



Dispute Settlement Model of Land Acquisition for Public Interest

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Abstract:

This study aims to analyze obstacles in resolving conflicts over land acquisition for public interest in Pohuwato Regency, as well as formulate the ideal model for resolving conflicts over land acquisition for the public interest in Pohuwato Regency. This type of research uses empirical research, by using a statutory approach, a conceptual approach, and a case approach. Sources of data used are primary data and secondary data. The data that has been completed is analyzed using qualitative descriptive. Based on the research results that have been described, there are several findings in this study, namely (1) There are obstacles in resolving conflicts over land acquisition for public interest in Pohuwato Regency. The first obstacle is related to legal factors where in terms of legal substance, there is a regulation on the use of consignments as a safe-keeping of compensation private law provisions which shift to public law provisions. And the second obstacle is the determination of compensation, which should be based on an agreement with the land owners, turned out to be unilaterally determined by the Land Procurement Committee. estimate the amount of compensation for the holders of land rights. (2) The ideal model for resolving conflicts over land acquisition for the public interest in Pohuwato Regency, namely the non-adjudication settlement model, namely through deliberation where all parties involved carry out activities that involve listening to each other, giving and receiving mutual opinions, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on a voluntary basis. As well as a settlement model by adjudication or through a court route, where the Court has the authority to decide the amount and form of loss given to the holder of land rights whose rights are affected by land acquisition for development in the public interest..

Keywords: Model; Dispute Settlement; Land Acquisition; Public Interest

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Introduction

The existence of laws and regulations to provide legal certainty of various problems related to land acquisition for the public interest does not seem to have fully provided problem solving in resolving the increasingly complex land acquisition conflicts for public interest that are occurring in several regions. This is based on the rise of community lawsuits against the local government in the case that the land is included in the procurement area for development. One of the areas experiencing land acquisition problems for the public interest is Pohuwato Regency, which is located in the west of Gorontalo Province.

Pohuwato Regency currently makes regional development the main target in order to make one of the regions in Gorontalo Province to be developed and developed. The development which will later be realized by Pohuwato Regency certainly requires the availability of sufficient land. The availability of this land will later be used in the context of accelerating development, through the legalization of land acquisition for the public interest. Based on data obtained by researchers from the Department of Housing and Settlements of Pohuwato Regency, that in the last 3 (three) years there have been 19 land acquisition projects for development in the public interest, which will be described in the table below:

Table 1. Development Procurement

Year Procurement	Amount of	Land Procurement	Location
2018	1	Access Road to Airport	Marisa
	2	Road widening	Sipatana
	3	Procurement of school land	Bulangita
	4	BPP Development	Wanggarasi
	5	Communal house construction	Paguat

2019	6	Communal house construction	Randangan
	7	Village road construction	Marisa
	8	Road widening	Taluditi
	1	Health center land addition	Lemito
	2	Communal house construction	Paguat
	3	Communal house construction	Dengilo
2020	4	Communal house construction	Popayato
	5	Communal house construction	patilanggio
	1	Communal house construction	Randangan
	2	Communal house construction	Marisa
	3	Village Office Construction	Buntulia
	4	Love Tree Playground Dev.	Marisa
	5	Health Center Development	Marisa
	6	Health Center Development	Popayato
Total	19	10	12

Source: Department of Public Housing, Housing, Transportation and Land, Pohuwato Regency, 2021.

The series of land acquisition programs for development based on the table above certainly does not always run without obstacles, where one of the conflicts in land acquisition for the public interest is the dispute between the rights of community members who have land rights and local governments who have social goals. One of the cases is as stated in the Marisa District Court Decision Number: 7/Pdt.G/2019/PN Mar. related to disputes over the construction of weirs and irrigation networks in Randangan District, where the local government does not pay compensation for the rights to ownership of land rights affected by land acquisition. Then the conflict over land acquisition for the construction of the Pohuwato Airport (Airport) located in Imbodu village, Randangan sub-district. There are 33 hectares of land recognized by the community which they have owned

for years on the basis of a Certificate of Land Tenure or SKPT, which is also claimed by the government as a protected forest area.

