

# **The Yuridical Study of the Implementation of Land Procurement for Development for General Interests (Case Study of Highway Construction of Paros Makassar - Parepare in Pangkajene and Kepulauan Regency)**

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**Abstract:** The purpose of this study is To know the process of land procurement implementation for the construction of Parepare Makassar-Parepare axle in Pangkep regency and to know the factors that affect the implementation of procurement for the construction of Makassar-Parepare shaft highway in Pangkep. Research in writing this thesis in the form of law empirical normative research is law research that combine between normative law research and social law research / empirical. In this type of research the researcher by combining the two types of research as mentioned above in a study.

The results of this study indicate that Article 18 of the Basic Agrarian Law states that "For the public interest, including the interests of the Nation and the State and the common interest of the people, the rights to land may be repealed, by compensating suitably and in accordance with the manner regulated by the Law" . The implementation of Article 18 is stipulated in Law Number 20 of 1961 concerning the Revocation of Land and Existing Land Rights and its Operations based on the Presidential Instruction of the Republic of Indonesia Number 9 Year 1973 on the Implementation of the Revocation of Land and Property Rights There's Above.

**Keyword:** Yuridical Study, Land Procurement, General Interests

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## **I. INTRODUCTION**

Land is one of the most important natural resources for the survival of mankind. Human relationships with land are not merely a place of life, but more than that the land provides resources for human survival. Therefore it must be carefully managed in the future (Harsono Boedi, 2008: 32).

The function and role of the land in various sectors of human life has four strategic aspects, namely economic, political, legal and social aspects which are central issues in the process of land law policy conducted by the government (H.Idlam, 2004: 21). On the other hand the land should be used and utilized as much as possible for the welfare of the people fairly and equally, also must be preserved (Achmad Rubaie, 2007: 1).

Land is an asset of the Indonesian nation which is the basic capital of development towards a just and prosperous society. Therefore its utilization should be based on the principles that grow and develop in Indonesian society. In this case should be avoided the effort to make land as merchandise, object speculation and anything else that is contrary to the principles contained in Article 33 Paragraph (3) of the 1945 Constitution (Arie Sukanti Hutagalung, 2008: 83).

Sustainable development is a standard not only aimed at environmental protection (Alvi Syahrin, 2003: 1), but also for development policies, meaning that in the provision, use, improvement of natural resource capacity and economic growth, it is necessary to realize the importance of conservation of environmental functions , equality of intergenerational degrees, awareness of the rights and obligations of the people, the prevention of destructive and environmentally irresponsible development and the obligation to participate in the implementation of sustainable development at every level of society (Koesnadi Hardjosoemantri, 1999: 18-19).

Land for human life, contains a multidimensional meaning. First, economically, land is a means of production that can bring prosperity. Secondly, secarapolitis, the land can determine a person's position in community decision-making. Third, as a cultural capital, can determine the high level of social status of the owner. Fourth, the land is sacred, because at the end of life everyone will return to the land (Heru Nugroho, 2001: 237).

One of the development activities is the development for the public interest that is done along with the increasing number of population and the complex needs of the community. These conditions require a variety of

public facilities such as educational facilities, worship, sports facilities, communication, security, transportation, roads, bridges, and so forth.

Almost all development activities require land, so the land plays a very important role in development. Development carried out in all fields, especially for the public need the land as a container of development activities. The availability of land is relatively fixed while the need for land continues to increase, it requires a good regulation, firmly and carefully regarding the control, ownership, and utilization of land, in an attempt to realize the ideals of control and use of land for the greatest prosperity of the people (Andy Hartanto, 2015: 4)

The intensity of increasing development requires the land as a container to cause more and more limited land inventory. The condition is vulnerable to generate conflicts between individual interests and the public interest, so it takes a fair and wise arrangement to avoid conflicts that can happen in the community.

In order to avoid conflict, the government as stakeholders make efforts by establishing regulations on land procurement or land acquisition for the public interest, but in the implementation there are often obstacles that lead to inhibition of the development process.

The problem of land acquisition is vulnerable to the handling because it involves the livelihood of many people, it is understood because the available state land is very limited. So that way that can be taken is to free land owned by society which have been controlled with based on Customary Law or other rights according to Basic Agrarian Law.

