

The Concept of Justice in Compensation Arrangements to Realize the Establishment of National Law

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Abstract

Providing compensation is an effort to achieve justice for parties who experience losses in various legal contexts, including in data defense, criminal and administrative matters. The concept of justice in providing compensation in Indonesia needs to be understood as part of efforts to establish national law that reflects community values and national interests. Justice is not only limited to providing rights to the injured party, but also includes providing balanced sanctions to the party who caused the loss. The existence of clear and consistent regulations regarding compensation will increase public confidence in the national legal system and prevent legal violations. The formation of national law based on the concept of justice in providing compensation also needs to take into account universal principles and relevant norms. This effort includes synchronizing regulations between legal sectors and strengthening the role of judicial institutions in providing fair compensation. Thus, it is hoped that regulations regarding fair compensation can support the formation of national laws that are responsive, progressive and fair for all Indonesian people

1. Introduction

The concept of justice is a fundamental basis in every legal system, especially in the regulation of compensation which aims to provide protection and restoration of rights for parties who experience losses. In Indonesia, justice in providing compensation is an important element for the formation of national law that is fair to all Indonesian people. In human life there is an ethical demand to form a good life together, in order to achieve this life together, guidelines are needed in forming laws so that they are in accordance with life's ideals and life needs.¹ Before explaining the concept of justice in realizing legal certainty in the regulation of providing compensation for land acquisition for the public interest, we will first explain the concept of justice in the formation of national law as the basis for realizing legislative regulations based on the philosophy of life of the Indonesian nation, namely Pancasila. This begins with the principle of Indonesia as a rule of law state, which states that the 1945 Constitution is the basic law, placing law in a decisive position in the Indonesian constitutional system. From a constitutional point of view, it is no exaggeration to say that the supremacy of law can be considered one of the goals of the Indonesian people in establishing this country. In this connection, the concept of Indonesian statehood. among other things, it determines that government is limited by the provisions contained in the constitution. In countries that have a constitutional system or are based on basic law, there is a hierarchy of legislation, and the basic law is at the top of the pyramid, while other provisions are below the constitution.² This kind of construction is called *stufenbau theory*, according to Hans Kelsen.

Kelsen argued about the unity of legal order in the hierarchical and dynamic process of law formation. As well as viewing this order as a part of several steps of law formation. The existence of law formation by a lower level, namely the formation of laws to which the authority has been delegated, in Kelsen's view depends on the existence of a higher level of law formation, namely the formation of laws by those who delegate authority to the Rada. Finally, regarding the overall application of legal order, it can be returned to something that is rooted in a *grundnorm*. Through this *grundnorm*, there is unity in the dynamic process of law formation and in the legal order that is created by the *grundnorm*.³

2. Research methods

¹ Dian Natalia Sutanto, "Kajian Lembaga Hukum Konsinyasi Ganti Rugi Dan Asas Kesepakatan Dalam Peraturan Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Dalam Mewujudkan Keadilan Bagi Pemegang Hak Atas Tanah," 2013, <http://e-journal.uajy.ac.id/321/>.

² Ismail Sunny, *Mencari Keadilan* (Jakarta: Ghalia Indonesia, 1981).

³ Roeslah Saleh, *Penjabaran Pancasila Ke Dalam UUD 1945 Dalam Perundang-Undangan* (Jakarta: Aksara Baru, 1979).

Legal research is research carried out scientifically, namely a method that aims to study one or several symptoms, by analyzing them and conducting an in-depth examination of these facts, to then try to find a solution to the problems caused by these facts.⁴ The research method used in this article uses a normative juridical approach, namely a legal research method that prioritizes researching library materials or what is called secondary data materials.⁵ Which is research that focuses on the analysis of primary and secondary legal materials to understand the concept of justice in the regulation of providing compensation. This research aims to formulate principles of justice that can be applied in the formation of responsive and just national laws. This method involves a study of relevant laws and regulations, legal theories related to justice, as well as legal literature discussing compensation, thereby producing recommendations that support the creation of a national legal system that is consistent and has integrity.

3. Results and Discussion

The Constitution firmly outlines that one of the characteristics of the Indonesian government system is that it adheres to the principle of the rule of law. Based on the provisions of this constitution, it means that the Indonesian government has limited power, meaning it is limited by the constitution and in its implementation it is not permitted to act arbitrarily.⁶ The principles adopted must be reflected in the practice of state administration. This means that in the practice of administering state administration, the law must control power. This principle is in line with the state's objectives as formulated in the Preamble to the 1945 Constitution, namely that the state protects the entire Indonesian nation and all of Indonesia's blood, promotes general welfare, makes the nation's life intelligent, independence, eternal peace and social justice. Thus, the political order that creates the desired Republic of Indonesia is the Pancasila state as a vehicle for realizing prosperity in a broad sense for all Indonesian people. The policy principles for realizing prosperity are formulated in the articles of the 1945 Constitution which normatively must serve as guidelines for running the government.