As a result, the government is reluctant to provide compensation for the acquisition of tens of hectares of land for 28 people who feel that their rights have been harmed.

The conflict over land acquisition for the public interest that occurred in Pohuwato Regency as described in the chronology of the case described by the researcher above, was not only caused by the neglect of the rights of the community affected by land acquisition for development, for example related to compensation that was not in accordance with what the community wanted, However, the models and mechanisms for resolving conflicts over land acquisition for the public interest have been pursued by relevant agencies such as the National Land Agency and the National Land AgencyThe Public Housing Service for Settlement, Transportation and Land Affairs is still not optimally and effectively carried out, for example, mediation or deliberation efforts are applied only as a fulfillment of statutory requirements and are not really used to find solutions that meet the community's sense of justice.

Problem Statement

The problems above will also never get a solution if each party maintains its argument as an authorized party or has rights. Settlement of land acquisition conflicts can only be resolved by applying the adjudication and non-adjudication models in a fair manner. According to Sarjita (Sarjita 2015), if the settlement of land acquisition conflicts for the public interest through non-adjudication channels such as mediation and arbitration does not get an agreement, then the conflicting parties can take the adjudication route. The adjudication route will provide justice through the resistance system and is coercive to obey the adjudication decision. The output can be a win-lose solution, meaning that someone wins and someone loses.

Although the adjudication and non-adjudication models are existing dispute settlement models, they only need to be improved by looking at the obstacles to resolving conflicts that occur in the field with the aim of improving them.

The purpose of this study is to determine the analysis of obstacles in resolving conflicts over land acquisition for the public interest in Pohuwato Regency and to analyze the formulation of the ideal model for resolving conflicts over land acquisition for public interest in Pohuwato Regency.

Method

This research uses normative research, namely research which according to Sumitro is research in the form of literature or secondary data. (Soerjono Soekanto and Sri Mamudji 2013) Normative legal research serves to provide legal arguments in the event of a legal vacuum, ambiguity, and conflict of norms. (Irwansyah 2020) The approach used in this research is a legal, case and conceptual approach. The concept approach offers a new conception. (Peter Mahmud Marzuki 2014) While the statutory approach is to offer renewal of new legal rules or norms and the case approach is to build legal arguments in the perspective of concrete cases that occur in the field, of course, these cases are closely related to legal cases or events that occur in the field.

Discussion

A. Obstacles in Resolving Land Acquisition Conflicts for Public Interest in Pohuwato Kabupaten District

Relevant agencies such as the National Land Agency and the Housing and Settlement Service in Pohuwato Regency experienced several obstacles and obstacles in the implementation of resolving land acquisition conflicts for the public

interest. These obstacles come from various factors that influence it, both from the legal factor itself and non-legal factors, which include:

1. Legal Factors Against Legal Substance

Determining who is the owner of the land affected by the land acquisition activity greatly affects the determination of the amount of compensation and the process of relinquishing land rights for land acquisition activities. This, of course, proves who the owner is can be known based on formal evidence of the holder of the right to the land in question. This evidence is used as a guide for the provision of compensation. Even though in reality those who control the land are not necessarily the holders of rights and sometimes the evidence of the control of rights owned by residents is still 'traditional'.

Therefore, things like the above can be said that often laws and regulations 'conflict' with customary law so that it affects the neglect of the law that lives in society, as stated by John Griffith, state law no longer reflects the legal awareness of the community as intended by Tamanaha in (Satjipto Rahardjo 2015), while conflicts between other laws and regulations have changed as a result of the existence of nonlegal forces that affect the bureaucracy in implementing the LoGA, as intended by Seidman in (Esmi Warrasih 2015), that the operation of the law will also be greatly influenced by other factors outside the law.

Another problem is related to regulation. From the results of the research, it was found that the basic thing that often causes land acquisition disputes/conflicts is the semantic issue of the meaning of the public interest. Likewise, the mechanism for revocation of land rights is not used if there is no agreement, even though in legal provisions this is may and legally be used, but prefers to use the consignment method (compensation depository institution) if no agreement is reached between the land owner and the agency requiring the land.

a. Non-Legal Factors

i. Legal Structure

Based on work procedures and time limit guidelines in land acquisition activities, the deadline for each stage is the time limit. So the initial way to socialize the location of land acquisition is through a mechanism through public consultations and also through a deliberation mechanism to determine the form and/or amount of compensation, which must be done through deliberation or based on an agreement, which according to Ade Saptomo is oriented towards values that develop into habits. in society(Ade Saptomo 2010)in practice it turns out to be bureaucratic in nature, namely based on statutory regulations.

