



Jurisdictional analysis of the land acquisition for the komodo airport expansion

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ARTICLE INFO

Keywords:

Airport Expansion;
Land Acquisition;
Public Interest.

Article history:

Received Aug 2, 2024;
Revised Aug 13, 2024;
Accepted Aug 29, 2024;
Online Oct 30, 2024.

ABSTRACT

Airport development often requires land expansion, which implies land acquisition from the community. This process needs to be juridically analyzed to ensure its compliance with applicable laws and regulations, particularly Law No. 5 of 1960 on Agrarian Affairs and Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest. This research aims to examine the process of land acquisition for the expansion of Komodo Airport in terms of juridical aspects, based on the Basic Agrarian Law and Law No. 12 of 2012 concerning Land Acquisition for Development in the Public Interest. The research method used is normative juridical, by examining and analyzing relevant laws and regulations, as well as studying related literature. The results of the research show that airport expansion land acquisition can be carried out subject to the provisions in the Basic Agrarian Law and Law No. 12 of 2012 concerning Land Acquisition for Development in the Public Interest.

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1. Introduction

Land acquisition for various public interests often causes problems, resulting in disputes in its implementation. There are thousands of conflicts concerning land issues in Indonesia, especially those that directly intersect with agrarian issues. (Nober et al., 2021), (Morrison & Buhalis, 2024), (Huang et al., 2022), (Leandro et al., 2023). Interestingly, one of the main issues concerning systematic structural conflicts is characterized by state policy, namely land acquisition for public purposes (Warjiyati, 2019), (Allang, Achmad; Kunu, Andi Bustamin; Mubarak, 2023), (Matthews, 2002). Land acquisition is often characterized by impacts (horizontal conflicts) that cannot be anticipated by the state as a policy maker. Ironically, there are many conflicts caused by land acquisition for public purposes such as the construction of airports, roads, reservoirs, dams, and ports, on the other hand, conflicts also arise due to the absence of state policies in terms of "land acquisition for the community" in need, both for agricultural purposes, plantations, irrigation, residential land (housing), and others (Farhan, 2013), (Baldacchino, 2012), (Gruber et al., 2023). That is, the two opposing realities confirm that conflicts in land

issues are getting sharper due to the imbalance of two policies carried out by the state that move away from each other, even though both are equally important.

There are many cases that generally occur in Indonesia related to land acquisition for public interests, such as for road expansion, toll road construction, business sector development by the government, dams, hospitals managed by the government. Basically, these problems occur because the government does not fulfill the contents of the agreement initially made with the community, for example the amount of compensation for community land taken does not match the amount of compensation agreed upon at the beginning. Communities affected by the general impacts of land acquisition for development in the public interest should be socialized on the rights they are entitled to for the replacement of their land that has been taken in the public interest.

Law No. 2/2012 on Land Acquisition for Development in the Public Interest provides affected communities with compensation options other than monetary compensation, namely the option of providing replacement land, relocation, equity participation (share ownership), and other forms agreed by both parties. The rights of affected people to these options are often not guaranteed, or deliberately covered up by taking advantage of people's ignorance of their rights under the law (Eliana et al., 2022) (Rade et al., 2023), (Johannes et al., 2023), (Robertson, 2021).

In its implementation, land acquisition must be in accordance with the substance of the law itself, what is meant by the substance of the law in this review are regulations on land acquisition for the public interest that regulate how institutions must act or act (Ordonez, 2023), (Gabriel, 2007), (Mishra, 2022). The form is regulations, doctrines, laws that have normative legal force up to the level of actualization ordered, or their formal status. One of the agrarian problems that occurred was the eviction of residents' land, which led to protests from the community as landowners because there was no compensation process. This is contrary to the regulations of Law No. 2/2012 on Land Acquisition for Development for Public Interest where the state does not provide compensation options to the affected community. In addition to compensation money, the State can also provide replacement land, relocation, capital participation (share ownership), and other forms to be agreed upon by both parties (Rejekiningsih, 2015), (Susan, 2013), (Meckelburg & Wardana, 2024).

