



REPLACEMENT OF LAND ACQUISITION FOR DEVELOPMENT FOR THE PUBLIC INTEREST OF THE BALIKPAPAN – SAMARINDA TOLL ROAD BASED ON LAW NO 2 OF 2012

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Abstract: in regard to the objection to the incompatibility of compensation for land acquisition managers in East Kalimantan Province, The inconsistency of the compensation given with the area of land used, the area of land that has been given compensation is only 842 m² while the land used in land acquisition is 5428 m². The formulation of the problem in this study is: Whether the appropriateness of the provision of compensation for control is in accordance with the Implementation Stage of Land Acquisition based on Law Number 2 of 2012 and whether the decision of the Samarinda District Court Number 28/Pdt.G/2018/PN Smr is in accordance with Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest. Research Methods Using descriptive research that is normative, the collection of data for this research is based on secondary data carried out with the help of literature research, data analyzed by qualitative methods with deductive logic. The result of the research and discussion is that the value of compensation given by the land acquisition implementer is not in accordance with the principle of justice. The conclusion of the study is that the compensation given by the implementer is not in accordance with the principles of land acquisition. The judge's decision in accordance with Law No. 2 of 2012 regarding the submission of objections is carried out within 14 days after the value of compensation is determined in the deliberations.

Keywords: Land Acquisition, Public Interest, Balikpapan

INTRODUCTION

In the implementation of land procurement, there is an important element, namely the provision of decent and fair compensation. In terms of compensation, it does not guarantee that the landowner will live a better life. The facts show that development projects for the public interest make landowners poor,

because the existing rules are far from optimal, both juridically, sociologically, and philosophically. The problem in this case is that Ivanna has filed a lawsuit as the Applicant and registered on February 27, 2018 at the Samarinda District Court in Register Number 28/Pdt.G/2018/PN Smr. Against the Ministry of Agrarian and Spatial Planning/Land Agency of East Kalimantan Province c.q. Head of the

Agrarian and Spatial Planning Office/Land Agency of Samarinda City as the Executor of Land Procurement of Samarinda City Balikpapan-Samarinda Toll Road Package III and IV as the respondent.

Ivanna is a Indonesia citizen, as evidenced by the 6472046409580002 Population Identification Number. Mr. Ivanna is the owner of the land located at Simpang Pasir Jln. Pramuka, RT.001, Kel. Simpang Pasir, Kec. Palaran, Samarinda City, East Kalimantan Province, with a size of Length :± U : 180 meters / ±S : 165 meters and width ± T : 120 meters / ±B : 175 meters. In accordance with the Certificate of Sale and Purchase dated March 18, 1993 and the Statement of Non-Dispute dated July 4, 2017.

Ivanna's land has been renamed from the first party and has been registered in Palaran District according to the certificate to relinquish Land Rights Number: 898/SKMHT/PAL/IX/2001 on September 24, 2001 and the Minutes of Land Inspection/Field Maintenance requested by Mr. Ivanna on September 27, 2001. The SKMHT has been lost and the loss has been reported to the Police with evidence of letter number: STPL/3804/VII/2017/SPKT.

Previously, Mr. Ivanna had reported to the Simpang Pasir District Office on July 4, 2017 and a certificate of loss was made Number: 337/32/302.05, with the issuance of the non-dispute statement dated July 4, 2017 without any check Return to the location even though it had been requested by Mr. Ivanna, and at the time of the report, namely in July 2017 part of Ivanna's land had been released in the first phase of 842 m².

