

DETERMINATION OF COMPENSATION BASED ON LAW NUMBER 2 OF 2012 ARTICLE 9 PARAGRAPH 2

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Article's Information	Abstract
<p>Keywords: Land Acquisition, Public Appraisal Services Office, Compensation.</p> <p>DOI: https://doi.org/10.31599/k9prwy04</p>	<p><i>To ensure that development is carried out for the public interest, the government must carry out development. Therefore, the values of humanity, democracy and justice must be prioritized in land acquisition. To realize a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, this is necessary. The Public Appraisal Service Office (KJPP), which estimates a fair replacement value for community assets (land and buildings) damaged by development, is one of the professions involved in the implementation of land purchases. Law Number 2 of 2012, which regulates the purchase of land for development in the public interest, regulates participation. Compared to ten years ago, Indonesia is now doing a lot more appraisal work. The difficulty of reaching an agreement between the party needing the property (the land acquisition party) and the land owner on the amount of compensation to be received by the land owner is a problem that often arises in the process of determining compensation in land acquisition. Landowners were compensated in ways deemed inappropriate and unfair, and which did not promote the welfare of the environment, leading to legal problems (lawsuits). The normative juridical method with a literature study approach was chosen as the research methodology in this study. The literature study method gathers information from a variety of literary sources, including books, scientific journals, laws and regulations, decision studies, and other materials relevant to the research topic. The purpose of this descriptive research is to describe and explain phenomena related to the research topic. Based on research findings, the calculation of compensation that is</i></p>



correct and fair in land acquisition is necessary for the welfare and prosperity of the people. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest which regulates land acquisition for public purposes has been in effect. Comprehensive and applicable laws and regulations play an important role in this land acquisition, procedures that are as simple as possible, transparent, and have legal certainty based on the principles of integrity and fairness are also important. The government needs to find a solution that can minimize the negative impact on the people whose land is being taken, while maximizing the positive impact on the wider community. The Public Appraiser Service Office must raise the status of the Appraiser Bill so that it is immediately passed into the Appraisal Act by the DPR so that it can carry out its professional responsibilities with legal certainty and without being criminalized by other parties.

I. INTRODUCTION

In Indonesia, land acquisition refers to the process by which the government obtains property rights from private owners or communities for public use and development. This process is guided by Article 33(3) of the 1945 Constitution, which mandates that the government utilize land released by communities to promote public welfare. The article underscores land as a state asset under the control of the Indonesian government. To provide legal clarity in land management, the government established a series of statutory regulations. Law Number 5 of 1960 (LN 5/1960) builds upon Article 33 of the 1945 Constitution. This law, often referred to as the Basic Agrarian Law (UUPA), vests control over the allocation, use, supply, and maintenance of land, water, and space with the state (Article 2(2)). UUPA also empowers the state to regulate interactions and relationships between people and these resources.¹

Law Number 2 of 2012 (LN 2/2012) further clarifies the rights of both the government and communities regarding land acquisition for public purposes. This legislation allows the government to acquire land for infrastructure development projects while emphasizing transparency and adherence to human rights principles in the process. Law Number 2 of 2012 (LN 2/2012) emphasizes fair compensation for landowners affected by land acquisition (Article 9(2)). Presidential Regulation Number 71/2012 (PR 71/2012) further outlines the process. The Chief Executive of Land Procurement relies

¹ Hadjon, Philipus M. 2011. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press.

on appraiser assessments to determine compensation costs (Article 63(1) of PR 71/2012). The appraiser as the appointed party in determining the value of compensation to be given to the affected party always follows SPI 204. The value of compensation or compensation is the value given to the owner other than the market value of a property. It is also stated that if there is a transfer of land rights, take into account extraordinary factors in the form of non-physical losses that are covered. Since non-physical factors (other than Market Value) are considered (Market Value++), Compensation Value usually exceeds Market Value. Law Number 2 of 2012 (LN 2/2012) defines appraisers as qualified and independent experts responsible for assessing land acquisition costs (Article 1(1)). Authorized by the Land Agency and the Minister of Finance, appraisers conduct these assessments through Public Appraisal Services Offices (KJPP). This framework ensures appraiser professionalism and adherence to established standards.

