

THE ASPECT OF JUSTICE REGARDING THE COMPENSATION OF HIGHWAY CONSTRUCTION IN SAWAHAN VILLAGE IN BOYOLALI REGENCY

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ABSTRACT

The aspect of justice regarding the compensation of Solo-Mantingan I highway construction in Sawahan Village, Boyolali regency, need to be accomplished so that the villager have a chance to live better life. How is the justice regarding the compensation of Solo-Mantingan I highway construction in Sawahan village? This research uses empirical legal research methodology, which is representing analytical descriptive. The research findings show that the compensation given to the villager is far from what they expected. The researcher appraises that in the theory of justice concerning the public interest, the individual who believe in social justice must sets aside his or her own individual freedom in favor of others. Claims for reasonable and fair compensation must be understood because the social impact of it will be felt directly by the resident. The compensation is supposed to be used by the residents to have a better life in the new place. The land acquisition which based on the public interest criteria should follow the justice aspect in paying the compensation for those who reverse the rights. The justice here means the harmony between individual rights and public duty within their community. The justice indicator of the compensation payment can be used to recover the residents' socio-economic order. The compensation should be at least equal to the condition before the Land acquisition. The party who demanding their land can obtain can also obtain the land according to the plan and its allocation. Even they can have its legal protection in a form of obligations and rights. The compensation must displaying justice which can be accepted and felt by all party.

Key words: justice, compensation

Introduction

Land as God's blessing, functions significantly to encourage Indonesian people become mediocre and prosperous. The Act No.5 of 1960 about the Basic Agrarian Law Act is the direct implementation of Particle 33 Paragraph (3) Constitution 1945 which regulate land, ocean and natural wealth in the country will be utilized altogether for people prosperity. It is also carrying out Indonesian aspiration within the National Agrarian Law renewal. Basic Agrarian Law Act established to answer the entitlement and the need for national legal tool to regulate and guarantee the rights for land ownership, of which the purpose is to be one of the means for accomplishing the National Independence's aim and aspiration.¹ The regulation about land acquisition own by residents used for public service is structured within an Act that reflecting veneration to human rights.² The procedure of land acquisition that used for public service, the compensation given to the owner of the land should be commendable and fair. As a result, their life will come to be better in the future than before. Frequently, the land acquisition process consequences conflict between residents who suffer the impact of public service construction project and the government. Especially, the conflict arise is about compensation that dispense with justice aspect for the residents. The Article 3, the Act No. 39 of 1999 about human rights, regulates that justice is for everyone to be deserved. The rights should be guaranteed and protected by the nation including the requirement of compensation for land acquisition. Alongside accomplishing certainty and benefit, it should reflect justice for the land owner.

National development is one of the people of Indonesia's will. It is accomplished continuously in order to increase welfare and prosperity equally and also improve the people's life with regard to a democratic nation grounded by Pancasila. Dealing with accomplishment of prosperity, the government establishing a plan concerning reserve inventory, provision and usage of the natural resource concentrated for people prosperity. In other words, the usage of the land a can be done well-structured and organized bringing the prosperity for people and the country..³

Land acquisition process often consequences conflict between the government and the party who own the land, either personal or legal entities. The process disregards justice aspect for the suffered party. The certainty and usefulness aspect are the first place that caused conflict since agreement about commendable and fair compensation is unclear. The different view about the compensation becomes the reason why both party unable to reach agreement. The land owner think that the compensation is lamentable while the government think that the compensation commendable.

Almost all of development sector need land. However, the land availability is limited causing the demanding land

¹ Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, LPHI, Jakarta, 2005, p.151

² Achmad Rubaie, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Bayumedia Publishing, Surabaya, 2007, p.76

³ Muhammad Yusrizal, "Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Untuk Kepentingan Umum", *Jurnal De Lega Lata*, Vol.2 No.1, 2017,p.113

acquisition. Specifically in Indonesia, land has a strategic implication for people's life and livelihood so the cutting off the relation between people and their land carry out with consequences. As a result, in most land acquisition execution consequences land owner refusal.⁴

Problem that occurred during land acquisition in Sawahan village, Ngeplak District is about the low price compensation unsatisfied the people's claim as land owner who expecting a high price. Socialization and discussion were done only once. When the discussion were done some of the land owners did not attending the meeting. As a result the disagreement rouses by the residents about the price unable to be answered and discussed. Since, the both party unable reach agreement yet, there were only some land owners agree with the compensation price given by Kantor Jasa Penilai Publik (KJPP) Solo-Mantingan I highway construction project. There were four land owner who did not agree with the compensation price. They took legal action and bring the issue to the Boyolali District Court. They stated that their livelihood will threatened if the compensation unable to make their needs happen in the future.