Mr. Ivanna found out because he was called to take the compensation money without any negotiation with Mr. Ivanna first, and after checking back to the location, it turned out that many of the land was included in the exemption, but Mr. Ivanna did not get compensation. So Mr. Ivanna begged the party who worked on the toll road to re-measure the land and only then did Mr. Ivanna know that the land included in the first phase of liberation is 5428 m², but Mr. Ivanna only received a replacement of 842 m². The determination of compensation made by the Respondent Silda, Ivanna, is with the amount of compensation value only Rp. 270,497/m². Mr. Ivanna objected to the judgment made by the Respondent being unfair to him, this can be proven by the value of compensation for land belonging to Mr. Marinus whose compensation value is Rp. 633,360/m², even though the land is directly adjacent to Mr. Ivanna Sulistio Thio. Thus, an interesting problem to be analyzed according to the author is regarding the incompatibility of the provision of compensation for Ivanna's land with the area of land used. Based on the above background, the formulation of the problem is that the provision of compensation for land owned by Ivanna has been in accordance with the Land Acquisition Implementation Stage based on Law No. 2 of 2012 and the decision of the Samarinda District Court Number 28/Pdt.G/2018/PN Smr has been in accordance with Law No. 2 of 2012 concerning Land Acquisition for Development for the Public Interest.

MAIN PROBLEM

Based on the problems mentioned above, the author then formulates the main problems discussed in this study, namely:

1. Is the provision of compensation for Mr. Ivanna's land in accordance with the stage of implementing land acquisition based on Law No. 2 of 2012?
2. Is the decision of the Samarinda District Court Number 28/Pdt.G/2018/PN Smr in accordance with Law No. 2 of 2012 concerning Land Acquisition for Development for the Public Interest?

METHOD OF RESEARCH

The research of this article uses normative research, namely a search carried out on library materials or secondary data from primary, secondary, and tertiary legal materials. The nature of the research using the descriptive method is the nature of this research, which aims to describe in detail. Sourced from secondary data supported by primary data. Data collection is carried out using literature studies or research documents. The data from this article is analyzed qualitatively. The qualitative method is data collected in the form of literature materials and analyzed by explaining the situation being researched in the field, then reviewing and analyzing the problems that will be faced based on literature theory and law and drawing conclusions comprehensively. Then draw conclusions using deductive logic, namely from general statements to special statements.

RESEARCH RESULT AND DISCUSSION

1. Is the provision of compensation for Mr. Ivanna's land in accordance with the stage of implementing land acquisition based on Law No. 2 of 2012

The injustice of compensation in the decision is not in accordance with the principles regulated in Article 2 of Law Number 2 of 2012 where what is not in accordance are the principles of humanity, the principle of justice, and the principle of welfare. In the decision, Ivanna did not get the appropriate compensation where her land was 5428M² while the compensation was only 842M², therefore the compensation given by the land procurement implementer of the Balikpapan – Samarinda Toll Road was very inconsistent with the humanitarian principle. If seen in the decision, the compensation is far from the sense of justice contained in the sense of the principle of justice, which can be proven by the Respondent's letter No: 249/Peng.T/SMD/II/2018, made on February 22, 2018, which is confidential. Which was given to Mr. Marinus who is the owner of the land next to Ivanna's land, who was given compensation greater than Ivanna Sulistio Thio's land. This is very unfair because Ivanna's compensation is only Rp.270,497/M² where her land has mountain sand that can be sold, while Marinus land of Rp.633,360/M² does not have mountain sand. So in this case, it is very inconsistent with the sense of justice in the principle of justice. In the case of providing compensation for Ivanna's land, it is very inconsistent with the principle of welfare where on Ivanna's land there is mountain sand that can be sold at a

price of Rp.45,000,- / Ret or a truck with a full load of mountain sand is priced at Rp.45,000,- . because Ivanna's land has been built the Balikpapan – Samarinda Toll Road. With the construction of the toll road, the mountain sand can no longer be sold by Ivanna. Because in the future the land used by the toll road will no longer get economic value by selling the mountain sand. From this description, Ivanna has the right to ask for a compensation value of Rp.1,000,000,- / M². Because the price given by the land acquisition implementer is very inconsistent with the Welfare Principle.