Articles 31 to 34 of Law no. 2 of 2012 includes provisions governing appraisers or KJPP (Public Appraisal Services Office) to carry out assessments related to land acquisition for the public interest. Public Appraisers must be guided by Minister of Finance Regulation Number 228 of 2019 concerning Public Appraisers in carrying out their profession. To prepare a responsible appraisal report, the appraiser must also follow the Indonesian Appraiser Code of Ethics (KEPI), Indonesian Appraisal Standards (SPI), and applicable laws and regulations.

Because the topic of compensation cannot be separated from land acquisition procedures, it is important to evaluate all data and information provided before determining compensation. If the price and amount of compensation have been agreed upon, compensation will be paid. Sunaryati Hartono emphasized that Article 27 paragraph 2 of the 1945 Constitution contains very crucial criteria for determining tolerance limits for the release or revocation of private property rights for the sake of the public interest. According to the article, "No citizen can have his property rights reduced or revoked." Apart from that, Sunaryati Hartono also highlighted the possible consequences of relinquishing property rights, such as loss of job or livelihood, decline in economic conditions, limited opportunities to participate in business and fair employment. So citizens whose land ownership rights have been taken must be compensated in a way that guarantees them a job and a decent living.

Public appraisers carry a heavy burden because they are professionals who offer their services to the general public. Society becomes more critical. In some cases, land acquired by government agencies that require land is not in accordance with its basic

purpose and generally costs money. Problems often faced by appraisers in carrying out land appraisals for development in the public interest include differences between the nominative list and the results of field inspections. If these differences are not resolved, it will result in differences in the value of compensation because the area is different between the assignment and the physical field. Another problem is that the assessment was only carried out more than 6 months after the location was determined (penlok). This creates difficulties in the assessment to collect information and data from 6 months ago because the assessment date must match the date of location determination, 6 months is quite a long time. which causes data changes and price changes. From the nominative list given to an area, there are usually several plots of land owned by one owner, located in front of and behind the main road or land that has access and land that does not have access. This will of course cause differences in the value of the plots. The land is due to differences in characteristics, but the land owner does not agree with the existence of these differences and asks to be given the same or maximum compensation for each plot of land.

One example of a case that occurred was land acquisition for the Cibitung-Cilincing toll road where in land acquisition located in Gandamekar City, the land owner felt disadvantaged by the compensation value that had been determined. Another example is the case of a dispute over the provision of compensation for land acquisition for the construction of the Bali Arts Center in Klungkung Regency, Bali, where there was a difference between the image originating from the certificate and the image created in the block plan, this resulted in the Appraiser or Public Appraisal Services Office (Public Appraisal Services Office) KJPP) made an error in calculating the value of compensation, whereas based on regulations that the value of the Appraiser's assessment results is final and binding, from this explanation it can be concluded that there is a void in the norm if there is an error in the calculation made by the appraiser or the Public Appraisal Services Office (KJPP).

The author is motivated to conduct thesis research which develops an in-depth understanding of land acquisition procedures for the public interest, especially those relating to determining the value of compensation, which becomes a reference for deliberations regarding compensation, and the provisions governing the obligations and responsibilities of appraisers, so that researchers takes the title "determination of compensation based on law number 2 of 2012 article 9 paragraph 2".

II. METHODS

This research approach is a normative legal approach. The normative juridical method with a literature study approach was chosen as the research methodology in this study. The literature study method collects information from various literature sources, including books, scientific journals, laws and regulations, decision studies, and other materials relevant to the research topic. The aim of this descriptive research is to describe and explain phenomena related to the research topic.

III. DISCUSSION

Determination of Compensation in Land Acquisition for Public Interests and the elements of compensation

In preventing unrest in the community due to losses that may occur in land acquisition activities, it is important to pay attention to the principles of land acquisition to avoid disputes between the parties involved. The principles of land acquisition are explained in the explanation of Article 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In the case study of providing compensation in this research, the plaintiff felt that compensation was not appropriate because to buy comparable land around the acquisition location the price already exceeded the value of the compensation given.