Problem Statement

The main subject studied in this research is "how is the justice on the compensation of highway construction project in sawahan village, boyolali regency?"

Research method

This research used empirical legal study, of which the characteristic is analytical descriptive. This research used Act and Case approach. It carried out in Boyolali regency, because Solo – Mantingan I highway project administratively affiliated in Sawahan Village, Ngemplak district, Boyolali regency, Central Java. The technique to collecting data used interview technique. It was conducted with officer who has the responsibility toward the land acquisition process. The interview results were studied along with legal materials. The data analysis technique in this research is qualitative technique.

Research Finding and Discussion

According to Michael G. Kitay, *public-purpose* can be expressed in two ways. Firstly, General guidelines, which state merely that expropriation requires a public purpose. Terms can vary: Public may become social, general, common, or collective. Similarly, purpose may be replaced by need, necessity, interest, function, utility, or use. Not surprisingly, these general guidelines lay down by legislature, leave considerable discretion in the hands of the executive and judiciary branches of government. Executive powers declare a given project, such as a hospital, within the public-purpose requirement is checked only by judiciary power to interpret the statute. Secondly, List provision, explicitly identifying the purpose-schools, roads, government buildings, and the like-that the legislature deems to be public. Purpose not appearing on the list may not form the basis for expropriation of land. List provisions permit the executive and judicial branches less discretion than general guidelines.⁵

The highway construction requires wide land adjusting the width and length of the road planned. The Solo-Kertosono highway construction project is about 179 kilometers length. It passing through Solo – Mantingan – Ngawi about 90, 25 kilometers and Ngawi – Kertosono is about 89 kilometers. It is one part of Trans Jawa Highway.⁶ The highway passing through Sawahan village, of which intersection is just before Klodran toll booth in west Solo. Sawahan village is one of lowland regions in Boyolali is about 265, 8000 hectares width. It consists of rice field about 78, 9708 hectares and dry land about 186, 8292 hectare width. The population of the village is the biggest of all among village in Ngemplak district. It is about 8.808 populations. It can be seen that as the effect of birthrate, death and migration.⁷ The Solo – Mantingan I highway construction requires about ± 436, 79 hectare. The construction aims increasing accessibility and capacity the road network, within transportation facility in North Java of which the density intensity is high and able to support the economic growth. Noticeably, the construction project is necessary for the transportation be more efficient, increasing the welfare and giving benefit to the stakeholders and boosting the national economic growth simultaneously.

Frequently, land acquisition for public purpose consequences problems within the people. It is caused by many concerns contradict each other.⁸ The urgency of the Solo- Mantingan I highway construction project is based on fact that the 2/3 of National network road constantly having heavy traffic jam. It was predicted for the next 20 years the traffic will be three or five heavier than before. As a result, Indonesia precisely needs a new infrastructure such as highway. The perspective about highway as arterial road should be substitute with a concept high performance road network that connecting the main road which essential for land transportation logistic. The main factor of it is the reduction of the duration of journey about 50% at the main corridor

⁴ Sufirman Rahman, La Ode Husen, Salle, "Proper Government Role In Land Procurement For Public Interests In Indonesia", *Imperial Journal of Interdisciplinary Research (IJIR)*, Vol-3, Issue-5, 2017, p. 156

⁵ Michael G. Kitay, 1985, *Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector*, Boston, AL incoln Institute of Land Policy book,p.40-41

⁶ <http://www.skyscrapercity.com/showthread.php?t=1548691>, "SOKER Solo-Kertosono Toll Road a part of trans-jawa highway" retrieved on 25 September 2017, 13.08 PM

⁷ BPS Kabupaten Boyolali, Kecamatan Ngemplak Dalam Angka 2017, <https://boyolalikab.bps.go.id/publication.html>, retrieved on 25 November 2017, 14.00 PM

⁸ Akh. Munif, "Perlindungan Hukum Terhadap Hak-Hak Rakyat Atas Tanah Dalam Pembangunan (Kajian Atas Perpres No. 65 Tahun 2006)", *Jurnal Yustisia Universitas Madura*, Vol. 11, No.1, Mei 2011, ISSN 1412-2928, P. VI.

through direct and low traffic route plan, the less logistic cost, regional productivity and income redistribution.⁹ Article 13, Act No. 2 of 2012 is about Land Acquisition for public purpose, *jo*. Article 2 Presidential Regulation No. 71 of 2012 is about the land stipulation for public purpose, of which the stages consist of four; planning, preparation, implementation and the result submission.

