

Implications of the Law of Land Acquisition for Development in the Public Interest on Land Acquisition Conflict Resolution

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ABSTRACT

This study aims to evaluate and analyze legal certainty in resolving conflicts over land acquisition for development in the public interest in the context before and after the enactment of Law No. 2 of 2012. The research uses a normative legal research method with a statute approach. The method of analysis in this study is to use qualitative analysis. The study results indicate that legal certainty in resolving conflicts over land acquisition for development in the public interest in the context before and after the enactment of Law No. 2 of 2012, obviously very different. However, from the two cases, land acquisition and compensation for land rights for development in the public interest have not been processed and run effectively. Based on this conclusion, it is recommended that laws and regulations on land acquisition for development in the public interest be more clarified, particularly regarding deliberation activities and the form/amount of compensation value. In addition, all stakeholders involved in negotiating the agreement must attach importance to the principle of deliberation and consensus regarding land acquisition for development in the public interest.

Keywords: *Conflict Resolution; Deliberation; Land Acquisition; Public Interest.*

Submitted: September 17, 2021

Accepted: November 26, 2021

Published: November 28, 2021

Doi: <https://doi.org/10.56087/aijih.v24i2.286>

INTRODUCTION

It is impossible to deny that every country's development of construction activities is closely related to land acquisition. The land acquisition system and objectives useful for development projects in Indonesia are broadly classified into growth in the public interest and personal or private interest. Land acquisition for development in the public interest is carried out based on laws and regulations with direct involvement from the government. According to Mudakir Iskandar Syah, the formulation of "most strata of society" is more appropriate to use in the context of public interest. In

this case, as based on Article 1 point 5 of Presidential Regulation of the Republic of Indonesia Number 65 of 2006 on Amendment to Presidential Regulation Number 36 of 2005 on Land Acquisition for the Implementation of Development in the Public Interest, explaining that “*the public interest is the interest of most strata of society*”. However, this provision can be understood that all communities do not necessarily utilize public facilities. Meanwhile, land acquisition for personal or private interest development is based on buying and selling activities or transactions or exchanges. This classification is because the community will apply disparity in procedures in land acquisition practices.

The land acquisition process involves various interests owned or carried by the parties. As is often the case in society, there is a potential conflict if this process is not controlled correctly.¹ Ideally, the public interest process development is carried out after the land acquisition procedure is complete. In this case, development activities do not harm or reduce the standard of living of landowners and owners of land rights or objects. Although specific laws and regulations regulate land acquisition for development in the public interest, it often faces obstacles and problems. In the end, these conditions can cause violations to the owner of the land rights, and development cannot move in harmony.

The land acquisition that affects the loss of part or all of the land requires a compensation process, with an amount of money or things that will be concessioned with land in other areas. Therefore, implementing the development of a project will require a land acquisition of the location of a project.² So several strategic factors need to be studied further. First, development in the public interest aims to distribute many benefits to the community and has a high economic value.³ The delayed infrastructure development projects result from difficulties in regulation and land acquisition. In this case, the community’s benefits of infrastructure are not enjoyed directly. Of course, this situation will hinder the community’s prosperity development plan. Second, development in the public interest related to land rights issues, the release, and revocation or abolition of the owner’s rights to land. This condition concerns human rights, namely the relationship with the livelihoods of the land rights holders and their materials. Elements of land acquisition must be in line with the objectives of the land rights holder. In this case, the laws and regulations on land acquisition for development in the public interest will always be related to protecting property rights by rights holders. The government’s position in carrying out land acquisition

¹Utomo, S. (2020). Problematika Proses Pengadaan Tanah. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan dan Pranata Sosial*, 5(2), p. 25.

²Rianto, N. (2011). Indikator Perubahan Kesejahteraan Masyarakat Pasca Pembebasan Lahan untuk Pembangunan Infrastruktur Pekerjaan Umum dan Permukiman. *Jurnal Sosial Ekonomi Pekerjaan Umum*, 3(3), p. 184.

