

Compensation for Land Acquisition for Public Interest Islamic Law and Agrarian Law Perspective (Case Study in the Yogyakarta International Airport Mega Project)

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Abstract

In general, this study examines the issue of compensation for land acquisition for the public interest in the view of Islam and Agrarian law. While empirically, this study examines the implementation of compensation for land acquisition for the public interest in the Yogyakarta International Airport project from the perspective of Islamic law and agrarian law. This type of research is library research, namely research whose main objects are library books and other literature, which are related to the title above. So this research is a qualitative research. However, this research is strengthened by research data in the field (file research). In this study, researchers tried to examine and view the law with a complete picture. And to realize it, it must always be carried out in an interdisciplinary manner, where law is a symptom of two aspects, namely normative (das sollen) and empirical (das sein). Therefore, this research is not enough to only use library research, but rather a combination of library research with research surveys in the field. Thus the approach method used is normative juridical and sociological juridical, with descriptive-qualitative research specifications. In connection with this research is empirical legal research, the data sources used are the primary data sources and secondary data sources.

Keywords

compensation; land acquisition; islamic law; agrarian law



I. Introduction

The background of the problem (Atmadilaga, 1994), which is the interest of researchers in reviewing this study is beginning with the existence of government performance programs that strengthen development in the infrastructure sector, both from the land, sea, and air sectors bring many benefits to the people of Indonesia. (2018), related to land acquisition between the government and the affected communities.

The discussion of land problems in development is a fairly thorny problem. This is because with the increase in development, the need for land for development is also increasing. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Land not only contains economic aspects but also concerns social, political, legal and so on. Therefore, the government's steps in meeting the needs of land for development is not an easy thing, but is a serious problem, considering that mistake in determining policies will be fatal and cause unrest that disrupts the stability of the community.

In Indonesia, related to the legal arrangements for land procurement for the public interest (UU No. 2 of 2012 for Land Acquisition, 2012), has undergone a development process since unification. Law No. 5 of 1960 on the Basic Rules of Agrarian Trees (UUPA). In terms of revocation, release, and release of rights always has a considerable

impact on the stability of society. Various tensions arise in the community, because there is no agreement between landowners or land rights holders whose land will be taken for the purposes of development projects and the authorities or governments tasked with doing so. In addition, the problem arises because the amount of compensation that will be given by the affected community is not clear even feasible (Adrian Sutedi, 2007).

UU No. 2 of 2012 is also the basis of land procurement, namely on Land Procurement for Development in the Public Interest. Land procurement an activity to provide land by providing proper and fair compensation to the entitled party. In the Act in giving a large assessment of compensation based on land, buildings, plants, and objects related to the land owned by the parties. The form of compensation provided can be money, replacement land, settlement, shares, and other forms agreed by both parties. Not only Law No. 2 of 2012 but there is also Presidential Regulation No. 71 of 2012 on The Implementation of Land Procurement for Development in the Public Interest and Regulation of the Head of the National Land Agency Number 5 of 2012 on Technical Instructions for Land Procurement Implementation. Related to the problem, Islam also touched on matters governing the liberation or use of land. In the Qur'ān as a source of Islamic law there are many verses that speak of the earth/land as a gift of Allah Swt.

In Islamic law there is a rule that aims to maintain human benefit, both material, physical and spiritual benefits, both personal, individual and for the lives of many people, the rule called maqasid sharia is to maintain religion, wealth, honor, soul and offspring. Thus, every rule of law is intended to maintain the five purposes of the syara', by avoiding things that can be destructive or harmful. From the essence of this teaching radiated an equation with what is explained about social interests (Wahbah al-Zuhaili, 1986)

From the above exposure, a question arises whether the land acquisition cases that have occurred so far have put forward the principle of benefit. In fact, by looking at the number of people who are homeless, agricultural land and other property for the implementation of government programs related to development. If indeed the principle of good has been applied with reference to maqasid syar'iyah of course this is not the case.

II. Research Methods

In this study using a type of normative legal research that uses a legal approach, case approach or comparison approach. The objects that are being studied include laws governing land acquisition, compensation both in positive law and Islamic law and supported by affected communities in order to make legal efforts against land acquisition compensation for the construction of Kulonprogo airport.

