

A Critical Examination of The Legal Protection Available to Those Who Hold Land Rights

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Abstract

The objective of this research is to analyse the legal protection of holders of land rights in development. The research employs a normative legal research method, utilising data sourced from literature studies, including laws and regulations on mining, as well as literature, such as books related to the subject matter. First, it is the duty of the State to protect holders of land rights certificates due to the aforementioned individuals' good faith and the state's decision to issue certificates as proof of land titles. Such certificates should not be canceled by the state without compensation. Second, in instances where land is required for the implementation of public development, the acquisition process must be conducted expeditiously and in a transparent manner, while maintaining due consideration for the protection of legitimate rights to land. The issuance of Presidential Regulation No. 36 of 2005, which has been amended by Presidential Regulation No. 65 of 2006, is founded on several legal instruments. This research leads to the conclusion that the government's objective is to provide a form of protection and guarantee of legal certainty over land ownership for individuals. This is achieved through the registration of land rights as outlined in Article 19, Paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. The form of legal protection for people's rights to land in development is to provide legal protection for holders of land rights to their land.

I. Introduction

The concept of land is fundamental to the survival of humanity, yet its scarcity and limitation can be a consequence of the rapid population expansion. Furthermore, the vulnerability of land makes it prone to social crises when there is a lack of consensus regarding its use. The legal community, as a collective entity with a vested interest in its land, is intimately tied to the land. This bond, shaped by a religious and mystical lens, gives rise to the legal community's right and responsibility to possess, control, and utilize the land for various purposes, including harvesting plants and hunting. This right is commonly known as hak pertuanan or hak ulayat, respectively. For the communities living in these lands, land is a crucial component of their lives. The State, in regulating the lands within its territory, plays an essential role in achieving the government's objectives. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia was enacted by Law Number 5 of 1960 concerning Basic Agrarian Principles, or what is often referred to by the abbreviation UUPA. One of the primary objectives of the UUPA is to establish the legal framework for providing certainty regarding land rights. This legal certainty encompasses three key aspects, the legal subject of land (whether an individual or legal entity), the location, boundaries, and size/area of land, and the status of land rights, which serves as the foundation for relationships between land and individuals or legal entities.

As one of the principal objectives of the UUPA, the concept of legal certainty is further delineated in Article 19 paragraph (1) of the UUPA, . Article 19 paragraph (1) of the UUPA stipulates that: In order to guarantee legal certainty, the Government shall conduct registration throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulation. The provisions of Article 19 paragraph (1) of the UUPA are designed for the government to undertake land registration throughout the territory of the Republic of Indonesia with the objective of ensuring legal certainty for holders of land rights in accordance with the provisions of Government Regulation No. 24/1997 on Land Registration.

The reduction in land available for cultivation and the resulting social imbalances, caused by the uneven economic situation of the community and further exacerbated by the condition of poorly planned land distribution, have the potential to give rise to significant challenges in the political, economic, and social spheres.

Land occupies a pivotal role in human life, as it is a fundamental source of sustenance for humankind. "Land is regarded as a tangible entity with an enduring nature that may be retained for future generations. Currently, the

availability of "free" State-owned land that is not occupied or owned by individuals or other interested parties is exceedingly limited." The acquisition of people's lands for the purpose of development or the implementation of public interests can be carried out via three distinct approaches. The aforementioned three methods include, among others, the relinquishment or surrender of land rights (land acquisition), revocation of land rights, and the direct acquisition of land (sale and purchase, exchange, or other means agreed upon by both parties voluntarily). The government's acquisition of land for various development interests, especially those of the public interest, may be carried out through deliberation between the parties that require land and the holders of land rights whose land is needed for development activities. The negotiation process for the form and amount of compensation is frequently prolonged due to the absence of consensus among the parties involved regarding the terms of the agreement.

It is of great importance to provide legal protection for those who hold land rights, as under certain conditions they may be required to surrender their land to the government. This is on the grounds that the public interest is the interest of the nation, state, and society, which must be realized by the government and used to the greatest extent for the prosperity of the people.

Land acquisition is intimately connected to the acquisition or relinquishment of land rights essential for both public and private interests, a process that frequently gives rise to societal challenges. This is largely due to the coexistence of numerous conflicting interests among various stakeholders.

In accordance with the 1945 Constitution of the Republic of Indonesia (UUD 1945), the strategic importance of land is explicitly delineated in Article 33 Paragraph (3), which stipulates that "the earth and water and the natural resources therein shall be under control of the state, and shall be used in the greatest possible extent for the prosperity of the people." Article 4 of Law No. 5 of 1960 Concerning Basic Agrarian Regulations (UUPA) stipulates that, based on state control, various kinds of rights over the surface of the earth exist. The rights in question include land ownership. The rights provided by the UUPA allow individuals to use and utilize land. However, if these rights are limited to the utilization of land as the earth's surface, they will be of little value.

