

# THE COURT'S AUTHORITY OVER CASH PAYMENT AND CONSIGNMENT ON LAND ACQUISITION FOR DEVELOPMENT FOR PUBLIC INTEREST IN LAMPUNG PROVINCE

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## THE COURT'S AUTHORITY OVER CASH PAYMENT AND CONSIGNMENT ON LAND ACQUISITION FOR DEVELOPMENT FOR PUBLIC INTEREST IN LAMPUNG PROVINCE

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### ABSTRACT

*The implementation of land acquisition for the public interest is in line with Law Number 5 of 1960 concerning Basic Agrarian Principles, on this basis the government can take community land. In line with the times, the regulation regarding the implementation of land acquisition for public interest was amended several times, until the last one was the issuance of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, which later the technical rules were regulated in Presidential Regulation No. 71 of 2012. The problems in this study are (1) what is the court's authority over cash payments and consignments for land acquisition for development for public interest in Lampung Province? (2) Anyone entitled to apply for cash payments and consignments for land acquisition for development for public interest in Lampung Province. The research method used in this research is to use a normative empirical approach with data sourced from primary and secondary data. The results showed (1) the authority of the court to acquire land for development for the public interest in Lampung Province was carried out by releasing land land with compensation by consignment through several stages such as: location determination, counseling, determination of boundaries, announcement of results, and deliberation on pricing. , waiver. (2) Who is the party entitled to apply for cash payment and consignment in land acquisition, namely through non-technical evidence of incomplete and technical proof of ownership: the measurement process is long. The impact of land acquisition, positively is to accelerate economic growth, while the negative impact is violations committed by the consignment agency, which therefore need to be eliminated.*

*Keywords:* Authority, Consignment, Public Interest.

### INTRODUCTION

Land is one of the important natural resources for human being sustainability. Relation both of them is not only a place for life, but also it is providing resources for life (Firmansyah 2014). As a basic capital, land has two functions: productive function and non-productive function (Zakie 2011). land acquisition according to John Salindeho means to provide us to achieve a state of being, because in striving for and providing there is already tucked the meaning of holding in that state (Prasetyo 2018). Regulation regarding land acquisition for the interest of the public have experienced dynamics in line with the times. Starting in Law Number 5 of 1960 concerning Basic Agrarian Principles, the provisions regarding land acquisition for the public interest have undergone several changes, where the last amendment was the enactment of Law Number 2 of 2012 concerning Land Acquisition for Development for the Interest General.

In a policy stipulated by the Government, including the Regional Government, or a legal act committed by the parties often caused a dispute. The disputing parties are: between individuals and individuals; between individuals and a group of people; between individuals and companies; between a group of people and a company; between company and company; between individuals and the Government or Regional Government; between a group of people and the Government or Local Government; between the Government and the Regional Government; between Local Government and Local Government; between the company and the Government or Local Government; between customary law communities and companies; between the customary law community and the Government or Local Government (Santoso 2016).

In the implementation of land acquisition, the factor that affects the smooth implementation of land acquisition projects is human resources (Mulyadi 2017), the related institutions that implement these regulations often cause excesses that have a significant impact on the stability of a community involved in it. The various conflicts that have arisen and the tensions triggered by this are based on the failure to reach a consensus or agreement between the community as the owner of the land rights and the party carrying out the land acquisition, in this case the government.

Relations among community members are often disrupted because one party does not carry out its obligations. So that because of this then it creates a dispute or conflict. If a dispute arises, then the party who feels aggrieved can claim their rights, on the other hand, if both parties have both fulfilled the contents as agreed, then an agreement has been born because the agreement ends or is completed.

In civil relations, disputes often result in losses for certain people and cannot be resolved by the parties amicably so that the party who feels aggrieved submits his case to the court to be decided by a judge in accordance with applicable law to claim his rights which have been violated by the other party. Judges in making their decisions can be in the form of dictum that is punishing/condemnatory. Such decisions generally contain sanctions in the form of punishment for the defeated party in the case at the trial.