The types and sources of data used in this study are primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is obtained directly from the original source, by reviewing legal materials including Constitution No. 2 of 2012, presidential decree and other legal materials that discuss Agrarian. The legal material is then strengthened by other literature that aims to provide further explanation of matters that have been studied primary legal materials. Tertiary legal materials or supporting legal materials that include materials that provide instructions and explanations for primary and secondary legal materials such as dictionaries and encyclicals (Deddy Mulyana, 2010).

In addition to the literature, literature above, researchers also use supporting sources in the form of literature or library materials that are relevant in the process of writing this dissertation, which is limited in the form of articles from newspapers, magazines, the internet, research journals, and so on.

III. Results and Discussion

3.1 Definition of Indemnity (*Dhaman*)

Etymologically, *dhaman* has quite a diverse meaning. For example, assume, responsibility, and obligations. In the *Lisan al-Arab* dictionary, Ibn Manzur signifies that all meanings of *dhaman* are concentrated on guarantee, insurance or guarantee. A not much different meaning is also found in the dictionary *al-muhith* which interprets *dhaman* with compensation. In terms of *fiqh*, *dhaman* is also interpreted variously. Imam Ghazali, for example interpreting *dhaman* with *luzumu rad al-syayy awu badaluhu bil mitsil awu bil qimati* (the necessity of replacing an item with an item equal to or commensurate with its selling value). Al hamawy on *kitab al-asybah wa al-naza'ir* by Ibn Nujaim said that *dhaman* is 'like 'an raddi misli al-halik awu qimatuhu (replacing damaged goods with the same goods or commensurate with their selling value). While as-Shaukani said that *dhaman* is like replacing damaged goods.

Al-ahkam al-'adliyah magazine mentioned that the compensation is adjusted to the type of damaged goods (*dhaman huwa i'tha'u misli al-syai' inkana minal misliyat, waqimatuhu inkana minal qimiyat*). If the type is classified as *al-misliyat*, then the compensation with the same goods (*al-mish*). If the damaged goods are classified as *al-qimiyati*, then the value of compensation is adjusted to the selling value in the market (*qimah*).

3.2 Release of Land Rights according to the View of Islamic Law and Agrarian Law

a. Rights to Land According to Islamic Law

Soil is one of the important factors of production that must be utilized optimally. Each type of soil in addition to having substances, namely the soil itself, also has certain benefits for example for agriculture, housing or industry. Islam allows a person to own the land and cultivate it. If you look at the propositions of Islamic law related to land ownership, it will be found that the provisions of land law are different from the ownership of other objects. The *Qur'an* itself as the source of Islamic law is widely founded verses that speak of the earth / land as a gift of Allah SWT to mankind. This is indicated by the many words of *al-arḍ* revealed in the *Qur'an*, *Al-Nahl*: 16/52-65-73-77, as found in QS. *Al-Nahl*: 16/65:

وَاللَّهُ أَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَحْيَا بِهِ الْأَرْضَ بَعْدَ مَوْتِهَا ۗ إِنَّ فِي ذَلِكَ لَآيَةً لِقَوْمٍ يَسْمَعُونَ

And Allah sent down from heaven the water and with it he revived the earth after his death. Surely there are signs for those who listen. There are three words mentioned by Allah SWT about the land in the *Qur'an*, in addition to the word *al-arḍun* the word that is also mentioned is *al-thin* then the word *al-thurab* which if translated into Indonesian means land. The definition of "land" according to Al-Raghib al-Ashfahanani is someone who grows something else or a cult that can fertilize thing. Meanwhile, the definition of land according to Fairuz Abadi in *Al-Qanus Al-Muhith Abdurrahman* gives the definition of *tanha* which is "a place of living for the ummah of humans in addition to being a source of life for those who seek a living through farming efforts (Abdurrahman, 1994).

