

Reconstruction of Guarantee for Legal Protection of Communities Affected by Land Procurement For Railway Construction In Indonesia

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Abstract: *This study aims to analyze the concept of regulation that guarantees adequate legal protection in the event of problems in fulfilling the rights of compensation for entitled parties. This research uses normative or doctrinal standard research methods. Primary data sources were obtained through field studies, while secondary data used literature studies data collection techniques using surveys, interviews, and literature study. The data analysis technique used a qualitative approach with an interactive model. The sampling method used was purposive and snowball sampling. In terms of its nature, this dissertation is explanatory research, and from the point of view of its form, it is a prescriptive study. In this legal research, the researcher uses 2 (two) approaches, the statute approach, and the conceptual approach. The results show, in terms of the validity theory of Gustav Radbruch's law, the guarantee of the legal protection of Law Number 2 of 2012 on the process and mechanism for providing compensation for entitled parties have valid validity from a juridical review but does not yet have valid validity from philosophical thought. And sociological. This study also concludes that it is necessary to reconstruct the land acquisition law, mainly concerning the provisions governing the process and mechanism for providing compensation or compensation to entitled parties. To guarantee legal protection in drafted regulations to fulfill the fundamental values of justice and benefits for the community, reconstruction is directed at a. There is the involvement of parties entitled as the subject of land acquisition rights with appraisal in the assessment of land acquisition objects, b. the presence of a dispute resolution institution with a non-litigation paradigm (PnLg) in the form of mediation, c. there is a change in the term "compensation" to "compensation," and d. there are additional rights for entitled parties, namely: "the right to get adequate compensation." Based on the above conclusions, it is recommended that the government revise Law Number 2 of 2012.*

Keywords: *Reconstruction, Land Acquisition, Legal Protection, Compensation, Fairness.*

1. INTRODUCTION

The state is a legal partnership that occupies an area forever and is equipped with the highest power to carry out the people's greatest prosperity. The Government must be reflected in 3 (three) elements which constitute a condition for the existence of that state, namely the fact of a place (area), the presence of the people or society, and the existence of an organization in the form of a government that is ruling, sovereign, guarantees and protects the people or people who live in that particular area. (Ayu & Rachmi, 2019) The people play a very strategic role in a country because people are one of the constitutive elements of establishing a state and a sovereign government. Therefore, the Government, in making policies, must listen to the voice of the people. People have the right to be heard and access to

information (the right to be heard and access to information), which must be fulfilled. With the right to be heard, the possibility of a dispute between the Government and the people can be reduced.(Sukmoro, Sulistiyono, & Karjoko, 2019)

One of the national development missions is to achieve equitable development and justice. Therefore, any action carried out by the Government should pay attention to the sustainability of people's lives in a weak position, and the Government's arbitrariness is not justified.(Sudarwanto & Handayani, 2019) The people as civil society should have a strategic place, guaranteed and protected their rights, and be given the broadest possible opportunity to voice their interests. However, in many cases, there are still many public complaints due to the Government's treatment of the community that does not reflect the implementation of the national development mission.(Sudarwanto, 2020)

While Law Number 2 of 2012 on land acquisition for public interest development was passed, many people still refuse to use their land for the development of infrastructure. Such a situation or situation may occur as a result of Law No 2 of 2012 on land acquisition for development for public interest, which in the terms of its articles regulating the procedure for deciding the amount of the compensation to be paid to the entitled party, permits the determination of the amount without the consent of both parties, even if the entitled party has not been involved from the outset.(Wibowo, Sulistiyono, & Karjoko, 2019) From the results of the estimate, it is hoped that land rights holders would accept or approve them immediately through deliberations conducted for that reason. If no compromise is reached between the two parties, it will be referred to the District Court to settle the matter. This is what makes disputes over land acquisition possible.(Kuncoro, Handayani, Muryanto, & Karjoko, 2019)