In the current era, marked by globalization and economic liberalization, the role of land in supporting various purposes will expand. This expansion encompasses both residential and commercial uses. Consequently, the necessity for legal certainty in the land sector will also increase. Legal certainty in the land sector necessitates the availability of comprehensive, written, and clear legal instruments that are consistently implemented in accordance with their original intent and the spirit of their provisions.

Furthermore, in order to address the diverse real-world scenarios, it is essential to organize land registration activities that facilitate straightforward demonstration of the rights pertaining to the land in question by the holders of these rights, while also providing interested parties—including prospective buyers and prospective creditors—with the requisite information regarding the aforementioned land, which is subject to the implementation of legal proceedings. Moreover, these activities enable governmental entities to implement effective land-related policies.

Land acquisition law is dynamic in order to realize justice for the parties, and as such, the definition of "land acquisition" must reflect this value of justice (Sumardjono, 2015: 2-3). Presidential Decree No. 55 of 1993 on Land Acquisition for the Implementation of Development for the Public Interest was the inaugural regulation to utilize the term "land acquisition." Nevertheless, Article 1, point 3 of Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest defines land acquisition as the revocation of land rights. This definition has been the subject of criticism from various groups, who have argued that the term "revocation of rights" implies that individuals are obliged to relinquish their land rights for the public interest (Sumardjono, 2015: 5-7). Prior to 2012, the provisions regarding land acquisition were set out in Law No. 2/2012 on Land Acquisition for Development in the Public Interest, together with the associated implementing regulations. In essence, land acquisition is an activity undertaken for the purpose of providing land for development, accompanied by the provision of compensation to parties in possession of the land and/or those exercising control over it.

In Rahardjo (2021), Fitzgerald posits that legal protection theory finds its origins in natural law. According to the natural law school of thought, law originates from God and is universal and eternal. Furthermore, there is no distinction between law and morality in this perspective. Natural law adherents maintain that law and morals represent fundamental principles that guide and inform human life internally and externally.

According to Fitzgerald, Salmond's legal protection theory aims to integrate and coordinate interests in society. This is because the interests of a party can only receive protection if the interests of other parties are limited. Law has the most substantial influence on determining the interests that need to be limited and protected, as it is one of the functions of law to regulate human rights and interests as legal subjects.

The principle of legal protection against government actions is derived from the concept of recognition and protection of human rights. This concept is based on limiting the interests and fulfilling the obligations of society and government. It

can be argued that everyone is entitled to legal protection from the government, as all legal relationships must be protected by law. In Indonesia, the principle of legal protection can be considered a manifestation of the recognition and protection of human dignity, in accordance with the principles of the rule of law as set forth in Pancasila. The objective of legal protection is to ensure the recognition and protection of human rights, as both individual and social beings, within a unitary state that upholds kinship for the benefit of the people.

2. Research Method

The research design represents the pattern or form that is intended to be realized by the research. The research design has several applications; it provides the researcher with a more precise grasp of how to conduct the research; it delineates the parameters of the research in terms of its objectives; and it provides a comprehensive understanding of the steps that need to be undertaken and offers insights into the potential challenges encountered by other researchers in similar endeavors. The present study employs a descriptive qualitative research methodology.

This research approach entails the description and analysis of a particular phenomenon. Descriptive research, as elucidated by Sugiyono (2014), involves the systematic exploration and assessment of independent variables' values, whether singular or multiple, without engaging in comparative analyses or establishing connections with other. (Sugiyono., 2014) According to Sutjana and Ibrahim, descriptive research is research that seeks to describe the characteristics of a given phenomenon in the present moment. The research method we have employed is that of literature review, which entails conducting research using existing literature. This may include books, notes, and research reports from previous studies.

The research conducted is therefore field literature research or library research, where this research is carried out using existing literature in libraries such as books, journals, notes, and research notes. In order for researchers to conduct library research effectively, it is essential to have an understanding of the available library resources, to employ appropriate research methods, and to reach conclusions in an organized manner. The researchers gathers information from sources that are relevant to a particular topic, and then analyzes that data to address the existing problems in an appropriate and systematic manner.

This research employs a qualitative descriptive methodology, which can be classified as normative-empirical legal research or literature. Sugiyono (2019) posits that qualitative research is a method employed to examine natural object conditions, wherein the researcher assumes a central role. (Sugiyono, 2019).

