

The Nature of the Application of Site Determination In Small-Scale Land Acquisition For Development For General Development (Case Study In South Sulawesi Province)

Andi BesseTenri Adjeng¹, Sufirman Rahman², Syahrudin Naw³, Sri Lestari Poernomo⁴

¹*Mahasiswa Doktor Program Pascasarjana Hukum, Universitas Muslim Indonesia*
^{2,3,4}*Universitas Muslim Indonesia*

Abstract

The nature of the application of location determination in the small-scale land acquisition process is the licensing in determining land objects for the public interest in order to achieve legal certainty. The decision to use location determination or not to use it is all the choice of agencies that need land, because the latest regulation, namely PP No. 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest which is strengthened by the Regulation of the Minister of Agrarian affairs and Spatial Planning No. 21 of 2021 concerning the Implementation of Spatial Utilization Control and Spatial Planning Supervision explains that in the process of small-scale land acquisition can be done in a directly as well as by location determination. The application of location determination in the land acquisition process in South Sulawesi Province directly or indirectly, using location determination or not, based on the results of research, depends on the circumstances of the location area, and also depends on the culture of the people of an area. If the community can be invited to consult regarding the value of compensation and the location is not disputed, direct land acquisition can be carried out, which is a faster process and the costs required are not as much as if they go through the site determination stage. Although the latest regulations state that small-scale land acquisition can be done directly without location determination, many regions continue to carry out their land acquisition process using the site determination stage because it is considered safer and has more guaranteed legal certainty. Factors that affect the determination of location in the land acquisition process include factors of legal substance, law enforcement officials, costs, community culture and location, if the condition of the area to be carried out by small-scale land acquisition there are indications of disputes or the culture of the community cannot be discussed, then in order to achieve the desired procurement process in the public interest, it must be carried out with the stage of determining the location. Because the location determination process is coercive, inevitably the community must hand over their land to the state, if they do not agree, the payment of compensation is deposited in the district court (consignment).

Date of Submission: 10-12-2022

Date of Acceptance: 24-12-2022

I. Introduction

National Development is carried out in order to fulfill the mandate of the Preamble to the 1945 Constitution, from year to year it continues to increase. The increasing intensity of development and limited land supply have the effect of increasingly difficult to acquire land for various purposes, uncontrolled soaring land prices and the tendency to develop irregular land use, especially in strategic areas. Soaring land prices make it more difficult for the government to carry out development for the provision of infrastructure and public interest.

At present it is very difficult to carry out development for the public interest on state land. Reality shows that development requires land, but on the other hand the State land available to meet those needs is increasingly limited, because the existing land has been partly controlled/owned by the community with a right. In order for the development momentum to be maintained, especially the construction of various facilities for the public interest that require land plots, the legal remedies from the government to acquire these lands in fulfilling development are among others carried out through the approach of rights acquisition and disenfranchisement. Basically, land acquisition is the government's action to acquire land for various development purposes, especially for the public interest.

Land acquisition carried out through Land Acquisition for Development for Public Interest as referred to in Law Number 2 of 2012 jo. Presiden Regulation Number 71 of 2012 is based on Location Determination. Based on Article 1 number 13 of Presidential Regulation Number 71 of 2012, it is emphasized that Location Determination is the determination of development sites for the public interest determined by a governor's decree, which is used as a permit for land acquisition, land use change, and transfer of land rights in land acquisition for development for the public interest.¹

From these provisions, it can be concluded that the location determination has 3 (three) functions, which include: first, a land acquisition permit whose activity deadline is 2 (two) years and can be extended by 1 (one) year. Second, Land use change permit. Third, Permission to transfer land rights. Law Number 2 of 2012 places location determination as the starting point in land acquisition activities for development for the public interest. As part of national agrarian law, land acquisition regulations should refer to the objectives of national agrarian law with the principle of balance between private interests and public interests. The right to any land that exists in a person cannot be justified, if the land is to be used (or not used solely for his personal interests, but must also consider the public interest. Such provision does not mean that personal interests will be pressed at all by the public interest. Public interests and vested interests must balance each other, until finally prosperity will be achieved, and the happiness of the people as a whole. That is the hallmark of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (hereinafter referred to as UUPA).