The Land Acquisition Law offers a remedy by depositing money through the court to settle the dispute on the amount of compensation (compensation) between land rights holders and the land acquisition committee (government) for inland acquisition activities for growth for the public interest (consignment). However the consignment process introduced so far has not provided the right land acquisition solution in Indonesia. Still on the other hand, there has been friction that has led to confrontation between the group and the government.(Soediro, Handayani, & Karjoko, 2020) The Constitution on the expenditure of the State by a consignment agency does not excuse funding through the court. This consignment is also seen as generating unconstitutional acts by the government against the property rights of the liberated people, even though these property rights are guaranteed by the constitution of our country. Hence, stop the consignment process as far as possible to settle land disputes. The formation of a state, the existence of society as a nation's people, has a very strategic role as central to the existence of the government. Therefore the philosophy of life of the State of Indonesia considers the people as government collaborators in achieving the values of the State. In addition, in its vision, it is also understood that the Indonesian nation only wants to understand Indonesia. One of its national development missions aims to establish a democratic society founded on the law and the Indonesian nation's commitment to reform in the field of law.(Handayani, Seregig, Prasetyo, & Gunardi, 2017)

In addition, in carrying out growth, particularly in the infrastructure sector, the limited land area controlled by the government or owned by the government is a fact. Therefore, land for the said construction must be acquired. As mentioned above, land acquisition for development was governed by Law No. 2 of 2012 on land acquisition for development for public interest; however, there are several conflicts of interest in its implementation with the society or the citizens who hold land rights that are the target of being used as land for development. With these points in mind, the problem must be understood, investigated and addressed or a solution must be sought.(Eviningrum, Hartiwiningsih, & Jamin, 2019) This is planned to end or at least mitigate land acquisition disputes that have caused many casualties

in the region. It is hoped that the introduction of development would run smoothly and favourably with the resolution of these issues, but on the other hand, rights holders or land rights holders have their rights secured. And equally handled.(Akhmaddhian, Hartiwiningsih, & Handayani, 2017)

President Jokowi has launched the construction of the Adi Sumarmo Airport train in April 2017. This train line connects Adi Sumarmo Airport in Boyolali with Solo Balapan Station along 13.5 kilometers. Land acquisition will require 75.5 thousand square meters, with details of 70.6 thousand square meters in the Boyolali area and 4.9 thousand square meters in the Surakarta area. There are 594 housing units evicted in connection with the construction of this railroad project. The majority of houses to be acquired are located on land owned by PT Kereta Api Indonesia (KAI). Two hundred eighty-six houses are in the Nusukan area. Ninety-four houses in Gilingan and 214 in Kadipiro. The house is on the left and right of the railroad track. Also, there are 129 land certificates with ownership rights (SHM) traversed by the railroad. The land acquisition process started on 4 September 2017 with outreach for landowners. The government's legal basis is Law No: 2 of 2012 and Presidential Decree No 56 TH. 2018 concerning Amendments to PerPres No. 3 TH 2016 concerning Acceleration of the Implementation of National Strategic Projects.(Sukmoro et al., 2019)

By offering compensation in return for land and buildings on it the government undertakes land acquisition. There were originally 14 (fourteen) persons whose settlement was not transparent. Some were also hesitant to release their land properties because there was no anticipation of the amount of compensation. Land acquisition operations were forced to take place on 5 (five) land plots at the conclusion of the consignment, consisting of 2 (two) land plots because their ownership was unclear, 1 (one) land plot because it was still contested land, and 2 (two) land plots because the owner had also objected to the scale of the compensation.(Fatimah, Iswantoro, Basuki, Saputra, & Jaelani, 2020) The Air Force-owned land used for the airport railroad was 2.5 hectares, land not used for military operations at the time. The Minister of Transportation eventually communicated with the Chief of Staff of the Air Force to find a solution to the replacement of the land used for the airport railway to solve this issue. The construction of the railroad continues while waiting for replacement property. As for unauthorized settlements along existing railroad tracks, a resettlement system is used by the Solo City Government and compensation money is given. Presidential Regulation (Perpres) Number 56/2017 on Social Impact Management under the Land Provision System for National Strategic Projects offers compensation money.(Karjoko, Winarno, Rosidah, & Handayani, 2020)

The research conducted by the researchers focuses on improving Law No. 2 of 2012, in particular on the procedure or mechanism for awarding entitled parties compensation after the release of their land rights. The research objectives are (1) to carry out a review of the content of Law No 2 of 2012 concerning the acquisition of land for development of public interest in order to assess whether the law has not granted legal safeguards against the fulfillment of fairer compensation rights for the parties entitled to grow in the public interest to communities impacted by the acquisition of land, (2) to formulate a register.

