LEGAL PROTECTION FOR LAND RIGHT HOLDING COMMUNITIES ON LAND PROCUREMENT FOR PUBLIC INTEREST IN PERSPECTIVE HUMAN RIGHTS

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ABSTRACT
Currently, there are still a number of complaints submitted by the community holding land rights related to land acquisition for the public interest that do not have a human rights perspective. Meanwhile, the Indonesian constitution guarantees the property rights of every citizen as stated in Article 28 letter H paragraph (4) of the 1945 Constitution of the Republic of Indonesia, Article 18 of the UUPA, and Article 36, Article 37 of Law No.39 of 1999 on Human Rights. That the government as a representative of the State in carrying out land acquisition for the public interest has the obligation and responsibility to respect, protect, and fulfill human rights. The purpose of writing this journal is to analyze the legal protection of the aggrieved party in land acquisition for the public interest in the perspective of human rights. This study uses a normative juridical method in order to obtain a comprehensive and systematic overview of the problems regarding land acquisition for the public interest in Indonesia. The approach method in the research used is the statutory approach, the concept approach, and the case approach.

Keywords
Land Procurement in the perspective of Human Right.

INTRODUCTION

The State of Indonesia is a constitutional state, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia". NRI also guarantees the rights of every citizen which is stated in Article 28 of the 1945 Constitution of the Republic of Indonesia. Whereas in the State Constitution of the Republic of Indonesia it expressly states "protection, promotion, enforcement and fulfillment of human rights are the responsibility of the State, especially the government", Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In addition, it is also affirmed in Article 8, Article 71 of Law No. 39 of 1999 concerning Human Rights. In relation to the protection, promotion, enforcement, and fulfillment of human rights, the Indonesian government issued Law Number 39 of 1999 concerning Human Rights. This is to provide guarantees to citizens regarding human rights.

Human Rights (HAM) are "a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His grace that must be respected, upheld and protected by the State, law, government, and everyone for the sake of honor and protection of dignity." and human dignity". One of the human rights is the right to welfare, especially the property rights of an object which is regulated in Article 28 letter H paragraph (4) of the 1945 Constitution of the Republic of Indonesia which stipulates that "everyone has the right to have private property rights and these property rights are not may be taken over arbitrarily by anyone. Apart from that, it is also regulated in Article 36 and Article 37 of Law Number 39 of 1999 concerning Human Rights.

The government is currently carrying out development for the public interest. Development for the public interest is stated in the National Medium-Term Development Plan (RPJMNasional). That the 2015-2019 RPJMN is listed in Presidential Regulation No. 2 of 2015 concerning the 2015-2019 RPJMN. Infrastructure developments include "the construction of new roads covering an area of 3793 km, new toll roads covering an area of 1461 km, a railway line with a length of 1300 km, 14 ports and 15 airports. Allegations of this increasing number of conflicts are due to the planned toll road construction in the 2020-2024 RPJMN Draft.

UU no. 2 of 2012 concerning Land Procurement for Development in the Public Interest in the perspective of human rights has not provided regulations related to the fulfillment of adequate human rights, especially for rights holders. In Article 4 letter g, namely the principle of participation, there is the potential for coercion of the will of the government to citizens as land owners. Meanwhile, the Law states that: "Land Procurement for Public Interest aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state and society while still guaranteeing the legal interests of the entitled Party".

Based on the empirical data that the author obtained from the National Human Rights Commission (Komnas HAM) regarding the issue of land acquisition for the public interest, Komnas

HAM has received a number of complaints from the public, at least 86 related to infrastructure problems that were complained by the public from the period 2017 to 2017. by 2020, which were handled through the Monitoring and investigation mechanism, and as many as 48 (forty eight) cases were handled through the human rights mediation mechanism.