Nazir (2018) asserts that descriptive research represents a form of examination that pertains to the status of human groups, objects, conditions, systems of thought, or current events. The objective of descriptive research is to provide a systematic and factual description of the facts under study. (Nazir., 2018)

The process of data collection in literary studies encompasses a number of essential stages. These stages are designed to facilitate the acquisition of information from various sources, including printed books, records and research reports.

3. Results and Discussion

Indonesia, as a developing country, is distinguished by a vast expanse of land, which presents an opportunity for the construction of an extensive and aesthetically pleasing infrastructure. In order for this ambitious undertaking to be realized, the state must engage in a process of consultation with its citizens, who are entitled to a degree of ownership rights over their land, for the greater good of the state. The Indonesian people are stewards of the land, which was bestowed upon them by God Almighty for the benefit of their community. The land has intrinsic value beyond mere economic value, as it is a fundamental element in the lives of agrarian societies. It also represents an important step in the transition from agrarian to industrial agrarian development.

Various existing natural resources, including soil, water, and minerals, can be utilized for the advancement of human interests. However, the limitations of these resources, including quantity and quality, must be acknowledged. It is imperative that various activities in different sectors are carried out in a manner that is consistent with the objective of community welfare. In addition to this, it is of the utmost importance to be cognizant of the limitations of both existing resources and their carrying capacity in order to ensure the sustainability of any development initiatives.

Nevertheless, Presidential Regulation No. 71/2012 on the Implementation of Land Acquisition for Development in the Public Interest (hereinafter referred to as "Presidential Regulation No. 71/2012") was enacted on August 14, 2012. This regulation is an implementing measure of Law No. 2/2012 on Land Acquisition for Development in the Public Interest, which was passed on January 14, 2012. An effort is being made to improve the legal regulation of land acquisitions. With the enactment of Presidential Regulation No. 65/2006, which amended Presidential Regulation No. 36/2005 on Land Acquisition for the Implementation of Development for the Public Interest, the government seeks to further improve the principles of respect for legitimate land rights and legal. Nevertheless, in light of concerns regarding the alignment between the Presidential Regulation and contemporary community values, as well as the imperative for greater transparency and accountability in land acquisition for development projects of public interest, the necessity arises for the

formulation of clear and consistent regulations governing land acquisition processes. Such regulations must prioritise humanitarian principles, democratic values and a fair distribution of benefits.

The principles set forth by the Basic Agrarian Law serve as a legal foundation for the acquisition of land, establishing that for the sake of public interest, including the interests of the nation, state, and people, land rights can be revoked. This is to be achieved through the payment of fair and appropriate compensation in accordance with the stipulations outlined in the pertinent legislation. It is possible for the rights to land to be relinquished or surrendered for the benefit of either the public interest or private companies. Such release or surrender represents a process by which the legal relationship between the landowner and the land in question is dissolved. The release of land rights is therefore a specific type of land acquisition activity that is based on the principle of respect for land rights based on Sugianto and Leliya (2017). (Leliya, 2017)

Indonesia, a developing country, requires infrastructure development to enhance the well-being of its people. Every government initiative is contingent upon the availability of land as a foundation for its operations. Consequently, a policy framework for land acquisition for development is essential (Reni Febriani 2021). Such institutions pursue land acquisition in accordance with the regulations stipulated by laws and regulations, namely Presidential Regulation No. 36 of 2005 Regarding land acquisition for public interest-driven development, the government is focused on refining the principles of respecting legitimate land rights and establishing legal certainty, thereby fostering smoother implementation of projects aimed at s, as amended by Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 Regarding land acquisition for public interest-driven development, the government is focused on refining the principles of respecting legitimate land rights and establishing legal certainty, thereby fostering smoother implementation of projects aimed at s. The establishment and implementation of land acquisition regulations serves as a legal foundation for the government to obtain land for the realization of development projects in the public interest and provides a guarantee for land rights holders to receive appropriate compensation, thereby enhancing the quality of life and socio-economic conditions prior to the occurrence of such acquisitions.

In the deliberation process, it is essential to ensure that there is a constructive dialogue between the affected community and those who require land facilitated by the Land Agency in an atmosphere that is conducive and free from pressure (Sudana et al., 2022). All pertinent information pertaining to development plans, their anticipated impact and benefit to the community, the form and extent of proposed compensation, the rights and means by which the community may submit objections, and the manner in which such objections should be submitted, must be conveyed transparently to affected communities.

In addition to the objective of land acquisition, which is the pursuit of public interest development, ensuring that the rightful party is provided with fair and just compensation represents a paramount concern in the procurement process.

