

THE PROBLEMS OF ACTUALIZING SUBSTANTIVE JUSTICE WITHIN THE CONSIGNMENT OF LAND PROCUREMENT COMPENSATION FOR PUBLIC UTILITIES

Ila Hidatilah
Adi Sulistiyono
Lego Karjoko

ABSTRACT

This paper tries to analyse the problem of actualizing substantive justice within consignment of land procurement compensation for public utilities. The 42nd article of Law of Republic of Indonesia Number (No.) 2 of 2012 stated that in the event in which the Entitled Party refuses the form and/or amount of Compensation that has already been dictated by the result of the deliberation, or the decision made by the district court/ Supreme Court, the Compensation may then be deposited in the relevant district court. With the stipulation of such consignment, the right of ownership had by the Entitled Party toward the land will be revoked, and the property then comes under the state's direct authority. Although the deposit of compensation has complied to the rules in terms of procedure, substantive justice is frequently not attained for a number of reasons. The findings of this study demonstrate the Ratio Leges, or underlying principle of a certain law, that provides for the arrangement of a compensation consignment to ensure that development projects can proceed without being hampered by landowners' objections. Factors preventing the actualization of substantive justice within the consignment procedure of compensation for land procurement include the inability of the consignment to facilitate the landowners to rebuild comparable businesses elsewhere; a compensation process that does not adhere to the principles of agreement and fairness; a consignment of compensation that does not adhere to the principles of respect and recognition toward the right of ownership had by community; and the process of investigation on consignment which focus solely on procedural matters.

Keywords: land procurement, consignment, substantive justice, compensation

INTRODUCTION

Every development project the government undertakes in the public utilities is nearly always accompanied by the issues of land procurement. The legislation on property procurement for the public utilities has not addressed three concerns, namely the idea of the public utilities, compensation, and deliberation (Lego Karjoko, 2019). The unwillingness of the landowner to accept the compensation value because it is seen to be too low is one of the most important difficulties in land procurement.

Empirical evidence demonstrates that there are numerous issues with land procurement, particularly those connected to valuing compensation that landowners do not agree with, which results in disputes. Numerous studies have been done in order to demonstrate these issues, including; disagreements over the procurement of land for the high-speed rail project in West Bandung Regency, particularly in three sub-districts, Cikalong Wetan, Padalarang, and Ngamprah (Rizky, 2020), the dispute over the procurement of land for the Jakarta-Bandung high-speed rail project in Bekasi Regency because the entitled party objected to the compensation value (Vina Silvia, 2021). Another issue involves a disagreement between PT Biladi Karya Abadi and the National Land Agency of Bandung Regency as the Executor of Land Procurement about compensation for land procurement for the building of the Cisumdawu Toll Road in Cileunyi Market (Wibowo, 2021).

The problem of compensation for land procurement almost occurs in various countries. Arul Vikram and K Murali conducts research about critical review on land procurement and valuation process across the world, including like Indonesia. They find that inadequate compensation was a major challenge which normally causes delays in implementation of government projects as landowners appeal the compensation awarded to them (Arul Vikram, 2015).

The issue of land procurement compensation, which resulted in community rejection, was exacerbated by various definitions of what constitutes as an acceptable compensation (Sufriadi, 2013). In order to understand what is considered as appropriate compensation we need to take a look at: the agreement between the government agency requiring the land and the land owner, as well as the ability to provide a better standard of living than that which prevailed before the land was acquired. According to Yanto Sufriadi's research, in actual practice, as was evident in a land procurement dispute for the construction of a TNI dormitory in Dusun Besar, district Talang IV of Bengkulu Utara, the amount of compensation was rejected by the owner of the land because it was deemed inappropriate due to the fact that the amount of the compensation was not feasible to rebuild similar ventures elsewhere.

One of the hurdles to land procurement that slows government initiatives is the presence of community rejection over the value or quantity of the compensation. In order to overcome this hardship, the agency's that demand the land shall perform a custody or consignment for the compensation to the Court. Whether or not the community agrees, the government's unilateral decision to assume custody of the compensation puts them in an unfavorable position. Gunanegara claims that the deposit of compensation funds that is decided unilaterally by the land procurement committee or the state, is a form of rejection toward a crucial component in the deliberative procedure that necessitates a "unanimous consent." (Gunanegara, 2008).

As an example of the rise of consignment cases in land procurement, based on the results of the author's search through the official website of the "Sistem Informasi Penelusuran Perkara" (SIPP) of the Bale Bandung District Court, there are at least 17 determinations of deposits for compensation money in the land procurement of the Jakarta - Bandung high-speed rail project submitted by PT. Pilar Sinergi BUMN Indonesia (PT. PSBI) as an agency that requires land for compensation payments to landowners, which is partly due to the rejection of the compensation value because it is considered too low.