From a human rights perspective, the author considers that Law No. 2 of 2012 does not provide adequate arrangements related to the fulfillment of human rights, especially in Article 23 and Article 38. Implementation in the field is the number of complaints/disputes reported by affected communities or rights holders related to procurement. land for public use. the problems that are complained of are both material and non-material problems. Based on these circumstances, the author feels it is important to examine the legal protection arrangements for land owners affected by land acquisition for development for the public interest, especially with regard to the compensation calculation period of only 30 (thirty) days, and the lawsuit against the results of the compensation value. compensation which is only 14 (fourteen) days after the assessment team determines the amount of compensation, as well as the determination of consignment for the compensation that has been determined.

RESEARCH METHOD

In writing this research paper, the author tries to explore more problems related to the legal protection of land acquisition for the public interest in the perspective of human rights. The author in conducting this research uses a normative legal research type, namely research conducted through a study of applicable legislation and is applied to a particular legal problem. The author reads and examines various library materials (secondary material), from legislation, guidelines and principles of human rights, various literatures, and the internet with the support of data on cases of land acquisition for the public interest that were reported to Komnas HAM. In addition, in this study the author uses a statutory approach (statue approach). The legal approach in this study, the author reviews the laws and regulations regarding land acquisition for the public interest, by looking at the legal concepts related to the background of land acquisition, and the approach to cases reported by the community holding rights to study and see cases that have been reported. occurred in several areas related to land acquisition for development in the public interest.

Whereas in this research, the author searches for and uses sources of research materials with literature studies of legal materials and relevant materials related to land acquisition for development for the public interest so that the discussion can be more focused, directed, and obtain more consistent research results. In this study there are several legal materials used, namely primary legal materials are materials that have binding power such as basic norms or basic rules, basic regulations, statutory regulations; In addition, in this study, secondary legal materials that the author uses in this study are materials that provide an explanation of primary legal materials. The secondary legal materials that the author uses include legal materials consisting of textbooks written by influential legal experts (de herseende leer) in the form of legal journals, opinions of experts/experts, legal cases, jurisprudence and the results of the latest symposiums related to the research topic. In addition, the author also uses tertiary legal materials in this study which provide instructions or explanations for primary legal materials and secondary legal materials in the form of legal dictionaries, encyclopedias, and others. That in this study the author uses general human rights comments, and materials from the internet that can provide comprehensive instructions and explanations about the problems studied.

That the primary, secondary, and tertiary legal materials become the author's source to obtain the subject matter which is then arranged systematically. In normative legal research, that analysis of legal materials is an activity of processing data and then systematizing it. Systematization is the act of classifying written legal materials to facilitate the analysis process.

The author in this study uses descriptive qualitative which is a technique of analyzing legal materials used by describing the results of research in the form of presenting documents, various expert opinions, and so on. The results of the research are systematically described so that it is easier to do qualitative analysis. The results of this qualitative analysis then answer the questions that have been included in the problem formulation. Conclusions are then taken according to the aims and objectives of the study.

RESULTS AND DISCUSSION

A. Land Procurement for Development for Public Interest

Land procurement as regulated in Article 1 paragraph (2) of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest is an activity to provide land by providing appropriate and fair compensation to the entitled party. The regulation on land acquisition for the public interest is used as a basis and guideline for agencies that require land in carrying out development. Infrastructure development refers to the instruments of Law no. 2 of 2012 concerning Land Procurement for public interest.

The following regulations regulate land acquisition for development in the public interest, as follows:

a. Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Procurement for Public Interest;
b. Presidential Regulation Number 40 of 2014 concerning Changes to Presidential Regulation Number 71 of 2012;
c. Presidential Regulation Number 99 of 2014 concerning the Second Amendment to Presidential Regulation Number 71 of 2012;
d. Presidential Regulation Number 30 of 2015 concerning the Third Amendment to Presidential Regulation Number 71 of 2012;
e. Presidential Regulation Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012;
f. Perkaban BPN Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Procurement for Public Interest;
g. Permen ATR/BPN Number 6 of 2015 concerning Amendments to Regulation of the Head of the National Land Agency Number 5 of 2012;
h. Permen ATR/BPN Number 22 of 2015 concerning the Second Amendment to the Regulation of the Head of the BPN Agency Number 5 of 2012;
i. Permendagri Number 72 of 2012 concerning Operational Costs and Supporting Costs of Land Organizing for Development in the Public Interest Sourced from Regional Revenue and Expenditure Budgets;
j. Permenkeu Number 13/PMK.02/2013 concerning Operational Costs and Supporting Costs of Land Management for Development for the State;
k. Permenkeu Number 10/PMK.02/2016 concerning Amendments to Permenkeu Number 13/PMK.02/2013; and
l. Perma Number 3 of 2016 concerning Procedures for Filing Objections and Depositing Compensation to the District Court in the Procurement of Land for Development in the Public Interest.

Referring to the instrument, the process of land acquisition for development in the public interest is in principle carried out through 4 (four) stages as stipulated in Article 13 of Law No. 2 of 2012, including:

a. Planning stage

In the planning stage of land acquisition, the agency that requires land makes a land acquisition plan based on the regional spatial plan (RTRW), and development priorities listed in (a) the medium-term development plan, (b) the strategic plan, and (c) government agency work plan. After the planning document is complete, then the agency that requires land will submit the planning document to the Governor where the location of land acquisition will be for development.

Land acquisition planning for the public interest is prepared by the agency requiring land in the form of a document containing:

a) The aims and objectives of development planning;
b) Compliance with the National Spatial Planning (RTRW);
c) National and Regional Development Plans;
d) Land location;
e) Required land area;
f) General description of land status;
g) Estimated time for land acquisition implementation;
h) Estimated time of implementation of development; and
i) Budget planning.

b. Preparation phase

In the preparation stage for land acquisition, the provincial government in this case the Governor forms a Land Procurement Preparation Team (TP2T). The team consists of the Regent/Mayor, relevant provincial work units, agencies requiring land, and other relevant agencies. TP2T has the following duties:

a. Implementing notification of development plans, in this case conducting socialization. TP2T makes notification of development plans submitted directly or indirectly to the community who owns the land area of the development location;
b. Conduct initial data collection at the location of the development plan. The initial data collection includes the activities of the initial collection of the entitled parties and the object of land acquisition. The entitled parties include: (i) holders of land rights, (ii) holders of management rights, (iii) Nadzir for waqf land, (iv) owners of ex-customary land, (v) customary law communities, (vi) parties who control State land in good faith, (vii) the

holder of the basic land tenure, and (viii) the owner of development, plants or other objects related to the land;

c. Public consultation on development plans. Public consultation on the development plan is carried out to obtain agreement on the location of the development plan from the rightful party. In the event of a public consultation, there are parties who do not agree/object, then a re-public consultation is carried out. A re-public consultation has been carried out but there are still parties who object, then the agency that requires land reports to the Governor to be followed up with the formation of an objection study team;

d. Prepare the determination of the location of development. The determination of the development location is carried out by the Governor based on an agreement on the location of the development plan as outlined in the minutes of the public consultation agreement and the minutes of the agreement for repeated public consultations or the rejection of objections based on the recommendations of the Objection Study Team.
If there are parties who object to the determination of the construction location, then that party can file a lawsuit to the local TUN Court no later than 30 (thirty) working days after the issuance of the location determination. PTUN is given a period of 30 (thirty) working days from the receipt of the lawsuit to decide whether the lawsuit is accepted/rejected. And if there are objections to the results of the PTUN decision, then the objecting party can file an appeal to the Supreme Court no later than 14 working days after the issuance of the PTUN decision, which then the Supreme Court is given a maximum period of 30 working days.

e. Announce the determination of the construction site. The Governor together with the agency requiring land shall announce the determination of the location of development for the public interest which will be carried out at the Kelurahan/Village Office or by another name, the Subdistrict office, and/or Regency/City Office and at the location of the development which will also be announced through print media and/or electronic media.

