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Land Procurement Rights for Development for Public Interest

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Abstract. This research is a normative research. The essence of land acquisition for the public interest is carried out based on several aspects, namely ontological aspects (teachings about essence), axiological aspects (teachings about values), epistemological aspects (teachings about knowledge), and teleological aspects (teachings about goals). All of them must be in accordance with the 1945 Constitution of the Republic of Indonesia and be stated in the Land Acquisition Law aimed at creating a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development, to ensure the implementation of development.

Keywords. land; public interest

Introduction

Existing resources that can be used or utilized for human interests are land, land is the basic capital of development. "There are almost no (sectoral) development activities that don't require land. Therefore, land plays a very important role, even determining the success or failure of a development".(Meiliyana Sulistio, 2020) So the state's interference through it's apparatus in the land law order is absolute. This is followed up by providing a basis for legal authority to act in regulating everything related to land. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the land, water and natural resources contained there in are controlled by the state and used for the greatest prosperity of the people. The fundamental reason that earth and water and the natural resources contained there in must be controlled by the state is because the earth, water and natural resources contained there in are the main points of the people's prosperity.(Ismail, 2012)

The right of the state to control essentially gives the state the authority to regulate and administer the designation, use, supply and maintenance of the earth, water, space and natural resources contained therein.(Prasetya, 2018) The use of the land is further regulated in Article 14 paragraph 1 of Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Basic Regulations (Basic Agrarian Law) which states that the framework of Indonesian *socialism*, makes a general plan regarding the supply, designation and use of earth, water and space and the natural resources contained therein: (1) for the needs of the State, (2) for the purposes of worship and other sacred needs, in accordance with the basis of the Supreme Lordship, (3) for the needs of the centers of community, social, cultural life and other welfare, (4) for the purposes of developing agricultural, livestock and fishery production and with in that

line, and (5) for the purposes of developing industry, transmigration and mining. (“Aspek Hukum Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum,” 2018)

Based on Article 14 paragraph 1 of the Basic Agrarian Law, land can be used for the benefit of public interests, social interests of private interests and private interests. Thus, if the state needs land to be used for public interest or public interest, it must not ignore social interests and other interests. Based on the hierarchy, the general plan is divided into two, namely the first general plan which covers the entire territory of Indonesia and the second the national general plan is detailed into the regional general plan of each region. (Ulil, 2019)

Research Method

This research is a normative research. (Michael & Boerhan, 2020)

Research Results and Discussion

Land Acquisition Basis for Public Interest Based on Ontological Aspects

The public interest (Zwolak, 2019) in statutory regulations starts from the Minister of Home Affairs Regulation Number 15 of 1975 concerning Provisions regarding Procedures for Land Acquisition, Minister of Home Affairs Regulation Number 2 of 1976 concerning Use of Land Acquisition Procedures for Government Interest for Land Acquisition by Private Parties, Presidential Decree of the Republic of Indonesia Number 55 of 1993 concerning Land Acquisition for Implementation of Development for Public Interest (Keppres 1993), Presidential Regulation of the Republic of Indonesia Number 36 of 2005 concerning Land Acquisition for Implementation of Development for Public Interest (Perpres 2005), Presidential Regulation of the Republic of Indonesia Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for Public Interest (Perpres 2006) and Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest (Land Acquisition Law). (Hidayat et al., 2020)

The meaning of public interest as regulated in Article 1 paragraph (6) of the Land Acquisition Law is a *vague normen*. (Kaehler & Grundei, 2019) The implication of the obscure meaning of public interest is that it creates legal uncertainty in its implementation, for example, whether a hospital established by the government is then managed by a state-owned company or a private party in the category of public interest or not, even though the hospital in practice no longer provides social health services. (Levin & Hanson, 2020) However, looking for profit, the same applies to toll roads, airports, ports, terminals managed by state-owned enterprises or private parties, which in conducting their business activities aren't social but oriented solely for profit. Regarding the formulation of the public interest which hasn't been given standard boundaries, it's just that the essence of the public interest can be said to be for the needs, needs of the public or broad social goals. The limitation of the criteria for the public interest is important so that there is no difference in interpretation in the implementation, so that there can be a clear distinction between development for the public interest and development which aims only for profit.