Whether land acquisition, land ownership right deprivation or at all, always involve two concerns which should be balance. The both concerns are the governments' and the land owners'. Both of the party should obeying the law and regulation regarding the matter. According to Article 1 number 10 on Act No. 2 of 2012 about land stipulation for public purpose, the compensation is a commendable and fair payment to the party who reserve it. The words both "commendable and fair" have no specific definition. Moreover, in the Article 2, letter b explains about justice aspect that guarantees the commendable compensation so that the land owner can live a better life. That point of the mean and definition is different with Presidential Regulation No 65 of 2006 about amendment of Presidential regulation No 36 of 2005, states that land acquisition for public purpose particularly the sentence "giving out better sustainability of life than socio-economic condition before it afflicted by land acquisition" clearly mention in the article. The value within the article becomes an objective; consist of better life sustainability and socio-economic condition before it afflicted by land acquisition. It can be said that the element value is assertive and specific.¹⁰

Sainah states that people who afflicted by land acquisition will be given compensation to restore their socio-economic condition, at least equal with the previous condition by calculating the pecuniary and non-pecuniary losses.¹¹ The pecuniary losses are possible to be calculated in material terms. The redemption could be in a form of compensation. On the other hand, the non- non-pecuniary losses are insufficient if the compensation given only material. It should come with immaterial satisfaction.¹² Meanwhile, Alain Dupond explains that *non-pecuniary losses* are fewer to be calculated and proven. The market price is never objective. So, the non-pecuniary losses are bias and estimated subjectively.¹³ The component of non-pecuniary losses leads to *selective coding* approach. It is a process of integrating and selecting main category systematically, connects it to other category which validates the equation and its relation, then completing the category with renovation or development. Concept and relation which developed through *coding* process, significantly helps the process of data collecting and its analysis.¹⁴

The process of land acquisition for public purpose-the Solo – Mantingan I highway construction project in Sawahan village, Ngeplak district, Boyolali regency, Central Java, based on Decree by National Land Agency Head officer Central Java No 08/Pgd.Tnh/BPN.33/2016 about the duty to National Land Agency Head officer Boyolali, Karanganyar, and Sragen regency as leader of land acquisition implementation *jo*. Presidential Regulation No 65 of 2006 about amendment of Presidential Regulation No 36 of 2005, about the land acquisition for public purpose *jo*. Head of National Land Agency Regulation No. 3 of 2007 about the Implementation Rule of Presidential Regulation No. 36 of 2005 about Land acquisition for public purpose as amended with Presidential Regulation No. 65 of 2006 about the amendment of Presidential Regulation No. 36 of 2005 about Land Acquisition for public purpose. The socialization and discussion were done only once. In other words, the implementation were disobeyed the regulation. Because of the lack of socialization and unsatisfying compensation, four land owners file a sue to 4 Boyolali District Court. Meanwhile, reviewing the process and procedure done beside socialization and discussion, the implementation of land acquisition were in line with the procedure begin with planning and giving compensation.

Based on the research conducted, the researcher finds that the compensation was less than what the residents expect. It was done with discussion that reaches an agreement from the land owner with Panitia Pengadaan Tanah (P2T) or the committee of land acquisition, and then the land owner sumitting their land along with that they received the compensation. The submission of the land should be done by the land owner voluntarily without any intervention as it regulated in UUPA

The problem can be found in the implementation of discussion for calculating the compensation. In the process of land acquisition in Sawahan Village, it was clearly explained that the discussion should be done along with the regulation. Nevertheless the discussion between the committee of land acquisition and the land owner were done only once, on 17 May 2017. At that time both party still did not reach agreement yet. The leader of committee of Solo – Mantingan I highway project in Sawahan Village, who is served the head of Nasional land agency Boyolali regency, breaking the Article 1 letter (f) and the explanation in Act No. 2 of 2012 about land acquisition for public purpose, regulating that the principle of agreement means the process of land acquisition done without any intervention from others. In fact the discussion once done on 17 May 2017, the

⁹ Carol Walker, dkk. 2014. "Mentransformasi Jalan Di Indonesia; Krisis Infrastruktur Jalan, Membiayai Jalan, Jalan Bebas Hambatan, Jalan Arteri Non-Tol, Menggunakan Insentif, Keselamatan Jalan". *Jurnal Prakarsa Infrastruktur Nasional PRAKARSA* Edition 19. October 2014.

