



Application Of The Theory Of Utilitarianism In Perlegal Protection For The Provision Of Compensation For Land Rights Holders Declared Abandoned For Development In The Public Interest

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Abstract

Procurement of land for the development of public interest and the determination of compensation cannot be separated from the issue of relinquishing land rights. This study aims to study and understand the implementation of compensation for land rights holders who are declared abandoned and legal protection for land rights holders who feel disadvantaged in the process of land acquisition for the public interest. In this study the author uses a normative juridical method, using a statutory approach, namely Law no. 5 of 1960 concerning Agrarian Principles and Law no. 2 of 2012 concerning Land Acquisition. The results of this study indicate that the implementation of compensation for land rights holders who have been declared abandoned for the development of public interest is carried out by identifying, researching, warning, and determining abandoned land, land, deliberation. As well as legal protection for land rights holders who feel aggrieved include; has the right to obtain data and information, the right to demand a file of rights or a claim for the determination of the development area/location, has the right to receive fair and fair compensation payments, and has the right to refuse the type and amount of compensation.

Keywords: *Abandoned land, Land Procurement for Public Interest Development, Compensation*

A. Introduction

Indonesia is an agricultural country that has very rich natural resources, both from the agricultural, plantation, mining and fisheries sectors. With the large and abundant capital owned by the Indonesian state, it should be able to achieve prosperity and prosperity in terms of food for the very large contribution of agriculture. Wealth of agricultural products will provide an important role in the national economy. As for the Indonesian state, which has an agrarian state, land is a very important means to support the sustainability of human life, besides that the scope of a rural community has an important meaning for a place to live and live. Soil is the entire material resource contained.¹In this case the soil as the top layer and from this layer a variety of living things are formed, including humans/persons.²As

¹ Gesthi Ika Janti, Edhi Martono, dan Subejo, "Perlindungan Lahan Pertanian Pangan Berkelanjutan Guna Memperkokoh Ketahanan Pangan Wilayah (Studi di Kabupaten Bantul, Daerah Istimewa Yogyakarta)", *Jurnal Ketahanan Nasional*, Vol. 22, No.1, April, 2016, hlm.4.

² Maria S.W.Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*, Kompas, Jakarta 2008, hlm. 280.

stated in Article 2 paragraph (1) of the implementation of Article 33 paragraph (3) of the 1945 Constitution. It explains that the earth, water and space therein are natural resources controlled by the State.³

A statement that the earth, water and space are included in the natural resources contained in the state controlled by the state. Where the word power taken by the state in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia above does not have the meaning of owning, but as the ruler of the land, the state only provides legal foundations related to rights over land use. its designation, use and maintenance as well as regulations regarding existing and applicable legal actions and relationships.⁴

In this case the concept of power as described earlier, the state can give land to legal subjects related to use. One of them is known in the Basic Agrarian Law which mandates citizens to have the right to ownership, in this case there is a descending line that has people referring to land.⁵As a result of state recognition into land rights that can be owned by legal subjects so that the state has interests and obligations in terms of guaranteeing legal certainty, as for every legal subject who has the right to defend it, it is based on the Basic Agrarian Law into Property Rights, Cultivation Rights or usually abbreviated as HGU, Hak Guna Bangunan or commonly abbreviated as HGB, Right to Use, Right to Rent, Right to Open Land and Right to Collect Forest Products and other rights that are not defined by their temporary nature and rights, aimed at explaining the rights to the land according to its purpose. and the subject who is requesting the right.⁶As for comparison, land samples controlled by the state need to be granted a Cultivation Right, seeing as the purpose of applying for rights in the agrarian sector (agriculture, etc.) land that is not theirs.⁷

This granting of rights that are mandated by the rules to a person/legal entity followed by their obligations is aimed at their fulfillment, namely ensuring that these property rights can be exercised properly. Article 6 of the LoGA outlines that all land rights have the meaning of a social function. The formulation to become the holder of property rights to land creates an obligation to use the land in accordance with the circumstances, nature and purpose so that the rights can have benefits, of course, both for the state and citizens.⁸In fact, the land abandonment activity is quite massive. Looking at the 2019 Performance Report of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the number of land indicated as abandoned is 4,042 parcels with an area of 2,927,809 hectares.⁹

Development is a human way to utilize resources to meet needs and improve the welfare of life which is implemented by a set of public policies.¹⁰The government needs to sort out & implement certain development strategies that are deemed appropriate to realize something, the meaning of prosperous is where the conditions

³ Herawan Sauni, *Politik Hukum Agraria*, Pustaka Bangsa Press, Kampus USU, 2006.

⁴Ibid.

⁵Ibid.

⁶ Handoyo Setiyono, "PengadaanTanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum", <http://cahwaras.wordpress.com/2010,04,25>, di akses tanggal 20/03/2022, Pukul, 14:45.

