

Constitutional Protection for Ownership Owners Who Reject Consignation

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ABSTRACT

This research aims to analyze the legislation of granting consignation for development in the public interest and to analyze the constitution providing legal protection for owners of land rights who refuse consignation. This research is a normative legal research with a statutory approach. The legal material analysis technique used in this research is to use descriptive techniques. The results showed that the legis ratio of consignation provisions was based on the social function of land rights as regulated in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. The consignation itself is regulated in Article 42 of the Land Acquisition Law. The constitution provides legal protection for owners of land rights who refuse consignation because it is the community's right to get the protection enshrined in the 1945 Constitution and Pancasila as the philosophy of life of the nation and as the Ideology of the Unitary State of the Republic of Indonesia. In the 1945 Constitution Article 28H paragraph (4) states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone".

Keywords : *Consignment, Land Rights Owners, Constitution Protection.*

1. INTRODUCTION

Public services by the government apparatus today still encounter many weaknesses so that they cannot meet the quality expected by the community. This is indicated by the persistence of various public complaints that have been submitted through the mass media, so that it can lead to an unfavorable image of the government apparatus. State in this case the government must be able to meet the needs of the community. These needs are not individual needs but various needs that are expected by the community, such as the need for health, education, transportation, and others¹.

In general, transportation plays an important role in two ways, namely economic development and non-economic development. Economic goals such as increasing national income, developing national industries and creating and maintaining employment opportunities for the community. In line with these economic goals, there are also non-economic objectives, namely to enhance the integrity of the nation, and increase national defense and security².

Every development activity carried out by the Government certainly cannot be separated from the need for land as a container for its activities. This is because in general development activities are carried out on land. The existence of the need for the land has consequences for the holders of land rights related to the acquisition of land for the

¹ Sinambela, Lilian Poltak, *Public Service Reform, Policy Theory, and Implementation*, Jakarta: PT. Bumi Aksara, 2008,hal.89

² Abbas Salim. *Transportation Management*. Jakarta: Raja Grafindo, 2006,hal. 2

implementation of development in the public interest. Constitutionally, Article 33 paragraph (3) of the 1945 Constitution states that: "The earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". This underlies the right of control of the State contained in Law No.5 of 1960 concerning Basic Rules on Agrarian Principles, which is known as the Basic Agrarian Law (UUPA). Affirmed in Article 2 paragraph (1) of the BAL, namely: "On the basis of the provisions in Article 33 paragraph (3) of the Constitution and other matters as referred to in Article 1, earth, water and space, including natural resources contained therein is at the highest level controlled by the State, as an organization of power for all people. " In addition, the LoGA also adheres to the principle of land rights having a social function, as confirmed in Article 6 of the LoGA, namely: "All land rights have a social function". This principle implies that land rights holders must give up their land rights to be released or transferred if the Government requires the land for the implementation of development in the public interest³.

On this basis there needs to be a policy in the acquisition of land for development. Article 18 of the LoGA states that "For the public interest, including the interests of the nation and the State and the common interests of the people, land rights can be revoked by providing appropriate compensation and in a manner regulated by law. This is accomplished by making regulations namely Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest was amended by Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for Implementation of Development in the Public Interest. Arrangements regarding land acquisition become the legal basis for the government to obtain land for the implementation of development in the public interest as well as a guarantee for holders of land rights to obtain adequate compensation, thus providing better survival from the socio-economic level of life.

Article 10 paragraph (2) of Presidential Regulation No. 36 of 2005 concerning Land Procurement for the Implementation of Development in the Public Interest states "If after the deliberation as referred to in paragraph (1) is not reached, the land acquisition committee determines the form and amount of compensation as referred to in Article 13 and entrusts compensation money to the court a country whose jurisdiction covers the location of the land concerned. " The word "no agreement is reached" in that article means that one of the parties does not approve of the amount of compensation that is discussed. If

³ Amalia, Rizky, Legal Protection for Holders of Land Rights in Determination of Compensation Related to Land Procurement for Public Interest, *Journal, Yuridika*: Volume 27 No 3, September-December 2012.

you see Article 18 of the BAL it says that the right to land can be revoked but by providing proper compensation.

