

Land Acquisition Plan as The Object of Dispute In State Administrative Case

Elfran Bima Muttaqin¹, Tity Sundariarti Slamet²
{elfran@ukipaulus.ac.id}

Universitas Kristen Indonesia Paulus, Makassar, Indonesia

Abstract. This research begins by conducting a study of Law no. 2 of 2012 concerning Land Procurement for Development in the Public Interest and Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2016 concerning Guidelines for Proceeding in Disputes on Determining Development Locations for Public Interest at the State Administrative Court, basically the land acquisition plan is part of a government instrument that can be sued if it has the potential to cause harm to parties who feel that their interests have been harmed. This study uses a juridical normative research method. The results of the study indicate that the land acquisition plan in the form of location determination is the object of a state administrative dispute, while the parties who feel that their interests have been harmed consist of individuals or civil law entities and/or customary law communities.

Keywords: Land Acquisition Plan, object of dispute, State Administration

1 Introduction

Every nation has a state goal, including Indonesia as a state based on law. Promoting public welfare is a constitutional mandate which is the legal basis for the administration of public welfare and as one of the goals to be achieved by the state [1]. To achieve these goals, of course, the government is equipped with various instruments as vehicles or tools that will be used to achieve these goals, all of which are preceded by prior planning [2].

In development planning for the public interest, land becomes a very crucial part in the development sector, therefore in every development plan program, the government always tries to get land that will be used to realize the implementation of development for the public interest by always paying attention to the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony, which are regulated in Law no. 2 of 2012 concerning Land Acquisition for Development in the Public Interest.[3] In addition, the government as the authorized party in the context of land acquisition even though it is based on; [4]

- a. Regional Spatial Plan;
- b. National/Regional Development Plans;
- c. The strategic plan; and
- d. Work Plan for each agency that requires land.

The land to be used for development includes the following [5] ;

a. national defense and security; b. public roads, toll roads, tunnels, railway lines, railway stations, and railway operating facilities; e. reservoirs, dams, weirs, irrigation, drinking water canals, sewers and sanitation, and other irrigation structures; d. ports, airports, and terminals; e. oil, gas, and geothermal infrastructure; f. power generation, transmission, substation, network, and distribution; g. Government telecommunications and information networks; h. place for waste disposal and processing; i. Government/Regional Government hospitals; J. public safety facilities; k. Public burial places of the Government/Regional Government; l. social facilities, public facilities, and public green open spaces; m. eagar alarm and eagar culture; n. government office/regional/village government; o. structuring of completely urban settlements and/or land consolidation, as well as housing for low-income communities with rental status; p. Government/Local Government education or school infrastructure; q. sports infrastructure of the Government/Regional Government; and r. public market and public parking lot.

Therefore, in general, land that is controlled or owned by the community, which is the object of the land acquisition plan, even though it is released first before carrying out development by providing a number of compensations with proper and fair compensation to the entitled party. However, what if the public interest is not balanced with the interests of the community affected by the land acquisition plan.

Development for the public interest sometimes sacrifices the interests of the local community, where the benefits of development are not as great as other benefits or benefits obtained by local residents. This of course has the potential to cause harm to the community concerned. Therefore, community members who feel that their interests have been harmed can file a lawsuit with the State Administrative Court to fight for their rights and interests in order to stop or request cancellations related to the government's land acquisition plan [6].

However, whether community members in groups can file a lawsuit if there is a common interest, because in Law no. 5 of 1986 concerning the State Administrative Court, provides the right for any individual who feels that his interests have been harmed by a state administrative decision to file a lawsuit. It's just that in Law no. 30 of 2014 concerning Government Administration, Article 87 letter f concerns decisions that apply to community members, providing opportunities and possibilities for community members who have the same interest to be able to file a collective lawsuit against decisions that are considered detrimental and/or have the potential to cause harm.

2 Research Methods

The writing of this article uses a normative juridical research method [7] using the case approach method and the provisions of the laws and regulations related to this title. The data used in this paper includes primary legal materials including Law no. 5 of 1986 concerning the State Administrative Court and its amendments as well as the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2016 concerning Guidelines for Proceeding in Disputes on Determining Development Locations for Public Interest in the State Administrative Court, and secondary legal materials including literature in the form of books, journals, and related articles. The author uses a prescriptive qualitative analysis method referring to the provisions of applicable legal norms and describes the phenomenon supported by the relevant theories in this study.