Based on the statement of Mr. Lukman Pither as Head of Land Procurement and Development Section at the National Land Agency of Pohuwato Regency, that:

“Activities have started to appear, usually at the time of preparation, because there is a public consultation mechanism regarding the planned location for the land acquisition project.”

Disputes and conflicts are resolved by mediation, now for which there are no clear rules, the arena is on my side (disputes/conflicts in each land office) even though we are often not included in the Procurement Team, and our routine task is to handle disputes, conflicts and cases in accordance with Ministerial Regulation 17 of 2016 concerning Settlement of Land Cases, which are also broad in scope, routinely not ad hoc such as land acquisition, our human resources are also limited in handling such matters.

Based on these interviews, it can be seen that the failure of the legal structure of land acquisition and the legal structure of land acquisition dispute settlement in giving a fair decision, is due to a conflict of interest between people who are in the legal structure (power) in the internal structure, and with other stakeholders. which owner by Dahrendorf in(George Ritzer and Douglas Goodman

2017), is described as a conflict between groups holding positions of authority and subordinate groups who have interests whose substance directions contradict each other.

According to Mr. Hendra Djafar as the Land Procurement Section Officer as well as the Coordinator of the Consolidation of Land Acquisition Supervision at the National Land Agency Office of Pohuwato Regency, who stated that:

“The resolution of disputes and conflicts related to land acquisition is better if regulated in detail in the Laws, this is because the handling of disputes and conflicts over land acquisition involves not only officials/parties appointed as the land acquisition team, but includes staff and part of the land acquisition section, so this clearly affects performance. Where all dispute resolutions, conflicts and cases, both general cases and those related to land acquisition, all have a targeted time for completion. Especially with land acquisition activities related to development, acceleration of national projects, national strategic policies, to investment”.

Legal structures that are not neutral and work in a formal-procedural manner, are often the cause of disputes/conflicts in land acquisition for the public interest. However, such a way of working is needed, as stated by (Adji Samekto 2013), is to allow the operation of the law mechanically and independently of the real world, because justice is considered to have been given by making positive law. Legal structures created to work mechanically also require the support of a positivistic legalistic legal culture, as stated by (Lili Rasjidi and L. B Wyasa Putra 2013) Legal positivism does not ignore unwritten law, because positivism identifies law with law.

ii. Legal Culture



Law Number 2 of 2012 concerning land acquisition for development in the public interest, stipulates that what is said to be the entitled party is the party who controls or owns the object of land acquisition. due to land acquisition activities. If in the previous regulation it is stated that the party who relinquishes or surrenders land, buildings, plants, and other objects related to land is an individual, legal entity, institution, business unit having control rights over land and/or buildings and plants on the ground, this is more accommodating than the previous laws and regulations.

In connection with this, Mr. Maulidin Botutihe as Head of Land Affairs at the Housing and Settlement Service of Pohuwato Regency, said:

"With the stipulation in the Law that what is meant by the entitled party is the Entitled Party is the party that controls or owns the object of land acquisition (Article 1 point (3) of Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest, this is also often causes disputes when compensation is given, in terms of proving who is entitled to receive it, if the owner of the land is different from the land owner. Because to get compensation, by submitting formal evidence (land certificate). This kind of dispute is also the reason for depositing replacement money This land acquisition activity is entrusted to the District Court (PN)".

The regulation regarding who is entitled to receive the form and amount of compensation is very important, because it relates to the rights of the party whose land is used for land acquisition activities, so that compensation is appropriate. Because the reality is sometimes very different, the one who controls and uses the land may be different from the holder of the right to the land. This is because in the land law, there is physical control and juridical control. That the one who controls physically is not necessarily juridical and vice versa. Therefore, it is related to the form and amount of compensation that often causes problems. That the party occupying/controlling the land is asked to provide formal evidence as your juridical control. Not necessarily though, with the principle that national land law is a law based on customary law, parties as holders of legal rights sometimes even retain control over their land rights, only in the form of letters C. girik, tax returns. And

in practice, in reality, even modern people still often make transfers of rights under their hands, without being followed by efforts to regulate their land administration, namely registration of rights (transfer of names).

