

A Resettlement Action Plan Design for Land Acquisition in Indonesia

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This study aims to answer how can law design of the resettlement action plan, ensure the sustainability of affected parties who live on land acquired for public interest in Indonesia. By using a statutory and conceptual approach, the results of the study indicate that the law design of the resettlement action plan (RAP), that ensures the sustainability of affected parties on land acquired for public interest, can be done by accommodating a social impact assessment (SIA) model and a social impact management plan (SIMP) as the basis for RAP design. The eight indicators that can be derived from SIA and SIMP as a reference in preparing the RAP are: health; education; religion; water; agricultural; soil quality; sanitation; and livelihood opportunity. There are three stages, namely: the pre or RAP preparation stage, the RAP implementation stage and the RAP monitoring and evaluation stage.

Key words: *Law design, land, acquisition, affected parties.*

Introduction

The need for land development for public interest is crucial because there are various interests that intersect with each other. The government is given the authority by law and regulation to manage the nation's independence through the development of various sectors, in this case infrastructure needs land to realise development.

Land acquisition for public purposes is related to the development of the country's economic sector in the broadest sense, where the private sector also contributes to the expansion of its business. The private sector has an interest in land acquisition, because in reality they also need infrastructure development such as roads, ports, airports, both in terms of investment and utilisation. In addition to the interests of the government and the private sector, the interests of the wider community in developing infrastructure to make life easier is also found



in the land acquisition process. However, other interests that must not be forgotten, are those of affected parties whose land is acquired for infrastructure development for the public good.

Land acquisition for public purposes is currently divided into two interests, namely revocation of land rights as stipulated in Law No. 20 of 1961 and the release of land rights based on Law No. 2 of 2012, concerning Land Procurement for Development in the Public Interest. This is then elaborated with Presidential Regulation No. 71 of 2012, concerning Implementation of Land Procurement for Development in the Public Interest and the Head of the National Land Agency Regulation No. 5 of 2012, concerning Technical Guidelines for the Implementation of Land Acquisition.

The model of releasing land rights is fundamentally preferable than the model of revocation of rights. This is because it prioritises preventive and repressive legal protection that is not accommodated in the model of revocation of rights, which only provides a means of repressive legal protection. However, the model of the relinquishment of rights that currently applies, still leaves weaknesses in the procedural aspects of land acquisition. As an example, attention was not paid to harmonisation between aspects of development planning and spatial planning, in the construction and expansion of airports, which is known to have a negative impact on surrounding community.

Article 36 of Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest is currently the main legal basis for the implementation of land acquisition in the public interest. This law only refers to resettlement as a form of compensation for those entitled to land acquisition, in addition to other forms such as money, replacement land and ownership of shares or other forms agreed by both parties (Firmansyah, 2014). However, when explored in the explanation of Article 36 letter c, it states that what is meant by "resettlement", is the process of providing replacement land to the entitled parties to another location, in accordance with the agreement in the land acquisition process (Firmansyah, 2015). Therefore legal construction does not accommodate for any form of resettlement that is considered too difficult and only accommodates resettlement that is straightforward. This is because resettlement and providing replacement land are substantively two very different things. There is also a reduction in responsibility, and shows the impartiality of the government towards the rightful party.

Most of the parties affected in land acquisition for public interest, are people whose livelihoods depend on land and land used in the process of land acquisition. Therefore a sustained effort, based on regulations in the form of laws and regulations, is required to protect them in a complete manner (Firmansyah, 2016). This can either be when the actual choice desired by the community and the condition of the location of land acquisition results

in resettlement or resettlement activities. The affected parties can be given compensation in the form of money, or the provision of replacement land provided by the government.

Land acquisition for public interest, as an effort to accelerate national development through infrastructure development is very different from land acquisition for private interest that aims to create profit. In the latter situation benefits will only be enjoyed by certain select parties (JarotWidyaMuliawan, 2019). Land acquisition for public interest is more complicated, but this is not a reason to cause negative impact on affected parties. This condition requires legal and policy alignments from the government, to ensure the sustainability of livelihoods of affected parties through various efforts. This research supports these efforts by producing a legal design of a resettlement action plan/resettlement in land acquisition activities, in the public interest, that protects affected parties.