This is because one of the properties of land is limited, so the price tends to rise, and this is being one of the inputs that must be considered by the appraiser in calculating the Fair Replacement Value in the non-physical compensation element, land acquisition requires a waiting period before compensation is paid. On the other hand, land owners cannot be arbitrary in asking for compensation from the government because there is no competence regarding Fair Replacement Value as mandated by law. In realizing welfare for land owners and the government in the land acquisition process, they must refer to article 9 paragraph 2 regarding the provision of adequate and fair compensation so that the welfare referred to by Bagir Manan can be realized where the government can realize social and general welfare for its population.

The quality of assessment results that are good, accurate and fair can reduce the potential for disputes between the parties involved. If the parties are satisfied with the compensation assessment carried out by the Public Appraiser, the land acquisition process can proceed quickly without experiencing prolonged delays and higher costs due to

disputes related to the assessment report.² Therefore, the Public Appraiser has the responsibility to uphold the principles of land acquisition and comply with the regulations stipulated in the legislation when carrying out the appraisal. Appraisers must be professional in accordance with their competencies as regulated by standards in implementing Law no. 2 of 2012 regarding the provision of appropriate and fair compensation (article 9 paragraph 2). Regarding determining the amount of compensation, the government inserted new paragraphs, namely paragraphs (3) and (4) in Article 34 of Law 6 of 2023 on Land Acquisition Cluster as follows:

Paragraphs (3): The amount of Compensation value based on the results of the Assessor's assessment as intended in paragraph (1) is final and binding.

paragraphs (4): The amount of Compensation value as intended in paragraph (2), is used as the basis for determining the form of Compensation.

That the results of the appraisal from the appraiser as the value at the time of the announcement of the determination of the development location for the public interest are final and binding. Furthermore, in paragraph (4), specifications have also been made, where initially the results of the appraiser's assessment were used as the basis for deliberations on determining compensation, now the results of the appraiser's assessment become the basis for determining the form of compensation.³ The substance of the regulations for determining the amount of compensation in the implementing regulations of the Job Creation Law regarding Land Acquisition, namely PP Number 19 of 2021, is also in line with what is stated in the Job Creation Law.

That Article 71 paragraph (2) PP Number 19 of 2021 states "Deliberation as intended in paragraph (1), is carried out directly to determine the form of Compensation based on the results of the Compensation assessment as intended in Article 68 paragraph (1)" It can be seen from the presentation above, the government through the Job Creation Law tries to harmonize the regulations in the Land Acquisition Law with its implementing regulations so that they are mutually sustainable. Even though compensation has been regulated, in practice compensation is the main obstacle in development projects.

Disputes arising from the results of the Public Appraisal Services Office (KJPP) assessment report

² Aditya Bakti. Perangin, Effendi. 1986. *Hukum Agraria di Indonesia*. Jakarta: Rajawali Perss.

³ Sutedi, Adrian. 2014. *Peralihan Hak Atas Tanah dan Pendatarannya*. Jakarta. Sinar Grafika.

One case of a dispute over compensation for land acquisition was between the land owner and the Head of the Bekasi Regency Land Office as the head of land procurement for the Cibitung - Cilincing Toll Road, as well as the Director General of Highways at the Ministry of Public Works and Public Housing as the agency that needed the land. In this case, the Petitioner felt that the compensation given for his land was unfair and did not meet the principles of justice and transparency. As previously explained, in carrying out land acquisition for development in the public interest, there are 10 principles that need to be considered in order to guarantee the rights of the parties involved. In this dispute case, the Petitioner failed to prove that the results of the compensation assessment carried out by the Public Appraisal Services Office (KJPP) did not meet the principles of justice and transparency.