In line with the development of the community to facilitate the course of development for the public interest, on the one hand the government requires a large enough land area. On the other hand, the holder of the right to the land to be used by the government for development should not be harmed. To regulate this, it is necessary to have a legal regulation that is acceptable to the community. In addition, clear and firm laws and regulations can realize order and order. Land acquisition for development for the public interest also has several important meanings, namely supporting infrastructure development, supporting economic activity, supporting the ease of investment and improving the welfare of the people.²³

Land acquisition in Indonesia for the implementation of public interest development carried out by the government is carried out by revoking land rights. This is regulated in Article 1 number 3 of Presidential Regulation (Perpres) No. 36 of 2005 concerning Land Acquisition for Development for the Public Interest.

Amendments to Law No. 2 of 2012 concerning Land Acquisition for the Public Interest are regulated in the Job Creation Law and Government Regulation No. 19 of 2021 concerning the Implementation of Land Acquisition for the Public Interest ("PP 19/2021"). This change expands the instrument of land acquisition for the public interest of the Upstream and Downstream Oil and Gas Industrial Estates that are authorized and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises. Special Economic Zones, industry, tourism, food security and/or technology development initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, or Regional-Owned Enterprises. The Job Creation Law also stipulates that for land with an area of no more than 5 (five) hectares, public consultation can be carried out directly between agencies that require land and parties who are entitled to location determination only carried out by the regent / mayor. With the implementation of changes related to land acquisition for the public interest, the infrastructure development process is expected to be easier and benefit all stakeholders in the infrastructure development process.

Although regulations related to land acquisition for development for the public interest have been updated several times to improve all existing regulations, but in its implementation in the field there are still many obstacles faced in the process of acquiring land for development for the public interest. Likewise, regarding location designation, which is an important aspect of land acquisition, the latest regulations say that for a small scale, there is no need for location determination for the sake of effectiveness and efficiency but in fact if you do not use location designation, it can cause problems in the future if the process is not carried out as it should be. Based on the description above, researchers want to examine more deeply the nature of location determination in small-scale land acquisition, as well as its application in South Sulawesi Province and the factors that influence it.

II. Research Methods

This type of research uses a qualitative approach in the form of in-depth interviews with respondents who are considered representative. The results of the interview will be described in the form of an elaboration related to the research results. In addition, a quantitative approach is also used by distributing questionnaires to research samples. Quantitative research is research whose elaboration is in the form of numerical data and / or graphs / images obtained from research results using questionnaire instruments. The research site will be carried out in South Sulawesi Province. There are several regencies / cities that are the location of the study, namely Makassar City, Gowa Regency, Maros Regency, Takalar Regency, and Jeneponto Regency.

The types and sources of data used as a basis to support the results of this study are primary and secondary data. Determination of samples in the study using *purposive sampling* with the following criteria:

1. Head of Land Acquisition Section of the Makassar City National Land Agency Office, Mr. Dinar S.H., M.H;
2. Coordinator of the substance of land consolidation and development of Maros Regency, Mr. Kamaruddin, S.H., M.H;
3. Coordinator of the substance of land consolidation and development of Gowa District;
4. Takalar District land consolidation and development substance coordinator, Mrs. Nadine Grace Yusticia, S.Si;
5. Coordinator of the substance of land consolidation and development of Jeneponto District;
6. Head of Land Division of the Housing, Settlement and Land Office of Gowa Regency, Mr. Dienul Akmal B, S.E, M.Adm.Pemb
7. PeopleCityMakassar(10people);
8. PeoplesKabupatenMaros(10people);
9. CommunityKabupatenGowa(10people)
10. People of Takalar Regency (10 people)
11. People of Jeneponto Regency (10 people)

The study was conducted using in-person interviews, questionnaires and document studies. Direct interviews are conducted to obtain primary legal materials, while document studies are conducted to obtain secondary legal materials. The data collection technique used is obtained through field research, which is the collection of legal materials directly from related parties related to the object of research. The interview method used is an in-depth interview. The data analysis technique that is also used is systematic interpretation. A systematic interpretation dotted with or based on a system of rules of law interprets a provision of law. Systematic interpretation is carried out by reviewing laws and regulations according to their type and level. Then in conclusion the direction and purpose of the legislation. This conclusion will be used as a basis for determining the direction and purpose of the law to be formed so that it is in line and in sync with other laws and regulations, especially those with higher levels. ⁴

III. Research Results

1. The Nature of The Application of Location Determination in Small-Scale Land Acquisition for Development in the Public Interest

Nowadays, the construction of public facilities in Indonesia is increasing, such as the construction of toll roads, hospitals, airports, train stations and so on. The establishment of these facilities is the result of legal actions on land acquisition carried out by the government in order to realize national development as the ideal of the Indonesian nation. The government organizes development in order to create a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. One of the development efforts within the framework of national development organized by the government at this time is to organize land acquisition for the public interest.