From the above explanation, the operational definition of land is the surface of the earth that is used as a place to live and a place to earn a living for mankind. In accordance with the nature and nature of the human as individuals and social creatures, the human relationship with the land in Indonesia is known for the collective nature that is the right to control of the state as the organization of all people's power over the earth, water and space and the natural wealth contained therein and know also the nature of private that is

protected and recognized property rights. The success of leadership is partly determined by the ability of leaders to develop their organizational culture (Arif, 2019).

Land ownership in Islam is very dependent on the status of the land concerned whether the land obtained due to conquest or not. Ownership of land also depends on the status of its utilization whether for farming or other than agriculture. In addition, it is also seen from the status of the land whether the land falls into the category of dead land or the land that has been turned on. Furthermore, it should also be known whether the land is owned by individuals or states.

b. Land Acquisition in the Public Interest in view of Agrarian Law

Understanding land acquisition is the activity of providing land with proper and fair compensation to the entitled party. In the law referred to by the procurement of land in the public interest means providing land for the implementation of development to improve the welfare and prosperity of the State and society by ensuring the legal interests of the entitled party (Yulianus Pabassing, 2016). Procurement in the public interest is carried out by the government both locally and central government. Parties entitled in this case are required to release the land at the time of the implementation of land acquisition in the public interest after the provision of appropriate and fair compensation or based on the decision of the court that has obtained a decision that has permanent legal force. Land that is then built in the form of buildings or facilities for the public interest will belong to the government either local government, central or become the property of SOEs if used in accordance with interests and needs. Land acquisition is the activity of providing land by providing proper and fair compensation for the right party. The entitled party is the party who controls or owns the land, the above ground and underground space, buildings and plants, objects related to the land or other forms that have value (Gunanegara, 2008).

In some senses related to land acquisition for the public interest is regulated in the laws and regulations. Changes in regulations will be made and followed by changes in the understanding of the land procurement agency itself. The term land procurement is used first in presidential decree number 55 of 1993 on land acquisition for the realization of the implementation of development in the public interest in the provisions of article 1 number 1 land acquisition or in other terms referred to as land procurement defined as follows:

In the next development, the devinisi of land procurement was changed again in the provisions of article 1 number 3 of Presidential Regulation Number 36 of 2005 on land procurement for the realization of development implementation in the public interest. Land acquisition is any activity to obtain land by providing compensation to those who release or hand over land, buildings, plants and objects related to land or by revocation of land rights (Gunanegara, 2008).

Furthermore, in 2012 the government enacted Law number 2 of 2012 on land acquisition for public interest development. The provisions of article 1 number 2 define land procurement as follows: Land procurement is the activity of providing land by providing proper and fair compensation to the entitled party.

c. Analysis of Islamic Law on Land Procurement in the Public Interest

In the opinion of Islam, everything in the heavens and the earth including land belongs to Allah SWT alone. Allah SWT states. A-Nur:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَإِلَى اللَّهِ الْمَصِيرُ

"To Allah belongs the doth of the heavens and the earth, and to Allah belongs the doer of all mankind."

In interpreting this verse, Imam al-Qurthubi said, "This verse is the proposition that the origin of possession (aslul milki) belongs to Allah Swt, and that man has no right but to utilize (tasarruf) in the manner of Allah Swt" (Al-Qurthubi, 1967). Thus, Islamic law has clearly explained about land ownership in Islam. In essence there are two important points Islam regulates related to land ownership, first: the true owner of the land is Allah Swt, second: man only has the right to manage land according to the laws of Allah. Therefore, this has the implication that there is not a single law that should be used to regulate land processing, except the laws of Allah Swt (Islamic sharia).

Allah Swt states at QS. *Al-Kahfi*: 18/26.

