak-bandara-nyia-saya-dicekik-dipukul-dan-diseret>>.

¹⁶ Computell, *supra* note 6.

¹⁷ Zaman, *supra* note 7 at 177.

this case, human rights violations that are ignored or violated by the party implementing land acquisition are related to property rights.

III. LEGAL PROTECTION FOR COMMUNITIES AFFECTED BY LAND PROCUREMENT

It is only natural that a regulation regulating the legal protection of owners or holders of land rights that have certainty, usefulness and legal justice by fulfilling the various desires and needs of owners/holders of land rights without intimidation, deception, and discrimination because all citizens are equal before the law and are entitled to obtain legal protection from acts of intimidation, deception, and discrimination. The explanation above related to the legal protection of ownership of land rights explains that the tenure rights to land owned by individuals and customary rights are fundamental rights that must be protected. Land acquisition or land acquisition of individual property rights or customary rights by anyone, including the authorities, namely the government, must not be taken arbitrarily and violate the human rights of every individual, including reasons for development in the public interest. If this is conducted, then it must be based on law and be given adequate compensation. The interest of each person in question is the right that is entitled to each individual about the acquisition of land for development in the public interest. The inherent characteristic of the right according to the law, as stated by Fitzgerald in Satjipto Rahardjo, is that the right is placed on someone who is called the owner or subject of that right.¹⁸

Land acquisition activities for development for the public interest, theoretically, are based on certain principles and are divided into two subsystems, namely land acquisition by the government because of public interest and land acquisition by the government because it is not in the public (commercial) interest.¹⁹ The land acquisition that is carried out through land acquisition or the release of land rights often results in conflict. The conflict

¹⁸ *Ibid* at 194.

¹⁹ Limbong, *supra* note 2 at 334.

occurred because of weak regulation. The regulation governing land issues before Law Number 12/2012 on Land Procurement for Development in the Public Interest is Law Number 5/1960 on Basic Regulations on Agrarian Principles, Law Number 20/1961 on Revocation of Rights On the Land and the Objects Above and the rest are Peraturan Presiden, Keputusan Presiden, and Peraturan Menteri. Regulation on land acquisition should be in the form of a law that has permanent legal force and is binding on all levels of society that concern the lives of many people. This is a significant factor causing conflicts or problems in the process of implementing land acquisition.

Legal protection given to people affected by land acquisition is in the form of compensation. Compensation, in this case, needs to be underlined, because compensation can be said as legal protection for people affected by land acquisition when the compensation is appropriate to be given. It means that the compensation given can guarantee the rights of the community itself. In addition, compensation must also guarantee the welfare of the people affected by post-development land acquisition. In addition, the presence of Law Number 12 of 2012 on Land Procurement for Development in the Public Interest is positive progress in the framework of improving national land regulations. This is a consequence as a country that adheres to the Continental European system, Indonesian legal products must be oriented to the law.²⁰ The relevant law is a policy in the implementation of land acquisition for development in the public interest, which concerns the lives of many people and concerns the human rights of every individual affected by land acquisition. The dimensions of 'the lives of the people' and 'human rights' are the two sub-categories central in the state of Pancasila and the Constitution of the 1945 Constitution, and therefore must be actualized in a balanced and actual manner in the legal products of the laws.²¹ In addition, the emergence of Law Number 12 of 2012 on Land Procurement for Development in the Public Interest is a breakthrough that can be used as a legal basis by the government in carrying out land acquisition for development in the public interest properly, correctly and following the law.

²⁰ *Ibid* at 335.

²¹ *Ibid*.

It is intended that the party implementing the land acquisition does not neglect the element of human rights of the people affected by the land acquisition.

IV. CONCLUSION

Procurement of land for development in the public interest is said not to violate human rights if it carried out following the applicable laws and regulations, namely Law Number 2 of 2012 and Law Number 9/1999. Besides, the land acquisition must meet three elements, land acquisition, namely the limitation or definition of public interest, the mechanism of valuation of land prices and compensation, and the procedures for land acquisition adopted. Besides, the implementation of land acquisition must pay attention to human rights, where human rights with land acquisition activities must be respected, protected, and protected. It is intended that the people affected by land acquisition do not feel disadvantaged in physical or financial form after development. Human rights in carrying out land acquisition activities must always be considered to minimize conflicts between the party implementing land acquisition and the people affected by land acquisition. Implementation of land acquisition for development in the public interest is closely related to spatial planning. In the example of the case that the author has described, it can be said that land acquisition violates human rights. This happened because the land acquisition team's deliberations did not reach consensus, so the conflict between the party implementing the land acquisition with the people affected by the land acquisition continued. For this reason, in the procedures or procedures for carrying out land acquisition that often occurs, violations of human rights are deliberations relating to the determination of the amount and proper form of compensation.

Second, legal protection for the rights of people affected by land acquisition is the 1945 Constitution, Law Number 5 of 1960 on the Basic Agrarian Regulations, Law Number 39 of 1999 on Human Rights, Law Number 2 of

2012 on Land Procurement for Development in the Public Interest as well as other laws and regulations under laws governing ownership rights to land that may not be seized arbitrarily even in the public interest. Other than in the form of laws and regulations, the form of legal protection provided to people affected by land acquisition is compensation in whatever form has been agreed by both parties (land acquisition team with the community affected by land acquisition), and the compensation must be appropriate based on laws and regulations.

REFERENCES

Age, Nurus. *Political Law of Land Procurement Between Public Interest and Protection of Human Rights* (Bandung: Refika Aditama, 2016).

Computell, Asa. "State Gazette of the Republic of Indonesia " 12.

Indonesia. "Law Number 2 of 2012", online: <<http://www.bpn.go.id/publication/regulations-perundangan/undang-undang/undang-undang-nomor-2-years-2012-876>>.

Indonesia. "Law Number 5 of 1960", online: <<http://www.bpn.go.id/publikasi/peraturan-perundangan/Undang-Undang/undang-undang-nomor-5-1960-920>>.

Indonesia. "Law Number 26 of 2007", online: <<http://www.bpn.go.id/publication/Regulations-Perundangan/Undang-Undang/undang-undang-nomor-26-years-2007-1849>>.Limbong, Bernhard. *Land acquisition for development: regulation, compensation, law enforcement* (Margaretha Pustaka, 2011).

Rubaie, Achmad. *Land Procurement Law for Public Interest* (Pusderankum and Bayumedia Publishing, 2007).

Santoso, Urip. *Agrarian Law*, first edition ed (Jakarta: Kencana Prenada Media Group, 2012).

Supriadi. *Agricultural Law*, sixth edition ed (Jakarta: Sinar Grafika, 2015).

Sutedi, Adrian. *Implementation of Public Interest Principles in Land Procurement for Development* (Jakarta: Sinar Grafika, 2008).

Tribunnews Jogja. "Recognition of an Impacted Citizen of the NYIA Airport : I Was Strangled, Beaten and Dragged ", (5 December 2017), online: <<http://jogja.tribunnews.com/2017/12/05/pengstrangled-beaten-and-dragged>>.