Guided by the meaning contained in the Preamble to the 1945 Constitution, that the Republic of Indonesia is a legal state in which all uses of power must always have a legal basis and be within the framework of the boundaries established by law. Apart from that, the state is an organization from all levels of society that organizes itself rationally, to jointly make efforts to

⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2014).

⁵ Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan" 4, no. 42 (2019): 10, <https://doi.org/10.23920/jbmh.v4n1.1>.

⁶ Miriam Budiardjo, *Kapitalisme, Sosialisme, Demokrasi* (Jakarta: Gramedia, 1984).

realize social welfare for all people while still referring to the values of human dignity based on the belief in the Almighty God.⁷

Philipus M. Hadjon concluded that the main characteristics of the Pancasila legal state are:

- a. Harmonious relations between the government and the people are based on the principle of harmony;
- b. Proportional functional relationships between state powers;
- c. The principles of deliberative and judicial dispute resolution are the last means;
- d. Balance between rights and obligations.⁸

The development of Indonesian constitutional law with the amendment of the 1945 Constitution, there have been significant changes to the concept of the Indonesian rule of law, these changes can be seen regarding the mention of Indonesia as a rule of law, which previously before the amendment was only found in the explanation of the 1945 Constitution, then after it was amended the confirmation of Indonesia as a rule of law was included in stated firmly in Article 1 paragraph (3) of the 1945 Constitution, this proves that Indonesia upholds law and social justice for all people. It is impossible to construct justice without drawing it first into legal principles, in this case the regulation of the rights and freedoms of citizens, including their scope and limitations, is the field of study of constitutional law.

The concept of justice enshrined by constitutional law refers to increasing access for as many members of society as possible to be able to play a role and participate in activities that are generally called democracy. The essence is freedom of opinion, freedom of association and organization, equality of position under the law and so on. Thus, legal principles which have justice as their core, in regulating the rights and freedoms of citizens, are more emphasized in the behavior of national and state life. Based on this construction, the concept of the Indonesian legal state emerged, as a modern legal state by giving freedom to citizens to play a role and participate in state activities, characterized by the Indonesian state as a modern legal state consisting of:

1. Recognition and protection of human rights;
2. Pancasila animates every legal regulation and its implementation;
3. The principle of kinship is the starting point of the Indonesian legal state;
4. A judiciary that is free and not influenced by any power;
5. Widespread community participation.

⁷ Bahder Johan Nasution, *Negara Hukum Dan Hak Asasi Manusia*, cetakan ke (Bandung: Mandar Maju, 2014).

⁸ Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia : Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: Bina Ilmu, 1987).

Although there are many views regarding the distinctive features of the Indonesian legal state, the deepest core of the Indonesian legal state can be identified with the submission of the rulers and the people to Indonesian law which was made democratically and based on Pancasila. In such circumstances, according to Padmo Wahjono, law must be the central point in the lives of individuals, communities, nations and states.⁹

Law is a means to achieve ideal goals that all citizens and society want to achieve together. The ideal of law itself, whether institutionalized through the idea of a democratic state, or realized through the idea of a rule of law, is intended to improve the general welfare of society. Even as Indonesia's national ideals, as formulated in the Preamble to the 1945 Constitution, the aim of the Indonesian nation as a state is to protect the entire Indonesian nation and all of Indonesia's blood, promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice. From these goals and ideals, it can be said that Indonesia, as a legal state, functions as a means to realize and achieve the goals of the Indonesian state as outlined in the Preamble and in the body of the 1945 Constitution as basic law. As a basic law, it can realize the formation of a just national law based on the philosophy of the Indonesian nation, namely Pancasila.

Understanding the concept of justice in the formation of national law, according to Bahder Johan Nasution:

It must be translated in relation to Pancasila, then linked to the interests of the Indonesian people as a nation that must experience justice. Therefore, in relation to legal regulations according to the Pancasila concept of justice, these regulations are carried out through legal regulations that are protective of the nation, namely protecting humans passively (negatively) by preventing arbitrary actions, and actively (positively) by creating social conditions, which is humane and allows social processes to take place in a natural way, so that in a fair way every human being gets ample opportunities to develop all their human potential as a whole. Protection in this case means that the sense of justice that exists in the conscience of Indonesian people must be fulfilled. In this sense, the concept of justice according to the views of the Indonesian people is defined as virtue or truth.¹⁰

This understanding is based on the view of the concept of justice which is based on the principles of belief in the Almighty God with the principles of just and civilized humanity. The principles of the Almighty Godhead are the basis

⁹ Padmo Wahjono, *Hukum Nasional Dalam Negara Hukum Pancasila* (Jakarta: Rajawali Press, 1992).