Land Acquisition for the Public Interest aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and community while guaranteeing the legal interests of the Entitled Parties. Land acquisition is an act of the government in order to acquire land for various development purposes, especially for the public interest. In principle, land acquisition is carried out by means of deliberations between parties who need land and holders of land rights whose land is needed for development activities. This shows that the land acquisition process is not simple, because it is directly related to the rights of certain parties (communities) to land. The principles of land acquisition as stated in the general explanation of Law No. 2 of 2012 must be in accordance with the values contained in Pancasila. In other words, that the

implementation of land acquisition in Indonesia should not go out of the Pancasila corridor. This is to ensure fairness for each party. Furthermore, in addition to development in accordance with the values affirmed in Pancasila and the 1945 NRI Constitution, all other regulations governing land acquisition must also be carried out for development in the public interest or the interests of all Indonesian people. Broadly speaking, land acquisition is preceded by deliberations that begin with counseling to the right-holding community about the purposes and objectives of land acquisition held by the Land Acquisition Committee (PPT) together with Government agencies that require land, by opening up the possibility of involvement of community leaders and local informal leaders in it. Following the counseling, an inventory of land acquisition objects by PPT, Government agencies in need, and related agencies was carried out. The announcement of the results of this inventory gives the right holder the opportunity to raise objections.

In the history of the journey of land acquisition for the public interest often encountered problems, the problem was not only encountered in large-scale land acquisition but also the problem was encountered in small-scale land acquisition for the public interest. These obstacles include:

- 1) The implementation of development was hampered, due to land acquisition problems;
- 2) During the Construction Period, there was a lawsuit seeking compensation;
- 3) The community claims it has never been compensated, even though it is physically a road;
- 4) Disagreement over the price of compensation, the demand of the owner is very high compared to the offer;
- 5) Vagueness Alas Hakatastanah/overlapping;
- 6) Doubts/fears of land acquisition.

Based on the aforementioned problem, if you review the theory of legal effectiveness proposed by Soerjono Soekanto that whether or not the law is effective to overcome a problem, it can be measured from 4 supporting factors, including:

1. Its own legal factors (Act);
2. Law enforcement factors are parties who form or apply the law;
3. Factors of means or facilities that support law enforcement;

and

4. The community factor is the environment in which the law applies or is established.

Based on the theory of legal effectiveness proposed by Soerdjono Soekanto related to the problems mentioned above, the government continues to strive so that problems in the field of land acquisition can be resolved and resolved properly, if viewed from legal or legal factors, the government continues to strive to make regulations related to land acquisition for the public interest in order to accelerate the development and progress of the State.

Location determination is the determination of the location of the development for the public interest determined by a decree of the governor, which is used as a permit for land acquisition, land use change and transfer of land rights in the acquisition of land for development for the public interest. It is said that the location designation is a permit to carry out land acquisition. The problem arises when the holder of land rights is not willing to give up his land and the location for small-scale land acquisition is the best location or cannot be moved to another location with considerations based on historical, climatological, geological and topographical aspects there is no other location, if the location is moved it will suffer heavy losses.

If this problem arises when the holder of land rights is not willing to give up his land, while the location for small-scale land acquisition cannot be moved and all means have been carried out by the land acquisition committee such as the deliberative process of determining compensation by the land acquisition committee, filing a lawsuit with the Court and several other ways that have been done the land acquisition committee did not reach an agreement. Then there can be a revocation of the right to land where this revocation is carried out by providing compensation deposited in the District Court or consigned.

The government has the authority to conduct consignment or deposit compensation to the District Court. This can be seen in the provisions of Article 1 number 2 of Law Number 23 of 2014 concerning Regional Autonomy, it is explained that Regional Government is the implementation of government affairs by local governments and regional people's representative councils according to the principle of autonomy and auxiliary duties with the principle of the widest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia. Article 6 of Law Number 2 of 2012 states that the acquisition of land for the public interest is organized by the Government.

This means that the government is given authority in terms of acquiring land for the benefit of the implementation of development for the public interest as well as carrying out all the implementation processes and stages in land acquisition for public purposes including the authority to make compensation through consignment or deposit of compensation to the District Court as stipulated in Law Number 2 of 2012 jo Law No. 11 of 2020 and regulations government no. 19 of 2021 concerning land acquisition for the public interest.