The Basic Agrarian Law provides a legal basis for the acquisition of land by determining that in the public interest, including the interests of the nation and state as well as the common interests of the people, land rights can be revoked, by providing adequate compensation according to the method regulated by law (Abdillah et al., 2022), (Yusuf, 2015). Land acquisition in Indonesia for the implementation of public interest development carried out by the government is carried out by revoking land rights. This is regulated in Article 1 point 3 of Presidential Regulation No.36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest.

However, with the issuance of Presidential Regulation No.65 of 2006 which is an amendment to Presidential Regulation No.36 of 2005, land acquisition for the implementation of development in the public interest carried out by the government is carried out by releasing or transferring land rights. In principle, there are two forms of land acquisition in Agrarian Law in Indonesia, namely implemented by releasing or surrendering land rights and implemented by revoking land rights.

The difference between the two can be seen in that the revocation of land rights is carried out by force, while land acquisition is carried out based on the principle of deliberation. The existence of Presidential Regulation No.65/2006 emphasizes that the method of revocation of land rights does not eliminate the method of revocation absolutely, but the method of revocation is the last method taken if the deliberation path fails (Eliana et al., 2022) (Hasima, Rahman; Zuliarti, Wa Ode; Widyastuti, Endah; Rizky, 2023).

Therefore, this article explores the following research questions; Therefore, this article explores the following research question; How is The Land Acquisition Of Komodo Airport Expansion Reviewed From The Law And The Law Number 2 Of 2012 On Land Acquisition For Building For General Interests?

2. Method

The author will conduct normative legal research. Normative legal research consists of research on legal principles, legal systematics, the level of legal synchronization, legal history and comparative law. To answer the above problems, the author will examine legal principles and systematics (Stefanus Don Rade, 2022). Research on the principles of starting from certain fields (legal system) by conducting identification in advance of the legal rules that have been formulated. Research on legal systematics can be carried out on certain legislation or recorded law. The main objective is to identify the main or standard notions in law, namely legal society, legal subjects, rights and obligations, legal events, legal relations and legal subjects. The author will conduct research with a type of normative legal research, namely by analyzing related materials taken from the library and formulating conclusions and writing reports from the literature analysis (Lempoy, 2017).

In these secondary sources, the criteria chosen are regulatory documents directly related to the issues studied, namely Law No. 2/2012 on Land Acquisition for Development in the Public Interest, Government Regulation No. 36/2005 on the Implementing Regulations of Law No. 28/2002 on Building, Presidential Decree No. 55/1993 on Land Acquisition for the Implementation of Development in the Public Interest and legal journals on land acquisition for the public interest.

3. Analysis and Results

3.1. Land Acquisition

The definition of the term "land acquisition" has changed several times. Article 1 point 1 of Presidential Decree Number 55 of 1993 on Land Acquisition for the Implementation of Development in the Public Interest is the first time the term "land acquisition" is mentioned. In this regulation, land acquisition is any activity to acquire land by providing compensation to those entitled to the land. Furthermore, in Article 1 point 3 of Presidential Regulation Number 36 of 2005 on Land Acquisition for the Implementation of Development for the Public Interest, it is stated that there is then another new regulation that provides a new definition of land acquisition, namely Presidential Regulation Number 65 of 2006 on Amendments to Presidential Regulation Number 36 of 2005 on Land Acquisition for the Implementation of Development for the Public Interest.