f. Carry out other tasks related to the preparation of land acquisition for development in the public interest assigned by the Governor.

c. Implementation stages

At the implementation stage, it is carried out by the Ministry of Agrarian Affairs and Spatial Planning (ATR) / National Land Agency (BPN) RI, and carried out by the Head of the Regional Office of Agrarian and Spatial Planning (ATR) / National Land Agency (BPN) RI. The implementation of land acquisition is carried out through the following mechanisms:

a) Inventory and identification are carried out with several activities, namely: measurement and mapping of land parcels per plot, and data collection of entitled parties and objects of land acquisition. the results of the inventory and identification made in the form of a map of land parcels and a nominative list must be announced at the Village/Kelurahan/Kecamatan Office, and at the land pawnshop. if there is an objection, then the objecting party may file an objection within 14 (fourteen) working days after receipt of the objection by filing a lawsuit to the local District Court;

b) Determination of the value of compensation, the determination of the amount of compensation is carried out by the Head of the Land Procurement Executor based on the results of the appraisal service of an appraiser or public appraiser held and determined by the Head of the Land Procurement Executor. The appraiser is in charge of assessing the amount of compensation for land parcels, including: land, aboveground and underground space, buildings, plants, objects related to land, and/or other losses that can be assessed. The appraisal task is carried out by the appraiser no later than 30 (thirty) working days;

c) Deliberations to determine the form of compensation, deliberation is an activity that contains a process of listening to each other, giving and receiving each other's opinions, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on the basis of volunteerism and equality between the parties involved. owns land, buildings, plants, and other objects related to land with parties who need land. The Chairperson of the Land Procurement Executor shall carry out deliberation with the entitled party within a maximum period of 30 (thirty) working days from the receipt of the appraisal result from the appraiser. The results of the agreement in the deliberation become the basis for providing compensation to the entitled party which is stated in the Minutes of Agreement. In the event that an agreement is not reached, the entitled party may file an objection to the local District Court within 14 (fourteen) working days after signing the Minutes of Agreement. The local District Court decides the form and/or amount of compensation within a maximum period of 30 (thirty) working days after the receipt of the objection. Parties who object to the decision of the District Court may file an appeal within 14 (fourteen) working days to the Supreme Court of the Republic of Indonesia (MA RI), and then the Supreme Court of the

Republic of Indonesia must render a decision within 30 (thirty) working days after receipt of the application. appeal;

d) The provision of compensation, in Law Number 12 of 2012 expands the form of compensation, starting from money, replacement land, resettlement, share ownership, or other forms that are approved by both parties. Provision of compensation based on the results of the assessment determined in the deliberation; and
e) Custody of compensation, if the right holder refuses the form and/or amount of compensation based on the results of deliberations or decisions of the district court and/or the Supreme Court of the Republic of Indonesia, the compensation will be deposited with the local District Court. That the deposit of compensation is carried out in the following cases:
   (1) The party who has the right to refuse the form and/or amount of compensation based on the results of deliberation and does not file an objection to the Court;
   (2) The party entitled to refuse the form and/or amount of compensation based on the decision of the PN/MA RI which has obtained permanent legal force;
   (3) The whereabouts of the entitled party are unknown; and
   (4) The object of land acquisition for which compensation is granted is being disputed in court, i.e. the ownership is still disputed or confiscated by the competent authority or as collateral in the Bank. The deposit of compensation is submitted to the local District Court in the form of money in rupiah.

d. Stages of Submission of Results

At the stage of submitting the results of land acquisition, the Head of the Land Procurement Executive begins and then submits the results of land acquisition to the agency that requires land/land accompanied by data on land acquisition. Whereas technically the submission of land acquisition results is in the form of land parcels and land procurement documents, and is accompanied by an Official Report (BA) to be further used by the agency that requires land/land to register the land as State Property (BMN). And then the agency that requires land can start the implementation of development after the Head of the Land Procurement Executive submits the results of the land acquisition that has been carried out.