As previously described regarding the conditions of consignment or custody of compensation, although the government is given the authority to carry out consignment or custody of compensation to the indemnity, but

if the conditions of consignment or custody of compensation, one of which is the determination of the location set by the governor is not met, the consignment or custody of compensation will be rejected by the District Court and agencies that require land. unable to conduct consignment or custody of damages in court. If the land acquisition is not carefully considered regarding the basis of its rights, then it is possible that these problems may arise in the future.

a. Application of Location Determination in Land Acquisition for Development for Public Interest in South Sulawesi Province

As is known, there are four stages in the land acquisition process, namely planning, preparation, submission of results and implementation. At the planning stage is the authority of the agency that requires land acquisition. Then, for preparation is the authority of the regional head. In PP No. 19 of 2021 for land acquisition planning documents, both small-scale and large-scale, spatial planning must also be considered. This spatial layout is the main foundation and this needs to be considered in the planning aspect. That is the advantage if the land acquisition process is carried out according to stages, compared to direct land acquisition.

Based on the results of filling out a questionnaire for the people of Makassar City, it can be concluded that the people of Makassar feel that using the location determination of the land acquisition process is easier because all stages are more guaranteed security and legal certainty, although there are also some people who choose land acquisition without determining the location more easily because it is considered that the process is faster. Based on the results of an interview with Mr. Dinar as Head of the Land Acquisition Section of the Makassar City Land Office, he said that land acquisition in Makassar City can run well if the desired land does not have a land dispute, and the compensation value is in accordance with the circumstances and conditions of the rupiah value in the community

Mr. Dinar explained, the latest PP, namely PP No. 19 of 2021, contains clearer and more detailed contents than the previous regulations. He said that both small-scale and large-scale land acquisitions should use site designation to prevent problems from arising in the future and hinder development. He also said that in the Makassar area, gowa and maros if the land acquisition location leads to the village, there must be obstacles, namely the community refuses to take the land because the community feels that they can no longer buy land in Makassar with the amount of compensation given so that the community feels like they are asked to return home because the value of compensation is not commensurate with the price of land in Makassar.

He also explained that in Makassar there is also small-scale land acquisition without using location determination, for example the Tamangapa Makassar Landfill (TPA). Currently, the Environment Agency wants to carry out development so that the Head of the Makassar City Environmental Agency wants to use the location determination stage to prevent obstacles to the land acquisition process such as rejection from the community, while landfills cannot be placed in any place.

Before ending the interview session, Mr. Dinar said that it is true that the theory presented by Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of law), the substance of the law and the legal culture (legal culture). But according to him, the most decisive thing about the law enforcement process in land acquisition is the legal culture because even though we use appraisal as an appraiser of the amount of compensation, people sometimes still ask for more than determined by the appraisal.⁵

Based on the results of filling out questionnaires for the people of Maros district, many of them chose the lurah office as a place for providing compensation and deliberations, while what was considered the biggest obstacle in the land acquisition process was the amount of compensation, then another obstacle was the long time for implementing land acquisition from the initial process to providing compensation to the community. Based on an interview with Mr. Kamarudin as the Coordinator of the Land Assessment, Procurement and Reserve Substance Group of the Land Acquisition Section of the Maros Regency Land Office, he explained that the agency that requires the land must pay attention to all the completeness including the rights of the landowner because otherwise it will make it difficult for the diamond itself if it wants to issue the land certificate in the future. Based on the results of filling out the questionnaire for the people of Maros Regency, it can be concluded that the Maros community feels that using the location determination of the land acquisition process or not using the location determination is considered the same can facilitate the process as long as all aspects involved can work professionally and according to the rules. Mr. Kamaruddin explained that during his tenure in Maros Regency, there have been 5 (five) small-scale land acquisition processes in Maros Regency. He continued that

in addition to the sale and purchase deed, it is also possible for the Agency to attach the Minutes of Release to obtain Agency Use Rights from the Office of the National Land Agency.⁶

Based on the results of an interview with Mrs. Nur Hasanah as coordinator of the Land Consolidation Substance Group and Land Development of the Land Acquisition Section of the Gowa Regency Land Office, she explained that small-scale land acquisition should still be carried out in the stage of determining the location even though it is considered that it will take a not fast time but legal certainty in the future is still guaranteed.⁷