The execution of a decision (execution) is a forced act with legal force carried out by the court against the losing party to carry out a decision that has permanent legal force. It is not enough for the court / judge to just settle the case by passing a verdict, but also that the decision must be implemented or executed, so that achievement is realized as an obligation of the parties listed in the decision (Samosir 2011).

Regarding voluntary implementation of decisions. In the opinion of M. Yahya Harahap, that there are no rules for the fulfillment of decisions voluntarily. The law only regulates the details of the procedure for fulfilling decisions by execution (M. Yahya Harahap 2010). Consignatie/deposit, namely if a creditor refuses a payment that the debtor wants to make, the debtor can free himself from his debt by offering the money paid to the creditor through the bailiff. And if the creditor also rejects this offer, then the money is deposited at the secretariat of the District Court with a request that the creditor is summoned before the court and that the deposit be legalized as payment. For approval, pay off the debtor's debt.

In the current implementation of land acquisition, some parties still feel that in its application, the laws used still do not reflect the values contained in Pancasila, both as a view of life and a source of law for the Indonesian nation. This results in the emergence of several parties who have not been accommodated and have not received legal certainty or protection. Especially the holders of land rights. Then with regard to the consignment carried out by the court, the community is considered to have ignored the living law values in the community. Because in practice, courts only refer to the provisions in the regulations made by the authorities, without considering the social aspects that exist in society.

Discussions of land in land acquisition for development for public interest are the first to be used by the government in implementing development. One way is by payment and consignment as an instrument of government control and supervision for the community. Included in the business world. The most important issue for the business world is the ease of carrying out development, in the regions. The easier the land acquisition procedure, the better the development perception, but in theory, the function of the court in payments and concessions will be clearer.

This research intends to find out that court practices (Kholid 2015) so far have not had the same perception of the procedure for offering cash and concession payments as regulated in Article 1404 to Article 1412 of the Civil Code, if no agreement is reached in deliberations for land designation then it is deposited in court (Article 42 of Law No. 2 of 2012) whose implementation must be in accordance with applicable procedural law because procedural law plays an important role in the judicial process.

The results of this research will be endeavored to construct land acquisition for the development of the public interest as a cut in the bureaucratic chain, not a reduction in the function of permits as an instrument of control. Based on the description above, the research questions posed are: (1) what is the Court's authority over cash payments and consignments for land acquisition for development for the public interest in Lampung Province. (2) Anyone entitled to apply for cash payments and consignments for land acquisition for development for public interest in Lampung Province.

The purpose of this study is to seek answers to research questions posed by using legal research methods. The theoretical benefit of this research is to apply the theory of agrarian law as a controlling instrument of development policy. Thus, an application flow for cash and consignment payments will be obtained for land acquisition for development for the public interest which is taking place in Lampung Province.

## RESEARCH METHODS

The research method in this article uses a normative juridical approach (dogmatic legal research) with a review of statutory regulations. Statutory regulations analyzed by means of content of analysis. Analysis of legal materials and data was carried out descriptively and analytically. This research is a legal research using a social science methodological approach in a broad sense. The data used in this study consisted of two types of data, namely primary data and secondary data.

Data were collected through inventory procedures and identification of laws and regulations, observation, and classification and systematization of legal materials according to research problems. Legal materials and data collected were reviewed for completeness (editing), then classified and systematized thematically (according to the subject matter), for further analysis where the analysis was carried out qualitatively, and then described descriptively.