Several provisions in Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest have changed, including the definition of the term "land acquisition". In Article I of Presidential Regulation No. 65/2006, Article 1 letter 3 of Presidential Regulation No. 36/2005 is changed to land acquisition is any activity to obtain land by providing compensation to those who release or surrender land, buildings, plants, and objects related to land. Land acquisition is any activity to obtain land by providing compensation to those who release or surrender land, buildings, plants, and objects related to land or by revoking land rights. After undergoing several changes to the regulations on land acquisition for the public interest, the latest was promulgated Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest which took effect on January 14, 2012. Then the Implementing Regulation of Law Number 2 Year 2012 was stipulated and enacted on August 7, 2012, namely Presidential Regulation Number 71 Year 2012 on the Implementation of Land Acquisition for Development in the Public Interest. Article 125 of Presidential Regulation No. 71/2012 states that when the Presidential Regulation comes into force, Presidential Regulation No. 36/2005 on Land Acquisition for Development in the Public

Interest as amended by Presidential Regulation No. 65/2006 and its implementing regulations are revoked and declared invalid except for the land acquisition process as referred to in Article 123, namely the land acquisition process that was being carried out before the enactment of Presidential Regulation No. 71/2012 is completed based on the provisions before the Presidential Regulation came into force.

The definition of "Land Acquisition" has changed. In Article 1 point 2 of Law Number 2 of 2012, land acquisition is an activity to provide land by giving proper and fair compensation to the entitled parties. Furthermore, in the implementing regulations, namely in Article 1 number 2 of Presidential Regulation Number 71 of 2012, it is stated that land acquisition is an activity to provide land by giving adequate and fair compensation to the entitled parties.

3.2. Principles of Land Acquisition

The principles of land acquisition can be found in land acquisition laws and regulations, be it Presidential Decree No. 55 of 1993, Presidential Regulation No. 36 of 2005 Jo Presidential Regulation No. 65 of 2006, or Law No. 2 of 2012. The consideration of letters b and c of Presidential Decree No. 55 of 1993 reads: "That the implementation of land acquisition is carried out by taking into account the role of land in human life and the principle of respect for legitimate rights to land." "that on the basis of these considerations, land acquisition for the public interest is pursued in a balanced manner and for the first level is pursued by direct deliberation with the parties holder of land rights".

Furthermore, in the Consideration of Presidential Regulation No. 36 of 2005 Jo Presidential Regulation No. 64 of 2006, it reads: "Whereas with the increase in development for the public interest that requires land, its acquisition needs to be carried out quickly and transparently while still paying attention to the principle of respect for legitimate land rights". That in order to further improve the principle of respect for legitimate land rights and legal certainty in land acquisition for the implementation of development in the public interest, it is deemed necessary to amend Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest. Furthermore, the consideration of letter b of Law No. 2 Year 2012 reads: "In order to ensure the implementation of development in the public interest, land needs to be acquired by prioritizing humanitarian, democratic, and fair principles."

Related to the above, the implementation of land acquisition must consider several things, namely: a) The role of land in human life, b) The principle of respect for legitimate rights to land, c) The principle of legal certainty, d) Implementation in a fast and transparent manner, e) Based on the principles of "humanity, democracy and justice", and f) Based on the principle of "direct consultation" with land rights holders.

In addition, Article 2 of Law No. 2/2012 mentions a number of principles underlying the implementation of land acquisition for development purposes. The principles include: (a) Humanitarian Principle. What is meant by the principle of humanity is that land acquisition must provide protection and respect for the human rights, dignity, and dignity of every citizen and resident of Indonesia proportionally. (b) Principle of Justice. What is meant by the principle of justice is to guarantee adequate compensation to the entitled parties in the land acquisition process so that they get the opportunity to be able to live a better life. (c) Principle of Benefit. What is meant by the principle of expediency is that the results of land acquisition are able to provide broad benefits for the benefit of the community, nation and state. (d) The Principle of Certainty. What is meant by the principle of certainty is to provide legal certainty of land availability in the process of land acquisition for development and provide guarantees to the rightful parties to obtain adequate compensation. (e) Openness Principle. What is meant by the principle of openness is that land acquisition for development is carried out by providing access to the public to obtain information related to land acquisition. (f) Principle of Agreement. What is meant by the principle of agreement is that the land acquisition process is carried out by

deliberation of the parties without coercion to obtain mutual agreement. (g) Participation Principle. What is meant by the principle of participation is support in the implementation of land acquisition through community participation, both directly and indirectly from planning to development activities. (h) Welfare Principle. What is meant by the principle of welfare is that land acquisition for development can provide added value for the survival of the entitled parties and the community at large. (i) Sustainability Principle. What is meant by the principle of sustainability is that development activities can continue continuously, continuously, to achieve the expected goals. (j) Principle of Harmony. What is meant by the principle of harmony is that land acquisition for development can be balanced and in line with the interests of society and the state.

