

# Implementation of Regulation Number 2 of 2012 on Land Acquisition for Development

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**Abstract:** In the implementation of Act No. 2 of 2012 on the procurement of land for development for the public interest in making the toll road, in its implementation found many problems causing the slow completion of land acquisition for the construction of Pekanbaru-Kandis Dumai toll road. The purpose of this study is to comprehensively review the implementation of Law No. 2 of 2012 on the procurement of land for development for the public interest in making the Pekanbaru-Kandis-Dumai toll road in Siak regency of Riau province and to know the mechanism of legal settlement when the rights owner Over the land rejects the form and the amount of compensation. This research method is sociological legal research with empirical juridical approach, which includes research on the identification of written law and unwritten law, with a view to know the implementation of legislation relating to the procurement of land for development for the public interest. The results of this study are based on respondents data obtained from the field that most of the people agreed that the land affected by the construction project of Pekanbaru-Kandis-Dumai toll road, this can be proved by the payment of compensation money to land, land and plants as well as objects related to  $\pm 85\%$  of land has received compensation money and  $\pm 15\%$  who do not agree because feel compensation money does not match the price of their land and / or building. The conclusion shows that the implementation of Act No. 2 of 2012 on land acquisition for development for public interest in Siak regency of Riau Province there are still many problems, among others, legal settlement for parties who are entitled to reject the form and / or amount of compensation through Siak District Court either Filed a lawsuit to the Court as well as those who did not file a lawsuit ultimately entrusted to the court in accordance with Article 42 of Law No. 2 of 2012 concerning the procurement of land for development for the public interest.

**Keywords:** Land Procurement, Development and Public Interest

## 1. Introduction

The growing population of course requires various public facilities as set forth in Article 10 of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, is land for public interest is used for development:

- 1) National defense and security;
- 2) Public roads, toll roads, tunnels, railways, railway stations and railway operations facilities;
- 3) Reservoirs, dams, weirs, irrigation, drainage, drainage and sanitation, and other irrigation structures;
- 4) Ports, airports and terminals;
- 5) Infrastructure of oil, gas and geothermal;
- 6) Power plants, transmissions, substations, networks and distribution of electricity;
- 7) Government telecommunications and informatics networks;
- 8) Landfills and waste management;
- 9) Government hospital / local government;



- 10) Public safety facilities;
- 11) Public burial places of government / local government;
- 12) Social facilities, public facilities, and public green open spaces;
- 13) Nature reserves and cultural heritage;
- 14) Government office / local / rural government;
- 15) Arrangement of urban slums and / or land consolidation, and housing for low-income communities with rental status;
- 16) Education infrastructure or government / local government schools;
- 17) Government / local government sporting infrastructure; and
- 18) Public market and public parking.

The construction of such public facilities requires the land as its container. In the case of soil supply is still wide, the construction of public facilities is not a problem. But the problem is that land is a limited natural resource, and it never grows. The available land is already covered by rights (land rights), and state land is very limited in stock. Development of it in Indonesia increasingly day. The construction of inpres school buildings, hospitals, markets, railway stations, places of worship, bridges, the procurement of various projects for the construction and widening of roads and other developments require land as its primary means. The problem that then arises is how land acquisition belongs to the community for the purposes of the development project. This is indeed the most controversial issue on land issues. On the one hand the development demands will beThe land is already urgent, while on the other hand most of the people also need the land as a place of residence and place of livelihood.

Further, the problem of land acquisition is very vulnerable in handling it, because in it concerning the livelihood of the people, when it is seen from the government's need for land for development purposes, it is understood that "available state land is very limited, therefore the only way to go is By freeing land owned by the community, whether they have been controlled by rights under customary law or other rights under the BAL. Land has a very important role for human life, much of human life depends on land. "The land is valued as a treasure that has a permanent nature and can be reserved for life in the future. Nowadays the availability of "free" state land is not owned or occupied by people or other interested parties is very limited.

Land procurement is an act of the government to acquire land for various development interests, especially for the public interest. In principle, land acquisition is done by deliberation between parties requiring the land with the holder of land rights whose land is needed for development. This compensation issue becomes the most sensitive component in the land acquisition process. Negotiations regarding the shape and magnitude of the compensation are often the longest and most protracted process due to the absence of common ground agreed upon by the parties concerned. The protracted process is very detrimental to the course of development itself. In the example of such a project delayed construction of Pekanbaru-Kandis-Dumai Toll Road, which among other causes is the unfinished problem of land acquisition of citizens. If seen in the wider scope it turns out this is a common problem in Indonesia. Land procurement is an act of the government to acquire land for various development interests, especially for the public interest. In principle, land acquisition is done by deliberation between parties requiring the land with the holder of land rights whose land is needed for development.