⁷ Maria S.W.Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, *Op.Cit*, hlm. 280.

⁸Ibid.

⁹ BPN, "Laporan kinerja Kementerian Agraria dan Tata Ruang atau Badan Pertanahan Nasional (BPN) Tahun 2019.

¹⁰ SF. Marbun, Moh. Mahfud, *Pokok-Pokok Hukum Administrasi Negara*, Cet. 5, Lieberty, Yogyakarta, 2009, hlm. 163.

for the basic needs and rights of citizens have been fulfilled not only with the consumptive level and access to public services from the government, but also opportunities need to be given. to participate and express aspirations within the framework of development in the public interest.¹¹

One that is categorized as the implementation of development for one of them is development that is intended for the public interest or with regard to the interests of the common community, thus requiring efforts to implement it even though it is in line with the increasing population. The increasing number of residents with a better level of prosperity, of course, requires various public facilities such as roads, bridges, transportation, educational facilities, houses of worship, sports facilities, communication facilities, public safety facilities and so on.¹²

Land procurement is something that is done by the government in obtaining land for development purposes, especially for the public interest / the wider community. Referring to the fact that the land acquisition can be done through deliberation to reach an agreement between the parties who need the land and the holder needed for the implementation of development,¹³ Therefore, the state authority as a policy milestone needs to be responsible for making efforts by issuing or stipulating legal products regarding land acquisition for the implementation of development activities.¹⁴

Likewise with the authority and responsibility, in the event that the provision of land is carried out in the interests of the citizens and the state, the government can revoke the provision of land land rights with provide appropriate compensation in a manner that regulated as in laws and regulations, provided that efforts through deliberation fail to bring results. The state has the right to control over land, also authorizes the State to regulate matters relating to the provision of land for the public interest. Theoretically, the law of the land that was built based on the values that live in society,¹⁵ and revocation land rights by the state for the benefit of general must do by providing compensation to those affected appropriately, thereby taking land rights for public interest, should be accepted and obeyed by the community, so as to minimize disputes that occur.¹⁶

The land acquisition process that is currently being carried out in Indonesia is the construction of the Jakarta-Bandung Fast Train (LRT), this Fast Train has been planned since the beginning of 2016, then at the end of November 2016, the President Director of PT. Wijaya Karya Bintang Perbowo said: the land acquisition for the high-speed train has grown by 85 percent.¹⁷ Aiming at the construction of a high-speed train, namely for modern means of transportation at this time by uniting the provinces of Jakarta and West Java, especially the city of Bandung, which is very likely to take only a short time. The means of transportation is actually to move from one

¹¹Ibid.

¹² Triana Rejekiningsih, "Asas Fungsi Sosial Hak Atas Tanah pada Negara Hukum (Suatu Tinjauan dari Teori, Yuridis dan Penerapannya di Indonesia), *Yustisia*, Vol. 5 No. 2, Mei-Agustus 2016, hlm. 7.

¹³ Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Kompas, Jakarta 2008, hlm. 280.

¹⁴Ibid.

¹⁵ Satjipto Rahardjo, *Membedah Hukum Progresif*, Kompas Media Nusantara, Jakarta, 2006, hlm. 164

¹⁶ Darwin Ginting, *Kapita Selekta Hukum Agraria*, Fokusindo Mandiri, Jakarta, 2013, hlm. 122.

¹⁷ Achmad Dwi Afriyadi, *Kereta Cepat Jakarta-Bandung*, Liputan6, <http://bisnis.liputan6.com/read/2660590/>, diakses pada tanggal 20/03/2022, pukul 8.38 WIB

place to another in order to make it easier for humans to carry out their individual activities easily and quickly. The construction of this high-speed train is the result of cooperation between Indonesia and foreign investors from China. The stakeholders (parties) in making this big project cooperate with, among others, PT. Wijaya Karya, PT. Kereta Api Indonesia, PT. Jasa Marga, PT. VIII National Plantation and China Railway International Co.Ltd.¹⁸

The plan for the construction of the Jakarta-Bandung high-speed train does not always go according to expectations, as for several obstacles that arise in the development process, namely in the process of land acquisition. land between the government and the affected communities. First, price adjustment land and buildings those who were released/received compensation, this is because of the low price in land acquisition and building. Second, on payment compensation for the existence of the community as the owner of rights, both property rights to land and other rights that are legally regulated by law (eg HGB, HGU and Use Rights), whether or not they have received replacement payment make a loss. Third, wrong measurement land, namely land and buildings that have been acquired or receive compensation, the extent of which is smaller when compared the actual land area, as for when the land is measured by the officer residents in this case are not involved.¹⁹