³Wirabrata, A. & Surya, T. A. (2011). Masalah Kebijakan dalam Pengadaan Tanah untuk Pembangunan Infrastruktur. *Jurnal Ekonomi & Kebijakan Publik*, 2(2), p. 730.

must still have limits and controls so that there is no abuse of authority and power. Third, although the concept and design of land acquisition for development in the public interest do not provide opportunities for private participation, efforts to legitimize the private sector to participate in the land acquisition for development in the public interest mechanism are still carried out laws and regulations. Fourth, from an economic and political perspective, the antecedents of land acquisition for the public interest return to the question of international influences and pressures in policy formulation and definition.

Development does not always side with humanity. Sometimes development even marginalizes and even gets rid of the weak. The Kedung Ombo Reservoir development project is the most straightforward example of how growth excludes most people. In the late 1980s, the New Order regime faced the most dramatic and severe resistance of the many infrastructure development projects during this regime's reign. The development of the Kedung Ombo Reservoir, located right on the border of three regencies —Boyolali, Sragen, and Grobogan— bears witness to the various practices commonly carried out by the New Order regime at that time to force development in the name of 'national interest'. Intimidation, persecution, stigmatization, and forced displacement are common for those considered 'rebellious'.

The development of the Kedung Ombo Reservoir, financed mainly by loans from the World Bank, was not easy. This situation was inseparable from the government's approach, where the New Order followed a top-down approach through the state structure from the district level to the sub-district level and down to the village level. The village apparatus is used as a government "institution" responsible for explaining plans for dam development, land acquisition, and payment of compensation. The one-sided approach of the apparatus in the land acquisition process and compensation determination has complicated the case of the Kedung Ombo Reservoir.⁴ This situation also causes the public to assume that their interests are not protected by law, resulting in violations of the community's human rights and civil rights, which violates the community's sense of justice towards government policies and decisions.⁵

After an extended dynamic, the Government of Indonesia has finally passed a detailed law governing land acquisition, namely Law of the Republic of Indonesia Number 2 of 2012 on Land Acquisition for Development in the Public Interest (after this referred to as Law No. 2 of 2012). Law No. 2 of 2012 is expected to be a solid legal foundation to facilitate development in the public interest. Based on Article 2 of Law No. 2 of 2012 regulates that land acquisition in the public interest is implemented based on

⁴Novandi, A. S., et al. (2019). Dampak Pembangunan Waduk Kedung Ombo terhadap Kehidupan Sosial Ekonomi Masyarakat Petani di Kabupaten Grobogan Tahun 1989-1998. *Indonesian Journal of Conservation*, 8(2), p. 129.

⁵Ananta, D. D. (2016). Politik Oligarki dan Perampasan Tanah di Indonesia: Kasus Perampasan Tanah di Kabupaten Karawang Tahun 2014. *Jurnal Politik, Universitas Indonesia*, 2(1), p. 115.

the principles:

- a. humanity;
- b. justice;
- c. expediency;
- d. certainty;
- e. openness;
- f. agreement;
- g. participation;
- h. welfare;
- i. sustainability; and
- j. alignment.

Based on Article 3 of Law No. 2 of 2012, regulates that:

“Land acquisition in the public interest aims to provide land for the implementation of development to improve the welfare and prosperity of the nation, state, and society while still ensuring the legal interests of the Entitled Party.”

However, land acquisition problems are still often encountered today and even clash with the development process that the Government of Indonesia must carry out.⁶ For example, landowners decide on a price that is deemed unreasonable. In addition, the state also unilaterally determines the price of compensation and uses coercion. This situation gives the impression that the rights and interests of landowners are not legally protected.⁷ In contrast, Article 1 point 2 of Law No. 2 of 2012, explains that *“Land Acquisition means providing land by giving adequate and fair compensation to the entitled party”*. Furthermore, based on Article 42 section (1) of Law No. 2 of 2012, regulates that:

“In the event that the Entitled Party refuses the form and/or amount of compensation based on the results of the deliberation as referred to in Article 37, or the Decision of the District Court/Supreme Court as referred to in Article 38, the compensation shall be deposited in the local district court.”