Regarding deliberation, which is one of the important activities carried out by the development land procurement committee for the public interest in order to reach an agreement on compensation procedures. Deliberation can be carried out several times in the presence of the implementing members of the land acquisition and competent representatives of all rights owners or authorized parties, according to the dynamics that arise during the deliberation process. Deliberation is carried out to achieve the principle of deliberation and respect for the rights of land owners and owners of everything on the land. In the verdict, Ivanna received compensation that did not go through deliberation first. Which is not in accordance with Article 34 paragraph (3) which states "*The value of compensation based on the assessment of the Appraiser as referred to in paragraph (2) is the basis for deliberation on the determination of Compensation*", and Article 37 paragraphs (1) and (2) states "*The Land Institution conducts deliberations*

with the Entitled Party within a maximum of 30 working days from the results of the assessment from the Appraiser is set aside to the Land Institution to determine the form and/or amount Compensation based on the results of the Compensation assessment based on the results of the Compensation assessment as referred to in Article 34"

Regarding the submission of an objection by Ivanna to the Samarinda District Court within 14 days is the right thing, in accordance with Article 38 paragraph (1) of Law Number 2 of 2012 which states "*in the event that there is no agreement regarding the form and/or amount of Compensation, the entitled party can submit an objection to the Local District Court within a maximum of 14 working days after the deliberation on the determination of compensation as intended in Article 37 paragraph (1)*". In the decision, Ivanna has raised an objection that is still within the time limit determined by the law. And Ivanna has appropriately submitted this objection to the Samarinda District Court, where this has been in accordance with Article 2 of the Provisions of Supreme Court Regulation Number 3 of 2016 which states: "*The court has the authority to examine, adjudicate, decide and resolve objections to the form and/or amount of damages determined based on the deliberation on the determination of damages*".

2. Is the decision of the Samarinda District Court Number 28/Pdt.G/2018/PN Smr in accordance with Law No. 2 of 2012 concerning Land Acquisition for Development for the Public Interest

In the decision Number 28/Pdt.G/2018/PN Smr has been in accordance with Law Number 2 of 2012, where the basis used in the decision is Article 38 paragraph (1) of Law Number 2 of 2012, Article 73 paragraph (1) of the Presidential Regulation of the Republic of Indonesia Number 71 of 2012, and has been in accordance with Article 5 of the Provisions of the Supreme Court Regulation Number 3 of 2016. In the case description, the invitation letter given by the Land Acquisition Implementer to Ivanna on February 15, 2018 regarding the submission of Compensation for the Balikpapan – Samarinda Toll Road with the determination of the value of compensation the results of which were received through a letter sent with Number: 261/Peng.T/SMD/II/2018 on February 22, 2018 which is confidential, regarding the Submission of Compensation Value, based on the letter, the objection case submitted and has been registered in the case register Number: 28/Pdt.G/2018/PN Smr which was submitted on February 27, 2018, then in the event that the objection has not exceeded 14 days, it is in accordance with the provisions of the method of submitting an objection. The submission of the objection is in accordance with Article 3 of the Provisions of the Supreme Court Regulation Number 3 of 2016 which states: *"the objection as referred to in Article 2 is recommended in the form of an application"*. And in this decision, Ivanna has filed an objection to the Compensation for her land.

The next objection raised is regarding the assessor carried out by the Land Acquisition Implementer is very far from the sense of justice

mandated in Article 2 of Law Number 2 of 2012. This is evidenced by the Respondent's letter Number: 249/Peng.T/SMD/II/2018, dated February 22, 2018 regarding the Submission of Compensation Value. The letter was given to Mr. Marinus which is very different from the land belonging to Ivanna Sulistio Thio, even though the land of Marinus is directly adjacent to his land, where the Marinus land has a compensation value of Rp.633,360/M². With this, it can be included in the human principle, the principle of justice and the principle of welfare contained in Article 2 of Law Number 2 of 2012.

In the judge's consideration, it is also appropriate, where the judge rejects the exception submitted by the Respondent objecting where the exception is indeed without legal grounds. Because in the exception the Land Acquisition Executor said that the lawsuit filed was the wrong party, the one who was sued should be KJPP. Meanwhile, according to Article 36 paragraph (2) of Presidential Regulation Number 148 of 2015 states: *"the services of appraisers or public appraisers as referred to in paragraph (1) are held by the chief executive of land procurement"*, based on this description, the Respondent's reason regarding the provisions of Article 36 is not correct because it explains the inventory of objections to the implementation of the land procurement.