Law Number 2 of 2012 says that "land acquisition is an activity" providing land by giving proper and fair compensation to the rightful party". in the this law is not listed the same one word "revocation" and "land acquisition", characterize & signify that the spirit contained in this law is so that in procurement soil pattern used more lenient & respects position right holder on the ground, so that it is stated also the word for compensation worthy and fair.²⁰

As it is known that land concept *banking* is to provide land in an area, then saved, then reserved for development on future. Based on Law No. 11 of 2020 concerning Job Creation version page 1.187, matters relating to this land bank are on page 702, to be precise the Fourth Part on Land, Paragraph 1 concerning Land Bank. This law mandate the government center to form land bank agency is a special agency that manages the land. According to Indonesian President Joko Widodo during an online press conference from the Presidential Palace, confirmed by the President that the land bank This is necessary for the creation of interests public interest, social interest, development interest national level, economic equity, and consolidation land and agrarian reform. This is very important to ensure public access to land ownership, land ownership, and so far we do not own bank land. Furthermore, Article 126 regulates the issue of availability land for agrarian reform is at least 30 percent of the land country designated land bank. Main goal is to facilitate land acquisition for the benefit of general, social, development, economic, agrarian reform, and others. Not only that, this cluster too regulates land acquisition, ownership of shares and land, land release, to granting term of rights Land Use and Cultivation Rights.²¹

¹⁸*Ibid.*

¹⁹ Achmad Dwi Afriyadi, *Kereta Cepat Jakarta-Bandung*, Liputan6, <http://bisnis.liputan6.com/read/2660590/>, diakses pada tanggal 26/03/2022, Pukul 8.38 WIB.

²⁰ Darwin Ginting, *Kapita Selekta Hukum Agraria*, Op.Cit, hlm.122.

²¹*Ibid.*

Providing compensation decent and fair there needs to be clarity in application, so that the size worthy and fair to government and holders land rights exist balance, it's not just the government to judge as freely as possible by setting the price according to what is met, but there must be consualism or the price agreement between government and land rights holders, with maximum effort possible in order to avoid trying to force the community to release right.

From the description above, it becomes the basis for the author in conducting research related to how the implementation of compensation for land rights holders who are declared abandoned and how the legal protection is for land rights holders who feel disadvantaged in the land acquisition process for the development of the public interest.

Theoretical framework

Utilitarianism is a form of consequentialism which holds the opinion that the consequences or results of an action, law, policy, etc., determine whether it is good or bad, right or wrong. Therefore, in this view, we require to choose based on the consequences that are considered the best. The only thinker who became a major figure in this view was Jeremy Bentham.

Bentham says:

“What is a moral obligation is to create as much pleasure as possible for as many people as possible where this pleasure is determined by the presence of pleasure. Another principle that includes the principle of utility is that one human being is as valuable as another human or any other language, everyone is counted as one and no one is more than one. There is a concept of human equality that underlies this one principle.”²²

The description above tries to explain that development for the public interest cannot be separated from the view of utilitarianism which is based on the greatest happiness of the greatest number. This has been legitimized in Law Number 12 of 2012 concerning Land Procurement which is contained as a legal justification for the transfer (if not expropriation) of this living space for people to become smaller for the public interest. Therefore, this paper also takes into account the advantages and disadvantages derived from the implications of airport development for economic analysis.²³

B. Literature review

Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) states that all land rights have a social function, in the explanation of the basic agrarian law it is explained that a person may not solely use land for his personal use, or not to use it. land that causes community losses. Therefore, individual interests and personal interests must balance each other, which ultimately achieves the main goal of prosperity, justice and happiness for the people as a whole.²⁴

²²John Rawls, *A TheOry Of Justice*, LondOn: *OxfOrd University press*, 1973, yang sudah diterjemahkan dalam bahasa indOnesia Oleh Uzair Fauzan dan Heru PrasetyO, *TeOri KeadilAn*, YOgyakarta, Pustaka Pelajar, 2006, hlm. 47.

²³*Ibid.*

²⁴Boedi Harsono, *Hukum Agraria Indonesia, Peraturan-peraturan Hukum Tanah*, Intan Sejati Klaten, 2007, hlm. 219.