The court approves the application for the consignment with the end result taking the form of a consignment determination if the request for safeguarding of remuneration has satisfied with the procedural requirements and is deemed to be an acceptable justification (*ratio decidendi*). The community suffers as a result of the determination of the consignment because the landowner is forced to accept compensation money that they did not agree to accept or risk having the consignment money stay as long as the landowner does not request to have it collected.

There are previous research studies that are relevant to this study. Vina Silvia, Fifiana Wisnaeni, and Irawati in their research in 2021, examined the implications that occurred and how the ideal formula related to policies in land acquisition for the construction of the Bandung-Jakarta High-Speed Train in the Bekasi Regency area. (Vina Silvia, 2021). Nadia Astriani and Yulinda Adharani in their research in 2017, conducted research by analyzing the position of the development of the Jakarta-Bandung High – Speed Train from the point of view of Spatial Planning (Nadia Astriani, 2017). Meanwhile, Y Eko Haryanto researched how to resolve disputes over the determination of compensation in land acquisition in Karawang Regency as well as the settlement of residual land cases in land acquisition for the construction of the Jakarta-Bandung high-speed rail line which in terms of benefits could no longer be used according to its designation. (Y Eko Haryanto, 2020). This research This research has a novelty because focuses more on discussions related to the problems of actualizing substantive justice within the consignment of land procurement compensation for public utilities.

Consignment compensation issues have had numerous significant effects on the community, particularly in relation to the 1945 Constitution's (UUD 1945) mandates for the preservation of property rights and the fundamental right to justice. This demonstrates the actual unfairness that the consignment compensation process causes to landowners. The goals of this study's challenges are to provide answers to two questions. First, what are the legal requirements (*ratio leges*) for the consignment compensation in land purchase for public utilities? Second, what are the factors that prevent the actualization of substantive justice within consignment of land procurement compensation for public utilities?

RESEARCH METHOD

This type of research is doctrinal or normative research. The data used in this legal research is secondary data, sourced from primary and secondary legal materials. The approach method used in this research is the statute approach and conceptual approach. Data collection technique used in this legal research are done by libraries research. The primary data resources use the law and the land procurement, secondary data was collected from journals and reference books. The data obtained were analyzed using prescriptive analysis.

FINDINGS AND DISCUSSIONS

1. The *Ratio Leges* of Provision for the Consignment of Land Procurement Compensation Directed for the Development of Public Utilities

The word consignment derives from the English words consign and consignment, which imply to submit, dispatch, and submit as care. In *KBBI (Kamus Besar Bahasa Indonesia, - Great Dictionary of the Indonesian Language)* the word consignment means "Delivery of goods to be directed to be sold by the recipient of the commodities," "Deposit of goods," and "deposit of money in court".

In 2012, the Indonesian government passed a landmark bill called Law No. 2 of 2012 on Land Acquisition in the Public Interest. The 42nd article of Law of Republic of Indonesia Number (No.) 2 of 2012 stated that in the event in which the Entitled Party refuses the form and/or amount of Compensation that has already been dictated by the result of the deliberation, or the decision made by the district court/ Supreme Court, the Compensation may then be deposited in the relevant district court.

The Law on Land Procurement's provisions govern Indonesian citizens' rights and duties, specifically with the regard to right over land that are urgently needed for public utilities and may be revoked in light of their social purposes. Fundamental provisions govern the concept of consignment, which is utilized as a substantive regulation or policy in applying consignment for land procurement directed for public utilities, furthermore the procedures and protocol for applying such consignment must take into account the principles of precautionary and respect. The principle of precautionary is a component of the rights of those whose land is taken through the process of "releasement" or "layoff" under the need of fulfilling public interest. At the very least, the precautionary principle is applied when examining the parties' documents. The idea of respecting land rights is one of a citizen's basic rights. Thus, it is impossible to simply take away a citizen's land rights for specific reasons, such as for the development of public utilities, without respecting the law as it currently stands. (Tehupeiory, 2019).

Because of government's efforts to continue the construction on community property under the guise of being in line with public's interest, some people see themselves as victims of such development. While this is going on, it is alleged that the people's attempts to protect their land rights as a way that constitute an attempt to impede the development. Since there are still those who believe they have not been treated fairly for the development that has been done on their property, this truth cannot be disregarded. (Silvia Syarafina, 2021).

Justice is not only a legal issue; it is also a social one, which is frequently brought to light by the sociology of law. The nature of substantive justice, which depends on the "reaction" of the community, creates legal problem-solving that "deepens the conscience of the community." This demonstrates that the law is able to take into account what the general public wants and that it is dedicated to attaining substantive justice.

Land pricing deliberations are an effective way to provide a of justice to the people when pricing can be agreed upon in the deliberations because there is no element of coercion from the government, but based on the awareness of the land rights holders. But the justice is not felt by the community if in the procurement of land, the payment of compensation is made by force through the consignment institution of the court as a place of custody of compensation that has been determined by the government.