In the decision, the Samarinda District Court has fulfilled the determination of the value of compensation regulated in Article 38 paragraph (2) of Law Number 2 of 2012. The Samarinda District Court has fulfilled this article where it can be proven that the calculation of the

reasonable Compensation Value for Ivanna's land for each square meter is Rp.873,711,- so that the value of compensation for Ivanna's land is described as follows: Persil Number 10a with an area of 347 M² X Rp. 873,711 = Rp.298,809,162,- , Persil Number 5 with an area of 6,575 M² X Rp.873,711 = Rp.5,744,649,825,- and the value of the plant = Rp.1,929,008,- with the total amount of compensation value of Rp.6,045,387,995,- . Therefore, the decision has been appropriate. Because it has paid attention to the provisions of Supreme Court Regulation Number 3 of 2016 concerning procedures for submitting objections and depositing compensation to the District Court in the Procurement of land for development for the public interest and the provisions of other legal provisions such as Law Number 2 of 2012 and Presidential Regulation Number 71 of 2012.

The Samarinda District Court which adjudicated the objection case in the District Court gave a ruling in the case in this decision, between the applicants, namely Ivanna is the legal owner of the land located at Simpang Pasir Jalan Pramuka, RT.001, Simpang Pasir Village, Palaran District, Samarinda City, East Kalimantan Province, with a length of $\pm U : 180 \text{ M} / \pm S : 165 \text{ M}$ and a width of $\pm T : 120 \text{ M} / \pm B : 175 \text{ M}$ which borders the North: Kadir/Karyono which is now a freeway, to the South: Sungkono, to the East: Marsono which now belongs to Marinus and to the West: Frediyanto. The land came from the sale and purchase between Yono and Mrs. Gunawan Gunawati as the biological mother of Ivanna Sulistio Thio, the purchase was known by the

head of Simpang Pasir Village on March 18, 1993.

The land has been changed from the first party to the name of Ivanna and has been registered in Palaran sub-district according to the Certificate of Relinquishment of Land Rights Number: 898/SKMHT/PAL/IX/2001 on September 24, 2001 and along with the Minutes of Land/Border Inspection in the field applied by Ivanna on September 27, 2001. The letters have been lost and the loss is reported directly to the Police according to the receipt of the notification of loss/goods and the letter number: STPL/3804/VII/2017/SPKT.

Previously, Ivanna had also reported to the Simpang Pasir Village Office on July 4, 2017 and a Certificate of Loss Number: 337/32/302.05 was made, and then on the basis of the letter, Simpang Pasir Village had issued a Non-Dispute Statement Letter on July 3, 2017.

Basically, there is no objection to Ivanna's land being hit by the toll road, which is the basis for her objection is to the value of the replacement because the replacement price remains in the sense of Article 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest is completely unfair. In determining the value of compensation made by the Respondent for Ivanna's land with the amount of Compensation Value only amounting to Rp.270,497/M², as referred to in the letter given Number 261/Peng.T/SMD/II/2018, made on February 22, 2018 which is confidential, regarding the submission of the value of compensation. Regarding the value of compensation,

Ivanna objected because the assessor carried out by the Land Acquisition Implementer was unfair to his land, this can be proven by the Compensation Value of the land belonging to Mr. Marinus which is different from the land owned by Ivanna Sulistio Thio, where the land belonging to Marinus the Compensation Value is Rp.633,360/M2, this is known by Ivanna based on the letter of the Respondent No. 249/Peng.T/SMD/II/2018, which was made on February 22, 2018, which is confidential, regarding the submission of the value of compensation, which was shown to Mr. Marinus. It is very reasonable and fair for Ivanna to object to the value of compensation for her land and request the Chairman/Judge of the Samarinda District Court to review the application and decide to determine the amount of compensation for Ivanna's land of Rp.1,000,000/M2.