C. Research methods

In analyzing the problems that the authors examine, the authors use normative juridical research methods based on legislation, theories and concepts related to the problems studied.²⁵The statutory approach is carried out by reviewing statutory regulations so that researchers use statutory regulations as the initial basis for conducting an analysis related to abandoned land and providing compensation for abandoned land used for development in the public interest. The type of data in legal research that is juridical normative uses secondary data types, namely data obtained through library materials and primary data obtained from the field, namely conducting data requests and direct interviews related to land acquisition for the construction of the Jakarta-Bandung Cepar Train.²⁶The secondary data sources can be classified into 3 (three) bindings, namely as follows Primary Legal Materials such as legislation, including: Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Law Number 2 of 2012 concerning Procurement Land.²⁷Secondary legal materials in this research include: literatures, research results, text books, legal journals, papers, related to land acquisition issues.²⁸While related to tertiary legal materials, it is obtained from the Big Indonesian Dictionary, the Legal Dictionary which provides understanding of terms related to terms: abandoned land, compensation, development, and public interest.²⁹Data collection techniques were carried out by two kinds of procedures, the first was library research. Secondary data collection is primarily to receive sources of libraries, books, laws and regulations and others related to abandoned land issues and land acquisition for the public interest. Both Field Research Techniques were carried out to obtain data directly through direct observations related to land acquisition for the construction of the Jakarta-Bandung Cepar Train.

D. Results and Discussion

1. Implementation of Provision of Compensation for Land Rights Holders Who Have Been Declared Abandoned

In harmony with the current situation and condition of Agrarian Indonesia and in order to create a just and prosperous society.³⁰ Basically, the Agrarian Law in Indonesia does not allow the abandonment of land by the holder of property rights/owners. This is because it is feared that these actions will have a negative impact that can disturb and harm the community. Among them: social and economic disparities, declining environmental and natural conditions, and can cause various disputes in the community. Therefore, to prevent these adverse effects, the act of abandoning the land can actually be carried out as quickly as possible. The seriousness of the UUPA prohibits the act of neglecting land, it can be proven by the existence of punishments that can be given, namely: "Abolition/loss of rights to the land in question, termination of the legal relationship between the land and the

²⁵ Zainudin Ali, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, 2009, hlm. 19.

²⁶ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Op.Cit, hlm.13-14

²⁷Ibid.

²⁸Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2010, hlm.144.

²⁹Ibid.

³⁰ Boedi Harsono, *Hukum Agraria Indonesia, Peraturan-peraturan Hukum Tanah*, Intan Sejati, Klaten, 2007, hlm. 3.

holder of the rights/owner, and the land is declared as state land (land which is controlled directly by the state). In addition, according to Article 180 of Law no. 11 of 2020 concerning Job Creation, "if the rights, permits, or concessions on land or areas are intentionally not cultivated and neglected by the holders of land rights for a period of two years from the time they are granted, they are returned to the state."³¹

The definition of abandoned land is stated in Article 27 of the UUPA that abandoned land if done intentionally is not used as it should be, the nature and purpose of the rights. However, since the promulgation of the UUPA, the article relating to abandonment of land cannot be implemented immediately. This is because the operational guidelines in the article as described above have not yet been applied. This resulted in the prohibition of abandoning land being ineffective, which in the end the act of abandoning land was difficult to control. Abandoned land is one of the problems in land that needs serious resolution and solutions, because, if not resolved properly, it can disrupt the development process and can violate the principle of justice for the community at large.

The legal consequences that arise from the above actions give the state firm authority to control the land by considering the payment of compensation for the holder of the rights to the abandoned land. The productive use of land is an obligation mandated by the LoGA. This obligation is important as part of the consequences of the rights granted by the state to the appropriate person or legal entity. The involvement of the state in land management is a reflection of state utilitarianism. This means that the participation and involvement of the state in formulating policies and regulations regarding land is an effort to regulate the implementation of reforms so that they are in accordance with the principles of National Development. Every holder of land rights is obliged to use his land in accordance with the circumstances, the nature and purpose of granting land rights. Everyone uses his land or does not use his land as he pleases without regard to the public interest.

Land acquisition process for the Project Train Fast (High Speed Train) Jakarta-Bandung In 2016 which passed through 5 villages in Karawang Regency, identification, determination and utilization of abandoned land had been carried out, in order to determine a plot of abandoned land. the land is properly used as a social function of the land and is not delivered.

In providing compensation to holders of land rights who are declared abandoned if analyzed using the theory of utilitarianism in order to fulfill the values of justice, goodness and equality,³² That the land that has been given right by the state on the basis that land rights are not being used, utilized in accordance with their nature as well as the purpose of granting land rights or the basis for their control, identification and determination of abandoned land must be carried out, if it is proven that the land is indeed abandoned, then utilization will be carried out. land for development interest general.

Procurement land for interest general must be done properly and pay attention to the role land in life In addition, humans must also uphold respect for

³¹ Ida Nurlinda, Yani Pujiwati, Marenda Ishak, "Perbandingan Penanganan Tanah Terlantar di Kabupaten Tasikmalaya dan Kabupaten Sukabumi dalam Mewujudkan Ketahanan Pangan Provinsi Jawa Barat", *Jurnal Hukum Ius Quia Iustum*, Vol. 21 No. 1 Januari 2014, hlm. 18.