The definition of deliberation as outlined in Article 1, Paragraph (10) of Presidential Regulation No. 36/2006 is as follows: In the context of land acquisition, deliberation is defined as an ongoing process of listening to each other, offering and receiving opinions, and striving to reach an agreement on the form and amount of compensation and related matters. This occurs between parties who own land, buildings, or other objects related to land and individuals or entities requiring land. The objective is to achieve equality and voluntariness in these negotiations, ensuring that all parties involved have an equal say in the matter.

In the initial deliberation, there is an element of voluntariness. The second element is an attitude of mutual acceptance of opinions or desires based on voluntariness between the land rights holders and those who need land. The third element of deliberation is to obtain an agreement on the form and amount of compensation in land acquisition for the public interest. This is in accordance with Article 1, paragraph (6) of Presidential Regulation No. 36/2005, which states that land acquisition is carried out via the release or surrender of land rights. The aforementioned release or surrender of land rights constitutes an activity designed to release the legal relationship between the holder of land rights and the land they control, as well as the land in question, in exchange for the provision of compensation based on deliberation. In light of the definition of releasing or surrendering land rights, it can be argued that the active party is the holder of the land rights. This is in accordance with the view expressed by Sigarlaki, Lasut, and Lembong (2023), who state that the legal relationship of the land rights is released. (Sigarlaki, Belinda, Roosie Lasut, 2023)

The concept of compensation is intended to compensate the land rights holder for any loss incurred as a result of the transfer of their rights. The form of compensation provided must not merely compensate for physical losses but must also take account of any non-physical compensation, such as the restoration of the socio-economic conditions of the people who are relocated to a new location (Reni Febriani 2021). The provision of compensation should not have a detrimental impact on land rights holders who lose their rights. Rather, it should have a positive effect and ensure that their quality of life remains at, or at least approaches, the level it was prior to the development activities. Presidential Regulation No. 36/2005, Article 12, regulates the compensation that may be granted for rights to land, buildings, plants, and other objects related to the land.

As stated in Article 18 of the UUPA, the rights of landowners can be revoked in the interest of the public, the state, and the common interests of the people, with appropriate compensation and in accordance with established legal procedures. (Mulyanti, 2003)

Law No. 2 of 2012 has established the obligations of communities with respect to the implementation of land acquisition for developmental purposes in the public interest, as follows.

Article 5 of the aforementioned law stipulates two circumstances under which landowners must relinquish their land rights: (1) if compensation is provided in accordance with the aforementioned article, and (2) in the event that a court decision has obtained permanent legal force.

Secondly, it is incumbent upon those with entitlement to comply with the stipulations of this legislation as outlined in Article 8, which states: those with entitlement to the object of land acquisition for the public interest must adhere to the provisions of this legislation.

Article 41, paragraph 2 stipulates that, upon receipt of compensation, the entitled party shall relinquish their land rights and submit proof of ownership to the land agency.

Obligation to Comply With Provisions of Land Acquisition for Building in the Public Interest. As stipulated in Article 56, which determines: In implementing land acquisition for the public interest, all parties are obliged to comply with the provisions of land acquisition for development in the public interest. Based on the aforementioned provisions, the obligations of right holders and members of the public are as follows:

Firstly, it is the duty of the landholder to relinquish their rights to the land in question in exchange for the payment of compensation. Secondly, it is the duty of all individuals to comply with the pertinent legislation and regulations. Then, it is the obligation of the landowner to relinquish their land rights and to submit proof of ownership to the relevant land agency in the event that compensation has been provided. Also, there is an obligation to comply with the stipulations set forth in the land acquisition for building in the public interest.

4. Conclusion

According to the relevant regulations, the government is empowered to organize land acquisition for the purpose of promoting public benefit through the implementation of acquisition measures by the Minister responsible for agrarian and spatial planning. In the Indonesian government's policy framework, land acquisition is defined in accordance with two fundamental principles. The first is that such acquisition must be carried out exclusively for the sake of public interest, and the second is that those who possess land rights must be compensated in accordance with established procedures. In essence, land acquisition is the act of the Indonesian government taking possession of land for the public interest in a way that is based on the assumption that an agreement on

the relinquishment of rights and the provision of compensation will be reached before the revocation of the right takes effect. In the process of implementing the land acquisition function, two outcomes are anticipated. These are the acquisition of land that has been designated by the government, and land belonging to other parties. Land acquisition for the construction of public facilities is a form of land acquisition carried out by the government for the development of the public interest. The process of land acquisition is comprised of three distinct stages: planning, preparation, and implementation. In each of these stages, the local government serves as the executor of land acquisition, the ministry that oversees land-related affairs, the land rights owners, and the affected communities are all involved.

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