Land Acquisition Basis for Public Interest Based on Epistemologic Aspects

There are ten principles of land acquisition for public interest based on Article 2 of the Land Acquisition Law, namely the principle of humanity, the principle of justice, the principle of benefit, the principle of certainty, the principle of openness, the principle of agreement, the principle of participation, the principle of welfare, the principle of sustainability, and the principle of harmony. (Prasetyo et al., 2020)

In the context of land acquisition for development for the public interest, there is a land acquisition mechanism, which is regulated according to the 1993 Presidential Decree by the transfer or release of land rights. Meanwhile, in addition to the public interest, the Government is carried out by means of sale and purchase, exchange, and other methods agreed upon by the parties concerned, (2) according to the Presidential Decree 2005, Land Acquisition by the Government or Regional Government is carried out by: (a) release or transfer of land rights, and (b) revocation of land rights. (3) according to the 2006 Presidential Decree, Land Acquisition by the Government or Regional Government is carried out by means of Relinquishing or Transfer of Rights to Land. (4) according to the Land Acquisition Law, Article 13 states: Land Acquisition for Public Interest is carried out through planning, preparation, implementation and delivery of results. (Yusuf, 2019)

The term public interest is a conception that is very general in nature without any more specific explanation for its operation in accordance with the meaning contained in that definition. In simple terms public interest can be said to be for the needs, or interests of many people or broad purposes. Public interests include the interests of the Nation and the State as well as the common interests of the people by taking into account social, political, psychological, and defense and defense aspects on the basis of National Development with due regard for National Resilience and Archipelago Insights.

Land Acquisition Basis for Public Interest Based on Axiological Aspects

When viewed from the designation, the essence and characteristics of the public interest in land acquisition / acquisition are in the interests of the nation and the State. The state as a people's power organization that has the authority to control and regulate public or individual interests. The state can have various sectors that control the livelihoods of many people, but cannot own property or land with the status of property rights. According to this understanding, the State. Only giving recognition to individual land rights in a position that is balanced with the public interest, in the sense that these two things are not mutually harmful. Even if the public interest is forced to take precedence over individual interests, individual interests must be protected by continuing to provide compensation in the form of appropriate compensation. (Lestari, 2020)

According to Anderian Sutedi, the principle in activities that are truly for the public interest, namely (1) these activities are owned by the government, activities for the public interest cannot be owned by individuals or the private sector. Where the private sector and individuals cannot have the types of activities of public interest that require the acquisition of private or state lands, (2) related development activities are carried out by the government, activities for the public interest can only be carried out by the government, and (3) not looking for profit, the limitation of the sentence. (Soemarwi, 2019)

In order for the criteria of public interest to run effectively in the field, (Rohaedi et al., 2019) of course, it must meet the criteria for the nature, form and characteristics, namely (1) application of the characteristic criteria as stated in Article 1 of Law of the Republic of Indonesia Number 20 of 1961 concerning the Revocation of Land Rights and The Objects That Are Above It. The use of the list of characteristics is mandatory for alternatives, (2) the application for these criteria is listed in Article 1 of the 1973 Presidential Instruction and Article 5 of the 2005 Presidential Decree which has now been regulated in Article 10 of the Land Acquisition Law, and (3) application for the criteria for the characteristics of an activity of interest. General, namely that the activity is actually owned by the government, managed by the government and not for profit.

Conclusion

The essence of land acquisition for the public interest is carried out based on several aspects, namely ontological aspects (teachings about essence), axiological aspects (teachings about values), epistemological aspects (teachings about knowledge), and teleological aspects (teachings about goals). All of them must be in accordance with the 1945 Constitution of the Republic of Indonesia and be stated in the Land Acquisition Law aimed at creating a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development, to ensure the implementation of development. For the public interest, land procurement is required that is carried out by prioritizing the principles of humanity, democracy and justice, based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony. The implication is that the principle of law is an ideal element of law. Legal principles form the content of legal norms formulated by the parties authorized to carry out these activities, without legal principles, the legal norms will lose their strength.

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