Maria S.W. Sumardjono is one of the few people who thinks it is improper to use the safekeeping idea for monetary compensation in court, which is similar to the safekeeping concept for debts and receivables in Article 1404 of the Indonesian

Civil Code. If there is no agreement but the compensation is still nonetheless be deposited to the court, it might be argued that this is not only improper but also violates the principle of equality between those who require the land and those who own the right over the land by enforcing one party's desire over the other. (Sumardjono ,2006).

Under the guise of being in line with the public interest, the government frequently forces their citizen to agree to give up upon the rights over their land. To reach a voluntary contractual agreement, the community must be prepared to engage in discussion through a robust negotiating process. This is fundamentally a civil procedure. On the other side, the government, with all of its personnel, is genuinely looking for the populace's readiness to renounce their rights. Therefore, what occurs in this situation is just an uneven interactional process. If this procedure is successfully implemented, the government will then adopt a power strategy that has *publiek rechtelijk* (a form of juridical process that solely rely on government's influence) in nature. In reality, all of this act demonstrates a form of unfair and dishonest treats toward the community.

Law is a great tool in upholding justice and fostering prosperity. A balance of interests, order, fairness, happiness, and welfare for every human being must be achieved in order for the law to function well. The law mandates that the fulfillment of everyone's interests, whether individually or collectively, must be uninterrupted by other individuals or groups. Justice and truth are, in essence, the goals of law (Syarifudin, 2021).

The Law of Republic of Indonesia Number (No.) 2 of 2012 adheres to the principle of agreement, thus land procurement should be accomplished through the transfer or renunciation of rights in accordance with the idea that agreements should be reached after a careful consideration. Without a contract, compensation cannot be deposited but must instead be made through a rights revocation institution in accordance with The Law of Republic of Indonesia Number (No.) 20 of 1961. (Gozali, 2018).

According to Eman Ramelan, who was cited by Gozali, the inclusion of a consignment institution inside the 42nd article of Law of Republic of Indonesia Number (No.) 2 of 2012, which establishes the justifications over consignment or safekeeping of compensation that is carried out if the entitled party rejects the form and/or amount of compensation, is in conflict with the principles that already persist within Law of Republic of Indonesia Number (No.) 2 of 2012, particularly the principles of humanity, justice, and agreement.

The law is a code of conduct for the state and society. Peter Mahmud Marzuki asserts that while laws are being created, lawmakers must consider three factors: they must not conflict with universally recognized legal concepts, be semantically clear, and have coherence between one law and another. The reasoning underlying a law's provisions is known as its *Ratio Leges* (Marzuki, 2020). In the academic text of creating the law, the enactment of a statutory regulation can be tracked to determine the *Ratio Leges*. The ontological foundation described in the scholarly text provides the context for why it is necessary to have such rule.

The empirical practical study portion of the academic text of the law's draft on land procurement dictates that the amount of the compensation is one of the primary obstacles that is troubling the whole process of the law enactment, since the issue of price disputes claimed by land owners constantly emerges. These issues stand out because of a variety of root causes, including differences in geography, social condition, and how private versus public rights are perceived among all of the involved parties (DPR, 2010). Though it typically only affects a small number of landowners, the issue of price disagreements will have an effect on the sustainability of the development projects. The construction then, will feel the effects later on.

The Ratio Leges of Provision for the Consignment of Land Procurement Compensation were added to ensure that development projects may proceed without being hampered by disputes about landowners' compensation. It's a good idea to deposit compensation money in court. Citizens can agree through this action rather than through time-consuming litigation processes. Citizens' opposition does not prevent the committee from using the land directly for development due to the existence of the compensation that has already been deposited.

Although there has been a lot of criticism from experts related to the consignment mechanism in land procurement, the consignment of compensation has become a positive law used by the government to overcome development obstacles in the event of disagreements with landowners, even though this consignment mechanism is further strengthened its role with changes or consignment provisions as in law number 11 of 2020, namely by adding subsection (3) of article 42 which provides that the district court shall not exceed a period of 14 working days shall receive a deposit of compensation. In the academic text of law number 11 of 2020, the reason for the change is explained because many district courts are not willing to accept the custody of replacement money so it is hoped that the addition of these provisions will have implications for the land acquisition rules to be more certain. (Kementerian Hukum dan Hak Asasi Manusia, 2020).

2. Factors Preventing the Actualization of Substantive Justice within the Consignment Procedure of Compensation for Land Procurement for Public Utilities

According to Theo Huijbers, the law's primary purposes include serving as an instrument to uphold the public interest in society, protect human rights, achieve fairness in coexistence, and engage in social engineering. Two philosophical schools exist, according to Theo Huijbers' analysis, on how law and justice are related. According to the natural law school, fairness is inherent in the structure of the law. Thus, it might be interpreted as follows: A law that is unjust is not a law because laws are equivalent to justice.