قُلِ اللَّهُ أَعْلَمُ بِمَا لَبِثُوا ۗ غَيْبُ السَّمَاوَاتِ وَالْأَرْضِ ۗ أَنْبَأْ بِهٖ وَأَسْمِعُ ۗ مَا لَهُمْ مِنْ دُونِهِ مِنْ وَلِيٍّ وَلَا يُشْرِكُ فِي حُكْمِهِ أَحَدًا

Say, "Allah knows how long they have lived. He belongs to all that is hidden in the heavens and on the earth. How bright is his vision and how sharp is his hearing; There is no protector for them except him. And he did not take anyone to be his ally in making decisions." In fact, humans are given the right to the management of land owned by Allah Swt then it should be human beings to be the owners of the industry and should only take advantage of it instead of having it actually. In carrying out the development process in the public interest, the government has the authority to issue policies related to development. This is because the government is considered as implementing community development for the prosperity of the people and must be obeyed by its people, as the fiqh rule formulated by Imam Shafii.

تَصَرَّفُ الْإِمَامِ عَلَى الرَّاعِيَةِ مَنُوطٌ بِالْمَصْلَحَةِ

It means: The policy of the leader/caliph is in the interest of his people. Thus, the Muslim (the people) must obey all the wiseness of the imam in order to establish the goodness. This is in accordance with God's statement which explains to obey Allah, the Apostle and Ulil amri (leader).

d. Indemnity Analysis under Law No. 2 of 2012

Procurement of land in the public interest needs to be done as well as possible and done by paying attention to the role of land in human life as well as the principle of respect for the legitimate right to land. Land in addition to having economic value, also has a social function. As article 6 of Law No. 5 of 1960 reads: "all land rights have a social function". This social fungsi sometimes requires personal interest in land sacrificed for the public good. What is meant by the public interest is the interests of the State and the government community is used as much as possible for the prosperity of the people.

Not all development activities can be classified as development in the public interest. Land procurement in the public interest is carried out based on the principle of:

1. Humanity

What is meant by the "principle of humanity" is that land procurement must provide protection and respect for human rights, dignity, and dignity of every citizen and population of Indonesia proportionally.

2. Justice

What is meant by the "principle of justice" is to provide a guarantee of proper replacement to the Entitled Party in the process of Land Procurement so as to get the opportunity to be able to live a better life.

- a) What is meant by fulfilling the principle of justice in the release of tanah in the public interest is: Can improve the socio-economic conditions of landowners who get compensation, and at least equivalent to the circumstances before the revocation or release of their rights;
 - b) Parties who need land can also obtain legal protection.
 - c) Justice formulated by law in the form of rights and obligations shall reflect the justice received and felt by the parties.
3. Expediency
What is meant by the "principle of expediency" is the result of Land Procurement able to provide broad benefits for the benefit of the community, nation, and state.
 4. Certainty
What is meant by the "principle of certainty" is to provide legal certainty of the availability of land in the process of Land Procurement for development and provide guarantees to parties entitled to obtain proper compensation.
 5. Openness
What is meant by the "principle of openness" is that land procurement for development is carried out by providing access to the community to obtain information related to land procurement.
 6. Agreement
What is meant by the "principle of agreement" is that the land procurement process is carried out by deliberation of the parties without the element of coercion to get a mutual agreement.
 7. Participation
What is meant by the "principle of participation" is support in the implementation of Land Procurement through community participation, either directly or indirectly, from planning to development activities.
 8. Welfare
What is meant by the principle of welfare is that the procurement of land for development. Can provide added value for the survival of the entitled party and the community at large.
 9. Sustainability
Sustainability is a development activity that can take place continuously continuously, to achieve the expected goals.
 10. Harmony
What is meant by the "principle of harmony" is that land procurement for development can be balanced and in line with the interests of the community and the State.

IV. Conclusion

Based on the results of studies and research in the field, then analyzed and discussed in depth in the analysis of results, then by paying attention and understanding what is obtained from the data, facts, and data analysis, several conclusions can be drawn as a result of this study, namely:

- a. In principle, the implementation of the construction of Yogyakarta International Airport, many of which are not in accordance with the regulations on the release of land rights. This is due to the interests of certain parties who look unilateral in determining a decision. Whereas if referring to Law No. 2 of 2012 in terms of land acquisition must establish the principles: Humanity, Justice, Expediency, Certainty, Openness, Agreement, Participation, Welfare, Sustainability, and Harmony.