There has been much previous research related to land acquisition for development in the public interest in Indonesia, including:

1. Urip Santoso discusses dispute resolution in a land acquisition taken through deliberation between the agency that requires the land and the party who is entitled to it, a lawsuit, or an objection to the court.⁸ In this case, that research

⁶Ediwarman. (2003). *Perlindungan Hukum bagi Korban Kasus-Kasus Pertanahan (Legal Protection for The Victim Of Land Cases)*. Medan: Pustaka Bangsa Press, p. 48.

⁷Kalo, S. (2004). *Himpunan Peraturan Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*. Jakarta: Pustaka Bangsa Press, p. 4.

⁸Santoso, U. (2016). *Penyelesaian Sengketa dalam Pengadaan Tanah untuk Kepentingan Umum. Perspektif: Kajian Masalah Hukum dan Pembangunan*, 21(3), p. 188.

only generally discusses terms dispute resolution in land acquisition for the public interest based on the latest law. Meanwhile, this research will compare the two dispute cases in the land acquisition which resolutions use two different legal bases.

2. Hardianto Djanggih & Salle discusses land acquisition analysis to create legal certainty in land acquisition for local governments.⁹ In this case, that research only discusses aspects of the agencies that play a role in land acquisition to implement development in the public interest. Meanwhile, this research will also discuss the terms of problems when there is a dispute in land acquisition.
3. Mukmin Zakie conducted a comparative study between Indonesia and Malaysia in providing land for the public interest.¹⁰ In this case, that research discusses the regulation of land acquisition and its concept for the benefit of the people. Meanwhile, this research has differences in the object of comparison and the problems.

Based on the above background, this study aims to evaluate and analyze legal certainty in resolving conflicts over land acquisition for development in the public interest in the context before and after the enactment of Law No. 2 of 2012. In addition, it is also to identify, analyze, and explain solutions to problems in land acquisition for development in the public interest.

METHOD

The research uses a normative legal research method with a statute approach. This understanding is research that prioritizes legal materials in legislation and court decisions as the primary reference material in conducting research or assessment. The normative approach in the legal context is intended as something autonomous with its validity determined by the law. Based on this, the law is the final result and has been declared perfect so that it remains only to be implemented.¹¹ The type of data that we will use is secondary data. The data comes from library materials by tracing the literature associated with land acquisition for development in the public interest. Secondary data includes primary, secondary, and tertiary legal materials. The primary legal materials as secondary data used in this study consist of:

1. Law No. 5 of 1960 on Basic Agrarian Regulations;
2. Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest;

⁹Djanggih, H. & Salle, S. (2017). Aspek Hukum Pengadaan Tanah bagi Pelaksanaan Pembangunan untuk Kepentingan Umum. *Pandecta, Universitas Negeri Semarang*, 12(2), p. 165.

¹⁰Zakie, M. (2011). Pengadaan Tanah untuk Kepentingan Umum (Perbandingan antara Malaysia dan Indonesia). *Jurnal Hukum Ius Quia Iustum*, 18(Edisi Khusus), p. 187.

¹¹Barus, Z. (2013). Analisis Filosofis tentang Peta Konseptual Penelitian Hukum Normatif dan Penelitian Hukum Sosiologis. *Dinamika Hukum, Universitas Jenderal Soedirman*, 13(2), p. 311.

3. Presidential Regulation No. 148 of 2015 on the Fourth Amendment to Presidential Regulation Number 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest;
4. Presidential Decision No. 55 of 1993 on Land Acquisition for the Implementation of Development in the Public Interest;
5. Regulation of Minister of Internal Affairs No. 15 of 1975 on Provisions Regarding Land Acquisition Procedures;
6. Regulation of the Supreme Court No. 3 of 2016 on Procedure for Filing Objection and Depositing of Compensation to District Court on Land Acquisition for Development in the Public Interest
7. Semarang District Court Decision No. 117/Pdt.G/PN Semarang/1990 jo No. 143/Pdt G/1991/PT Semarang jo No. 2263/K/Pdt/1991 jo No. 194/Pdt/G/2014/PN.Smg; and
8. Kalianda District Court Decision No. 55/Pdt.G/2017/PN Kla.