When deciding on public use, agencies that require land apply for land acquisition in accordance with Article 27 of Law 2 of 2012. The Minister will carry out land procurement based on Presidential Decree Number 148 of 2015, and will be carried out by the Head of the BPN Regional Office as the Chief Executive of Land Acquisition. Previously, according to the provisions of Article 49 paragraph (1) of Presidential Regulation No.71 of 2012, the implementation of land acquisition was organized by the Head of BPN. Then in Presidential Regulation No. 148 of 2015 in Article II stipulates that all abbreviations of "BPN" as referred to

in Presidential Regulation No. 71 of 2012 and its amended regulations must be interpreted as "ministries" and all mentions of "Head of BPN" must be interpreted as "Minister".

The implementation of land acquisition will be determined within up to 2 working days from the receipt of the submission for the implementation of land acquisition in accordance with Article 49 of Presidential Regulation number 71 of 2012 Juncto Presidential Regulation number 148 of 2015. The Head of the BPN Regional Office appoints the Head of the Land Office as the person in charge of land procurement, taking into account efficiency, effectiveness, geographical conditions, and human resources, a maximum of 2 working days from the date the application is received, it can be in the case of land procurement, the establishment of the implementation of land acquisition within a maximum of 2 working days from the receipt of the assignment,

The decision of the Samarinda District Court Number 28/Pdt.G/2018/PN Smr is in accordance with Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, because the decision uses Article 38 paragraph (1) of Law Number 2 of 2012 which states that "in the event that there is no agreement regarding the form and/or amount of Compensation, the entitled party may submit an objection to the Local District Court within a maximum of 14 working days after deliberation on the determination of compensation as referred to in Article 37 paragraph (1)", has fulfilled Article 73 paragraph (1) of the Presidential Regulation of the

Republic of Indonesia Number 71 of 2012 which states: "in the event that there is no agreement regarding the form and/or amount of compensation, the Entitled Party may submit an objection to the Local District Court within a maximum of 14 working days after the signing of the Minutes of the results of the Deliberation as referred to in Article 72 paragraph (3)". And it is in accordance with Article 5 of the Provisions of the Supreme Court Regulation Number 3 of 2016 which states: "Objections as referred to in Article 3 are submitted no later than 14 days after the results of the Deliberation on the determination of Compensation".

In the case description, the invitation letter given by the Land Acquisition Implementer to Ivanna on February 15, 2018 regarding the submission of Compensation for the Balikpapan – Samarinda Toll Road with the determination of the value of compensation the results of which were received through a letter sent with Number: 261/Peng.T/SMD/II/2018 on February 22, 2018 which is confidential, regarding the Submission of Compensation Value, based on the letter, the objection case submitted and has been registered in the case register Number: 28/Pdt.G/2018/PN Smr which was submitted on February 27, 2018, then in the event that the objection has not exceeded 14 days, it is in accordance with the provisions of the method of submitting an objection. The submission of the objection is in accordance with Article 3 of the Provisions of the Supreme Court Regulation Number 3 of 2016 which states: "the objection as referred to in

Article 2 is recommended in the form of an application". And in this decision, Ivanna has filed an objection to the Compensation for her land. The next objection raised is that the assessor carried out by the Land Acquisition Implementer is very far from the sense of justice mandated in Article 2 of Law Number 2 of 2012. This is evidenced in the Respondent's letter Number: 249/Peng.T/SMD/II/2018, dated February 22, 2018 regarding the Submission of Compensation Value.

CONCLUSION

In decision Number 28/Pdt.G/2018/PN Smr, Ivanna did not get appropriate compensation where her land was 5428M² while the compensation was only 842M², therefore the compensation given by the land procurement implementer of the Balikpapan – Samarinda Toll Road was very inconsistent with the principle of humanity. Decision Number 28/Pdt.G/2018/PN Smr has been in accordance with Law Number 2 of 2012, an invitation letter given by the Land Acquisition Implementer to Ivanna on February 15, 2018 regarding the submission of Compensation for the Balikpapan – Samarinda Toll Road with the determination of the value of compensation whose results were received through a letter sent with Number: 261/Peng.T/SMD/II/2018 on February 22, 2018 which is confidential.

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