2. RESEARCH METHODS

This type of research is doctrinal or normative legal research (as written in the book). The analysis process is carried out according to the flow of a deductive syllogism. The regular normative study aims to examine and analyze which provisions in Law Number 2 of 2012 are the causes of the many conflicts that occur in the community, then reformulate more precise regulations so that the position between the community holding land rights and the

land acquisition committee (government) be balanced and reflect a sense of justice.(Karjoko, Gunawan, et al., 2020) This study uses a statute approach. This approach is primarily to find out how Law No.2 of 2012 has provided legal protection for entitled parties in the process of land acquisition for development. The second approach is the conceptual approach (conceptual approach). This approach departs from the views and doctrines developed in the science of law.(Jaelani, Rachmi Handayani, & Karjoko, 2019) From there, the researcher will find ideas that give birth to legal notions, legal concepts, which can be used as a basis for researchers in building a legal argument in solving the issue at hand. At the same time, the sampling methods that can be used are purposive and snowball sampling. Primary data obtained directly from the field. Secondary data is data or information obtained from a review of documents and literature research. Secondary data comes from previous studies, literature, magazines, newspapers, brochures, expert opinions, regulations/laws, electronic media (internet), dictionaries, and others related to the problem (library research). Data collection is accomplished in several ways. During the pre-survey, preliminary data collection was carried out at the relevant agencies to facilitate further data collection steps. Second, collecting data by interview (interview). In principle, interviews are conducted in a non-directive manner, not based on a pre-arranged list of questions. Third, direct observation or observation in the field. Fourth, library research or documentation study.(Jaelani, Handayani, & Karjoko, 2020a)

3. RESULTS AND DISCUSSION

Judicial security is meant by applicable laws and regulations to protect traditional subjects and is enforced with sanctions. Preventive legal security designed to avoid an infringement and to include signs or restrictions in the fulfillment of a duty is legal protection here.(Jaelani et al., 2019) As regards the assurance of the legal rights of the law on the acquisition of land against the procedure and process for deciding the form and amount of the compensation, the following provisions are apparent: first, point 10 of Article 1 explains that the concept of compensation is a just and equitable compensation to the party. Who is entitled to the process of acquiring land? It follows from this concept that there is a guarantee of legal protection for the community, that the entity has the right to refuse to renounce its land rights, provided that the procedure of renouncing its rights is not accompanied by the payment of sufficient and equal compensation to the community, in which case the parties are entitled.(Ishak, Hasibuan, & Arbani, 2020) Secondly, Article 36, which allows for the granting of compensation, permits the entitled party to select the type of compensation to be obtained after the entitled land has been surrendered. There is a provision for compensation which by agreement between the Land Institution and the entitled party, is voluntary or optional as part of the fundamental values of the Government for the protection of its citizens. Third, Article 37 of the Deliberation on the calculation of compensation for damages. The entitled party has the right to protect its property through negotiations held by the Land Institution with entitled parties, through struggles to receive sufficient compensation.(Rosidah, 2020)

By granting the right of the entitled party to participate in the determination of the form and amount of compensation to be paid, the right of the government to participate in the determination is a form of legal security for its citizens. Fourth, Article 38 provides for a remedy in the event of conflict in the deliberations between the Land Agency and the party entitled to decide the type and amount of the award.(Hanum, 2020) According to the provisions of this article, if there is a dispute, the entitled party shall have the right to lodge an objection with the District Court. If the entitled party does not recognize the decision of the District Court, it is still permitted to appeal to the Supreme Court, which is also controlled

by the same article. The existence of an opportunity for an entitled party to lodge an objection before the District Court and an opportunity to lodge an appeal before the Supreme Court is a form of government legal defense for its citizens (Entitled Parties). Fifth, Article 55 provides that in carrying out the acquisition of land, the entitled party has the right to: a. Know the implementation plan for land acquisition and b. Obtain details about the acquisition of land.(Erina & Yanis, 2020)