3 Results and Discussion

3.1 Land Acquisition Plan as Object of State Administrative Dispute

Planning is divided into three categories [8] : first; informative planning, namely the estimation design regarding community development as outlined in certain policy alternatives, such a plan has no legal consequences for citizens, secondly; indicative planning are plans that contain policies that will be pursued and indicate that these policies will be implemented, such planning has indirect legal consequences, third; operational or normative planning is a plan consisting of preparations, agreements, and decisions. Spatial plans, urban development plans, land acquisition plans, allotment plans, subsidy plans. Among the plans mentioned above, the land acquisition plan is an important part to support the development process in the public interest [9], this plan has direct legal consequences for both the government and the community. according to J.B.J.M. ten Berge in a plan contains elements such as written, decision or action, by a government organ, intended for the future, often in the form of actions or decisions, having a dissimilar nature, various, related, often programmatically, for a certain period of time [10].

Regarding land acquisition plans, it is part of operational or normative planning that has direct legal consequences for residents and the government. Land acquisition planning is manifested in the form of stipulation, namely the determination of the location of development for the Public Interest which is determined by the decision of the governor/regent/mayor which is used as a permit for Land Procurement, changes in land use, and the transfer of Land Rights in Land Procurement for development in the Public Interest. , as referred to in Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning Implementation of Land Procurement for Development in the Public Interest [11].

The development plan as well as the land acquisition plan by the relevant agency must submit an application to obtain a stipulation from the Governor, if within 14 days the Governor does not issue a stipulation on land acquisition for the purpose of developing a National Strategic Project, it is urgent and/or development that cannot be relocated, the Agency Those in need of Land may submit an application for Determination of Location to the Minister, namely the minister who carries out government affairs in the fields of agrarian, land and spatial planning, then the Minister within 7 days of receipt of the application may issue a determination [12].

Due to the fact that a land acquisition plan is made in the form of a decision, the land acquisition plan in this form can be challenged by the community whose demands are that the stipulation be declared null and void, if the stipulation is deemed detrimental to the interests of local residents whose land is the object of land acquisition. for development [13].

3.2 Stakeholders

The authority to adjudicate the case becomes the absolute competence of the State Administrative Court, this is confirmed through the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2016 concerning Guidelines for Proceeding in Disputes on Determining Development Locations for Public Interest in the State Administrative Court, in Article 2 it is stated that the Court is authorized examine, decide, and resolve Disputes on the Determination of Development Locations for Public Interest. In this case, the plaintiff is the Entitled Party consisting of individuals, legal entities, social entities, religious bodies, or government agencies that own or control the Land Procurement Object in accordance with the provisions of the Laws and Regulations, which include: a. Holders of land rights; b. Management holder; c. Nadzir for waqf land; d. Owners of ex-customary land; e. Indigenous peoples; f. Parties who control state land in good faith; g. Holders of basic land tenure; and/or

h. Owner of buildings, plants, or other objects related to land [14]. Based on these provisions, it is possible to file a lawsuit collectively if the identity of the plaintiff concerned is a representative of the customary law community, while the provisions for groups outside of that are still unclear so that the position of the Plaintiff is still guided by the Law on the State Administrative Court, namely the holder rights as individuals and the Government Administration Act where the position of the right holder as a community is still unclear whether only as individuals or can be representatives of a group with the same interests.

While the Defendant is the Governor who issues the determination of the location or the Regent/Mayor who gets a delegation from the Governor to issue the determination of the location. The examination of disputes regarding the determination of development locations for the public interest is carried out without going through a dismissal event, namely the examination or examination of the lawsuit by the chairman of the state administrative court, for a lawsuit that is considered complete or has been perfected based on the judge's instructions, it can be continued for examination of the main case, but if this is not the case then the chairman of the court will issue a determination accompanied by considerations that the proposed lawsuit is declared unacceptable or unfounded, besides that it is not possible to request a postponement of the implementation of the object of dispute, even though there is a reason from the plaintiff that there is a very urgent interest.

4 Conclusion

- a. The land acquisition plan is made in the form of a decision so that the land acquisition plan in this form can be sued by the community as an object of a state administrative dispute, the content of which is that the stipulation is declared null and void, if the stipulation is deemed detrimental to the interests of local residents whose land is the object land acquisition for development in the public interest.
- b. A lawsuit can be filed collectively if the identity of the plaintiff in question is a representative of the customary law community, while the provisions for groups outside of that are still unclear so that the position of the Plaintiff is still guided by the Law on the State Administrative Court, namely the holder of rights as individuals and the Act. -Law on Government Administration where the position of the right holder as a community is only as an individual or can be a representative of a group with the same interests.

Acknowledgment

The author would like to state appreciation to the Universitas Kristen Indonesia Paulus (UKI Paulus) in Makassar, Indonesia for supporting to publish this article.

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- [9] 1945 Constitution of the Republic of Indonesia
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- [11] Law No. 5 of 1986 concerning the State Administrative Court
- [12] Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning State Administrative Courts
- [13] Law No. 51 of 2009 concerning the second amendment to Law No. 5 of 1986 concerning the Administrative Court
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