¹⁰ Nasution, *Negara Hukum Dan Hak Asasi Manusia*.

that leads the ideals of the state, which gives soul to efforts to carry out everything that is right, just and good, while the principles of Just and Civilized Humanity are a continuation of the actions and practices of life from the foundation that leads the ideals of the state. A just and civilized basis for humanity must follow, in conjunction with the first basis. Its location cannot be separated because the basis of humanity must be seen as a continuation of the life practice of ideals and charity towards God Almighty. This concept of justice is not only the legal basis for the life of the nation, but also a guideline for implementation and the goals to be achieved by law. Social justice is a decisive step towards achieving a just and prosperous Indonesia.

This is not much different from the understanding that applies to the common law legal system, where there is a paradigm of legal understanding by the man on the street. The understanding referred to is that there is an idea that law is courts, prosecutors, judges, police, court buildings and other legal instruments, which are in concrete form. Padmo Wahjono further stated that:

Justice is a matter of living in relation to other people or a matter of living in a group. Apart from that, discussions about justice must be linked to real life, which is specifically about justice from a legal perspective, with the positive law of the unitary state of the Republic of Indonesia. Where it is added that linking the issue of justice with meaning based on the 1945 Constitution, means that justice must be related to two things in group life in Indonesia, namely; Justice is related to state order; and justice is related to social welfare.¹¹

According to two aspects, the role of law as a tool can be obtained, an image of justice that must be developed. In the reform era, this is closely related to aspects of law formation itself, in the process it is not impossible that the law that is formed is the result of a compromise of the interests of parties in a coalition within community representative institutions. This practice is actually also known as a manifestation of legal politics. Therefore, regarding the legal products that are produced, it is not uncommon for there to be debates about the set of legal regulations, and they have been formed with certain benchmarks, using these parameters it can be identified that a legal set that is formed is not just the realization of the interests of certain groups or individuals. simply. According to Padmo Wahjono, it was stated that:

If the law is only a balance of the interests that exist in society alone, then surely the weak will not be protected, this benchmark is what is meant by the function of law. Thus, law is not just a powerful tool, or a balance of interests in society, even though that may be the case. In relation to justice, the law must have a certain function. In line with this thought, Roscoe

¹¹ Wahjono, *Hukum Nasional Dalam Negara Hukum Pancasila*.

Pound has launched the idea of law as a tool of social engineering, an adage that has become commonplace among philosophers and legal practitioners and has especially had a strong influence in Indonesia, where it has also predicted the possibility of deviation from the function of this law. The ideal is that law can be used as a tool in shaping society, but it is different when this is applied in developing countries. Typically, in developing countries the adage that develops is law as a tool of the ruler, so that at a certain point the deviations that occur are also very widespread. In other words, legislative regulations are the authorities in perpetuating their interests. It is clear that the connection between human rights and law has been explained, that the government, through its legal and regulatory instruments, must guarantee the protection of human rights, which are human rights. It can also be translated as the highest right for each individual in society which is assumed to be equivalent to the sovereignty of the individual concerned. The goal is that these regulatory instruments can fulfill the ideals of justice as a manifestation of people's sovereignty.¹²

The manifestation of popular sovereignty in the formation of national law in the Republic of Indonesia. To be able to understand the concept of the rule of law which is actually adopted by the Indonesian state itself, by looking at the preamble and the articles in the 1945 Constitution as the entire source of Indonesian legal politics. What is the basis for their confirmation as sources of national legal politics is first, the preamble and articles in the 1945 Constitution contain the objectives, foundations, legal ideals and basic norms of the Indonesian state which must be the aim and basis of Indonesian legal politics, including the formation of national law. Second, the preamble and articles in the 1945 Constitution contain distinctive values originating from the views and culture of the Indonesian people inherited by the Indonesian ancestors.¹³

Based on these two parameters, it is clear that the concept adopted by the Indonesian rule of law since the era of independence until now is not a *rechtsstaat* concept or the concept of the rule of law, but forms a new concept of the rule of law which is based on the views and philosophy of the noble life of the Indonesian people. . This new concept is the Pancasila legal state as the crystallization of views and a philosophy of life that is full of the noble ethical and moral values of the Indonesian nation, as stated in the Preamble to the 1945 Constitution and implied in the articles of the 1945 Constitution. It can be understood that Pancasila is a basic norm the Indonesian state (*grundnorm*) and is also the legal ideal of the Indonesian state (*rechtsidee*) as a belief framework that is normative and constitutive. It is normative because it functions as the

¹² Wahjono.