These provisions are the provisions of Law No 2 of 2012, which provide the group in particular the entitled party, with guarantees of legal security, in particular with regard to the condition of compensation, after the transfer of their land rights. According to Lawrence Meir Friedman, there are three (three basic elements in the legal system that must be considered in order for the law to operate according to its function, namely: first the legal framework, that is, a pattern demonstrating how the law is carried out in accordance with its formal provisions.(Subekti, Sulistiyono, & Handayani, 2017) This system explains how the courts, lawmaking, and other legal bodies and procedures function and are carried out. The second is the essence of the statute, namely the principles used when performing legal relationships by conventional actors. He bases his partnership on trade laws when a merchant agrees with each other and these guidelines are known as legal substances. The three applications or demands are referred to as traditional culture. These requests come from citizens or consumers of legal facilities, such as courts, for example.(Soediro et al., 2020)

Law is human work in the form of rules that provide requirements for conduct. It represents human will on how to cultivate society and where it should be guided. The Group needs justice in society to be established and its interests are served by law. It also wants society to have laws that maintain trust in their contact with each other. These three principles are referred to as the essential values of law by Gustav Radbruch: justice, utility, and legal certainty. In addition, it is clarified that from a metaphysical point of view, a legal framework that has accommodated the basic importance of justice means that it has legitimacy.(Jaelani, Ayu, Rachmi, & Karjoko, 2020) By comparison, a legal framework that has modified the basic cost of utility suggests that a sociological review is accurate. A legal framework that has modified the basic importance of legal certainty indicates that a legal analysis has validity. It also indicates or refers to the opposite case. In this discussion, we will examine the degree to which the legal framework of Law No.2 of 2012 has provided assurances of legal security in the process of giving compensation for entitled parties in terms of the aspect of fundamental standard principles or validity from metaphysical, juridical, and sociological reviews based on theory Gustav Radbruch's "basics of law enforcement."(Jaelani, Handayani, & Karjoko, 2020b)

Article 31, Article 32, Article 33, Article 34 and Article 37 of Law No 2 of 2012 provide that in carrying out an appraisal of land acquisition objects, the appraiser or appraisal must not expressly apply to the entitled party as the subject of land acquisition rights. In order to assess justice for the entitled party, the provisions of Article 37 govern deliberations. Whereas Article 38 states that if there is no agreement or opposition on the part of the entitled party in the review referred to in Article 37, the person concerned shall be directly challenged at the hearing of the District Court, and so on until he is entitled to appeal to the Supreme Court. It can be understood from these clauses that the entitled party does not have ample opportunities to conduct negotiations in order to protect its land.(Leonard, Pakpahan, Heriyati, Karjoko, & Handayani, 2020) The space that creates negotiating opportunities is rather narrow. This is not in line with as mentioned earlier, the principle of procedural justice by John Rawls. To meet their everyday needs, the entitled parties should be given the broadest possible opportunity to protect their land. From the above definition, it can be inferred that the results of the study of the fairness of the guarantee of legal security of Law

No. 2 of 2012 in the procedure for the determination of compensation or compensation to the entitled party as a result of a review of the fundamental value of justice or of a philosophical examination indicate that the provisions relating to the procedure and the process for detecting justice have been created. (Prasetyo, Handayani, Sulistyono, & Karjoko, 2019)