Another case is the case of a dispute over the provision of compensation for land acquisition for the construction of the Bali Arts Center in Klungkung Regency, Bali, where there was a difference between the image originating from the certificate and the image made in the block plan, this resulted in the Appraiser or Public Appraisal Services Office (KJPP) made an error in calculating the value of compensation, whereas based on regulations that the value of the Appraiser's assessment results is final and binding, from this explanation it can be concluded that there is a void in the norm if there is an error in the calculation made by the appraiser or the Public Appraisal Services Office (KJPP).⁴

Then, if a lawsuit occurs and it is not resolved at BPN, the compensation money will be entrusted to the court and after a court decision is made, the compensation will be given to those in dispute. Based on information related to this case, in this case the KJPP has calculated and provided compensation for profits, which in fact the conditions in the field are compensation because the community bought land for Rp. 100 million per acre, but replaced by Rp. 36.6 million (36 million 6 hundred thousand rupiah) per are.

The author's analysis is based on the case example above. What is often a problem in land acquisition disputes is that the amount of compensation for land owned by land rights owners affected by land acquisition is not satisfactory to the parties. There are those who challenge the results of the assessment and the assessment process to the Court, Article 50 of the Criminal Code, which more or less means "those who carry out statutory orders cannot be punished".

⁴ Maria S.W. 1994. *Antara Kepentingan Pembangunan dan Keadilan "Forum Diskusi Alternatif"*, Yogyakarta : Universitas Adma Jaya.

In some of the author's research from cases at MAPPI, many Public Appraisers in carrying out their duties are sued by Law Enforcement Officials due to differences in perceptions and views regarding Fair Replacement Value. Legal certainty regarding land acquisition in national strategic projects is very important to avoid conflict and uncertainty for all parties involved. Changes in laws and regulations regarding land acquisition and the implementation of the Job Creation Law have provided a number of efforts to increase legal certainty in this process. However, there needs to be good coordination between various related parties, including the government, society and the private sector, so that the implementation of these regulations can be carried out effectively and fairly.

IV. CONCLUSION

Determination of compensation for land acquisition is carried out by an appointed appraiser in accordance with the mandate of Law no. 2 of 2012 articles 31 to article 33. Appraisers in carrying out their roles act competently, with integrity, objectivity, confidentiality, professionalism and responsibility in accordance with the Indonesian Appraiser Code of Ethics (KEPI), Indonesian Appraisal Standards (SPI) and laws and regulations related to land acquisition for development in the public interest. The Value Opinion produced by the appraiser becomes the basis for deliberations on determining the form of compensation (article 34 paragraph 3). In relation to the legal void when the appraiser makes a mistake in determining the amount of damages, then it is necessary to make corrections to Law No. 2 of 2012 so that compensation can be awarded in a proper and fair manner in accordance with article 9 paragraph 2. Currently, appraisers at the Public Appraisal Services Office in carrying out their duties are only regulated in Minister of Finance Regulation Number 101 of 2014 and number 228 of 2019 concerning Public Appraisers as well as other related regulations and laws, so that there is legal certainty in carrying out their duties, and so that they are not criminalized by on the other hand, the Appraiser Bill (RUU) has now been included in the national legislation program (prolegnas) for the 2024 fiscal year, and is expected to be ratified soon by the government and the DPR so that appraisers in practice have legal certainty at a level equivalent to the law, like other professions: Accountant, Lawyer, Notary, Medicine, Journalist and so on.

V. SUGESTIONS

It is recommended that the government look at the consequences of eviction or relocation of displaced communities so that social inequality does not occur with assistance budgeted for through the APBN. It is recommended to the parties (stake holders), the government and the DPR to immediately ratify the Appraiser Bill which has been included in the national legislation program (prolegnas) for the 2024 fiscal year into law, in accordance with the tagline MAPPI supports the Appraiser Bill so that in practice appraisers have a legal umbrella. the level is equivalent to the Law.

BIBLIOGRAPHY

- Aditya Bakti. Perangin, Effendi. 1986. *Hukum Agraria di Indonesia*. Jakarta: Rajawali Perss.
- Hadjon, Philipus M. 2011. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press.
- Maria S.W. 1994. *Antara Kepentingan Pembangunan dan Keadilan 'Forum Diskusi Alternatif'*, Yogyakarta : Universitas Adma Jaya.
- Sutedi, Adrian. 2014. *Peralihan Hak Atas Tanah dan Pendatarannya*. Jakarta. Sinar Grafika.