¹³ Arief Hidayat, "Pancasila Sebagai Kaidah Penuntun Dalam Pembentukan Hukum Nasional," *Mahkamah Konstitusi RI*, 2021, https://www.mkri.id/public/content/infoumum/artikel/pdf/artikel_16_04_arief_hidayat.pdf.

ideal basis and prerequisite that underlies every positive law, and it is constitutive because it directs the law to the goals to be achieved. In the next stage, Pancasila became the main fundamental rule of the state "staatsfundamentalnorn" by being included in the Preamble to the 1945 Constitution (UUD 1945). The concept of the Pancasila legal state is the main characteristic and distinguishes the Indonesian legal system from other legal systems, if it is linked to literature on the combination of more than one choice of social values, referred to as a prismatic choice which in the legal context is referred to as prismatic law.¹⁴ It can be understood that the Pancasila legal state is prismatic in nature (prismatic law). Prismatic law is a law that integrates good elements contained in various laws (legal systems) so that a new and complete law is formed. The characteristics of the Pancasila legal state, which is the basis for the formation of national law, can be described as follows:

First, it is a family country. In a family state there is recognition of individual rights (including property rights) or human rights but still prioritizing national interests (common interests) above the interests of the individual. On the one hand, this is in line with the social values of Indonesian society which are community in nature, but on the other hand it is also in line with the shift in Indonesian society towards a modern society which is patembayan in nature. This is in stark contrast to the western concept of a legal state which emphasizes the greatest possible individual freedom, and at the same time is in contrast to the concept of a socialist-communist legal state which emphasizes communal or shared interests. In the Pancasila legal state, efforts are made to create harmony and balance between individual interests and national (society) interests by giving the state the possibility to intervene as long as necessary for the creation of a national and state life order that is in accordance with the principles of Pancasila.

Second, it is a legal state that is certain and just. With its prismatic nature, the concept of the Pancasila rule of law in legal activities, both in the process of formation and implementation, is carried out by combining various elements contained in the concept of rechtsstaat and the rule of law, namely by combining the principle of legal certainty with the principle of justice, as well as concepts and systems. other laws, for example the customary law system and the religious law system that exist in this archipelago, thus creating a prerequisite that legal certainty must be upheld in order to uphold justice in society in accordance with the principles of Pancasila.

Third, it is a religious nation state. By looking at the relationship between state and religion, the concept of the Pancasila legal state does not adhere to secularism but is also not a religious state as in theocracy and in the

¹⁴ Hidayat.

concept of Islamic nomocracy. The concept of the Pancasila legal state is a concept of a state based on God. Believing in God means that the life of the Indonesian nation and state is based on belief in the Almighty Godhead, in this way there is freedom for citizens to embrace religions and beliefs according to their respective beliefs. The logical consequence of this prismatic choice is that atheism and communism are prohibited because they exclude belief in the Almighty God.

Fourth, combining law as a means of changing society and law as a reflection of society's culture. By combining these two concepts, the Pancasila legal state tries to maintain and reflect the values that live in society (living law) while also positivizing the living law to encourage and direct society towards development and progress in accordance with the principles of Pancasila. The principle of pluralism/multiculturalism cannot be applied in Indonesia. Indonesia should adhere to the principles of *Bhinneka Tunggal Ika* in building a national legal system. So, even though we need to adhere to the principle of legal unification, the legal unification that is adopted and developed still takes into account the universal aspects of every difference as per the principle of *Bhinneka Tunggal Ika*.

Fifth, the basis for making and forming national laws must be based on legal principles that are neutral and universal, in the sense that they must fulfill the main requirements, namely Pancasila as a glue and unifier; based on values that can be accepted by all interests and do not privilege certain groups or factions; prioritizing the principles of mutual cooperation and tolerance; as well as the existence of a common vision and mission, the same goals and orientation accompanied by mutual trust. It is hoped that the concept in the formation of our national law, especially agrarian regulation in Indonesia, is related to providing compensation for land acquisition for development in the public interest. This concept is based on the values of justice in the characteristics of Pancasila which are built on living law in social life and prismatic law which truly reflects the values of social justice.