Methods

This research is a doctrinal/normative legal research that examines national and sectoral laws and regulations governing land acquisition in the public interest. A statute and conceptual approach is used, as well as data based on primary legal materials in the form of national, sectoral and regional legislation. Secondary legal materials are also used in the form of legal literature, scientific works, documents and previous research results related to land acquisition for general benefit. The analysis of legal material is carried out in two stages. First, by way of presentation and analysis of the content (structure) of applicable laws, systematisation of legal phenomena that are presented and analysed, interpretations, and assessments of applicable laws (Meuwissen, 2007). The second step is the analysis of materials using Regulatory Impact Assessment (RIA) (Kirkpatrick and Parker, 2007).

Discussions

Resettlement Action Plan as Legal Protection Model

Law is a very important aspect of social life. With the law, social life is better and more orderly. According to Kelsen (1973), "The law is, to be sure of ordering for the promotion of peace, in that it forbids the use of force in relations among members of the community", so that there can be peace in every community. Although it is realised that the law carries various restrictions and sacrifices, it is still considered far better when compared to lawless situations (Kelsen, 1973). In good law, its validity is reflected philosophically, sociologically, juridically and politically. Philosophical application means that the philosophical values of the Republic of Indonesia are contained in Pancasila as "fundamental". The formulation of the five precepts of Pancasila contains the religious values of Godhead, fair humanity and civilised humanity, nationality in the "Unity of diversity", popular sovereignty, and social



justice for all the people of Indonesia. None of the five philosophical values may be ignored or even opposed by legal norms contained in various possible forms of legislation in the Unitary Republic of Indonesia (Jimly, 2006).

In line with the concept of validity, if the law is built on a foundation that is not in accordance with the spiritual structure of society, we can be sure that the community's resistance to the law will be very strong (Syaukani&Thohari, 2008). Furthermore, with the recognition manifested in attitudes and behavior, it means that a rule of law can be accepted by the community and has reached its complete form in sociological aspects. According to Gilissen and Gorle (2007), primary legal sources are the legal habits of the community. On the basis of the formation and enactment of the laws and regulations above, the legal protection of the community through regulation in the laws and regulations, tends to be mapped whether the community is protected by a regulation or actually oppressed.

Legal protection for the people relates to the formulation in the Dutch language library which reads "*rechtsbescherming van de burgers tegen de over heid*" and in the English literature "legal protection of the individual in relations to acts of administrative (Jimly, 2006) authorities". From the formulation above it can be seen that the context of legal protection in question is legal protection for individuals in relation to government actions. Legal protection is closely related to the recognition and protection of human rights inherent in humans from birth. Both the concept of the rule of law and the concept of "*rechtstaat*", place recognition and protection of human rights is a central point. For the Republic of Indonesia, the central point is harmony of relations between the government and the people, based on the principle of harmony. From this principle of harmony, other elements of the Pancasila legal state concept develop. These are, the establishment of a proportional functional relationship between state powers, deliberation of dispute resolution while the judiciary is the last resort and human rights are not only suppressing rights or obligations, but establishing a balance between rights and obligations (Hadjon, 1987).

Providing legal protection is a state's obligation to respect, protect and fulfil the rights of its people. Legal protection is provided through certain regulations in laws and regulations, both protection that is preventive and repressive, so that the community is protected from violations committed by others or by government administrators/state administration. Legal protection must also be given to the community in the acquisition of land for the benefit of local government (Firmansyah 2014).

In the context of land acquisition for the benefit of local government administration, the laws and regulations governing it must provide legal protection to the community, both with preventive and repressive protection. When a condition results in a resettlement action plan or resettlement for a party affected by development in the public interest, the true meaning of

resettlement must be guaranteed by the government, namely returning the affected parties to their original position before their land was acquired for public use. The process of ensuring the continuity of life and the betterment of the people, must be presented as a form of government responsibility to the community.

By ensuring resettlement is the main model for compensation, the social and economic life of those who are entitled and affected by land acquisition can be better directed. This is provided that the government truly conducts resettlement with the aim of forming a just and prosperous society.