Based on the results of filling out the questionnaire for the people of Gowa district, gowa people feel safer if they use location determination, because with the location determination when they have agreed to the land acquisition project in their area, there can no longer be people who rebel or refuse so that the process of land acquisition and compensation payments can run quickly and safely. Furthermore, Mrs. Nur Hasanah's colleague, who is also the Coordinator of the Land Assessment, Procurement and Reserve Substance Group of the Land Acquisition Section of the Gowa Regency Land Office named Mr. Ambo Tuwo, said that regarding small-scale land acquisition, the process uses location determination or not depending on the state of the area. If the land area is considered by the community to be less cooperative in the land acquisition activities, for example, they do not want to participate in deliberations, or if they will not agree on the value of the compensation offered, a location determination must be made so that the government's land acquisition program can be implemented quickly. But if the situation of the community is cooperative, compact and obedient, there is no need to carry out the stage of determining the location.⁸

Furthermore, the researcher conducted research at the Office of the Housing, Settlement and Land Office of Gowa Regency and had the opportunity to interview Mr. Dienul, he said in small-scale land acquisition, the process of direct land acquisition is more often carried out in this case buying and selling because it is considered faster not to require a committee and 4 stages of land acquisition (planning, preparation, implementation, submission of results) but he further explained the land acquisition process. Immediately does not escape the shortcomings, namely if in a community group there are 2-4 heads of families who do not agree with their building being used as a land acquisition location, so the process will also take a short time to get the desired compensation value agreement.⁹

All small-scale procurement processes in Takalar Regency do not use location determination because it is considered too long so that for the sake of efficiency and effectiveness the land acquisition process is carried out directly. So far, there are no obstacles, but according to the results of an interview conducted with Mrs. Nadine Grace as the coordinator of the substance of land consolidation and development in the land acquisition section of the Takalar Regency Land Office, "Direct land acquisition is a fast process, it's just that many agencies do not have a strong right base so in the future if you want to issue the land certificate, it will be complicated. So I think that even if they want to directly the agencies must have a clear and strong basis of rights

Based on the results of filling out questionnaires for people in Takalar Regency, more takalar district people fill in the basis of their rights, namely the sale and purchase deed, and more consider the amount of compensation as an obstacle felt in the land acquisition process. Mrs. Nadile added that for example, BMN (a state-owned agency) has bought small-scale land to build UPT but when it wants to certify the land, the rights are not necessarily there or unclear about its existence but the agency claims to have carried out small-scale land acquisition, it has also been paid compensation. Many are constrained by the process of certifying the Right to Use of small-scale land agencies in Takalar Regency because of this, furthermore, Mrs. Coordinator Nadile explained that in purchasing small-scale land in Takalar Regency, some use sale and purchase deeds and some without a jul buy deed only use receipts.

Furthermore, he explained, what is an obstacle for the Office of the National Land Agency is that the agency wants the process of making certificates to be fast but the completeness is difficult for them to fulfill on the grounds that employees who now serve in the agency do not know where the completeness in this case is the basis of rights which is one of the conditions for issuing certificates. He said that this land acquisition occurred at a time when they were not yet employees in the agency.

He concluded that to ensure legal certainty and the process of making certificates is quickly completed, it is hoped that agencies that carry out the land acquisition process either directly or indirectly will pay attention to the basis of the rights of the land. If the land acquisition process uses location determination, problems as described earlier can be avoided because in the land acquisition process using the site determination stage, it is very concerned about the basis of the rights of the land, in contrast to direct land acquisition which gives

loopholes to agencies to buy time for years the registration process for the issuance of the right of use certificate, so that it may have changed officials / employees who handle the matter, The right of use has not been issued or even the basis of the right when the land acquisition process is lost.

After conducting research in Jenepono Regency, researchers also conducted a survey by distributing questionnaires containing questions related to land acquisition in Jenepono Regency by taking samples of 10 communities, resulting in the conclusion that according to most jenepono people think the appropriate compensation value will make it easier for them to hand over their land to the state, compared to appraisal assessments. There are also people who consider the historical value of their buildings in this case their homes to be one of the reasons it is difficult to give their land to the state for the sake of public interest development if the house is a legacy from their ancestors. Based on the results of filling out questionnaires for people in Jenepono Regency, more people in Jenepono regency fill in the basis of their rights, namely the deed of sale and purchase, and more consider the amount of compensation as an obstacle felt in the land acquisition process.