The data collection technique in this research is a literature study. In this case, the legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. While the data analysis method to be carried out is the qualitative analysis method, namely the method that prioritizes processes, meaning processes that occur and take place at the source of the data and the entire context that includes it, in addition to the data generated.

RESULT AND DISCUSSION

A. Before Law No. 12 of 2012: The Kedung Ombo Reservoir Case

The dispute regarding the land acquisition of the Kedung Ombo Reservoir irrigation project is based on the Regulation of the Minister of Internal Affairs of the Republic of Indonesia Number 15 of 1975 on Provisions Regarding Land Acquisition Procedures (after this referred to as the Regulation of Minister of Internal Affairs No. 15 of 1975). The plaintiffs are a small number of people whose land was taken to develop the reservoir. While the defendants are:

Defendant I:

State of the Republic of Indonesia qq Government of the Republic of Indonesia qq Minister of Internal Affairs qq Governor or Regional Head Level I Central Java;

Defendant II:

State of the Republic of Indonesia qq Government of the Republic of Indonesia qq Minister of Public Works qq Director General of Irrigation qq Head of Jratunseluna River Development Area qq Kedung Ombo Reservoir Project Leader.

In the case of Kedung Ombo Reservoir, namely with case No. 117/Pdt.G/PN Semarang/1990 jo No. 143/Pdt G/1991/PT Semarang jo No. 2263/K/Pdt/1991 jo No. 194/Pdt/G/2014/PN.Smg. The Supreme Court explained and emphasized the nature of holding deliberation to reach consensus in the context of land acquisition, the procedure for which is regulated in Regulation of the Minister of Internal Affairs No. 15 of 1975. Basically, all landowners agree that their land is used to develop the Kedung Ombo Reservoir. The Governor determines the issue of compensation, and most of the landowners have received payment and handed over their land. It is just that 54 residents sued the government. According to the Fatwa of the Deputy Chief Justice of the Supreme Court dated November 26, 1988, Number 578/1320/88/um/TU/Pdt, compensation was consigned at the Boyolali District Court. The Boyolali District Court issued a Consignment Determination. When there is no agreement regarding the compensation, the disputed land will still be worked on for reservoir development.

The plaintiff argues that the plaintiffs are not opposed to using their land rights in the public interest, as long as the procedure is carried out following the applicable regulations, namely through a balanced agreement. However, in reality, the compensation is considered inadequate and without consideration. Not to mention the intimidation by the local subdistrict head in which the community was threatened with three months in prison and a fine of Rp. 10,000 if they did not accept the compensation. After they serve their sentence, the land will become the state's property where the army and police will carry out strict security complete with weapons.

In January 1989, the land belonging to the Plaintiffs had been worked on for reservoir development. Therefore, Defendant can be declared to have committed an unlawful act. In this case, because they have harmed Plaintiff, Plaintiff was forced to flee to another place.

First of all, what needs to be questioned is the authority of the District Court in examining and adjudicating that case. Because Article 1 of Government Regulation of the Republic of Indonesia Number 39 of 1973 on Procedure for Determination of Compensation by the High Court in Connection with the Revocation of Rights to Land and Objects thereon (after this referred to as Government Regulation No. 39 of 1973), regulates that:

“Regarding the decision on the amount of compensation that cannot be accepted because it is considered inadequate, connection with the revocation of rights to land and objects thereon, as referred to in Articles 5 and 6 of Law Number 20 of 1961 on Revocation of Rights to Land and Objects thereon (State Gazette of 1961 Number 288), can be appealed to the High Court.”