To resolve such disputes, the method of resolving disputes/conflicts is through deliberation or compromise, which is believed to be in accordance with the cultural values of the Indonesian people and the philosophical values of Pancasila. This is because the settlement of disputes/conflicts is carried out in a bureaucratic manner, because the settlement structure is resolved in a procedurally formal manner.

B. Ideal Model of Land Acquisition Dispute settlement for Public Interest in Pohuwato District

There are various problems that often arise in the land acquisition process, whether it's a matter of unclear rights status. Likewise with the form and amount of compensation that will be given to the affected community, in the context of land acquisition for the implementation of development in the public interest, many problems also arise due to regulatory weaknesses. On the one hand, the regulators in this case the Government and the House of Representatives have indeed issued Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. On the other hand, the material aspects of all existing regulations are inadequate so that they have the potential to cause disputes. Several factors that have the potential to give rise to such disputes include: the definition and scope of public interest. land acquisition mechanism, (A. Hartanto 2015)

In connection with the above, Mr. Hendra Djafar as the Land Procurement Section Officer and Coordinator of the Consolidation of Land Acquisition Supervision at the National Land Agency Office of Pohuwato Regency, said that:

“In Pohuwato Regency itself, problems related to land acquisition for development for the public interest only include two things. First, regarding the ownership of land rights, and the second is the objection from the



measurement results and the objection from the result of the compensation value. These two problems result in the process of land acquisition for the public interest taking quite a long time.”

Furthermore, in Pohuwato Regency, there are two models of dispute settlement over land acquisition for development in the public interest, namely:

1. Land Acquisition Dispute settlement Model through Non-Adjudication Path

Settlement of disputes in land acquisition should be carried out to the maximum extent possible through non-adjudication or out-of-court settlements because national land law is also based on customary law. In principle, customary law is different from modern society, dispute resolution in customary law communities is based on the view of life adopted by the community itself. The view of life of indigenous peoples rests on the philosophy of existence, namely the philosophy of humans which teaches to live in harmony and together. So at least efforts to force the relinquishment of rights in land acquisition must be avoided by continuing to prioritize togetherness and prevent land conflicts between the government and land rights holders.

Dispute settlement model Land acquisition for the implementation of development in the public interest can be carried out through non-adjudication or deliberation channels. According to Presidential Decree No. 36 of 2005 and Presidential Decree No. 65 of 2006, the definition of deliberation is an activity that includes listening to each other, giving and receiving each other's opinions, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on the basis of volunteerism and equality between the parties who have rights. land, buildings, plants, and other objects related to land with parties who need land.

Deliberations are held directly between the holders of land rights in question and the Government Agencies that require the land, namely by inviting the Government agencies that require land, holders of land rights and owners of

buildings, plants and/or other objects related to the land. concerned to hold deliberation at a place determined by the Committee in order to determine the form and amount of compensation. The meeting is chaired by the chairman of the committee, provided that if the chairman is unable to attend, the meeting is chaired by the deputy chairman. In the event that the number of holders of land rights and owners of buildings, plants and/or other objects related to the land in question do not allow effective deliberation to be held,

2. Land Acquisition Dispute settlement Model through Adjudication Jalur

The second model of dispute settlement is through adjudication or through the judiciary. The court has the authority to decide the amount and form of loss granted to the holder of land rights whose rights are affected by land acquisition for development in the public interest. The district court examines the objection to compensation within a maximum of 30 working days, starting from the receipt of the objection, as a consideration for the judge in deciding the decision on the amount of compensation, the interested party may submit or present an expert witness in the field of assessment to have his opinion heard as a comparison against the assessment. compensation as stated in the explanation of Article 38 paragraph (2) which states:

"As a consideration in deciding the decision or the amount of compensation, interested parties can present expert witnesses in the field of assessment to have their opinions heard as a comparison for the assessment of compensation."