³² Otje Salman Soemadinigrat, *Teori Hukum Mengingat, Mengumpulkan, dan Membuka Kembali*, Refika Aditama, Bandung, 2004, hlm. 156-157.

legal land rights. Besides having economic quality value, land also have function social welfare, as stated in Article 6 of the LoGA. This social function sometimes has to prioritize the public interest first above individual interests. Whereas which meant with interest general that is interests owned country and a government based on the prosperity of the people.

Procurement land for interest general organized by the government based on the Plan System Room Regions, considering the stabilization of national development with those in the regions, strategic plans, and considering the goals and objectives of agencies that need land in the future. As well as the interests of development with the community, must be accompanied by the provision of adequate and fair compensation. Payment of compensation is a compensation that can be in the form of cash or in the form of goods to people who feel a loss because the assets owned are used for the public interest. Respect and appreciation for land rights holders in the land acquisition process for the implementation of development in the interests of the general public is manifested in the form of compensation. The form and amount of compensation is the most important element because it will be directly related to the survival of the owner who is entitled.

The concept of compensation in land acquisition for the public interest as formulated in Presidential Regulation No. 19 of 2021 concerning Procurement Management Land For Implementation Development For interest General namely:

“Payments for physical and non-physical compensation that occur due to the land acquisition process given by the holder of land rights, buildings, plants, and other objects related to land, which can provide benefits for survival that are better than the standard of living. previously affected by the expropriation of land acquisition”.³³

Since the launch of the Jakarta-Bandung High Speed Train Project in 2016 and passing through the Karawang Regency, it is known that the length of the track that passes through Karawang is quite long, reaching 30 kilometers, there are 5 villages affected by the high-speed train project, namely Wanasari Village, Wanakerta , Wanajaya, Margakaya, and Margamulya.³⁴A total of 36 people owner/holder right on the land whose land caught Project Construction of the Jakarta-Bandung High Speed Train, and efforts are made to obtain compensation for liberation land with use mechanism big as well shape gift change losses through deliberation and consensus.

Based on the author's research that the implementation of development projects for the public interest. Based on the author's analysis on the implementation of the two development projects for the public interest, a committee for land acquisition was formed from the elements (local district or city government, the Settlement and Regional Office, the Agriculture and Food Crops Dnas, the Tax Service Office (PBB) and elements from the BPN office that acted as chairman, Bupari as deputy chairman, and; (Tax Service Office (PBB), Head of Public Works Service, Head of Agriculture Service, Camat), who act as

³³ Urip Santoso, *Hukum Pengadaan dan Pendaftaran Hak Atas Tanah*. Fakultas Hukum Universitas Airlangga. Surabaya. 2009. hlm. 46

³⁴Tvberita.Co.Id, 5 *Desa Terkena Proyek Kereta Cepat Jakarta-Bandung*, <https://tvberita.co.id/index.php/news/nasional/item/6509-5-desa-terkena-proyek-kereta-cepat-jakarta-bandung>, diakses tanggal 19/03/2022, Pukul. 09:44 WIB.

members. Head Part Equipment Secretariat Area as secretary. Furthermore, socialization is carried out by bringing together community members as owners of land rights affected in land acquisition for the Jakarta-Bandung High Speed Train Project so that they can hold discussions regarding the importance of developing the project, as well as discussing the relinquishment of rights or transfer of land rights owned. by residents by providing compensation payments in the form of relocation money or money along with relocation. In addition, deliberation to reach consensus is also in determining the nominal amount of compensation that residents want.

Development for the public interest is closely related to the theory of utilitarianism which is based on the greatest happiness of the greatest number. The theory has actually been legitimized in Law no. 12 of 2012 concerning Land Acquisition.³⁵The connection in the process of grounding for the public interest is how land acquisition can provide and fulfill the value of fulfilling justice solely in accordance with the value of goodness for the community, equality for holders of land rights, including equality of social life as well as in utilizing natural resources ("social goods").

J. Bentham is the originator of "the greatest happiness principle" or "the principle of utility. Basically it does not refer to the utility of a thing, but how an action can produce pleasure general (general happiness).³⁶

According to the author's analysis, the implementation of compensation for land rights holders who are declared abandoned for the development of the public interest in order to provide values of justice, goodness and equality for land rights holders based on the theory of utilitarianism by Jeremy Betham, is carried out by:³⁷

1. Identify, research, warn and stipulate abandoned land on land that has been granted rights by the state in the form of property rights, HGU, HGB, use rights, management rights and the basis of control which are not used or utilized or intentionally not used then declares that the rights are abolished on the land as well as ending the legal relationship between the land and the owner of the land rights, in addition to confirming that the land is state-owned land for further utilization of the intended use for the public interest.
2. Deliberation in order to achieve an agreement between the parties in land acquisition or an agreement in the transfer of land rights related to reaching an agreement related to compensation, types of compensation, resettlement and economic recovery.
3. The realization of a sense of justice, which can be more accepted by the community who will relinquish their rights or surrender their land rights. Because a sense of justice is a legal ideal that is based on the oral values of humanity
4. Fulfillment of benefits in the surrender and relinquishment of rights or in the process of revocation of land rights. Because basically in the land acquisition process, it is obligatory to provide benefits for those who need land and the community as holders of land rights.