See the flow and mechanism, as well as the stages of land acquisition for the public interest as stipulated in Law Number 2 of 2012:

B. Land Acquisition Issues for Public Interest in Indonesia

Whereas the problem of land acquisition for the public interest in Indonesia occurs in almost all parts of Indonesia that are included in the RPJM. In general, the problems reported are related to the value of compensation that is not appropriate/inappropriate, the calculation period is only 30 (thirty) days, and a lawsuit against the result of the compensation value which is only 14 (fourteen) days after the amount of compensation is determined. as well as the determination of the consignment for the compensation that has been determined.

Based on empirical data that the author obtained from Komnas HAM, there were at least 86 of the total 597 agrarian cases (14%) related to infrastructure problems that were reported by the community in the period 2017 – August 2020. That from these data, the community was affected by the procurement land for development in the public interest, at least there are several points of problems that arise, including:

1. The time limit of 30 working days in the preparation stage for the inventory and identification which includes a list of nominations and a map of land parcels does not provide sufficient time for the assessment team (appraisal).
2. The assessment team only provides an assessment of compensation based on the list of nominations provided by Task Force B consisting of ATR/BPN, agencies requiring land, and government/local governments.
3. The lack of socialization and openness of the government/regional government regarding the transfer of functions and compensation for community land.
4. The negotiation process carried out by the Land Procurement Committee (P2T) with the affected community only relates to the form of compensation in accordance with Article 36 of Law Number 2 of 2012, and not the compensation value that has been determined by the assessment team.
5. The negotiation process for compensation is unequal, full of intimidation, and coercion with various national strategic policy arguments.
6. The assessment of compensation from the assessment team is only given based on the location and location of the land, and not based on the criteria for the status of land rights.
7. The assessment of compensation does not involve a social economic assessment team as regulated in Article 33 letter f of Law 2 of 2012.

8. Consignment issues in court.
9. There is no opportunity for the affected community to seek a settlement through deliberation/mediation for the value of compensation.

The following is empirical data relating to complaints submitted by affected communities/right holders related to land acquisition for development in the public interest that the author obtained from Komnas HAM which was followed up through a human rights mediation mechanism.

C. Legal Protection Against Aggrieved Parties in Land Procurement for Public Interest in the Perspective of Human Rights

That the State guarantees the legal protection and property rights of every citizen, as stated in 28D paragraph (1), Article 28G paragraph (1), Article 28H of the 1945 Constitution of the Republic of Indonesia and Article 3 paragraph (2) and paragraph (3), Article 17, Article 36, Article 37 of Law Number 39 of 1999 concerning Human Rights. Whereas in this regulation, the State guarantees that every citizen has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. In addition, the State guarantees that everyone has the right to personal protection, family, honor, dignity and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.

In practice, the guarantee of legal protection and human rights has been neglected with the issuance of Law No. 2 of 2012 A quo. Whereas land acquisition for development for the public interest is still using repressive methods, the period of objection to the results of the compensation value, the formality of deliberation with the community, and consignment issues. The problems that were complained about by the affected communities were regarding the provisions of Law no. 12 of 2012, Article 38 and Article 42 are known to be still not effective in facilitating problems that arise in the implementation of land acquisition for the public interest. In Article 38 of Law Number 2 of 2012 A quo states that:

1. Paragraph (1) “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 no later than 14 (fourteen) working days after the deliberation on the determination of Compensation as referred to in paragraph (1). Article 37 paragraph (1)”.
2. Paragraph (2) “The district court shall decide on the form and/or amount of Compensation within a maximum period of 30 (thirty) working days from the receipt of the objection.”
3. Paragraph (3) Parties who object to the decision of the district court as referred to in paragraph (2) within a maximum period of 14 (fourteen) working days may file an appeal to the Supreme Court of the Republic of Indonesia.
4. Paragraph (4) The Supreme Court is obliged to give a decision within 30 (thirty) working days from the receipt of the cassation request.
5. Paragraph (5) The decision of the district court/Supreme Court which has obtained legal force remains the basis for the payment of Compensation to the party filing the objection.

