

Land Procurement Policy For Development From the Perspective of Utilitarianism

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Abstract: Land issues become more crucial when population growth and increased development activities both by the government and by communities and individuals move on a relatively fixed land area, which simultaneously increases various land-use problems. The existence of various interests that seem to conflict with one another regarding land issues in development causes the process of land acquisition for development purposes to become a protracted problem. Therefore, it is necessary to review the policies that have been issued by the Government so far regarding land acquisition for infrastructure development, which is very closely related to the public interest based on a utilitarian perspective.

Keywords: Land Procurement, Utilitarianism.

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1. Introduction

Soil is a basic human need. From birth to death, man needs land for his place of life. Cosmologically, land is where humans live, where and where they come from, and will be the purpose for which they go. In this case, the land has a very broad dimension, both economically, socially, culturally, and politically. (Limbong, 2015)

In line with the description above, K. Wantjik (Saleh, 1985) said that "The land is very closely related to human life. Everyone certainly needs land, not even just in his life, to die even if man still needs a piece of land." So, the existence of land for human life and death is so important. So important is the land for humans, so it is inevitable that conflicts in the field of land. The history of human civilization has recorded that the wars and destruction of mankind were caused by a contested piece of land.

Furthermore, land acquisition becomes more crucial as population growth and increased development activities – both by governments and by communities and individuals – move on relatively fixed land areas, simultaneously increasing various land use problems. For example, when Indonesia proclaimed independence in 1945, indonesia's population was only about 60 million people, but now it has reached approximately 273 million people. Problems arise and get heavier and heavier because

the population is increasing rapidly with all social, economic, psychological and other problems inhabiting a space that is basically fixed. (Ginting, 2007)

The fact that occurs in the field often occurs in the same location is in demand by various development actors. This situation will result in a conflict of interest, both between sectors, between regions, and between community members in the use of land resources. Given these conditions, land problems including the provision of land for various development activities are becoming more and more strategic, directly proportional to the weight of increasingly complex problems. The quality of the problem is generally cross-sectoral which has many facets and dimensions, including the legal dimensions of economic, socio-cultural, political and defense of security, therefore in the development of agrarian law now it is necessary to pay attention to the national and global dimensions. (Ginting, 2007)

Indeed, basically the availability of land for development is very important, because from the results of development it is aimed at fulfilling and improving the welfare of the people. However, efforts to procure land or land acquisition for development on the grounds of public interest are not easy to do. Most of the land has been owned by per person or a group of people who also have their own interests in the land. In addition, the issue of compensation is also still a problem. People whose land will be released, feel that the compensation that will be given by the Government is still too small, while the Government feels the opposite, that the value of compensation given to the community is appropriate. These are the things that then cause problems between the Government and some communities. (Wirabrata & Surya, 2011)

The existence of various interests that seem to conflict with each other with regard to land issues in development causes the process of procuring land for development purposes to become a protracted problem. On the one hand, development urgently requires land as its main means, while on the other hand most of the community needs the land as a place of settlement and livelihood. If the land is taken for granted and used for government purposes, it means compromising the right of public acuaasi that should not occur in a country that adheres to the principles of "Rule of Law". But if left unchecked will also have an impact on the faltering of development efforts. (Herlinda & Il, 2004)

Therefore, it is necessary to review the policies that have been issued by the Government so far related to land procurement for infrastructure development, which is very closely related to the public interest. Whether it is the formulation of the form of the policy, or in terms of its implementation in the field. The government needs to make regulatory improvements related to the issue of land procurement for infrastructure development, in order to formulate a rule or policy that can provide benefits for both parties to the opposite side, because the regulations or forms of policy that have been issued by the Government so far are not able to solve the land procurement problem.

2. Method

This type of writing is a type of normative juridical law writing and is descriptive of analysis. This article uses the statute approach, conceptual approach, and philosophy

approach. Furthermore, analysis is carried out using legal theory which in this case is the theory of utilitarianism pioneered by Jeremy Bentham, and correlated with applicable policies and / or laws and regulations. Data writing using secondary data with data collection techniques is carried out by means of literature research (Library Research). Then all data is analyzed qualitatively using the logic of thinking with deductive conclusions.

3. Result and Discussion

3.1 Polemic of Land Procurement for Private Interests

In addition to the procurement of land for the public interest, there is also known as land procurement in addition to the interests of umu or also called land procurement for private interests. Procurement of land for private interests means that there are business actors (companies / investors) who need land in order to carry out their business activities.

As is known in its development, many activities carried out by the government are clearly included in activities in the public interest as a form of development implementation, but it turns out that in its implementation and management it also aims to seek profit and is managed not by the government (Supit, 2021) For example, the construction of a bridge connecting Surabaya-Madura called Suramadu Bridge in East Java is carried out by STATE-OWNED PT Jasa Marga. The construction of Suramadu Bridge is included in one of the development criteria for the public interest as mentioned in Article 10 (b) of Law No. 2 of 2012.

Before the issuance of Presidential Regulation No. 98 of 2018 concerning Surabaya Bridge – Madura mentioned in Article 1 of the Presidential Regulation, it was stated that the operation of Suramadu Bridge as a Toll Road was changed to a public road without tolls. Which means that the Suramadu Bridge was once paid, now it is free. However, the main problem before the establishment of Presidential Regulation No. 98 of 2018 concerning Surabaya Bridge – Madura was that suramadu Bridge infrastructure is commercial or for profit.