The issue of compensation is a matter that is never separated in the process of land acquisition. It is necessary to first validate all information and data submitted in the provision of compensation. So that if an agreement has been reached, the form and amount of compensation will be made, then the compensation payment will be made and then proceed with the release or delivery of the right to the land concerned.

The State has the right to land called the right to control, as described in Article 33 Paragraph (3) of the 1945 Constitution which reads, "The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The State's power to control this land on the basis of the application of the social function of the land. This principle of control is only in the state, therefore the individual or institution existing in society is not entitled to implement the principle of reasoning on the grounds of the social function of the land itself (Muzakir Iskandar Syah, 2015: 7)

The release / disposal of land rights is the release of a legal relationship between a person and the land he or she owns with redemption based on a deliberation between the two parties. Whereas the revocation of land rights is the state's forced land acquisition of a person's land resulting in the right of the land to be abolished, without the person committing a violation or negligence in fulfilling its legal obligations. In Article 1 Paragraph (9) of Law No. 2 of 2012 on Land Procurement for Development for the Public Interest states that the disposal of land rights is a law-breaking activity from a party entitled to the state through a land institution (Andy Hartanto, 2015: 19 ).

## **II. FORMULATION OF THE PROBLEM**

1. What is the process of land procurement for the construction of the Makassar-Parepare shaft highway in Pankep regency?
2. What factors affect the implementation of land procurement for the construction of Makassar-Parepare shoreline in Pankep regency?

### **A. Theoretical Framework**

#### **Theory of Legal Effectiveness**

Bronislaw Malinowski (1884-1942) presents the theory of the effectiveness of social or legal control. Bronislaw Malinowski presents the theory of legal effectiveness by analyzing three problems which include, (1) the nature of modern society, the social order is maintained by, among others, a compulsive system of social control, that is, to enforce the law supported by a system of power tools police, judiciary, etc.) organized by a State, (b) In primitive societies such power powers are sometimes absent, and thus whether in primitive societies there is no law.

Meanwhile Soerjono Soekanto (1988: 80) says that effective is the extent to which a group can achieve its goals. Law can be said to be effective if there is a positive legal impact, at that time the law reaches its target in guiding or changing human behavior so that it becomes legal behavior. With regard to the issue of legal effectiveness, the identification of the law is not only with the element of external coercion but also with the court process. The threat of coercion is an absolute element in order that a rule can be categorized as law, then of course this element of coercion is closely related to the effectiveness of whether or not a provision or rule of law.

The theory of legal effectiveness is the essence of law enforcement lies in the activities of harmonizing the relationship of values that lie within the principles of steady and embodied and the attitude of acts as a series of the final value of the translation of value to create, maintain and maintain peace of life (Soerjono Soekanto,

2011 : 5). Soerjono Soekanto (2011: 8) argues that law enforcement as a process is essentially an application of discretion concerning decision-making which is strictly not regulated by legal principles, but has an element of personal judgment and essentially discretion is between law and morals narrow sense.

### **The Theory of Legal Certainty**

Hans Kelsen (in Peter Mahmud Marzuki, 2008: 158), law is a system of norms. Norm is a statement that emphasizes the "should" or *das sollen* aspect, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain general rules serve as guidelines for individuals behaving in a society, both in relation to their fellow individuals and in relation to society. These rules become the limits for society in burdening or taking action against individuals. The existence of such rules and the implementation of these rules give rise to legal certainty.

Utrecht (in Riduan Syahrani, 1999: 23), that legal certainty contains two meanings: first, the existence of a general rule makes the individual know what deeds may or may not be, and secondly, the legal security of the individual from the government's powers because with the existence of a general rule that the individual can know what the State can be charged or done to the individual.

This doctrine of legal certainty comes from the Juridical-Dogmatic doctrine which is based on the flow of positivistic thought in the world of law, which tends to see the law as autonomous, independent, because for the adherents of this thought law is nothing but a collection of rules. For the followers of this school, the purpose of the law is nothing other than just ensuring the realization of legal certainty. Legal certainty is manifested by law by its nature which only makes a rule of law that is general. The general nature of the rule of law proves that law is not intended to bring about justice or usefulness, but merely for certainty (Ahmad Ali, 2002: 82-83).