Looking at the legal mechanisms and procedures as regulated in Law Number 2 of 2012 A quo, there are several problems, including that land acquisition for development in the public interest forces the community to follow formal legal procedures. Judging from these rules, it can be concluded that the community holding rights cannot give objections either in the aspect of determining the location of development for the public interest or regarding the form/or amount of compensation. Because if the community holding the rights refuses and does not submit a legal process, it will be considered as accepting. Especially with regard to the form and amount of compensation.

In addition, the simplification of time in the legal process of lawsuits, especially with regard to the determination of the location to the State Administrative Court. In the provisions of the Act, the public is only given 30 (thirty) days to file a lawsuit. Meanwhile, in the main provisions of Law Number 5 of 1986 concerning the State Administrative Court which was changed to Law Number 9 of 2004 and Law Number 51 of 2009. It is very clear that the period of filing a lawsuit against the decision of the State Administration Agency or Official is 90 (ninety) working days. Whereas it can be concluded that Law Number 2 of 2012 A quo has restricted the rights of citizens, especially the rights of land owners to obtain justice for the impact of land acquisition for development in the public interest.

That the law contradicts the theory of legal protection put forward by Satijipto Raharjo argues that legal protection is "providing protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. In line with the theory of Satijipto Raharjo, Phillipus M. Hadjon in the book Legal Protection for the Indonesian People, categorizes 2 (two) models or means for legal protection efforts, namely:

1. Means of preventive legal protection, in this context legal subjects are given the opportunity to file objections or opinions before a government decision gets a definitive form. The purpose of preventive legal protection is to prevent disputes from occurring; and
2. Means of repressive legal protection aimed at providing protection within the framework of dispute resolution. The handling of legal protection through general courts or administrative courts is part of this category of legal protection. The principle underlying legal protection against government actions is the principle of the rule of law in which the recognition and protection of human rights has a primary place and can be linked to the objectives of the rule of law.

In addition, John Locke in his classic book entitled "The Second Trities of Civil Government and a Letter Concerning Toleration", put forward a postulation of the idea that all individuals are endowed by nature with inherent rights to life, liberty and property, which are their own and cannot be revoked by the State. Whereas through a social contract, the protection of this inalienable right is left to the State.

The purpose of law is to realize legal certainty as well as justice for the community as stated by Aristotle and Aguinas Grotius that legal certainty and justice are the goals of the legal system. Indonesia is a state of law, which means that all state life must be based on law. The concept of the rule of law can be implemented if there is legal protection and law enforcement. This is as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which affirms that "the State of Indonesia is a state of law".

That the State guarantees legal protection for every citizen. Other elements that must be met in legal protection are the guarantee of protection/protection from the government to its citizens, the existence of legal certainty guarantees related to the fulfillment of citizens' rights related to eco-social rights. One of the principles of the rule of law in the protection of human rights is that the state must protect its citizens equally or what is known as the principle of equal protection before the law.

The state guarantees equality before the law for every citizen as stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "All citizens are equal before the law and government and are obliged to uphold the law and government with no exceptions". In addition, Article 28 letter D paragraph (1) explains that "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". In addition, Article 3 of Law Number 39 of 1999 states that "Everyone has the right to recognition, guarantees, protection and fair legal treatment as well as legal certainty and equal treatment before the law". That the norm of equal protection before the law (EBL) protects the human rights of its citizens. Equality before the law means that every citizen must be treated fairly by law enforcement officials and the government. That in other words, the government is constitutionally bound by the value of justice in realizing and practicing law in Indonesia.