The researcher also conducted an interview to complete data related to location determination in small-scale land acquisition to the Director General of Agrarian Planning of the Ministry of Agrarian affairs and Spatial Planning Mr. Dr. H. Andi Tennisau, S.H., M.Hum, he said that it is true that location determination is a very important aspect in land acquisition for development for public interest both large and small scale because in the stage of determining the location there are many elements that can prevent the occurrence of problems in the future, considering the many things that can be a gap in problems related to land acquisition in Indonesia. Based on a questionnaire that has been filled out by 50 samples obtained from 5 districts, where each district has 10 samples, it is known that the community assesses using location determination in the small-scale land acquisition process to facilitate the process. More people's compensation payment locations choose at the local village office because they are considered easier to reach. Furthermore, more people have a sale and purchase deed as a basis for their land rights. The compensation that the majority of the people want is in the form of money. The most perceived obstacles for the community in the land acquisition process are the amount of compensation and the long implementation time.

b. Factors Influencing the Implementation of Location Determination in Small-Scale Land Acquisition for Public Interest Development in South Sulawesi Province

1. Legal Substance

In every development activity, it definitely requires soil as a container. The development will not encounter problems if the land supply is still extensive. However, the problem is that land, which is a natural resource, is limited, and cannot increase in area by itself and state land is already very limited in stock. The increase in the use of land for the purposes of various kinds of development is increasing, while according to SudaryoSoimin in his book entitled Status of Land Rights and Acquisition said that, "The State Land available to meet these needs is very limited or no longer exists". Therefore, land acquisition activities for development purposes must indeed take people's land to be used as state land through compensation. Unfortunately, often the acquisition of land for development purposes has not been fully in favor of the landowner people. In many cases, it has often appeared that people affected by land acquisition become victims. This is due to the lack of fulfillment of the principles of justice, expediency and certainty in land acquisition for development, especially in the process of land acquisition. Of the various regulations that have been issued by the government related to land acquisition, in fact there are still problems that arise related to land acquisition for public transportation, both on a large and small scale, according to the Secretary General (Secretary General) of the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR / BPN), although there are various these rules in its implementation there are still many that are not completed due to various obstacles in the field. One example is "There are toll roads that have not been connected in one location, the construction of infrastructure projects that have stalled because land acquisition has not been completed, land acquisition has not been completed, and land acquisition has often caused conflicts. Things like this end up hindering development itself and it's detrimental to the community," he said.¹⁰

Not to mention that the location determination or blocker issued by the governor as the head of the region is often not in accordance with the spatial layout. As a result, there is again a rejection when a project is about to be worked on. Haven't talked about other problems that make the project constrained and even unworkable.

The aforementioned problems do not only occur in the large-scale land acquisition process, but also occur in small-scale land acquisition poses. In its development, the government continues to strive to make the best regulations so that problems in the field of land acquisition can be resolved, especially small-scale land acquisition has also undergone regulatory changes to lead to a better state, it is necessary to make efforts to

study in the field of agrarian law, especially about changes in land acquisition regulations as material for carrying out legal reforms.

2. Law Enforcement Officers

Law enforcement officers are those who are authorized to carry out judicial proceedings, arrest, examine, supervise, or execute statutory orders in their respective fields. In the implementation of land acquisition using location determination, it is carried out by the Head of the Regional Office of the National Land Agency (BPN) as the Chief Executive of Land Acquisition. The Head of the BPN Regional Office may assign the Head of the Land Office as the Chief Executive of Land Procurement. In the implementation of land acquisition without using location determination (directly) is carried out by agencies that require land in collaboration with the Department of Housing, Settlement and Land in the area.

In order to efficiently and effectively acquire land for the Public Interest covering an area of no more than 5 (five) hectares, it can be done directly by agencies that require land with entitled parties, by means of buying and selling or exchanging or other means agreed upon by both parties.

Land acquisition that is carried out directly can be carried out without going through the stages of organizing land acquisition as stipulated in Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest, and its implementing regulations. In this case, it is known the stages of land acquisition under Article 13 of Law 2 of 2012 jo. Article 2 of Presidential Regulation Number 71 of 2012 consists of 4 (four) stages of land acquisition, namely the stages of planning, preparation, implementation and submission of results.

The activities to obtain location determination in land acquisition activities for development are carried out in two stages, namely the planning stage and the preparation stage of land acquisition. The determination of the construction site is based on an agreement between the Entitled Party and/or the community affected or rejected objections from the Objection Party. Location Designation is valid for a period of 2 and can be extended 1 time for a maximum of 1 (one) year.