While Gustav Radbruch (in Sudikno Mertokusumo, 1990: 145) argued that the law must contain 3 (three) identity values, namely as follows: 1. The principle of legal certainty (*rechtmatigheid*). This principle looks from a juridical standpoint. 2. Legal justice principle (*gerechtigheit*). This principle looks from a philosophical point of view, where justice is a common right for everyone before the court. 3. The principle of legal benefit (*zwechmatigheid* or *doelmatigheid* or utility).

### **III. DISCUSSION**

Article 18 of the Basic Agrarian Law states that "For the public interest, including the interests of the Nation and the State and the common interest of the people, the rights to land may be repealed, by compensating suitably and in accordance with the manner stipulated by law". The implementation of Article 18 is stipulated in Law Number 20 of 1961 concerning the Revocation of Land and Existing Land Rights and its Operations based on the Presidential Instruction of the Republic of Indonesia Number 9 Year 1973 on the Implementation of the Revocation of Land and Property Rights There's Above.

Through the right of control of this State, the State as the governing body shall always control or direct the management of the functions of the earth, water and space and natural resources contained therein in accordance with existing regulations and policies, namely within the scope of publicly legally controlled juridical (Muhammad Bakri, 2007: 5).

Law No. 5/1960 on Basic Agrarian Law (UUPA) also states unequivocally the rights of individuals to ownership of land rights. Yet land also has a social function. With regard to the function of the land, Article 6 of the Basic Agrarian Law affirms that although humans with land are immortal as land owners, it does not mean that landowners may arbitrarily use their rights, regardless of the interests of others. In the context of land acquisition for development for the public interest, the ownership of land can be revoked precisely because the land has a social function (Bernhard Limbong, 2015: 3).

Exemption / disposal of land rights is the release of legal relations between a person and the land he owns by means of compensation which amount is based on the deliberation between the two parties. Whereas the revocation of land rights is the state's forced land acquisition of a person's land resulting in the right of the land to be abolished, without the person committing a violation or negligence in fulfilling its legal obligations. In Article 1 Paragraph (9) of Law No. 2 of 2012 on Land Procurement for Development for the Public Interest states that the release of titles is an activity of termination of legal entity from the right party to the state through the land institution (Andy Hartanto, 2015: 19).

Significant impacts on stability in the community are often encountered when the revocation, exemption and disposal of land rights are carried out. This arises because of disagreements between landowners or holders of land rights which are taken by the government in the need of development projects. In addition, the issue of the status of rights and forms and the amount of compensation is a problem that sometimes arises in the process of land acquisition for development resulting in delays in the development process.

In order not to violate the rights of the landowners, the procurement of the land must be done by observing the principles of public interest (public interest) in accordance with applicable legal provisions.

Sunarno (in Sutedi, 2008: 75). Declare three principles that can be deduced that an activity is really for the public interest, namely: The activity is really owned by the government, related development activities undertaken by the government, and do not seek profit. In the principle of "State control", in the relationship between State and society, society can not be subordinated to its position under the state, since the state actually accepts the power of the people to regulate the designation, supply and use of the land and the relations and legal acts concerned with the land. Thus, all the actions of the state, in this case the government must be accountable to the community (Maria SW Sumardjono: 1998).

Land acquisition for the public interest, for example, for the development of general expansion, the construction of airfields, essentially merupakan government policy. Policy (policy) is a government instrument, not only in the sense of Government which only concerns the state apparatus, but also the governance that touches pengelolaan public resources. Policies are essentially decisions or action options that directly govern the management and distribution of natural, financial and human resources in the public interest (Edi Suharto, 2008: 3).

According to the Head of South Sulawesi Highways Development Office, the construction of this pavement road starting in 2008 is intended to increase capacity in the form of widening the road from the previous 6-7 meters with two lanes to two times 7.5 meters with a median of 2 meters width. Initially this project is expected to be completed in 2010 but constrained land issues so rescheduling done. Development is then targeted to be completed until the end of the 2012 fiscal year and the bridge of fiscal year 2013 but not yet completed.