As it is established that Law No. 2 of 2012 was drawn up in writing, the President of the Republic of Indonesia ratified it and promulgated it by the Minister of Law and Human Rights on the basis that its formation fulfilled its formal requirements. It may therefore be inferred that the validity of the law is founded on the basic principle of legal certainty, or on the fact of legal examination. (Sudarwanto & Handayani, 2019) Since the legislation has the force of effect from a judicial examination, the assurance of legal protection in the payment of compensation to eligible parties, which is governed by law, has the validity of a legal study which is binding on both the society and the eligible parties. The acquisition of land for infrastructure projects remains the biggest problem faced in Indonesia so far. According to the findings of a report by the Committee for the Acceleration of Priority Infrastructure (KPPIP), the acquisition of land after planning and preparation problems is the second-highest. While Law No. 2 of 2012 concerning the acquisition of land for public interest development has been released, many citizens still refuse to use their land for the development of infrastructure. However from the results of interviews with the Head of Land Acquisition at the Surakarta City Spatial Agrarian Office / National Land Department, it is inferred that currently the group generally does not oppose land that they own being acquired for development purposes, on the pretext that now good replacement money is considered beneficial. They hope their land will be affected in the public interest by land acquisition for development. (Sudarwanto & Handayani, 2019)

It can be understood from the two conflicting data that we obtain above that the smooth running of land acquisition activities for growth in its current development is very dependent on the assessment in deciding the amount of compensation or compensation for the entitled parties. The statute used as the legal framework does not depend on it. This is because it means that both are based on Law Number 2 of 2012 in the above-mentioned land acquisition during the same time, but the conditions are much different. It can be seen from the explanation above that the existence of Law Number 2 of 2012 by the public is not too questionable. (Akhmaddhian et al., 2017) This suggests that the reality of this legislation should not influence the opinions of the people, since the size or suitability of the payout they receive is the most important thing for the region. It can therefore be concluded that there is little impact on the assurance of legal rights offered by the legislation in the method and procedure of awarding prizes to the entitled parties. If not mentioned, the entitled party will not support the community in this case. In another way, the assurance that the legal rights of the legal system for the purchase of land or Law No. 2 of 2012 relating to the procedure and method for assessing the reward or compensation of the entitled party is not relevant if it is taken from the point of view of the fundamental value of the community benefit, or not. The validity of the sociological analysis is true. (Jatmiko, Hartiwiningsih, & Handayani, 2019)

In accordance with the provisions of Law No. 2 of 2012, the measures taken to decide the form and amount of the Compensation before delivery to the Entitled Party shall be followed by the following process: First on the basis of Article 31, the Land Agency has decided the assessment of the Land Acquisition Item by the Appraisers. Secondly, on the basis of Article 37 Paragraph (1), the Land Agency shall carry out negotiations with the Entitled Party on the nature and sum of the Award, on the basis of the Appraiser's assessment of the Land Acquisition Item. Thirdly, on the basis of Article 37 Paragraph (2), if an arrangement between the Land Institution and the Entitled Party on the nature and amount of the Compensation has been reached during the review, the Entitled Party shall continue to

provide the Compensation. However, if no agreement is reached in the deliberation, the entitled party may, on the basis of Article 38 Paragraph (1), lodge an appeal with the local District Court within 14 (fourteen) working days of the deliberation.(Soediro et al., 2020)

Fourthly, on the basis of Article 38 Paragraph (2), within 30 (thirty) working days of receipt of the objection submission, the District Court shall determine the form and amount of the award. Fifth, if the deserving party submits an objection to the District Court and acknowledges the decision of the District Court, then the award shall be continued to the entitled party on the basis of Article 41 Subsection (1). However if the Entitled Party or Land Entity does not agree what the District Court's decision is the parties which object to it may, on the basis of Article 38 Paragraph (3), lodge an appeal before the Supreme Court within 14 (fourteen) working days of the decision of the District Court. Sixthly, it is held, on the basis of Article 38 Paragraph (4), that the Supreme Court is obliged, within 30 (thirty) working days of receipt of an application for cassation, to issue a decision. What the Supreme Court decides is binding on both the Land Institution and the Entitled Party, so that the decision of the Supreme Court obtaining legal force is still used, on the basis of Article 38 Paragraph (5), as the basis for the payment of compensation to the party which filed an objection.(Sukmoro et al., 2019)