3. Community Culture

In this case, the culture of the people in an area is still concerned about the cost of compensation. Indemnity is the provision of compensation for losses suffered by the holder of land rights for the transfer of rights. Article 1 of Law Number 2 of 2012 states that compensation is a proper and fair replacement to the party entitled in the Land Acquisition process. In reality, those who are entitled always expect a higher nominal than the specified amount on the grounds that they can return to buy buildings/houses in the area. They said the amount determined sometimes does not match the price of the building at the site taken away so they find it difficult to get a new residence with the same area and location as before.

Departing from this, rules were made related to land acquisition directly without making a location determination, but in fact in its development, the rules related to the elimination of location determination for land cause several problems or impacts caused both for agencies that carry out land acquisition and community, these problems if viewed from several theories of legal effectiveness explained by Lawrence M Friedman that are effective or Whether or not a rule of law can be seen from 3 influencing factors, namely legal substance, legal structure and legal culture.

Currently in South Sulawesi Province, the small-scale land acquisition process is carried out in 2 (two) ways, namely by using location determination in accordance with Law Number 2 of 2012 and in a direct way in accordance with Presidential Regulation Number 148 of 2015. The area that uses location determination is the acquisition of small-scale land for ports in Takalar Regency based on the results of an interview with Mr. Eddy Sudyanto as Head of the Takalar Transportation Unit of the South Sulawesi Provincial Transportation Agency who said that:¹¹

"In the process of acquiring land for the port, we continue to use the site determination stage for smoothness and safety."

This was strengthened by the explanation of Mrs. Yurnita as Head of UPT Mamminasata of the Natural Resources Office of Cipta Karya and Spatial Planning of South Sulawesi Province, she explained that:¹²

"Although I feel that the absence of location determination can speed up the land acquisition process, I recognize that location determination is something more concrete and legally powerful than just sticking to RT/RW."

¹¹Eddy. Service Transportation Province South Sulawesi. Interview. Date September 1, 2022

¹²Yurnita. Natural Resources Office Copyright Work and Spatial Planning Province South Sulawesi. Interview. Date 30 August 2022

Meanwhile, the regions that carry out the land acquisition process by not using location determination instruments are Makassar City. This is known based on an interview with Mr. Hatta as the Head of the Land Problems Section of the Makassar City Land Service, he stated that:¹³

"Currently, the Makassar City Government is carrying out a small-scale land acquisition process following the provisions of PePRES Number 148 of 2015, namely directly by agencies that require land with landowners such as the example of Puskesmas land acquisition and until now the obstacles encountered related to this are during negotiations. But if we want a more targeted and clearer process, we have to use location determination."

Based on the facts mentioned above, it can be stated that related to factors affecting small-scale land acquisition must still use location determination by linking the problem with the teori approach to justice, legal effectiveness theory, legal expediency theory and authority theory, if a rule is expected to be able to overcome problems that arise in the field of land acquisition for small scale, then the government must reconsider related to the rules. The application of location determination for small-scale land acquisition with the following factors include:

1. To ensure the effectiveness of a legal rule related to small-scale land acquisition with location determination, that with the determination of the location will make it easier to carry out the management of certificates, because this is used as a basis in the issuance of certificates for land acquisition for the public interest, in the case of small-scale land acquisition without location determination until now it is still unable to provide a guarantee of complete legal certainty in the long term, there are still cases of certificate management that are hampered due to weak rights at the time of direct land acquisition, of course, this problem raises serious legal problems and can be a reproach for land mafias to act in claiming land that should have become an asset of the State, this shows how important regulations related to the determination of small-scale land acquisition sites by the government, appropriate regulations so that direct land acquisition does not cause legal problems in the future;

2. In terms of legal expediency that every rule made is expected to be able to provide legal benefits for all elements of society, rules related to land acquisition without determining the location for land under 5 hectares in accordance with law no11 of 2020 on the grounds that time efficiency in fact cannot be implemented optimally, there are still problems that often hinder efficiency and effectiveness in small-scale land acquisition without location determination, This happens if there are communities that do not agree to the land acquisition process directly through the process of negotiating compensation or buying and selling tough negotiations and do not encounter an agreement between agencies that want to procure locations with rights holders in the end still make the procurement of small-scale locations without location determination hampered and take a long time, In addition, small-scale land acquisition carried out directly may cause indications of injustice in the provision of compensation if it does not involve the appraisal team. In addition, direct land acquisition also cannot involve the court in terms of depositing compensation if there is an objection from the rights owner, the agency that wants to carry out small-scale land acquisition cannot deposit compensation to the court or consignment this is in accordance with Supreme Court Regulation Number 2 of 2021 which states that one of the conditions for making a determination of compensation to the court must be a location determination that appointed by the governor or regent/mayor. This can hamper the development process for the public interest.