The problem of compensation becomes the main obstacle so that the completion of the construction of widening of Makassar-Parepare shaft road in Pangkajene and Kepulauan Regency region that started since 2008 only finished in 2017.

Furthermore, the procurement of tanag for public interest has a philosophical and constitutional basis as stipulated in Article 33 paragraph (3) of the 1945 Constitution stated that: "The earth, water, and including natural resources contained therein are controlled by the State, and used widely for prosperity of the people". This is the basis of the legal relationship between the land and the land subject. The State acts as the subject with the highest authority over all the interests of the land for the prosperity of the people, this means that at the highest level the land is controlled by the State.

As the elaboration of the authority of the State on land for the welfare of the people, in Article 2 Paragraph (1) of the Basic Law of Agrarianisebut: "On the basis of the provisions of Article 33 Paragraph (3) of the Constitution and matters as referred to in Article 1, the earth, water, and space, including the natural wealth contained therein, at the highest level controlled by the State, as the organization of all the people".

The right to land is a right that gives the rightful owner the right to use or benefit from the land he or she occupies (Effendi Perangin, 1991: 229). Meanwhile, according to Boedi Harsono (2003: 4), the right of the land is the right of control over the land which contains a series of authority, obligation and / or prohibition for the holder of his right to do something about the land being abused. "Anything" that may, shall or shall be prohibited to do, constitutes the content of the controlling right that becomes the criterion or refusal to distinguish between the tenure rights over the lands governed by the Land Law. Article 2 Paragraph (1) of the Basic Agrarian Law states that: "On the basis of the provisions of Article 33 Paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, earth, water and space, including natural resources is contained therein at the highest level controlled by the State as an organization of the power of the whole society. "This is the basis of the existence of the State's right to control the land and the authority of the State to determine the rights to land which may be owned and / or provided to individuals and entities laws that meet the specified requirements.

The authority is stipulated in Article 4 Paragraph (1) of the Basic Agrarian Law that, "On the basis of the right to exploit from the state as meant in Article 2, it is determined that there are various kinds of rights on the earth's surface called land, which can be given to and possessed by people, both alone and together with other persons and legal entities". Whereas in Paragraph (2) it is stated that, "The land rights referred to in Paragraph (1) of this Article authorize the use of the land concerned, so also the earth body and water and the space thereon are required for the immediate interest with the stewardship of the land within limits under this law and the higher laws."

The State's authority over land is further mentioned in Article 2 Paragraph (2) of the Basic Agrarian Law as follows: "The right to control of the State referred to in sub-article 1, this article authorizes to: a. Arrange and administer the allotment, use, inventory and maintenance of the earth, water and space; b. Define and regulate the legal relationships between people with the earth, water, and space; c. Determine and regulate the legal relationships between people and legal acts that concern the earth, water, and space.

The purpose of the right of control of the State is to achieve prosperity and prosperity for the people so that the function of land is not solely for private and private interests or in other words the land has a social function or public interest. In Article 4 Paragraph (1) of the Basic Agrarian Law, it states that: "On the basis of

the right of control of the State as referred to in Article 2, it is determined that there are various kinds of land rights called soil, which can be given to and possessed by people both alone and together with other people and legal entities ". This means that the State has the power to grant land rights to a person or legal entity.

According to Article 6 of the Basic Agrarian Law that: "All rights to land have a social function", this means that any right to any land which exists on a person is not used solely for his personal interests but that his land rights must also take account of the interests of the people.

Land Procurement for Development for Public Interest in the view of Sumardjono (2009: 280), argues that land procurement is the act of the government to acquire land for various development activities, especially for the public interest. Meanwhile, according to Salindeho (1993: 31), the provision and procurement of land is intended to provide or to provide land for the interests or purposes of the government, in the framework of project development or development something according to government programs that have been established.

Imam Koeswahyono (2008: 1), the procurement of land as a legal act undertaken by the government to obtain land for certain interests by giving damages to the landowner (either individual or legal entity) land according to certain nominal procedures and magnitudes.