## 2. Research Methods

This type of research is sociological law research. The study of sociological law according to National Legal Development Board (BPHN) is more directed to a study that discusses the enactment of positive law and the effect of positive law on the life of society and the influence of non-legal factors on the establishment of legal provisions. This research uses empirical juridical approach method, with a view to know the application of legislation in the field of land procurement for development for the public interest. The purpose of this research is to know how the implementation Of The Act Of Number 2 2012 on the procurement of land for development for the public interest and how the mechanism of legal settlement when the owner of the right to land rejects the form and / or amount of compensation that has been set. The legal basis for the implementation of land acquisition for development for public interest in Indonesia is as follows:

- 1) The 1945 Constitution of the Republic of Indonesia;
- 2) Law Number 05 Year 1960 on Basic Regulation of Agrarian Principles;
- 3) Law Number 20 of 1961 concerning the Revocation of Land Rights and the Objects Above;
- 4) Law No. 2 of 2012 on Land Procurement for Development for Public Interest;
- 5) Presidential Regulation Number 71 Year 2012 has been amended several times lastly by Presidential Decree Number 30 of 2015 on the Implementation of Land Procurement for Development in the Public Interest;
- 6) Regulation of the Head of BPN RI Number 5 Year 2012 on Technical Guidance on Implementation of Land Procurement.

## 3. Discussion

The Implementation Of The Act Of Number 2 2012 becomes the most sensitive component in the process of compensation in the procurement of land for development for the public interest. Negotiations regarding the shape and magnitude of the compensation are often the longest and most protracted process due to the absence of common ground agreed upon by the parties concerned. The protracted process is very detrimental to the course of development itself. In the example of such a project delayed construction of Pekanbaru-Kandis Dumai road has not solved the problem of land acquisition of citizens. If seen in the wider scope it turns out this is a common problem in Indonesia. If this is not anticipated it can clearly interfere with the course of state development, while the right to land by individuals is a matter that needs to be paid attention equally by the Government.

In many cases the procurement of land for the sake of development then the form and amount of compensation becomes the main problem. Often residents whose lands are affected in the development plan in fact refuse to form and the amount of compensation even refuse to negotiate anything for any personal reasons. For this reason, this paper seeks to deepen the issue of land acquisition for development for the public interest, especially in relation to compensation issues and legal settlement mechanisms when compensation is rejected by the owners of land rights whose land will be released by the government. The issue of land acquisition can be seen in terms of land acquisition under Article 1 number 3 of Presidential Regulation No. 36 Year 2005 is: "Land procurement is any activity to obtain land by giving compensation to those who release or deliver land, buildings, plants, Objects relating to land or with the revocation of land rights ".

In comparison with Of The Act Of Number 2 2012 especially Article 1 paragraph 2 mentioned that Land procurement is the activity of providing land by giving compensation fair and fair to the party entitled. Whereas what is meant by the public interest according to Article 1 Paragraph 6 of Law. 2 of 2012 states that the meaning of the Public Interest is the interests of the nation, state, and society that must be realized by the government and used as big as for the prosperity of the people. This law comes with the purpose of legal certainty to the state development issue. The legal certainty here is the

certainty of compensation and certainty about the party who should receive the *gantirugi*. While the legal certainty for the Government is a certainty about the implementation of such development so as not to harm the state finances that are essentially a burden on society as well. Concrete with the certainty and protection of the implementation of development that has been using the state finance is not hampered only caused by problems arise by some landowners or other parties who gain power over the transfer of land rights

#### **4. Forms of Indemnity Under the Law**

Indemnification as referred to in The Act Of Number 2 2012 is: a reasonable and fair reimbursement to the party entitled to the land acquisition process. Such compensation shall be provided in accordance with the provisions of Article 33. The valuation of the value of Indemnification by the Valuer as referred to in Article 32 paragraph (1) shall be done in the plot of the land, including:

- |  |                             |
|--|-----------------------------|
| a. Soil;                               | d. Plant;                   |
| b. Space above ground and underground; | e. Objects related to soil; |
| c. Building;                           | f. Other assessable losses. |

The forms of compensation are provided in Article 36 of Law Number 2 Year 2012 which states that: Provision of Indemnification may be granted in the form of:

- a. Money;
- b. Replacement land;
- c. Resettlement;
- d. Share holding; or
- e. Other forms agreed by both parties

Elucidation of Law Number 2 of 2012 Article 36 refers to "Resettlement" means the process of providing replacement land to the party entitled to another location in accordance with the agreement in the Land Procurement process. Furthermore, in the explanation explaining what is meant by "Forms of Loss through Share Ownership" means the participation of shares in development activities for public interest related and / or its management based on agreement between parties. Other forms agreed by both parties, for example, comprise of two or more forms of Indemnification as referred to in letters a, b, c, and d. About compensation in terms of form and amount received confirmation through Presidential Regulation No. 71 of 2012.