³⁵*Ibid.*

³⁶John Rawls, *A Theory of Justice*, London: Oxford University Press, yang sudah diterjemahkan dalam bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, Yogyakarta, Pustaka Pelajar, 2006, hlm. 47.

³⁷*Ibid.*

5. The existence of legal certainty, in land acquisition, it is mandatory to refer to and fulfill the principle of legal certainty, which can be implemented by referring to the laws and regulations. So that all parties can clearly know the rights and obligations of each.
6. The achievement of a joint decision between the parties who need the land and the community as holders of land rights by means of deliberation to reach an agreement on the approval of the land acquisition process for development in the public interest.
7. There is transparency between the holders of land rights and those who need the land in terms of surrendering and relinquishing land rights, including guidelines related to land acquisition that must be submitted and socialized to the community, so that the community understands the contents of the regulations regarding land acquisition.
8. The existence and participation, participation and role of the community and other parties actively in the process of handing over land rights in order to create a sense of belonging and to minimize the possibility of rejection of the implementation of development in the public interest.
9. The achievement of equality, in the position between the parties in the process of land acquisition for development for the public interest, so that the position of all parties is equal in the process of implementing land acquisition activities for development in the public interest.
10. the achievement of sustainable economic welfare in land acquisition must be strived to minimize negative impacts.

Thus, the community can welcome the implementation of the Jakarta-Bandung High Speed Train Project which is carried out voluntarily and is available in releasing their land rights, provided that the compensation is acceptable, is considered appropriate and pays respect to the owner of the right to land. land. providing compensation for payments in the form of money that is appropriate, fair and appropriate in providing the value of the compensation provided.

With regard to the determination of compensation, according to the author, the most important thing is not the guidelines for the amount of compensation based on the NJOP, but based on the deliberation between the Land Procurement Committee and the land rights voters which includes an agreement between the two parties. In determining the amount of compensation, because there should be a price balance between the demands of the owners of land rights and the ability of government agencies. So that it refers to the utilitarian theory of land acquisition for the public interest to provide and fulfill the values of fulfilling a sense of justice in accordance with the value of goodness for the community, equality for holders of land rights, both equality in social life and equality in the use of natural wealth. ("social goods").³⁸

2. Legal Protection for Land Rights Holders Who Feel Aggrieved By Providing Compensation In the Process of Procurement of Land for Development in the Public Interest.

Legal protection for land rights holders means that land rights holders have special rights that must be protected in relation to land acquisition which can be

³⁸ Maria S.W, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Penerbit KOMPAS, Jakarta, 2007, hlm. 180.

provided by the agency/government that requires land. According to Satjipto Rahardjo that legal protection is to provide guarantees for basic freedoms and protection for human rights who feel harmed by other parties and that protection is given to local communities so that they can respect and take advantage of every right granted by law. Furthermore, the meaning of the word protection is the rules and actions of certain things to get a safe protected place, or legal regulations so that rights and obligations as well as commitments and commitments can be guaranteed to get legal protection.³⁹

Legal certainty for land rights holders concludes that land rights holders receive special rights protection with respect to land acquisition organized by government agencies that require land. Legal protection related to procurement land land for the benefit of by the government is a guarantee of protection rights special individual and group public which given by The law is based on applicable legal arrangements. This means that although the government has the authority to regulate, direct and control for the public interest, it should not freely take over land. Right individual and public which attached with land must be considered, respected and guaranteed protection.

Legal Protection or legal protection rights public in the revocation of land rights for enhancement interest generally regulated in the LoGA, so for the sake of interest general, includes interest nation and country as well interest together people, right on land can be revoked, by compensating for appropriate, reasonable and fair losses based on the laws and regulations. On the basis stipulated in the LoGA, the government ordered the establishment of Law no. 20 of 1961 concerning Revocation of Rights to Land and Objects On It. Article 1 confirms that in the case of interest general, including interests Nation and State and public interest, and development interests, The President based on the direction and opinion of the Minister of Agrarian Affairs, the Minister of Justice may revoke the rights to land and objects on it. Because the public interest must be a priority, it must take precedence over individual interests, so when going through discussion no can give good results hopefully, the government can revoke and control the land rights through the process of revocation of rights carried out in the public interest and resolved carefully and in a fair and wise manner, all of which must be in accordance with the statutory regulations.⁴⁰

As a form of guarantee of legal protection for the holders of land rights who feel aggrieved by the provisions for payment of compensation, it is regulated in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. Compensation for compensation as referred to in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, is the payment of appropriate and fair compensation to holders of land rights in land acquisition activities.