That EBL is a very universal concept which applies to anyone and anywhere and is textual for law. Universally, EBL is a law and state principle that requires the existence of a law and applies to every citizen. In addition, EBL is textually written in a legal document whose parent rule of law confirms that the rule of law applies to all citizens of the country where the law applies. On the other hand, from a legal perspective, it can be seen that the law does not allow itself to only benefit a number of parties without a valid reason before the law. An important element in law is its substance that should honor humans.

In line with the theory presented by Phillipus M. Hadjon, Suparjo (Lecturer of the Faculty of Law, University of Indonesia) in the FGD meeting with Komnas HAM said that it is related to understanding the anatomy of land acquisition regulations: opportunities, challenges and obstacles for the fulfillment and protection of human rights (A Pancasila Legal Perspective) explained that land acquisition must be guided by the 1945 Constitution of the Republic of Indonesia jo. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In addition, land acquisition must be perspective and based on Pancasila.

So the flow of land acquisition in national agrarian law must be based on the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Regulations on agrarian principles, and the purpose of establishing the Unitary State of the Republic of Indonesia, as well as Law Number 2 of 2012 concerning Land Procurement for the Public Interest. Law Number 2 of 2012 a quo explains that in land acquisition, it must:

1. Prioritizing the principle of deliberation;
2. The community has the right to obtain information and provide input in development;
3. Involvement of land owners in every stage of activity;
4. Approval of land owners in determining the location of development;
5. Guaranteed survival of the land owner for the compensation received (proper and fair compensation);
6. The development provides benefits to the community who owns the land and to the area where the development is located;

7. All differences are resolved through the judiciary (PTUN and PN);
8. Clarity of the problem of the object and subject of land acquisition;
9. Assessment of the amount of compensation is carried out by an independent institution; and
10. The government cannot intervene in determining the amount of compensation.

Furthermore, Suparjo conveyed several problems in land acquisition which include the following:

1) The reality of the legislation is the substance of the ambiguous regulatory text (multi-interpretation), especially with regard to compensation such as market price terminology, qualitatively reasonable prices but not yet touching the intrinsic value contained in the manifestation of human relations with land, and disharmony and synchronization of laws and regulations that are still felt, as well as deviations from the principle of deliberation via the application of consignment if an agreement for compensation is not reached;
2) In the realm of land acquisition executors, namely mistakes in implementing procedural rules, not complying with standard operating procedures regulated in the realm of State administrative law, personal factors of implementing officials (understanding of procedural rules, mentality, the government for certain benefits), co-optation elements in the executive bureaucratic structure and judicial institutions, co-optation of the interests of the circle of power agencies that have formal/informal affiliations with business actors (project implementers), and co-optation of the interests of international donor agencies;
3) Reaction of ownership and self of the land owner, namely personal life experience in the broad sense of the emergence of phobias when facing land acquisition issues as has been experienced in other places, the flow of information that has not been neatly organized and qualified in the early stages even pre-acquisition of land is carried out, co-optation from government officials ranging from the Lurah, Camat, to official agencies related to infrastructure development, and the co-optation of security personnel from the police, military, information figures who have identical powers of physical repression; and
4) In the realm of land administration, namely guaranteeing validation of the validity of proof of land ownership, especially lands that have not been registered (certificates), guaranteeing the accuracy of data validity in certificates produced through a negative-positive tendency publication system which still opens up great potential for inaccuracies in physical data and juridical.

The author considers that land acquisition for the public interest ignores legal protection for affected people/holders of land rights affected by development. Whereas the function of law is to protect human beings, the law aims to create an orderly society that creates order and balance. With the achievement of order in society, it is hoped that the interests of the community will be protected.

However, in its implementation there are still many problems related to the implementation of Law 2 of 2012 in the field. That the State of Indonesia is a legal state, one of which provides legal protection to every citizen as the purpose of the Republic of Indonesia (NRI) is to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on independence. , lasting peace and social justice.