Law Design of a Resettlement Action Plan (RAP) to Ensure the Sustainability of Life of Affected Parties in Land Acquisition for Public Interest

Before describing the design of the resettlement action plan that ensures the sustainability of the lives of the affected parties, the first thing to do is to analyse and evaluate the legislation governing land acquisition in the public interest. Analysis and evaluation of laws and regulations governing land acquisition in the public interest, will be carried out by describing the content of the legislation on land acquisition for the public interest from historical perspectives, using a statute approach. The analysis is presented in two tables, with regard to the historicity of the regulations and regulations that currently apply. From a historical perspective the regulation of laws and regulations governing land acquisition for public purposes are presented. Although these regulations no longer apply today, they still need to be analysed and elaborated in the material in order to obtain a clear and complete picture, related to the RAP regulation in legislation.

From the analysis that has been carried out on the regulations governing land acquisition that are no longer valid, some regulations only mention RAP as a form of compensation and some do not mention it. However, a number of laws and regulations that are mentioned do not elaborate what form and mechanism, or what guarantees the government provided in relation to the RAP process. Of special note and what needs to be considered, is the Minister of Home Affairs Regulation No. 2 of 1976. This regulation concerns the Use of Land Acquisition Programs for the Government's Interest in Land Acquisition by Private Parties. However, it does not regulate RAP at all, because it only discusses written permissions of the governor in the event of land acquisition for private interests. Whereas, the condition of land acquisition for private interests, should be subject to more stringent requirements than land acquisition for public use. This condition is certainly a dilemma for affected parties, as it may be for the convenience of one particular party, and produce difficulties for the other party, namely the affected party.

The next step is to conduct an analysis of the regulations governing land acquisition and their legal status that are the basis for land acquisition activities in the public interest in Indonesia today. Several regulations governing compensation only mention RAP as a form of compensation. However, a number of laws and regulations that mention it, do not elaborate at all what kind of form and mechanism and guarantees that the government provides related to the RAP process.

Article 78 of Presidential Regulation Number 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest provides a difficult impression. This emphasises that the granting of compensation is carried out simultaneously with the release of rights by entitled parties, without waiting for the completion of the resettlement construction. During the resettlement process funds for providing resettlement are deposited in the bank by and on behalf of the agency that requires the land. In addition, the provisions of Article 30 paragraph (3) of the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition, confirms that resettlement is only provided with monetary compensation value. The government prefers to complete the process of compensation for land acquisition in the public interest in the form of money, because it is easier, cheaper, effective and efficient when compared to other types of compensation, especially if the comparison is resettlement.

In line with this study, Andrio Firstiana Sukma in April 2014 was elaborate on the strengths and weaknesses of each compensation model for land acquisition for public use. The differentiation used is to categorise the types of compensation in the form of money and non-money. The results of the elaboration can be seen more clearly in table one (Sukma, 2014).

Table 1: The Types of Compensation in The Form of Money and Non-Money

No	Compensation Model	Advantages		Deficiency	
		Executor of Land Acquisition	Rightful Parties	Executor of Land Acquisition	Rightful Parties
1	Money	Easy to implement, no additional procedures needed, no monitoring and evaluation required	Can be directly utilised	Reduced responsibility	Without good management, it will quickly run out, and it requires effort to find a new place to live

2	Non-money	Responsible for the condition and survival of those who are entitled.	The situation before and after land acquisition remains the same.No effort is needed to find a new place to live	Difficult to do, additional regulations, monitoring and evaluation are needed.	Takes time to make it happen
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Referring to the comparison of compensation models in Table 1, in practice it has implications from the perspective of land acquisition operators. Generally they want to use the compensation model of money, because it is easy to do. This is because there is no need to go through the various procedures that are required of a non-money compensation model. Meanwhile, if viewed from the party entitled to compensation, if the form of compensation provided is money, it is practically easy to use to buy something that is needed immediately. In addition, by using this money, the receiving party can find a place to live for him and his family. The problem is that if the receiving party lacks good financial management, they can use the money wastefully which has a negative impact on their survival.