Furthermore, land acquisition for public purposes is regulated in Law Number 2 of 2012 and its implementing regulations. If it relates to the content of the law as stipulated in Article 10 paragraph (1) of Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 Amendments to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, then The content of Law Number 2 of 2012 is to fulfill the need for legal development in society and as a form of realization of national law, namely related to the acquisition of land for public purposes which was previously regulated in a Presidential Regulation. According to Ida Nurlinda stated that:

Law Number 2 of 2012 is implemented by Presidential Regulation of the Republic of Indonesia I Number 71 of 2012, both in terms of its legal form in the form of a law and its content which contains rules regarding land assessment as well as the existence of a public consultation process as a dialogical communication process. better than previous similar rules.¹⁵

With Government Regulation Number 19 of 2021, the implementation of Presidential Regulation Number 71 of 2012 and with its fourth amendment to Presidential Regulation Number 148 of 2015 is no longer enforced.

In fact, it has become perfect in accordance with the procedures for the sequence of statutory regulations as outlined in Law Number 12 of 2011 in conjunction with Law Number 15 of 2019. Even though Government Regulation Number 19 of 2021 is an implementation of Law Number 11 of 2020 concerning Copyright Work, but the basis for implementing Government Regulation Number 19 of 2021 remains based on UUPA and Law Number 2 of 2012 as a form of harmonization of special legal regulations in land acquisition. It's just that the provision which refers to the form of regulation of providing compensation resulting from the implementation of development in the public interest shows that there is a vagueness of norms, so that a clear regulatory concept based on justice is needed in the formation of national legal ideals, namely based on Pancasila.

In connection with the values of social justice and in order to realize the formation of a national law, the use of land for the public interest is an embodiment of the principle of the social function of land rights as stipulated in Article 6 of the UUPA, and the acquisition of land for public purposes for the public interest is an embodiment of its meaning. public interest in Article 18 UUPA. The acquisition of land in land acquisition for public purposes which is achieved through the release of rights is also a manifestation of Article 27, Article 34 and Article 40 of the UUPA which is accompanied by the provision of fair and appropriate compensation based on Article 1 number (2), Article 2 letter (b), Article 31 to Article 36 of Law Number 2 of 2012.

This includes the relationship between land acquisition for public purposes and the release of land rights. The term used from the side of the agency that needs land is land procurement, namely activities to obtain land for the benefit of the agency that needs the land by providing adequate and fair compensation to the parties who have the right, while from the side of the party whose land is needed by the agency that needs the land uses the term relinquishment of land rights, namely the activity of releasing the legal

¹⁵ Ida Nurlinda, "Penyelesaian Sengketa Dan/Atau Konflik Dalam Pengadaan Tanah Untuk Kepentingan Umum" (Surabaya, n.d.).

relationship between the holder of land rights and the land he controls with or without providing adequate and fair compensation to the land rights holder, which results in the land rights being extinguished and the land returning to state land. or land controlled directly by the state.

In relation to parties or holders who have the right based on Article 11 paragraph (2), and based on the General Explanation (III number 2) UUPA, related to the concept of justice in regulating the provision of fair and appropriate compensation, this cannot be separated from the basis of socialism Indonesia and in the implementation of legal unity, UUPA actually does not turn a blind eye to the existence of differences in the condition of society and the legal needs of groups of people so that it does not conflict with national interests, it is necessary to pay attention to the conditions of these groups by guaranteeing legal protection for economically weak groups.

Regarding Law Number 2 of 2012 which regulates land acquisition for public purposes, it is not a special regulation (*lex specialist*) from the UUPA as a general regulation (*lex generalis*). The UUPA does not regulate land acquisition for public purposes or the technical arrangements for providing compensation. Therefore, Law Number 2 of 2012 cannot be declared as a special regulation of the UUPA. However, what is regulated by the UUPA in Article 18 is related to the public interest which uses the method of revoking land rights accompanied by providing appropriate compensation according to the method regulated by law and guaranteeing legal certainty for the parties who have the rights.

4. Conclusion

Research on the concept of justice in the regulation of providing compensation emphasizes the importance of justice as the basis for every compensation process given to parties who experience losses, whether in civil, criminal or administrative cases. The concept of justice in the context of providing compensation includes distributive justice which focuses on the distribution of rights and obligations proportionally, as well as retributive justice which considers sanctions for the party causing the loss as a form of responsibility. In terms of the formation of national law, the application of the concept of justice aims to create rules or regulations that not only fulfill the rights of the injured party, but also encourage the establishment of legal equality and consistency in court decisions. The conclusion of this research is that regulations regarding the provision of compensation based on the concept of justice are very important to create a national law that is responsive to community needs. By formulating consistent and relevant principles of justice, it is hoped that we will be able to form national laws that provide fair and equitable legal protection for all Indonesian people.

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