As part of the legal development as mentioned above the content of Law No 2 of 2012 needs to be strengthened by incorporating and amending a number of provisions of the Articles and Paragraphs relating to the procedure or method for deciding the type and duration of the Award Compensation. The amendments made are related to the following: first, the need to include the entitled party in the assessment of the land acquisition object, which has been carried out so far only by the appraiser. Second, the position of the resolution of disputes between the Land Agency and the entitled party is necessary. Thirdly, the term "Compensation" must be changed to "Compensation." Fourthly, there must be additional rights for entitled parties, namely the right to get adequate compensation." Therefore the provisions of Law Number 2 of 2012 must be amended, particularly with regard to the procedure or mechanism for deciding the type and amount of Compensation, starting from the App. (Sukmoro et al., 2019)

Secondly, on the basis of Article 37 Paragraph (1), the Land Agency shall work with the Entitled Party to decide the form and amount of the Award, on the basis of the findings of an assessment of the Land Acquisition Object carried out by the Appraiser with the Entitled Party. Thirdly, on the basis of Article 37 Paragraph (2), if an agreement has been reached between the Land Agency and the Entitled Party in the analysis about the form and amount of the compensation, the Entitled Party shall continue to obtain the compensation. However, if on the basis of Article 38 Paragraph (1), there is no agreement in the deliberation, the entitled party may send a settlement to 14 (fourteen) working days of the deliberation. Fourthly, on the basis of Article 38 Paragraph (2), the assignment must be completed by 30 (thirty) working days of receipt of the completion request. Fifthly, on the basis of Article 41 Paragraph (1), if an arrangement between the Land Agency and the Entitled Party concerning the nature and sum of the Compensation has been reached in the settlement at the Compensation shall be continued to the Entitled Party. However, if on the basis of Article 38 Paragraph (3), there is no agreement in the deliberation, the entitled party may lodge an appeal with the local District Court within 14 (fourteen) working days of the deliberation being held.(Firdaus, Laxamanahady, & Widyasasmito, 2019)

Sixth, on the basis of Article 38 Subsection (4), the District Court shall, within a maximum time of 30 (thirty) working days from receipt of the objection, determine the form and amount of the award. Seventh, if a Qualified Party lodges a complaint with the District Court and acknowledges the decision of the District Court, the award shall be continued to

the Entitled Party on the basis of Article 41 Subsection (1). However if the Entitled Party or Land Entity does not agree what the District Court's decision is the parties which object to it may, on the basis of Article 38 Paragraph (5), lodge an appeal before the Supreme Court within 14 (fourteen) working days of the decision of the District Court. Eighthly, it is provided on the basis of Article 38 Paragraph (6), that the Supreme Court is obliged, within 30 (thirty) working days of receipt of an appeal for cassation, to issue a decision. What is the Supreme Court's conclusion that both the Land Institution and the Entitled Party are binding, so that the Supreme Court's judgment, which was legally enforceable on the basis of Article 41 Paragraph (1), is now used as a basis for the payment of compensation to the party which lodged an objection. (Sudarwanto & Pujiyono, 2020)

4. CONCLUSION

Sometimes referred to as the Land Acquisition Rule, Law No. 2 of 2012 has a solid legal status, clear binding authority, and legal certainty or validity resulting from a legal examination. This is because it has met the formal criteria for the creation of this legislation. However in deciding the form and amount of compensation for the parties entitled to the right to the law, the assurance of legal immunity does not have meaning when interpreted from the point of view of the basic value of justice or fact. From a metaphysical study, it applies. This is because the laws regulating the procedure or process for deciding the type and amount of compensation have not conformed to the concept of justice. This Land Acquisition Law also has little validity from a sociological analysis when viewed from the aspect of basic utility value or fact. This is because the society, the entitled party in this situation, does not profit from the presence of this statute. In order to achieve equal regulation in the payment of compensation and to pay greater attention to the values, engagement, democracy and consensus of humanity, Law No. 2 of 2012 must be amended as follows: a. Parties entitled to be the subject of land acquisition rights are interested in the evaluation of land acquisition objects, along with evaluations, b. In the context of mediation, the involvement of a dispute resolution organization with a non-litigation model (PnLg), c. "The word "compensation" needs to be changed to "compensation," and d. "the right to get adequate compensation." the right to get adequate compensation.

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