- b. The implementation of land procurement for the public interest contained in agrarian law and Islamic law substantially has many basic similarities with the provisions contained in Islamic law. In agrarian law or Islamic law it is recognized that there is a social function of land rights. It can even be asserted that Islam was the first or first pioneer of the birth of social function of an object. This can be seen from Islamic teachings that recognize the rights of others to objects owned by someone, such as sadaqah, waqaf, zakat, grants and so on.

References

- A.P.Parlindungan. 1993. *Pencabutan dan Pembebasan Hak Atas Tanah Studi Perbandingan*. Bandung: Mandar Maju.
- Abduh, Muhammad. 1979. *Beberapa Ciri Khas Hukum Administrasi Negara Indonesia*. Medan: makalah S2 USU.
- Abdurrahman, Jalaluddin. 1980. *Al-Masalih Al-Mursalah Wa Makanatuha Fi At-Tasyri' Al-Islami*. Kairo: Matba'ah As-Sa'adah.
- Alim, Yusuf Hamid. 1994. *Al-Maqashid Al-Ammah Fi As-Syari'ah Al-Islamiah*. Riyadh: Al-Dar Al-Ilmiah Al-Kitab Al-Islami.
- Andrizal. 2018. *Pembayaran Ganti Rugi Tanah Jalan Tol Pekanbaru-Kandis Berdasarkan Asas Kepentingan Umum*. *Jurnal hukum Novelty*, Vol. 9 No. 1, Februari.
- Atmadilaga, Didi. 1994. *Buku Pintar Panduan Penulisan Skripsi, Tesis, Disertasi*. Bandung: CV. Pionir jaya.
- Atmosudirjo, Prajudi. 1985. *Hukum Administrasi Negara*. Jakarta: Ghalia Indonesia.
- C.B. Macpherson. 1980. *Pemikiran Dasar Tentang Hak Milik*. Jakarta; Yayasan Lembaga Bantuan Hukum Indonesia.
- Departemen Agama RI. *Al-Qur'an Al-Karim dan Terjemahannya dengan Transliterasi*. Semarang: PT. Karya Toha Putra,t.t
- Ghazali, Abu Hamid. *Al-Mustashfa Min 'Ilm Al-Ushul*.t.t.p: t.p, t.t
- Hanafi. 1991. *Pengantar dan Sejarah Hukum Islam*. Jakarta: Bulan Bintang.
- Handayani, Mei Fatul dkk. 2016. Dampak Pembebasan Lahan Pertanian Untuk Jalan Tol Surabaya-Mojokerto (Sumo) Terhadap Kualitas Hidup Petani Bekas Pemilik Lahan Di Sumberwaru, Wringinanom – Gresik. *Jurnal Berkala Ilmiah Agridevina* : Vol 5 No 2, Desember.
- Harsono, Boedi. 1997. *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. jilid 1, edisi revisi, Ctk ketujuh, Djambatan Jakarta.
- Hasan, Husein Hamid. 1971. *Nazariyat Al-Mashlahat Fi Al-Fiqh Al-Islamiy*. Al-Arabiyyah: Dar Al-Nahdhat.
- K. Wancik Saleh. 1977. *Hak Anda Atas Tanah*. Jakarta: Ghalia Indonesia.
- Khafif, Ali. 1956. *Muhadharat Fi Asbab Ikhtilaf Al-Fuqaha*. Kairo: Ma'had Al-Dirasat Al-Arabiyyah Al-'Aliyah tt.p.
- M.Solly Lubis. 1994. *Fitsafat Ilmu Dan Penelitian*. Bandung: Mandar Maju
- Mulyana, Deddy. 2010. *Metodologi Penelitian Kualitatif: Paradigma Baru Ilmu Komunikasi dan Ilmu Sosial Lainnya*. Bandung: Remaja Rosdakarya.
- Pabassing, Yulianus. 2016. *Kepastian Hukum Ganti Kerugian terhadap Hak Masyarakat Hukum Adat Atas Tanah dalam Pengadaan Tanah Untuk Pembangunan*. *Disertasi Doktor*. Universitas Hasanuddin Makassar.
- Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute- Journal (BIRCI-Journal)*. Volume 3, No 1, Page: 276-286