Type change loss which can be given during the process land acquisition for public interest according to Article 76 of Government Regulation No. 19 of 2021 regarding maintenance Procurement Land For Interest Development General, are as follows:

³⁹Satjipto Rahardjo, *Membedah Hukum Progresif*, Kompas, Media Nusantara, Jakarta, 2006, hlm. 86.

⁴⁰ AP. Parlindungan, *Komentar Atas Undang-Undang Pokok Agraria*, Bandung, Alumni, Tahun 1988, hlm. 57.

- a) money
- b) land replacement
- c) settlement return;
- d) ownership share
- e) shape other which agreed by the parties

Types of compensation include cash, replacement land, resettlement. Ownership shares or other types as agreed by the parties. Compensation as cash is given in rupiah currency. Compensation payments are submitted no later than 7 working days after the determination of the type of compensation by the land acquisition committee.⁴¹ Compensation payments in the form of replacement land will be provided by the agency requiring the land through the Land Procurement Committee. Compensation in the form of resettlement will be given by the agency that requires land through the Procurement Implementation Committee Land. Implementation in providing housing again completed no later than 1 year after the determination of the type of compensation from the Land Procurement Operator. Substitution in the type of share ownership is given by the State-Owned Enterprises as a public organization in the form of a public company that has a special task from the government. Meanwhile, compensation in other types agreed upon by the parties may be in the form of a combination of at least 2 or more types of compensation.

Protection law for holder right on the land for the determination of compensation in development for the public interest, there is protection for the owner of land rights as follows:

- a. Protection the right to obtain information and data on procurement implementation land for development for the benefit of general

Holder's privileges land in procurement land for the public interest, among others: "knowing the arrangements and plans for the implementation of land acquisition and obtaining accurate data and information in the land acquisition process". The information in question must be obtained in a timely manner because the land acquisition plan for the public interest is determined by the relevant agencies that need the land, so that the community does not feel pressured and forced by the government but there is time to consider and think about the right decision when planning the development of land for development to public interest carried out by the government.

In deliberation involving land rights holders and implementers of land acquisition, including the community, religious leaders and traditional leaders, hold direct meetings with agencies that need land. In the meeting, the agency is obliged to convey data and information clearly, regarding the reasons and objectives of the need for land, so that the community really understands and understands the purpose of land acquisition, besides that it is also obligatory to provide information explaining the benefits, impacts and losses that may exist. after the implementation of development in the public interest, so that there will be no disputes in the future.⁴²

- b. Protection of the right to file a claim for rights or a lawsuit over the determination of the construction site

⁴¹Ibid.

⁴² Pasal 19 ayat 1 Undang-Undang No 2 Tahun 2012 Tentang Pengadaan Tanah

When there has been a determination location/planned area procurement land for development for public interest. Land rights holders can file a lawsuit. to the State Administrative Court (PTUN) within a maximum of 14 working days as of since the date the determination of the location of the development plan will be implemented, the Administrative Court is obliged to give a decision whether the lawsuit is accepted or rejected within 30 (thirty) working days from the receipt of the lawsuit. After the decision of the Administrative Court, the holder of land rights not accept the verdict Accordingly, the holder of land rights can file a cassation case within 14 (fourteen) working days after the decision of the Administrative Court is handed down. Supreme Court must give decision on the request for cassation no later than 30 days from the receipt of the application appeal. Thus, the reason for whether or not the procurement process can be continued land for interest general is a court decision that has strength law permanent.

c. Protection of rights in order to obtain compensation which worth and fair

Provision of compensation by the government is an absolute right that must be obtained through the holder of land rights. In the process of implementing the compensation provided by the government to land rights holders, it is not uncommon to feel dissatisfied, because it is considered that the amount of compensation is not appropriate. with which are expected. Types of compensation compensation which given to holder right on land can be; cash, replacement land, resettlement, and other agreed forms.⁴³

The process of determining the price of compensation to the community as the holder of land rights is carried out by looking at the regulated value stated in the NJOP, proof of payment of land and building taxes and other research identified as final considerations in determining the value of compensation. So that people feel that the value of compensation determined fulfills a sense of justice and respect.⁴⁴With regard to the causes that affect land prices, the causes that are considered reasonable and relatively fair, even though these are applied to different subjects in this case the holders of land rights, the results do not have to be the same, given the differences in the situation and condition of each object. ..⁴⁵

It turns out that the process of determining the amount of compensation for land is not a simple process, considering that there are various factors that must be considered and considered in determining the price of compensation. This factor is a study material as well as object and subject considerations right on land. With thus, pricing change loss in the procurement process can provide a sense of justice to rights holders above ground so that the rights holder in release right no feel forced, but can accept happily.

d. Protection of the right not to receive the form and amount of compensation.