¹⁰ Aristya Windiana Pamuncak, "Perbandingan Ganti Rugi Dan Mekanisme Peralihan Hak Menurut Peraturan Presiden Nomor 65 Tahun 2006 Dan Undang-Undang Nomor 2 Tahun 2012", *Jurnal Law and Justice* Vol. 1 No.1, March 2016, p. 4

¹¹ Sainah, Analisis Yuridis tentang Problematika Pengadaan Tanah untuk Kepentingan Umum berdasarkan Peraturan Presiden Republik Indonesia Nomor 36 Tahun 2005 dan Peraturan Presiden Republik Indonesia Nomor 65 Tahun 2006. Tesis untuk gelas Megister Hukum. Universitas Sumatera Utara. Medan.2010.p.39

¹² Butje Tampi, "KUHP dan Pengaturan Ganti Rugi Pihak Korban dalam Peradilan Pidana", *Jurnal Hukum Universitas Sam Ratulangi*, Vol.II No.2, Januari-Maret 2014.p.28

¹³ Alain Dupond, *Non-Pecuniary Loss in Commercial Contracts*, Minor Dissertation on Departement of Private Law, University of Cape Town, Tamboerskloof, 2008, p. 87

¹⁴ Saharon M Kolb, "Grounded Theory and the Constant Comparative Method: Valid Research Strategis for Educators", *Journal of Emerging Trends in Educational Research and Policy Studies (HETERAPS)*, 2012, p. 86

committee only proclaimed the compensation calculation without any further dialogue. Afterward, on 8 June 2017 the residents, who disagree with the compensation price, got their documents returned. It can be said that there were no bargaining or offering between both party.

The objection by the resident about the compensation price was not responded. If the objection rises, it is clear on Article 27 paragraph 2 letter c, Article 31, Article 37 Act No. 2 of 2012 about land acquisition for public purpose, the institution of National Land Agency as the defendant should take the responsibility regarding the objection. The defendant should coordinate with the estimator to do recalculation. In fact, there were no further meeting discussing the compensation. According to Poniman, the head chief Sawahan village, the resident did not have a chance for neither offering nor bargaining. The price of the compensation decided by KJPP is absolute price. Hence, there were residents who agree with the price KJPP offered and four residents who disagree file a sue to Boyolali district court.¹⁵

One of the residents who suffered by the construction project, Suprapti, stated that based on the calculation of the compensation done by the Solo- Mantingan I highway committee, the details of the compensation is Rp. 1.200.000,00/m² (one million two hundred thousand rupiah per square). Moreover, as she said that the land is her family main livelihood resource such as paying the family necessity and child education. She also stated that her land is very fertile so that it has three time harvesting. It also has high economic of which the location near the housing and Surakarta. The location even has the access to Haj hostel and airport. She expressed that she also have objection with the compensation price given by the committee, because the land price around her land is about Rp. 2.500.000,00/m² (two million and five hundred thousand per square), she only received compensation Rp. 1.200.000,00/m² (one million two hundred thousand rupiah per meter).¹⁶

The time given is limited, while the agreement about the compensation is hardly to achieve. Consequently, that condition limits both parties the residents and government to have negotiation. If the both party unable to meet an agreement within 30 days, the party who raise the objection can file objection effort to District Court within 14 days since the negotiation about the compensation. In this stage if the parties who raise the objection disagree with the Court decision, they can file the objection to the Supreme Court within 14 days. Arief Rahmat Bahtiar stated that the negotiation done by the Solo-Mantingan I highway committee was deficient because time given by the government is too short, so that was one of the obstacles. Based on half-hearted negotiation, there were four lands with different ownership of which the owner raise objection because the price is too low. He added that the land acquisition of Solo – Mantingan I highway in Desa Sawahan considered already meet the agreement because 96% resident agree with the compensation given by the committee.¹⁷