Appropriate compensation for land rights holders aims to respect the rights of land holders who have been willing to release or surrender their land rights to the state. Arrangements relating to land acquisition have been amended several times. These changes are intended to better respect and guarantee the rights of the holders of land rights. In the practice of land acquisition for public purposes, if there is no agreement for compensation, it can be implemented with a consignment. The existence of this consignment does not give the option to the holders of land rights other than releasing or giving up land rights. Problems arise in the practice of land acquisition, where there are still many neglect of the rights held by holders of land rights, especially for minorities and small people. They experienced a reduction in welfare due to the relinquishment or surrender of their land rights for the interests of those who need land, in this case the Government. This automatically violates the principles of Human Rights which are expressly recognized by the constitution with respect to the principle of decent survival, because the people's right to protection is the right of every Indonesian citizen contained in the 1945 Constitution and Pancasila as the philosophy of life of the nation and as the Ideology of the Unitary State of the Republic of Indonesia. In the 1945 Constitution Article 28H paragraph (4) states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone".

As Indonesian citizens, human rights must remain protected as mandated by the Constitution. But in reality the existing consignment system is not in line with the expectations of the general public, because problems arise when compensation is not in line with the expectations of the community. Constitutionally, Article 33 paragraph (3) of the 1945 Constitution states that: "The earth, water and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people". This becomes the basis for the Government to acquire land for public purposes. So that the people affected by the development must follow the existing rules, if they reject the compensation will be deposited through the court.

2. RESEARCH METHODS

Type of research is a normative legal research (juridical normative) with a statutory approach. The legal material used by the author in this study consists of 3 (three), namely primary legal materials, secondary legal materials, and tertiary legal materials. The approach used in this research is the statutory approach. The legal material analysis technique used in this research is to use a descriptive technique, which is the method of analyzing legal material by carrying out what it is about a legal perspective. Then proceed with evaluating a legal condition⁴. In conducting the evaluation the writer can use various interpretations. As well as by grouping and selecting legal materials obtained according to their quality and truth, then they are connected with theories, principles, and legal principles obtained from literature study so that answers will be obtained for the problems that are being studied in research, namely regarding the protection of the constitution for owners of land rights who refuse consignment.

3. RESULTS AND DISCUSSION

Legis Ratio Providing Consignment for Development in the Public Interest

Consignment is an effort to settle compensation through the court. The government through the Land Release Team (TPT) and the Land Procurement Committee (P2T) will deposit compensation in accordance with the Appraisal Team's estimate to the court. Landowners who will be used for public purposes are given 120 days from the first consultation to settle compensation. If you agree you can immediately receive payment. But if not, then those concerned can appeal to the High Court. Not reaching a meeting point, then the process through the court that can resolve the problem. Of course, the cost to be deposited in court is the price in accordance with the team's calculations *appraisal*, because the price offered is the highest.

The legis ratio of the consignment itself is based on Article 6 of the BAL, namely that all land rights have a social function, which in the explanation itself states that any land rights that exist on a person, it cannot be justified that the land will be used (or not used) solely eye for his personal interests, especially if it causes harm to society. The use of land must be adjusted to the conditions and nature of the rights, so that it benefits both

⁴ I Made Pasek Diantha, *Methodology Normative Legal Research in Justification of Legal Theory*, Kencana, Jakarta, 2017, hal.12.

the welfare and happiness that has it and benefits the community and the State. Article 6 of the Loga states that land owned by a person can be taken or used by the state to achieve benefits and prosperity for the community and the state. Land used by the State cannot be taken for granted, Article 18 of the LoGA states that "in the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights can be revoked, by providing compensation appropriate and in accordance with the manner stipulated in the law ". Self compensation can be done by deliberation in advance to determine the shape and size. If residents object and refuse the results of the compensation decision can be done by depositing the money in The District Court or commonly referred to as the Consignment itself is regulated in Article 42 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

The Constitution Provides Legal Protection for Owners of Land Rights Who Refuse Consignment

The community's right to get protection is the right of every Indonesian citizen contained in the 1945 Constitution and Pancasila as the philosophy of national life and as the Ideology of the Unitary State of the Republic of Indonesia. In the 1945 Constitution Article 28H paragraph (4) states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone". As Indonesian citizens, human rights must remain protected as mandated by the Constitution.

Consignment acts are coercion of wills, unilateral treatment, deprivation of rights, arbitrary actions by the Government that requires land, and do not give respect to the rights to holders of land rights. It cannot be justified if the Government which requires land takes the land holding the right of land before an agreement is reached in a deliberation regarding the form of compensation. If an agreement has not yet been reached, then the consignment cannot be considered as a basis for the taking of land rights, because this does not provide legal protection for holders of land rights.