3. In terms of legal authority, to ensure legal certainty, a location determination committee is needed to overcome problems that may be caused during the land acquisition process, both in terms of determining the location by considering regional and city spatial planning, determining compensation and to identify problems with land acquisition objects for the public interest so that legal problems do not occur in the future.

IV. Conclusions and Suggestions

A. Conclusion

Based on the results of research in 5 (five) districts in South Sulawesi Province, researchers can conclude that:

1. The nature of the application of location determination in the small-scale land acquisition process is the licensing in determining land objects for the public interest in order to achieve legal certainty. The decision to use location determination or not to use it is all the choice of agencies that need land, because the latest regulation, namely PP No. 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest which is strengthened by the Regulation of the Minister of Agrarian affairs and Spatial Planning No. 21 of 2021 concerning the Implementation of Spatial Utilization Control and Spatial Planning

¹³Hatta. Service Land Makassar City. Interview. Date 28 August 2022

Supervision explains that in the process of small-scale land acquisition can be done in a directly as well as by location determination.

2. The application of location determination in the land acquisition process in South Sulawesi Province directly or indirectly, using location determination or not, based on the results of research, depends on the circumstances of the location area, and also depends on the culture of the people of an area. If the community can be invited to consult regarding the value of compensation and the location is not disputed, direct land acquisition can be carried out, which is a faster process and the costs required are not as much as if they go through the site determination stage. Although the latest regulations state that small-scale land acquisition can be done directly without location determination, many regions continue to carry out their land acquisition process using the site determination stage because it is considered safer and has more guaranteed legal certainty.

3. Factors that affect the determination of location in the land acquisition process include factors of legal substance, law enforcement officials, costs, community culture and location, if the condition of the area to be carried out by small-scale land acquisition there are indications of disputes or the culture of the community cannot be discussed, then in order to achieve the desired procurement process in the public interest, it must be carried out with the stage of determining the location. Because the location determination process is coercive, inevitably the community must hand over their land to the state, if they do not agree, the payment of compensation is deposited in the district court (consignment).

B. Suggestion

On this occasion, the advice that researchers can give regarding small-scale land acquisition should be:

1. Agencies that require land must pay attention to all aspects of the small-scale land acquisition process including the basis of rights and who owns the land according to the latest regulations, preferably if carrying out the land acquisition process directly, they must report to the Land Office (according to the contents of Article 147 of the Minister of ATR / BPN Regulation Number 21 of 2021) and must immediately request registration of their rights so that the legal certainty of the land is guaranteed.

2. For agencies that need land, they should complete all the completeness so that the land acquisition process is smooth and the registration process for their rights at the Land Office can take place smoothly and the land gets legal certainty.

3. Both large-scale and small-scale land acquisition should still be carried out in the stage of determining the location so that the process can take place safely in the present and in the future when the land acquisition process has been completed.

4. The government has made repeated revisions and improvements related to land acquisition, so that all parties involved in the land acquisition process can comply with every applicable regulation, so that the results of the land acquisition are not legally defective

5. Observing the latest regulations related to land acquisition, namely Government Regulation Number 19 of 2021, is actually not much different from the previous regulation, namely Presidential Regulation Number 148 of 2015, the latest regulations should better guarantee expediency, and legal certainty.

6. People who own land should immediately take care of the certificate of rights to their land, in order to have legal certainty because it is the certificate that is the strongest basis for the rights of a piece of land, which will later provide benefits for the landowner himself. For example, if they need money, they can put their certificate into the bank as collateral if they want to take credit at the bank, or if one day the land is needed in the land acquisition program, the land acquisition process can take place faster and safer.

7. All parties involved in the land acquisition process, both agencies that require land, appraisal teams, communities that have land rights and land offices, are expected to work together and collaborate well in every land acquisition process so that the land acquisition program in Indonesia does not cause problems in the future.

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Andi Besse Tenri Adjeng, et. al. "The Nature of the Application of Site Determination In Small-Scale Land Acquisition For Development For General Development (Case Study In South Sulawesi Province)." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 27(12), 2022, pp. 46-58.