There are at least three other aspects, aside from the practical value of money as one of the compensation models relating to land acquisition for development in the public interest, namely:

- a. Juridical aspects;
- b. Social aspects; and
- c. Economic aspects.

In the juridical aspect, the pattern of non-money compensation requires further regulation or regulation regarding the mechanism or procedure for providing compensation. This is because the existing regulations are still not sufficient to implement the use of non-money compensation patterns. Examples include the pattern of compensation for resettlement. This pattern of compensation requires a special study, regarding the authority, indicators used, and procedures for implementation, so that additional regulations are needed to suffice.

From a social perspective, the use of non-monetary compensation patterns requires social costs that are not cheap. This is because some people are generally dissatisfied with the facilities provided, plus the need for adaptation to the new place.



Finally, the economic aspect and the use of non-monetary compensation patterns is considered less effective and efficient. This is because in land acquisition for public interests, such as the Trans Sumatra toll road project, land acquisition is carried out on thousands of residents' land so it will be less effective if the non-monetary compensation pattern is applied considering the non-financial compensation pattern requires a long process.

From the results of the previous analysis, it is very apparent that land acquisition regulations in the public interest are only superficial towards making RAP arrangements. The process of protecting, respecting and fulfilling the rights of affected parties if resettlement is carried out is highly insecure by statutory regulations. An unclear RAP arrangement will certainly have a negative impact on the land acquisition process in the public interest.

Learning from a comparative perspective, we turn to what is applicable in India. Here land acquisition regulations for the public interest provide far more protection, respect and fulfilment of the rights to affected parties. In India this is done by prioritising a social impact assessment (SIA) mechanism, which must be followed by Social Impact Management Plan (SIMP) for land acquisition processes. This can be carried out by the government, a partnership between the government and the private sector, or carried out by the private sector independently. The conception of a SIA and SIMP is accommodated in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 in India (Singh and Wankhede, 2017).

Therefore the design of the RAP in land acquisition arrangements for the public interest in Indonesia, an SIA and the obligation to prepare a SIMP, is very important as the basis for the design of the RAP in the procurement of land for public purposes that ensures the sustainability of the lives of the affected parties. The indicators that can be derived from the SIA and SIMP as a reference in the preparation of the RAP are as follows; health, education, religion, water, agricultural, soil quality, sanitation, and livelihood opportunities (Samanta, 2015).

The eight indicators that have been proposed for the RAP and the mechanism for the RAP phases must be stated in the amendment to the law on land acquisition. Then the related elaboration of each indicator and stage, can be stated in the form of government regulations or presidential regulations, to elaborate further regarding the three stages, namely: the RAP pre or preparation stage, the RAP implementation stage and the RAP monitoring and evaluation stage. It is hoped that the land acquisition process for the public interest will be able to accommodate the lives of affected parties, as much as possible through the RAP mechanism.



Conclusions and Recommendations

Conclusions

The design of a legal resettlement action plan (RAP) to ensure the sustainability of the lives of affected parties in land acquisition for public use, can be done by accommodating the SIA and SIMP models as the basis for the RAP design. The eight indicators that can be derived from SIA and SIMP as a reference in preparing the RAP are; health, education, religion, water, agricultural, soil quality, sanitation, and livelihood opportunity, with three stages, namely: the pre or RAP preparation stage, the RAP implementation stage and the RAP monitoring and evaluation stage. The legal design of the RAP must be stated in the form of legal law because, the law is a type of legislation that has the strongest and most legitimate legal form based on mutual agreement between the president and the house of representatives. As for the elaboration of the RAP mechanism, it can be stated in the form of government regulations or presidential regulations.

Recommendations

First, the government and parliament need to make changes to Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, by including eight indicators, namely; health, education, religion, water, agricultural, soil quality, sanitation, and livelihood opportunity, and three stages: the RAP pre or preparation stage, the RAP implementation stage and the RAP monitoring and evaluation stage for indicators or components, as well as the RAP stage in it. Secondly, the government needs to form a government regulation or presidential regulation, as a legal product of norm delegation that elaborates the RAP mechanism in land acquisition for public use.



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