Fairness and justice were recognition and management between right and obligation. If balance can be achieved, naturally we will recognize the “life rights”, or else we should defend our right with hard work that harmless for people around us. Because other people also own their rights, right for life as individual. If it is related to “social justice”, then the justice should connect with social relationship. Social justice can be interpreted as restoring the lost rights for those who reverse; erasing bully, fears and rape, and realizing the legal equality between every individual, entrepreneurs and rich people do fraud.¹⁸ John Rawls’s states that to achieve justice requires an element of justice that is substantive (justice) and elements of procedural justice (fairness). Substantial justice is defined as justice that is really accepted and perceived by the liberated parties of the land, whereas procedural justice is more oriented towards justice that has been formulated by law in the form of rights and duties.¹⁹

Based on the description of the principle of justice mentioned above, to measure the justice received by the community who received compensation for land procurement in Sawahan Village, the researcher argues that the theory of Justice concerning the society interest by itself the social individual must set aside their individual freedom for the other individual. The national law only regulates justice for all parties. As a result justice within the perspective of national law is justice that identifies or aligns general justice among the individual justice. This justice prioritizes the balance between the rights of individual society and the general obligations that exist within the legal community.

The demands for fair and commendable compensation should be understood as social impacts that will be felt directly by the residents. The proper and commendable compensation will be utilized by communities to rebuild their lives in a new place. Land acquisition for public purpose must pay attention to justice aspect in giving compensation to the citizens affected by the procurement of Solo - Mantingan I Highway. Article 2 letter b of Act No. 2 of 2012 on Land Acquisition for Development for Public Interest states that "the principle of justice" is to provide a reasonable reimbursement guarantee to the party who reserve it in the Land Acquisition process so they have the opportunity to be able to live a better life.

The practice of land procurement in Solo - Mantingan I highway, can be seen Article 66 paragraph 4 of Presidential Regulation No. 71 of 2012 on Implementation of Land Procurement for Development for the Public Interest, used by the land procurement committee as the basis to not conduct negotiation with the land owner about the compensation. This is contrary to

¹⁵ Personal interview with Poniman, the Head Chief of Sawahan village, on 20 November 2017 at 09.30 PM

¹⁶ Personal interview with Suprapti, Sawahan resident who entitled by Solo-Mantingan I highway construction project, on 20 December 2017, at 15.30 PM

¹⁷ Interview with Arief Rahmat Bahtiar, S.Si, Staf seksi Survey, Pengukuran dan Pemetaan, National Land Agency Boyolali District, On 15 November 201 at 10.30 PM

¹⁸ Suhrawardi K. Lunis, *Etika Profesi Hukum*, ctk.Kedua, Sinar Grafika, Jakarta, 2000, p. 50

¹⁹ John Rawls, *A Theory of Justice*, Harvard University Press Cambridge, Massachusetts. Diterjemahkan U. Fauzan dan H. Prasetyo, *Teori Keadillan*, Pustaka Pelajar, Yogyakarta, 2006, p. 95.

the existing rules, and the researcher argues that Land Acquisition for public purpose should still consider the aspects of justice in the provision of compensation. Justice is expected should be substantive and procedural justice. That is, justice is defined as justice that is truly accepted and perceived by the parties. It should also oriented to justice which formulated by the law in the form of duty and obligation without sacrificing some of them.²⁰

Conclusion

Regarding the justice received by the residents who received land compensation in Sawahan Village, Boyolali District, Central Java Province, the researcher argues that the theory of Justice concerning public interest, the individual who has social justice in their view, by itself must put aside their individual freedom for other individual. National Law only regulates justice for all parties, so justice in its perspective is a justice that makes the general justices harmonious among the individual. This justice prioritizes the balance between the rights of individual society and the general obligations that exist within the legal community. Land Acquisition based on existing public interest criteria should still pay attention to justice aspects in the provision of compensation to the party entitled. The Article 2 letter b, Act No. 2 of 2012 about Land Acquisition for public purpose rules that the definition of Justice is giving guarantee commendable compensation for the party who reserve it so that they have a chance to live a better life. The indicator of justice in the Land acquisition for public purposes is to restore the socio-economic conditions of the parties who are entitled to compensation at least equivalent to the circumstances before the revocation or discharge of their rights, the party who needs the land can also obtain the land according to the plan and its allocation and obtain legal and justice protection formulated by law in the form of rights and obligations should reflect the justice received and perceived by the parties.

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²⁰ Hery Zarkasih, "Pelaksanaan Prinsip Keadilan Dalam Pemberian Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum (Studi Kasus Pelebaran Jalan Raya Di Kota Praya Kabupaten Lombok Tengah)", *Jurnal IUS*, Vol. 3, No.8 August 2015, p. 394

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