The pattern of dispute resolution in the previous rule, namely Presidential Regulation Number 65 of 2006 that if there are parties who object or do not accept the amount and form of compensation because they are deemed inappropriate, the main thing to do is object to the governor, if after there is a determination from the governor and the rights holder the land owner still does not accept the form and amount of the compensation, the land owner can appeal to the high court so that the

court determines the compensation, with a special procedural law in a short time. However, the settlement of the compensation does not delay the revocation of rights, meaning that after the presidential decree regarding the revocation of rights,

The coercive attitude towards the community without respecting the holders of land rights is clearly felt by the community, because the appeal made by the State does not mean anything when the revocation of rights is carried out by the State, the protection provided by the State is really limited so that development activities for the public interest are impossible for the community to oppose. and it is possible that physical and non-physical conflicts will arise, in this case it seems that the interpretation of the principle of the social function of land rights, in addition to containing the meaning that land rights must be in accordance with the nature and purpose of the rights, so that it is beneficial for the right holder and society in general. This means that there must be a balance between individual interests and the public interest. that individual interests are recognized and respected in the context of implementing the interests of the community as a whole and finding a balance between the holders of land rights and the interests of the government is not easy to find its true meaning, but the most important thing is to be able to reach an agreement without any settlement in court.

Courts in deciding compensation to feel fair for the holder of land rights. Certain criteria are applied objectively with predetermined standards. In addition, rights holders need to know the basis for determining the amount of compensation received. In the process of giving compensation, there is what is known as a consignment. Law No. 2 of 2012 recognizes non-physical compensation, the term consignment is also not known in this law but the term used is safekeeping of compensation in court. In Law Number 2 of 2012 Article 41 paragraphs 1 and 3 states:

- a. Compensation is given to the rightful party based on the results of the assessment determined in the deliberation as referred to in Article 37

paragraph (2) and/or the decision of the district court/supreme court as referred to in Article 38 paragraph (5).

- b. The evidence as referred to in paragraph (2) letter b is the only valid evidence according to law and cannot be contested in the future.

The deposit of compensation in the local district court is carried out in the following cases:

- a. The party entitled to refuse the form and/or amount of compensation based on the results of deliberation or the decision of the district court/Supreme Court, the compensation is entrusted to the local court
- b. The whereabouts of the party entitled to receive compensation is unknown or
- c. The object of land acquisition for which compensation will be given, is being the object of a case in court, its ownership is still disputed, has been confiscated by authorized official or as collateral in the bank.

At the time of the implementation of the provision of compensation or entrusted to the district court, the ownership or land rights of the entitled party are nullified and the evidence of their rights is declared invalid and the land is land that is directly controlled by the State, as stated in Article 43 of Law Number 2 of 2012 which reads:

"At the time of the implementation of the provision of compensation and relinquishment of rights as referred to in Article 41 paragraph (2) letter a has been carried out or the provision of compensation has been deposited in the district court as referred to in Article 42 paragraph (1), the ownership or rights to land from the party has the right to be nullified and the evidence of the right is declared invalid and the land becomes land that is directly controlled by the State".

This deposit of compensation is clearly a form of coercion on the community to relinquish their rights, the soul of this law is closely related to the revocation of land rights.

Conclusion

The ideal model for resolving conflicts over land acquisition for the public interest in Pohuwato Regency includes, among others, two non-adjudication settlement models, namely through deliberation in which all parties involved carry out activities that contain mutual listening, mutual giving and receiving of opinions, as well as a desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities on a voluntary basis and equality between the parties who own land, buildings, plants and other objects related to land with parties who need land. As well as a settlement model by adjudication or through a court route, where the Court has the authority to decide the amount and form of loss given to the holder of land rights whose rights are affected by land acquisition for development in the public interest.

Recommendation

1. The Ministry of Agrarian and Spatial Planning should be able to take progressive steps to instruct its staff, especially the Land Procurement Committee, to change the pattern of giving compensation in favor of the community.
2. All relevant stakeholders should be able to synergize and have a strong spirit in resolving conflicts over land acquisition for the public interest, by fighting for the rights of the affected communities and realizing development for the public interest.

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