⁴³ Pasal 36 Undang-Undang Nomor 2 Tahu 2012 Tentang Pengadaan Tanah

⁴⁴ Maria SW Sumardjono, *Tanah Dalam Persepektif Hak Ekonomi Sosial Dan Budaya*, Kompas Media Nusantara, Jakarta, 2008, hlm. 263.

⁴⁵Ibid.

The objection to the determination of compensation to replace the object used for development in the public interest submitted by the holder of the land rights is wrong one evidence that land rights holders feel they have not received flavor fair and worth the value that guarantees the welfare of a much better life. For parties who feel aggrieved by the determination of the type and amount of compensation for the development of the public interest, may file an objection as stated in Article 38-44 as follows:

- 1) In the event that there is no understanding and agreement on the type and amount of compensation, the holder of land rights may file an objection to the local District Court within a maximum of 14 working days after deliberation on the determination of compensation is carried out.
- 2) Court Country determine shape and mark change loss during most long 30 day work since received object.
- 3) Party which object on decision Court Country in most time long 14 day work could submit cassation to Supreme Court Republic Indonesia.
- 4) Court great must give decision in time 30 (thirty) day work since received application appeal.
- 5) Decision Court country and Court great Republic Indonesian has powerful law permanent Becomes reason determination compensation to parties which submit object
- 6) If Party which Entitled refuse shape and quantity mark compensation however no submit object in time 14 working days, then, on moment that party which object considered has accept the form and amount of the replacement value loss.
- 7) Payment change make a loss given to Party entitled to be based on evaluation which decided in discussion and the decision of the District Court/Supreme Court.
- 8) On moment accept shape and quantity mark compensation, the party who entitled to be obliged to perform the transfer of rights; letters proof of mastery or ownership to agency which need land through BPN office. The party has the right to get the form and amount of value change loss, responsible answer on accuracy and validity Proof ownership or transferred possession. The demands of other parties if the land object has been handed over to the party who needs the land, becomes the responsibility of the owner of the initial land rights.
- 9) If the Entitled Party refuses the form and amount of replacement value loss, tyang based on results discussion or decision District Court/Court Great, then the compensation payment will be deposited in the District Court or called the Concession.
- 10) Custody of forms and compensation other than those mentioned above, is also carried out for:
 - (1) it is not clear the whereabouts of the party entitled to receive compensation or;
 - (2) Land Acquisition Object to be compensated: medium Becomes object case in the court; being in a dispute over

ownership is still in question; confiscated by office which authorized or land becomes guarantee. Terms of land acquisition must be based on the principles of a just democracy and uphold human rights or Human Rights because: land acquisition is deed law which results in the loss of right individual physical or non-physical as well as loss of treasure things for a while or forever and provide compensation that must consider: (1) loss of right on land, building, crops, (2) loss of income or various sources of income for life and help for move to area other with give alternative to areas that new with proper infrastructure, (3) help income recovery in order to return to the same condition as before the release of land rights. (4) The expropriation of land rights causes the owner of the land rights to be evicted and thus must be considered in the arrangement for payment of losses, (5) obtain information and data precise and accurate information about those affected evictions and the amount of compensation must be carried out basic observations regarding socio-economics, (6) the existence of institutions which responsible for implementation of land acquisition and settlement back, (7) approach deliberation for arrive at agreement must be promoted and necessary existence a means to convey aspirations and complaints in resolving disputes that arise in the process takeover land.

E. Conclusion

The implementation of compensation for land rights holders who have been declared abandoned for the development of the public interest based on utilitarianism theory is carried out by identifying, researching, warning and determining abandoned land, holding deliberation in order to reach an agreement, justice for people who will surrender or relinquish their land rights, there is benefit, surrender, relinquishment of rights or revocation of land rights, legal certainty, joint decisions between parties, transparency of openness between parties who need land and parties entitled to land in the release or surrender of the land, the participation or participation of all parties who are actively involved in the process of relinquishing or transferring rights, the existence of an equal position between the parties who are balanced in the process of procurement and relinquishment of land rights, the achievement of sustainable economic prosperity.

Legal protection for holders of land rights who feel aggrieved by the determination of compensation in the process of land acquisition for development for the public interest, namely: the right to obtain data and information regarding the implementation of the land acquisition plan for the public interest, the right to file a claim for rights or a lawsuit over the determination of the area/ construction site for the public interest, has the right to receive compensation payments that are reasonable and fair, and have the right to refuse the type and amount of compensation.

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