Furthermore, based on Article 20 section (1) of Presidential Decision of the Republic of Indonesia Number 55 of 1993 on Land Acquisition for the Implementation of Development in the Public Interest (after this referred to as Presidential Decision No. 55 of 1993), regulates that:

“Holders of land rights who do not accept the decision of the Land Acquisition Committee may file an objection to the Governor as Regional Head Level I accompanied by an explanation of the causes and reasons for the objection.”

Meanwhile, until this research was written, Law No. 2 of 2012 was approved. In this case, based on Article 38 section (1) of Law No. 2 of 2012, regulates that:

“In the event that there is no agreement regarding the form and/or amount of Compensation, the Entitled Party may file an objection to the local district court within a maximum period of 14 (fourteen) working days after the deliberation on the determination of Compensation as referred to in Article 37 section (1).”

However, the problem is that Government Regulation No. 39 of 1973 had not been revoked when the Kedung Ombo Reservoir dispute occurred. So it can be stated that there are conflicting provisions between Presidential Decision No. 55 of 1993 with Government Regulation No. 39 of 1973.

In addition, in the Legal Considerations of the Semarang District Court page 327, paragraph three, it is stated that the Governor’s Decision regarding the amount of compensation is based on Article 8 section (1) of Law of the Republic of Indonesia Number 20 of 1961 on Revocation of Rights to Land and Objects thereon (after this referred to as Law No. 20 of 1961) is the final decision. In this case, Article 8 section (1) of Law No. 20 of 1961 regulates that:

“If the person entitled to land and/or objects whose rights have been revoked is not willing to accept compensation as enacted in that presidential decree in articles 5 and 6, because they think the amount is inadequate, then they can appeal to the High Court, whose jurisdiction includes the location of the land and/or that object, so that the court will determine the amount of the compensation. The High Court decides that problem in the first and last instance.”

From the above provisions, the Legal Considerations of the Semarang District Court is problematic because the Judge in interpreting Article 8 section (1) of Law No. 20 of 1961 is too shallow. In this case, it is as if Article 8 section (1) of Law No. 20 of 1961 gives the Governor the authority to determine the form and amount of compensation imposed on the owners of the land concerned. Whereas in accordance with applicable legal principles, there has never been such an authority granted through a regulation that is “lower” than the law itself in this

situation by a Regulation of the Minister of Internal Affairs. However, Presidential Decision No. 55 of 1993 is more flexible in managing it. So what is determined by the Governor is not a final decision. Those with land rights still have the opportunity to express or object. As emphasized that the land acquisition procedure can be through other transactions such as buying and selling or leasing must be based on mutual agreement.¹² So it must be interpreted that if the landowner still refuses, the project may be cancelled or transferred to another place. If it must be carried out at that location, then the effort to be made is the revocation of rights.

Regarding the consignment of judges' considerations on page 333, paragraph 3 and next paragraf, based on the Deputy Chief Justice of the Supreme Court letter dated November 16, 1988 No. 578/1320/88/11/UM-TU/Pdt. AP Parlindungan thinks that the consignment problem is an activity that seems to be based on existing law.¹³ This situation is also regulated in Regulation of the Minister of Internal Affairs No. 15 of 1975. If the Government does it for the benefit of the community, then according to AP Parlindungan, it accepts it as jurisprudence on the land acquisition event. This case, namely "Pondok Derita" in Jakarta and Kedung Ombo Reservoir in Central Java. The problem is if it is extended to land acquisition for private parties.

In the Supreme Court's Cassation decision, the Panel of Judges decided that the meaning of 'consensus deliberation', such as the compensation clause in the Kedung Ombo Reservoir case, needed to be redefined. The agreement is based on deliberation between the Central Java regional government and residents. In this case, in the form of confessions, evidence in the record of photos of deliberation, as well as a consensus between residents and the Head of the District Attorney's Office, the Head of the Resort Police, the Commander of the Military District Command proposed by the defendant (Central Java Regional Government), were ultimately rejected by the Supreme Court. The Supreme Court has found that this does not reflect true material justice because it does not reflect essential truths. The procedure is just momentum and does not prove the implementation of a deliberate and mutually agreed upon land purchase. In addition, the presence of stakeholders sent by the defendant harms the deliberation and agreement on implementing the land purchase for the Kedung Ombo Reservoir irrigation project.