Article 28 H, paragraph 4, of the Second Amendment to the 1945 Constitution (UUD 1945) stated that: "everyone has the right ownership, and such rights cannot be unilaterally taken away by anybody". The government pays great attention to providing a protection regarding personal rights, as evidenced by the regulation of ownership over the land that was regulated within the 1945 Constitution (UUD 1945). However, these property rights are not absolute because they are limited by the social use of land, as indicated in Article 6 of Law of Republic of Indonesia Number (No.) 5 of 1960 relating to Basic Agrarian Laws. Based on the construction of the law, land ownership also has a social function, among others, in the form of public interest development carried out by the state to realize a fair and prosperous society as mandated by the Constitution. (Fifik Wiryani, 2021)

Ownership or proprietary is a matter of inherent right and hence precedes any political or legal institution after it. According to John Locke, ownership supersedes law, and legislation is only justified to the extent that it upholds and does not infringe upon this natural right (Ward, 1998). Based on the authority conferred by the Land Procurement Law, the state acquires

land for the public good. The land is acquired from privately owned properties, ensuring that the original owner is not harmed throughout the acquisition process and that justice is upheld.

The term "justice" has a wide range of connotations in legal literature, which encourages discussion among legal professionals. Justice comprises three meanings, and is one of the benchmarks of justice in the *rechtside* concept or the principles of Pancasila law as the philosophy of the Indonesian nation, namely:

1. Formal justice in the form of equality before the law;
2. Material justice in the form of utility (*doelmatigheid*), which incorporates the notion of kindness;
3. Legal justice in a form of legal certainty that establishes and demands structuring obligations to the rule of law;

Legal justice for society is not just formal-procedural justice, justice is based on rigid normative rules that are far from morality and human values. The opposite of formal-procedural justice is substantive justice, justice whose measure is not quantitative as it appears in formal justice, but qualitative justice that is based on public morality and human values and is able to provide satisfaction and happiness for society.

Society wants the law to no longer be a tool for the interests of the ruler, nor for political interests. Therefore, fair law enforcement is needed. In line with this, the reality in law enforcement often ignores people's sense of justice considering that textually the substance of the law requires more legal certainty. That's a challenge. (Ansori, 2017).

In legal practice, the debate over which should take precedence—"legal justice," which prioritizes formal justice, or "substantive justice," which prioritizes the protection and fulfillment of citizens' rights in the distribution of resources, natural resources, and the like—has relevance to be examined in greater detail in relation to the compensation process in land procurement.

According to the study's findings, the significant injustice that arose throughout the compensation procedure that resulted in the consignment can be traced as follows:

1. The method of calculating compensation value used by public personnel who have not thoroughly covered compensation that allows land owners to reopen similar ventures in other locations.
2. The Land Procurement Law's provisions are not entirely coherent. Because they do not put the land owners in a favorable position, the terms of the consignment are fundamentally at odds with the ideals of agreement and fairness.
3. The Land Procurement Law's consignment arrangements are inconsistent with the national land law's accepted principles, which include the acknowledgment and observance of community rights to land and land-related property.
4. Judges still only conduct a procedural investigation into consignment cases rather than a substantive one. As a result, the consignment determination only satisfies procedural justice and does not accurately reflect substantive justice because the basis for the community's refusal to pay compensation are not examined.

CONCLUSIONS

The ratio leges, or underlying principle of a certain law, that provides for the arrangement of a compensation consignment to ensure that development projects can proceed without being hampered by landowners' objections. Factors preventing the actualization of substantive justice within the consignment procedure of compensation for land procurement include the inability of the consignment to facilitate the landowners to rebuild comparable businesses elsewhere; a compensation process that does not adhere to the principles of agreement and fairness; a consignment of compensation that does not adhere to the principles of respect and recognition toward the right of ownership had by community; and the process of investigation on consignment which focus solely on procedural matters. Based on the aforementioned analysis, it is necessary to reformulate land acquisition agreements that are fair to landowners by prioritizing principles in land acquisition so that each implementation of land acquisition can reflect substantive or material justice as one of the principles of Pancasila law.

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Ila Hidatilah
Faculty of Law
Sebelas Maret University, (57127) Surakarta, Central Java, Indonesia
Email : idatilah@gmail.com

Adi Sulistiyono
Faculty of Law
Sebelas Maret University, (57127), Surakarta, Central Java, Indonesia
Email : adi_sumo@yahoo.co.id

Lego Karjoko
Faculty of Law,
Sebelas Maret University, (57127), Surakarta, Central Java, Indonesia
Email : legokarjoko@staff.uns.ac.id