Understanding land procurement regulated in legislation. The term land acquisition was first used in Presidential Decree No. 55/1993 on Land Procurement for the Implementation of Development for the Public Interest. It is stipulated in the provisions of Article 1 Paragraph (1), the procurement of land is defined as follows: "Land procurement is any activity to obtain land by providing compensation to the entitled to the land".

The definition of land acquisition is amended again in the provisions of Article 1 Paragraph (3) of Presidential Regulation No. 36/2005 on Land Procurement for the Implementation of Development for the Public Interest, "Land procurement is any activity to obtain land by providing compensation to those who relinquish or deliver the land, buildings, plants and objects related to the land or by revocation of land rights ".

The definition of land procurement is then amended by Presidential Regulation No. 65/2006 on Amendment to Presidential Regulation No. 36/2005 concerning Land Procurement for the Implementation of Development for Public Interest in the provision of Article 1 Paragraph (3) as follows: "Land procurement is any activity to obtain land by how to provide compensation to those who release or deliver land, buildings, plants and objects related to the land ".

#### **IV. CONCLUSION**

1. Article 18 of the Basic Agrarian Law states that "For the public interest, including the interests of the Nation and the State and the common interest of the people, the rights to land may be repealed, by compensating suitably and in accordance with the manner regulated by the Law" . The implementation of Article 18 is stipulated in Law Number 20 of 1961 concerning the Revocation of Land and Existing Land Rights and its Operations based on the Presidential Instruction of the Republic of Indonesia Number 9 Year 1973 on the Implementation of the Revocation of Land and Property Rights There's Above.
2. Factors affecting the procurement of land for public interest in this case Makassar-Pare-Pare road extension in Pangkep regency is the factor of law enforcement apparatus, the factors of legal facilities, and legal awareness of the community.

#### **REFERENCES**

- [1] Ali, Ahmad. 2002. *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*. Toko Gunung Agung. Jakarta.
- [2] Anggara, Sahya. 2014. *Kebijakan Publik*. CV Pustaka Setia, Bandung.
- [3] Bakri, Muhammad. 2007. *Hak Menguasai Tanah oleh Negara*. Cita Media. Yogyakarta.
- [4] Benyamin, Asri dan Thabrani Asri. 1987. *Tanya Jawab Pokok-Pokok Hukum Perdata dan Hukum Agraria*. CV Armico. Bandung.
- [5] Harsono, Budi. 2003. *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria*. Djambatan. Jakarta.
- [6] Idlam, H. 2004. *Konsolidasi Tanah Perkotaan dalam Perspektif Otonomi Daerah*. Alumni. Bandung.
- [7] Kusumaatmadja, Mochtar. 1976. *Hukum, Masyarakat dan Pembinaan Hukum Nasional*. Binacipta. Bandung.
- [8] Limbong, Bernhard. 2011. *Pengadaan Tanah Untuk Pembangunan*. Margaretha Pustaka. Jakarta.
- [9] Marbun. B.N. 1979. *Kota Indonesia Masa Depan; Masalah dan Prospek*. Erlangga. Jakarta.
- [10] Nugroho, Heru. 2001. *Menggugat Kekuasaan Negara*. Muhammadiyah University Press. Surakarta.
- [11] Otto, Jan Michiel. 2003. *Kepastian Hukum*. Terjemahan Tristam Moeliono. Komisi Hukum Nasional. Jakarta.
- [12] Perangin, Effendi. 1991. *Hukum Agraria Di Indonesia Suatu Telaah dari Sudut Pandang Praktisi Hukum*. Rajawali Pers. Jakarta.

- [13] Rubaie, Achmad. 2007. Hukum Pengadaan Tanah Untuk Kepentingan Umum. Bayumedia Publishing. Malang.
- [14] Soekanto, Soerjono. 2008. Faktor-Faktor yang Mempengaruhi Penegakan Hukum. PT Raja Grafindo Persada. Jakarta.
- [15] 2011. Faktor-Faktor Yang Mempengaruhi Penegakan Hukum. Cetakan Ke 10. PT Raja Grafindo Persada. Jakarta.

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