The use of this consignment institution is basically not justified by the Supreme Court of the Republic of Indonesia in its decision No. 3757 PK / Pdt / 1991 dated 6 August 1991 which stated that the consignment could not be applied in land acquisition conducted by the government. But in the implementation of this decision was not used as jurisprudence by the District Court in handling disputes over money through the District Court. This is due to the authority of the District Court in accordance with the mandate of

article 14 of Law Number 4 of 2004 concerning Provisions on the Principle of Judicial Power. Where the court may not refuse to examine and try a case that is filed under the pretext of law there is no or less clear but it is obligatory to examine and try. Acts of safekeeping money through the District Court basically can be rejected by the District Court based on the consideration of judges that has caused injustice in the community. For this reason, the District Court places its position as a community partner to obtain legal certainty rather than allowing the community to receive unfair treatment from the government⁵.

Giving compensation through this consignment will be detrimental to the community because the community will lose the function attached to the land, whether its social function is as a means of binding the traditional law community unit, or the function of the land as capital or a place of business to fulfill their living needs. The loss suffered by the holder of the land right is basically not only physical in the form of land, buildings or other objects that are on the land. But also includes losses in the form of non-physical, namely the loss of business opportunities, jobs, sources of income and other sources of income. And especially the loss of inner bonds with the land under their control. This physical loss can basically be compensated with cash that can be given to the holders of the rights to the land, but the loss in the form of non-physical which will experience difficulties if the replacement is done.

Imperfections in existing land acquisition laws and regulations still open the gap for actions that are contrary to the values of justice and the enforcement of human rights. Therefore, it is necessary to have a strong desire to reform land law based on the values of justice, which places human rights as one of the tasks shared by all parties to be able to realize the justice desired by all groups without causing the development process to be hampered.

One form of implementing legal certainty is the protection of arbitrary actions. The community expects legal certainty, because with legal certainty the community will be more orderly, because the purpose of the existence of law is for public order. In addition, the community expects benefits in the implementation of law enforcement. Laws are

⁵ Amalia, Rizky, Legal Protection for Holders of Land Rights in Determination of Compensation Regarding Land Procurement for Public Interest, *Journal, Yuridika*: Volume 27 No 3, September-December 2012.

created to regulate humans, so the implementation of law or law enforcement must provide benefits or usefulness to the community.

The taking of community land by anyone, including by the government, must not be carried out arbitrarily for any reason, including reasons for the public interest. If forced community land is taken for development in the public interest, then the taking must be based on law and by providing reasonable compensation. Regarding this, Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest also requires the same thing, namely land acquisition by providing appropriate and fair compensation to the parties entitled.

Land acquisition carried out by the government in the public interest must be able to protect the rights and interests of those who are entitled to the land, where they are expected to be willing to relinquish their rights to the land and in return for providing proper and fair compensation (Roesli, Heri, & Rahayu, 2017). So that the constitution provides legal protection for owners of land rights who refuse consignment because it is the community's right to get the protection enshrined in the 1945 Constitution and Pancasila as the philosophy of life of the nation and as the Ideology of the Unitary State of the Republic of Indonesia. In the 1945 Constitution Article 28H paragraph (4) states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone". As an Indonesian citizen the protection of human rights as mandated by the Constitution.

4. CONCLUSION

Legis ratio of the consignment itself is based on Article 6 of the BAL, namely that all land rights have a social function, which in its own explanation states that whatever land rights exist to a person, it cannot be justified that the land will be used (or not used) solely for his personal benefit, especially if it causes harm to the community. The use of land must be adjusted to the conditions and nature of the rights, so that it benefits both the welfare and happiness that has it and benefits the community and the State. Article 6 of the Loga states that land owned by a person can be taken or used by the state to achieve benefits and prosperity for the community and the state. Land used by the State cannot be taken for granted, Article 18 of the LoGA states that "in the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights

can be revoked, by providing compensation appropriate and in accordance with the manner stipulated in the law ". Self compensation can be done by deliberation in advance to determine the shape and size. If residents object and refuse the results of the compensation decision can be done by depositing the money in The District Court, or what is commonly referred to as the Consignment itself, is regulated in Article 42 of Law Number 2 of 2012 Concerning Land Procurement for Development in the Public Interest The

Constitution provides legal protection for owners of land rights who refuse consignment. refusing land rights consignment because it is the community's right to get the protection enshrined in the 1945 Constitution and Pancasila as the philosophy of national life and as the Ideology of the Unitary State of the Republic of Indonesia. In the 1945 Constitution Article 28H paragraph (4) states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone". As an Indonesian citizen Protection of human rights as mandated by the Constitution.

The Constitution actually regulates the ownership of land rights owned by a person so that they are not taken away just like that, but instead provides appropriate compensation for holders of land. It is true that the earth, water, and natural resources contained therein are controlled by the state, but every citizen also has the right to have private property and property rights, so if the state will use private property and community property, then the state is obliged to provide appropriate compensation for those who have rights.

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