The trial process finally showed a transition from pre-1993 where Regulation of the Minister of Internal Affairs No. 15 of 1975 as the legal basis for Presidential Decision No. 55 of 1993. Despite Presidential Decree No. 55 of 1993 was not used

¹²Hamdi, H. (2014). Penyelesaian Sengketa Penetapan Ganti Rugi dalam Pengadaan Tanah untuk Pembangunan Kepentingan Umum (Kajian terhadap Undang-Undang Nomor 2 Tahun 2012). *Jurnal Ius: Kajian Hukum dan Keadilan*, 2(4), p. 100.

¹³Parlindungan, A. P. (1993). *Pencabutan dan Pembebasan Hak atas Tanah: Suatu Studi Perbandingan*. Bandung: CV. Mandar Maju, p. 49.

as a legal basis because it was not retroactive, the judges of the Supreme Court remained focused on the existence of Presidential Decision No. 55 of 1993 in making decisions. After the court of first instance and appeal, the judge rejected the plaintiff's claim without stating the reasons. At the cassation level, the Supreme Court amended the decision for the following reasons:

1. The applicable regulation, in this case, is Regulation of the Minister of Internal Affairs No. 15 of 1975, and Presidential Decree No. 55 of 1993 is not intended to be retroactive. However, even though Presidential Decree No. 55 of 1993 and Regulation of the Minister of Internal Affairs No. 15 of 1975 were well implemented. However, violations were still found due to the non-execution of consensus deliberation according to the rights holders, and the Governor's decision was carried out with coercion;
2. Plaintiff did not accept the amount of compensation offered according to the Governor as required in Regulation of the Minister of Internal Affairs No. 15 of 1975. This condition causes the cultivation of building land by closing the reservoir fence to be illegal;
3. The defendant should compensate the poor as the plaintiff with the actual value. In this case, the plaintiff gets the opportunity to buy land or other buildings in exchange for an equivalent value.

As for the Judicial Review level, the Supreme Court provides several considerations. *First*, the decision of the district court ordering the transfer of the plaintiff's rights over land, buildings, and gardens to the state is valid for the following reasons:

1. All land rights have a social function, which means that individual rights surrender to the public interest;
2. The case of the Kedung Ombo Reservoir is for the public interest
3. The law must achieve national development according to MPR Decree 111 of 1993, which applies to similar conditions in the Mican Dam case in Supreme Court Decision No. 135K/Pdt/1989 of 19 July 1990.

Second, Regulation of the Minister of Internal Affairs No. 15 of 1975 and Presidential Decree No. 55 of 1993 subject to the Central Java authorities. In particular, most of the rights holders have accepted the compensation offered by the Governor. Based on the decision of the Supreme Court No. 578/1320/88/II/UMTU/Pdt, the Boyolali High Court has the right to transfer the plaintiff's rights to the state so that the project is not disturbed or neglected.

The understanding that can be drawn from the settlement of the Kedung Ombo Reservoir case above is that the direction of state policy translated into laws and regulations to become the legal basis for judges later still lies in prioritizing

development (for the public interest) rather than individual rights. The interaction of laws and regulations with judges or the court's position above results in an interpretation of 'public interest' in a broad sense, namely prioritizing social functions¹⁴ and benefits of project development rather than the public interest. In this case, the individual's rights must succumb or be limited by the social function.

B. Implication of Law No. 12 of 2012: Bakauheni – Terbanggi Besar Toll Road Case

Bakauheni – Terbanggi Besar toll road case involves Saimi Saleh as Petitioner who owns 3 (three) plots in 1 (one) field of 40,373 m² (forty thousand three hundred seventy-three square meters). In this case, it is located in Sukanegara Village, Tanjung Bintang Government Sub-district, South Lampung Regency, as based on SHM number: 776/Suka Negara, SHM number: 777/Suka Negara and SHM number: 778/Suka Negara 2009.