For this reason, the author is of the opinion that the government in establishing laws and regulations must be based on the 1945 Constitution of the Republic of Indonesia and refer to the provisions of the legislation first. Whereas with regard to land acquisition for the public interest of the State, in this case the government does not respect, protect, and fulfill the rights of the affected people/rights holders. That the government as a representative of the state should carry out its obligations and responsibilities to respect, protect, and fulfill human rights. As the theory of Phillipus M. Hadjon that the State must have preventive legal protection facilities and repressive legal protection facilities.

This is stated in the 1945 Constitution of the Republic of Indonesia in Article 28I paragraph (4) jo. Law No. 39 of 1999 Articles 8 and 71 jo. basic human rights instruments ratified in Law no. 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights jo. Law No. 12 of 2005 concerning Ratification of the Covenant on Civil and Political Rights. So the government in every policy issued, including issuing laws and regulations, must pay attention to the principles of protection and respect for the human rights of every citizen without exception.

For this reason, legal protection for land owners in land acquisition activities for the public interest is the obligation to provide adequate compensation for land owners. The principle of legal protection in Indonesia focuses on the principle of legal protection for human dignity which is rooted in Pancasila. Basically, the implementation of human rights instruments in Indonesia is the embodiment and implementation of the values of Pancasila. Meanwhile, the principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights.

Legal protection for land rights holders in land acquisition for the public interest is expected to provide a sense of justice for the community/right holders affected by the development, so that the community/right holders can continue to have their lives guaranteed. In addition, legal protection is a respect for the rights to land owned by a person in accordance with the land law regulated in this country. Legal protection by the state, in this case the government, is very important considering that the relinquishment of rights in land acquisition for development in the public interest is the obligation of the state. For this reason, the State through its laws must be able to guarantee protection in religion and worship of its citizens through positive law.

Thus, legal protection is an effort or action that aims to protect the community from arbitrary actions by the authorities who are not in harmony with legal instruments, to create peace and order so that humans can get a position according to their dignity as human beings. Whereas in the conception of human rights it is emphasized that individuals or communities are the owners or bearers of rights, while the state is the main organ responsible for protecting and fulfilling human rights, but at the same time can act as violators of rights. Such responsibilities cannot be reduced by reasons of SIPOL and EKOSOB. This conception is in line with the implementation of state responsibility and rule of law. The state is responsible for obeying human rights, and must comply with legal norms and standards contained in human rights instruments.

Other elements that must be met in legal protection are the guarantee of protection/protection from the government to its citizens, the existence of legal certainty guarantees related to the fulfillment of citizens' rights related to eco-social rights. One of the principles of the rule of law in the protection of human rights is that the state must protect its citizens equally or known as the principle of equal protection before the law.

Therefore, the principle of legal protection is an effort or action that aims to protect human dignity based on Pancasila and the principle of the rule of law from arbitrary actions by authorities who are not in harmony with legal instruments, creating peace and order so that it allows humans to get a position. according to his dignity. That in order to realize the goal of the rule of law, the main prerequisite is to recognize and give the main place for the principles and protection of human rights.

CONCLUSION

Based on the analysis of research problems, and based on data sourced from legal materials that guarantees against legal protection and property rights are regulated in 28D paragraph (1), Article 28G paragraph (1), Article 28H of the 1945 Constitution of the Republic of Indonesia and Article 3 paragraph (2) and paragraph (3), Article 17, Article 36, Article 37 of Law Number 39 of 1999 concerning Human Rights. In this regulation, the state guarantees that every citizen has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. In addition, the State guarantees that everyone has the right to personal protection, family, honor, dignity and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right.

Meanwhile, in the rules of Law Number 2 of 2012 which regulates land acquisition for development in the public interest, it has not guaranteed legal protection for the community, especially the community holding land rights in the land acquisition process who have been harmed by the rules for the duration of the complaint and the value of compensation. which is not appropriate.

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