From the aspect of the definition of compensation in accordance with the provisions of Article 1 of the Presidential Regulation is mentioned as "Reimbursement fair and fair to the party entitled in the Land Procurement process". In Article 65, the Valuer shall be responsible for assessing the magnitude of the Indemnification for each plot of land, including: a. soil; B. Space above ground and underground; C. building; D. plant; E. Objects related to soil; And / or f. Other damages which can be assessed.<sup>18</sup> The compensation forms that can be granted in the land acquisition process for the public interest, pursuant to Article 74 of Presidential Regulation No. 71 of 2012 are as follows: a. Money b. Substitute land c. Resettlement; D. shareholding; Or e. Other forms agreed by both parties.

## **5. Mechanism of Legal Settlement of Compensation Issues**

Provision of Indemnification in Of The Act Of Number 2 2012 Article 40, Provision of Indemnification on Land Procurement Object is given directly to the party entitled. In the Elucidation of Article 40 Compensation shall in principle be submitted directly to a Person entitled to indemnification. In the event of an absence, the Authorized Party due to law may authorize the other party or heir. The proxy may only accept the power of a person entitled to indemnification, which entitles, among others: a. Holders of land rights; B. Holder of the right of management; C. Nadzir, for wakaf land; D. Former customary land owners; E. Indigenous and tribal peoples; F. The party who controls the state land in good faith; G. Holder of land tenure; And / or h. Owners of buildings, plants or other objects related to the land.

Article 41 paragraph (1) stipulates that the indemnification shall be granted to the Eligible Party based on the result of the assessment determined in the deliberations referred to in Article 37 paragraph (2) and / or the decision of the court / Supreme Court as referred to in Article 38 paragraph (5). (2) Upon granting of Losses, the party entitled to receive compulsory compensation shall release the right and submit the proof of ownership or ownership of Land Procurement Object to the agency requiring the land through the Land Institution. (3) The evidence as referred to in paragraph (2) letter b is the only legal evidence and can not be contested in the future. (4) A Party entitled to receive indemnification.

Responsible for the validity of proof of ownership or possession submitted. (5) The other party's demand on Land Procurement Object which has been submitted to the agency requiring the land as referred to in paragraph 2 shall be the responsibility of the Party entitled to receive the indemnification. (6) Any person who violates the provision referred to in paragraph 4 shall be subject to criminal sanctions in accordance with the provisions of the law.<sup>24</sup> More specifically the Provision of Indemnification under Act No. 2 of 2012 Article 42 Paragraph (1), in the event that the Authorized Party rejects The form and / or amount of Indemnification under the results of the deliberations referred to in Article 37, or the decision of the district court / Supreme Court as referred to in Article 38, Replacement of Losses shall be deposited in the local district court. (2) Indemnification of Indemnification other than as referred to in paragraph 1 shall also be applied to: The Party entitled to receive the indemnification is not known to exist; Or Land Procurement object to be provided. Indemnification: 1. Being the object of the case in court; 2. Still disputed ownership; 3. seized by an authorized official or 4. Become a guarantee in the bank. At the time of the execution of the provision of Compensation and Release of Rights as referred to in Article 41 paragraph 2 sub-paragraph a has been executed or provision of Reparation has been deposited in the district court as referred to in

Article 42 paragraph 1, ownership or Right of Land from Eligible Parties to be abolished and The proof of their rights is declared invalid and the land becomes land directly controlled by the state.

## 6. Conclusions

- 1) Based on the results of research that has been done can be concluded as follows:
- 2) Article 41 Paragraph (1) stipulates that the indemnification shall be granted to the Eligible Party based on the result of the assessment stipulated in the deliberations referred to in Article 37 paragraph (2) and / or the decision of the Supreme Court / Supreme Court as referred to in Article 38 paragraph (5) ;
- 3) Upon granting of Losses, the party entitled to receive compulsory compensation shall release the right and submit the proof of ownership or ownership of Land Procurement Object to the agency requiring the land through the Land Institution;
- 4) The evidence referred to in paragraph (2) letter b shall be the only legal evidence which can not be contested in the future. (4) The party entitled to receive the Compensation shall be responsible for the truth and validity of the evidence of ownership or ownership submitted;
- 5) The Provision of Indemnification under Act No. 2 of 2012 Article 42 Paragraph (1), in the event that the Eligible Person rejects the form and / or amount of Indemnification based on the result of the deliberation as referred to in Article 37, or the decision of the Supreme Court / Supreme Court as referred to in Article 38, Indemnification shall be deposited in the local district court. Indemnification of Indemnification other than as referred to in paragraph 1 shall also apply to: The Party entitled to receive the indemnification is not known to exist; Or Land Procurement object to be provided. Indemnification: 1. Being the object of the case in court; 2. Still disputed ownership; 3. seized by an authorized official or 4. Become a guarantee in the bank. At the time of the execution of the provision of Compensation and Release of Rights as referred to in Article 41 paragraph 2 sub-paragraph a has been executed or provision of Reparation has been deposited in the district court as referred to in Article 42 paragraph 1, ownership or Right of Land from Eligible Parties to be abolished and The proof of their rights is declared invalid and the land becomes land directly controlled by the state.

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