Practically speaking, the suramadu bridge construction activity used to certainly have a commercial orientation even though it was carried out by the government in the public interest as well as the private interest. However, it cannot be categorized as a public interest because it does not reflect transparency, for example, people are asked to pay if they want to use / pass the Bridge, or in the development process must first give up their land and then state companies (i.e PT. Jasa Marga) benefits from the land. However, it has been expressly explained in the Constitutional Court Decision No. 50/PUU-X/2012 that infrastructure development is not a profit and loss project for the government, but it is the obligation of the government to overcome economic problems for the benefit of the nation and state and the common interests of all people. Land in the public interest is clearly for infrastructure development whose projects are not for the benefit of individual or agency profit and loss businesses.

Indeed, after the establishment of Presidential Regulation No. 98 of 2018 concerning the Surabaya – Madura Bridge, the tariff reduction at Suramadu Bridge has been free,

either because of practical political interests or indeed has given opportunities for private parties to be able to participate in fulfilling these public interests by reaping profits. Therefore, for the next this is an example and needs to be considered even though the state gives investors the opportunity to be able to participate in fulfilling the public interest, but the state still determines policies related to the public interest, for example in setting tariffs managed by SOEs (Persero), so that investors cannot fully determine the tariffs that are investments of the concerned. The role of state companies or SOEs is to support the implementation of national development, especially in the economic field, so the government's wisdom in the development of SOEs is adjusted to national policies.

Another example of land procurement for private interests in the framework of housing and settlement development. Legal politics in housing and settlement arrangements, both in urban and rural areas, which are carried out in an integrated and coordinated manner. The scope of arrangements concerning housing arrangements includes new development activities, restoration, repair, expansion, maintenance and utilization.

In line with the direction of general wisdom, then in densely populated urban areas while the available land is very limited, it is necessary to develop housing and settlement construction in the form of flats that are complete, balanced and harmonious with the environment. According to Article 1 paragraph 1 of Law No. 20 of 2011 concerning Flats "Flats are high-rise buildings built in an environment that is divided into functionally structured parts, both in horizontal and vertical directions and are units that can be owned and used separately, especially for dwellings equipped with shared parts, common things, and common ground. "

Furthermore, land for the construction of flats can only be built on land of property rights; right to use buildings / right to use state land, right to use buildings / right to use on land management rights. Especially for public flats and special flats can be built with the use of state / regional property and the utilization of waqf land. Article 22 of Law No. 20 of 2011 states that the provision of land for the construction of flats can be done through Granting land rights to land directly controlled by the state; Consolidation of land by landowners; Transfer or disenfranchisement by land rights holders; Utilization of state property or regional property in the form of land; Utilization of waqf land; Utilization of part of the country's land of former wasteland; and/or Land acquisition for development for the public good.

Then, to get the land that becomes a place for the construction of flats settlements, private companies have an obligation to have a location permit submitted by a private company to the Regent / Mayor through the Head of the Local District / City Land Agency. Then the location permit decision was signed by the Regent / Mayor. The activity of obtaining land rights is known as land procurement for private interests who solely carry out their activities to obtain profits.

3.2 Land Procurement Perspective Philosophy of Utilitarianism

In fact, an achievement or development requires sacrifice. In accordance with ancient Javanese philosophy which states that "Jer basuki mawa beya" which means that "an

achievement requires sacrifice". This proverb is often stated by city / regional leaders in the framework of development, even in development activities that result in people losing their land due to land procurement activities for the sake of development. Whether the land was in the public interest or for the private interest, most of these leaders often used the proverb as political rhetoric.

Currently a very vital need as a major supporter of community dynamics and activities and as the main supporting infrastructure for the national economy. So that the benefits of each infrastructure for the greatest prosperity of the people. As stated by R. Kranenburg who is the originator of the welfare state theory that the state must actively strive for welfare, act fairly that can be felt by the whole community evenly and balancedly, not the welfare of certain groups, but all the people. It is very careless if economic development is denied and economic growth is only viewed and concentrated on a mere percentage figure. The welfare of the people is a very good indicator.

This is in line with the opinion of Jeremy Bentham who is the initiator of the idea of the welfare state, that the government has a responsibility to guarantee the greatest happiness (or welfare) of the greatest number of their citizens. Bentham used the term utility to describe the concept of happiness or well-being. Based on the principle of utilitarianism he developed, Bentham argued that something that can give rise to extra happiness is a good thing. On the contrary, something that causes pain is bad. According to him, government actions should always be directed to increase the happiness of as many people as possible.

Regarding the procurement of land for the sake of development, it is necessary to emphasize that the interpretation in advance of the affected public interest should include the interests of most of the community, and actually the meaning of most of the community itself including the interests of the victims of land procurement, so that 2 (two) interests are interests between land users in this case the government and the interests of victims. Land procurement in this case the landowner is affected. Therefore, if the executor of the land acquisition is a Private Company in the form of a Company, which has government intervention and intervention in carrying out a development. The dualism of interests of legal subjects in this case private companies, namely accommodating some of the purposes of the public interest but, on the other hand aims to obtain the greatest profit, this can cause frictions that result in disputes, between the private sector which partly acts on behalf of the government and the community that owns land rights.

4. Conclusion

Legal arrangements related to the procurement of land for the public interest in Indonesia have undergone many changes in its formation, but in some legal rules regarding the procurement of land for the public interest still provide different definitions of the meaning of the public interest. The public interest in Law No. 2 of 2012 is the interest of the Nation, State, and society that must be realized by the Government and used as much as possible for the prosperity of the people. However,

behind it all, the government can base the deed on the theory of utilitarianism. In fact, there are those who have not been accommodated in utilitarianism theory as an ethical theory, namely justice. According to this theory, an action is morally said to be good if it produces the greatest happiness for the largest number of people. However, such an affirmation in no way means that it is also a just act. A sense of justice is the most fundamental weakness of the theory of utilitarianism. Morally, utilitarianism is flawed because it is not followed by the principle of justice.

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