On March 17, 2017, Petitioner held a meeting with the Defendant's attorney (President of Bakauheni Mautstrasse Terbanggi Besar Land Development) at Pulau Pisang Street/Residential KORPRI Blok A2 No. 13, Bandar Lampung. The meeting was intended to discuss the form of compensation. The results of the meeting agreed that the a-quo converence was not included in the category of deliberation, but was only in the stage of an official communication regarding the determination of the location of the highway on Petitioner's land area of 25,191 m² (twenty-five thousand one hundred ninety-one square meters) with a compensation value of Rp. 13,090,089,771.00 (thirteen billion ninety million eighty-nine thousand seven hundred and seventy-one rupiah).

Furthermore, Defendant promised to invite the Petitioner as soon as possible to hold a discussion to determine the value/form of compensation. However, until Petitioner received the Minutes of Offering Compensation Payments with No.: 16/Pdt.P.Kons/2017/PN/Kla dated July 18, 2017, it turned out that Petitioner had never received an invitation for deliberation from the Defendant. The Carianda District Court published the minutes at the request of Defendant II (Asmawi and Partners Public Appraisal Office). Furthermore, the Petitioner stated that he refused the amount of the compensation value before there was a Court Decision with permanent legal force.

It should be emphasized that Petitioner strongly supports the development of the Bakauheni – Terbanggi Besar Toll Road, which happens to be crossing Petitioner's land, as based on Kalianda District Court Decision No. 55/Pdt.G/2017/PN Kla. In this case, as long as the implementation is based on Article 2 of Law No. 2 of 2012.

¹⁴*Vide* Article 18 of Law of No. 5 of 1960 on Basic Agrarian Regulations.

Based on these provisions, the Petitioner feels he is being mistreated and feels forced. The unfair treatment referred to is in terms of compensation appraisal, namely Petitioner's land is valued at Rp. 460,000.00/m². Meanwhile, the land around Petitioner's land, such as land owned by Lukman/Hakim, is given a value of Rp. 1,200,000.00/m². Even land that is directly adjacent to Petitioner's land, such as the land of a.n. Raj Kumar Singh, Bakrie Brothers, and Djohan Leiman Yusuf, is valued at Rp. 1.109.000,00/m². Regarding the compensation assessment, Petitioner has sent letters to Defendant and Co-Defendant 2 (two) times, namely letters dated March 20, 2017, and May 5, 2017. In the letter, Petitioner requested a review of the value/amount of Petitioner's land compensation value/amount due to differences striking if compared to the price or compensation value of several plots around the Petitioner land. However, there has been no response to this, so it is not clear why there is such a stark difference.

Regarding the act of coercion felt by the Petitioner from the Defendant's attitude who ignored deliberation activities to reach an agreement. Based on Article 70 of Presidential Regulation No. 148 of 2015 regulates that:

- (1) The conduct of the deliberation as referred to in Article 68 may be divided into several groups by considering the number of Entitled Parties, the time and place of the deliberation on the determination of Compensation;
- (2) In the event that an agreement has not been reached, the deliberation as referred to in section (1) may be held more than 1 (one) time;
- (3) The deliberation as referred to in section (1) and section (2) shall be held no later than 30 (thirty) working days after the results of the appraisal from the Appraiser are submitted to the Chief Executive of the Land Acquisition.

Furthermore, based on Article 1 point 4 of Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2016 on Procedure for Filing Objection and Depositing of Compensation to District Court on Land Acquisition for Development in the Public Interest (hereinafter referred to as Regulation of the Supreme Court No. 3 of 2016), explains that:

"The Compensation Determination Deliberation is a deliberation conducted by the land agency as the executor of the land acquisition with the rightful party or its proxies and includes the Agency that requires Land to obtain an agreement regarding the form and/or amount of compensation based on the results of the Compensation assessment from an appraiser or public appraiser, the results of which are outlined in Minutes of the results of the deliberation on the determination of the results of the loss."