3.3. Issues in Land Acquisition

As already mentioned, prior to the presence of Law No. 2/2012, land procurement was regulated in Presidential Decree No. 55 of 1993 and Presidential Decree No. 36 of 2005 and Presidential Decree No. 65 of 2006. However, the presence of the Presidential Decree and Perpres was not able to eliminate various problems in the implementation of land acquisition. The presence of Law Number 2 Year 2012 is also expected to be able to reduce and even eliminate various problems in the implementation of procurement. Based on the research, a number of problems have been identified in the land acquisition process so far, including: a tough land acquisition process; unfair compensation value; different perspectives on land; less transparent socialization; denying the musaywarah process; and intimidation and the use of violence. Based on the above issues, it is concluded that the factors that influence the land acquisition process include: (a) historical factors with influencing variables namely land and building conditions; (b) communication factor with variables affecting it, namely inner bonds, land ownership status, land as a location for work, price agreement, resettlement considerations; (c) land certification factor with variables that influence it, namely the development of the surrounding environment and strategic location; (d) economic factors with variables affecting them, namely government release funds (compensation). Of the 4 (four) factors above, according to the compensation factor is the main inhibiting factor in the development of projects for the public interest. Each party insists on the amount of compensation for the land to be used for development. On the one hand, the party that needs the land, in this case represented by the government with relevant agencies, sets the value of compensation according to the basis for calculating compensation that has been regulated in twenty-seven regulations. On the other hand, the owner of the land rights bases the compensation value on the market value.

4. Conclusion

Overall, the issue of land acquisition for public purposes in Indonesia represents a complex situation and often leads to serious conflicts. Although Law No. 2/2012 provides a framework that regulates compensation for affected communities, its implementation often falls short of expectations. Many conflicts arise due to an imbalance in state policy between land acquisition for large projects such as infrastructure and communities' needs for land for agriculture, plantations or housing. Two different presidential regulations, Perpres No. 36/2005 and Perpres No. 65/2006, regulate the land acquisition process with different approaches: through relinquishment of rights or revocation of land rights. Nonetheless, the implementation of land rights revocation tends to cause conflict as it is often done forcibly without adequate consultation with affected landowners. In conclusion, the need to balance the interests of infrastructure development for the public interest with people's rights to their land is crucial. The state must ensure that any land acquisition process is conducted with transparency, fairness, and actively involves landowners. This is not only to prevent conflicts that are detrimental to the community, but also to ensure that infrastructure development can take place smoothly and sustainably in the long run. In addition, the need for strong legal protection for communities affected by land acquisition is also a key focus. Their involvement in the process

of determining compensation and other alternatives such as provision of replacement land or relocation must be guaranteed in a clear and transparent manner. The government needs to raise awareness of the law and land rights of communities and strengthen effective and fair dispute resolution mechanisms. The growing experience of conflicts demonstrates the importance of harmonization between national development policies and local needs in terms of land management. Thus, consistent and inclusive law enforcement is necessary to achieve sustainable development goals and social justice for all Indonesians.

The institution or agency responsible for law enforcement related to land acquisition is the National Land Agency (BPN) as the body authorized by the state to manage land in Indonesia, while the role of the court is that if a dispute occurs in the land acquisition process, the court is authorized to decide the dispute or dispute that occurs, while the role of ombudsman is to supervise the services provided in land acquisition and provide space for the public to report suspected maladministration, because although it is mentioned that the implementation of laws often does not meet expectations, there are still many conflicts that occur including specific causes of conflict, such as lack of communication, lack of community participation, or unfair compensation assessment. So the role of all parties, both government and community, is needed because it can strengthen and ensure justice for all parties can be achieved.

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