Furthermore, Law No. 2 of 12 does not explain the meaning of deliberation itself. However, based on Article 37 section (1) of Law No. 2 of 12, regulates that:

“The Land Agency shall hold deliberation with the Entitled Party within a maximum period of 30 (thirty) working days after the results of the appraisal from the Appraiser are submitted to the Land Agency to determine the form and/or amount of Compensation based on the results of the Compensation appraisal as referred to in Article 34.”

From the above provisions, the phrase “... the form and/or amount of Compensation ...” where the application of the word “and/or” indicates one or more than one possibility. In this case, it can be treated as “and” as well as “or”. Therefore, when applied in the provisions of the article, it means:

1. The meeting is held to determine the form and amount of Compensation;
2. The meeting is held to determine the form or amount of Compensation.

Therefore, deliberation to determine compensation is prioritized regarding the form of retribution, while it is not mandatory regarding the amount of compensation. In this case, because the amount of the compensation value is the authority of the public appraiser (Appraisal), namely Participating Defendant Objection I, to conduct the assessment. Based on Article 68 section (3) of Presidential Regulation No. 148 of 2015, regulates that:

“Deliberation as referred to in section (1), is carried out directly to determine the form of Compensation based on the results of the Compensation assessment as referred to in article 65 section (1).”

Therefore, the deliberation conducted to determine compensation is only required regarding the form of retribution, while the amount of damages is not required. So in the opinion of the Panel of Judges in the Court, the deliberation was held on March 17, 2017, according to the applicable procedures. This assessment was also strengthened by preliminary evidence in the form of an invitation to deliberation on the condition of compensation and the testimony of witnesses presented by the Petitioner. In this case, it is stated that the witnesses were present at the meeting held at the Residential KORPRI, where the activity discussed compensation land acquisition for the development of Bakauheni – Terbanggi Besar Toll Road. Subsequently, the Petitioner filed an objection on September 25, 2017, and was registered or submitted to the Kalianda District Court on September 26, 2017. Based on Article 5 of Regulation of the Supreme Court No. 3 of 2016, regulates that:

“The objection as referred to in Article 3 is submitted no later than 14 (fourteen) days after the result of the Deliberation on Compensation Determination.”

From the above provisions, it can be concluded that the Petitioner’s objection application has expired. In this case, from the deliberation period on March 17,

2017, until the plaintiff's objection, which was submitted to the Kalianda District Court on September 26, 2017. Therefore, the Petitioner's objection does not meet the formal requirements and is according to Regulation of the Supreme Court No. 3 of 2016.

CONCLUSIONS AND SUGGESTIONS

Based on the descriptions above, it can be concluded that legal certainty in resolving conflicts over land acquisition for development in the public interest in the context before and after the enactment of Law No. 2 of 2012, obviously very different. However, from the two cases, land acquisition and compensation for land rights for development in the public interest has not been processed and has not run effectively. In the Kedung Ombo Reservoir case, the Supreme Court found that this does not reflect true material justice because it does not reflect essential truths. The procedure is just momentum and does not prove the implementation of a deliberate and mutually agreed upon land purchase. In this case, although deliberation has indeed been carried out, the situation is not balanced. Meanwhile, it differs from the Bakauheni – Terbanggi Besar toll road case, where Petitioner considered that the meeting with the Defendant's attorneys held on March 17, 2017, was not a deliberation activity. Therefore, Petitioner's appeal on September 26, 2017, has expired and does not meet the formal requirements based on Regulation of the Supreme Court No. 3 of 2016. Based on this conclusion, it is recommended that laws and regulations on land acquisition for development in the public interest be more clarified, particularly regarding deliberation activities and the form/amount of compensation value. In addition, all stakeholders involved in negotiating the agreement must attach importance to the principle of deliberation and consensus regarding land acquisition for development in the public interest.

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