## RESULTS AND DISCUSSION

### Dimension of Justice on Public Interest

The terminology of general interest consists of the word's 'interest' and 'general'. Lexically, interest means needs, needs, and wants. Whereas in general, it can be interpreted as a crowd, public and inclusive or comprehensive. Based on the lexical meaning of these two words, the public interest can be interpreted as the will of the people or society in general. The effort of this encyclopedic work, riveted throughout with myriad footnotes, is "to state in orderly fashion the contexts and the range of tasks confronting modern democratic governments in using law as an instrument of social control, and as a means towards justice." In attempting to do so, Stone draws on all relevant sources and fields of knowledge, particularly sociology, political science, anthropology, and economics. In fattening his already husky subject he also undertakes a critical survey of present knowledge of law, "from the juristic, historical, anthropological, and sociological sides," and to delimit the more rapidly changing areas of statutory and case law (Gary S. Goodpaster 1967).

That law must lay down in the clearest terms any procedures for such compulsory acquisition and principles to be applied in awarding adequate compensation (Nor Asiah Mohamad, at.all: 2013). Such law accords for the principle that the rights of the public prevails against the private interest. In the era of development and globalization, the demand for new physical development has called for increased use of state land by the many quarters. Some projects require specific land at specific location thus, the

government may have no choice but to compulsorily acquire land for that purpose. As a result, the acquisition of private land is unavoidable and the Land Acquisition Act shall be invoked closely to ensure justice is done.

Referring to Salindeho in (Salindeho 1988) the public interest includes the interests of the nation and the state as well as the common interests of the people by looking at the social, political, defense, security and national psychological dimensions. Maria S.W. Sumardjono suggested that the concept of public interest, apart from fulfilling its "designation", must also be able to feel its benefits (for public use) (Arif 2012). In the context of land acquisition for the public interest, referring to statutory regulations, namely Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, it is stated that land acquisition for the public interest is the activity of providing land by providing appropriate compensation and fair to the entitled parties. The release of land can be seen as the first step in obtaining people's land, whether it is used for public or private interests (Fithry 2016). The criteria of public interest have two meanings according to Soetandyo Wignjoseobroto, (Wignjoseobroto 1991), namely: Public interest in its meaning as the interest of many people, according to morals, will soon be decided and defined according to the choices and tastes of many people, perhaps through a more spontaneous process, proceeding from the ground up. The public interest in the meaning of the national interest is decided through processes that are normative and structural in nature and centrally controlled in fulfilling the demands of development engineering.

Compulsory land acquisition has been a major impediment to economic development in Indonesia, often delaying major infrastructure projects for years. Prior to 2012, the legal authority and procedure through which the state could acquire land were both unclear and contradictory. Lacking a legal framework that provided the process with certainty and legitimacy, land acquisition has often triggered accusations of state coercion, intimidation, and human rights violations. In 2012, the Indonesian legislature passed a landmark bill called Law No. 2 of 2012 on Land Acquisition in the Public Interest. It conferred upon the state the legal authority to acquire privately held land for the purpose of economic development, and it established a statutory process for the determination of compensation as well as clearly defined procedural requirements and deadlines for all parties involved. This has resulted in the acceleration of many longstalled infrastructure projects and has ensured that the outcome of compulsory land acquisition is generally more equitable, though there are some deficiencies in the legislation that are likely to require further reform (James Guild: 2019).

According to the provisions in Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, land acquisition for public interests is used in development: National defense and security; Public roads, toll roads, tunnels, railways, railway stations, and railway operating facilities; Reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures; Ports, airports and terminals; Oil, gas and geothermal infrastructure; Generating, transmission, substation, grid and distribution of electric power; Government telecommunications and informatics networks; Landfills and waste processing; Government or local government hospitals; Public safety facilities; Government or local government public burial places; Social facilities, public facilities, and public green open spaces; Nature reserve and cultural heritage; Government or regional or village government offices; Arrangement of urban slum settlements and or land consolidation and housing for low-income communities with lease status; Government or local government educational infrastructure or schools; Government or local government sports infrastructure; Public markets and public parking lots.

The problem then is, as it is known that not all developments categorized above are actually carried out purely for the sake of the public. For example, in the construction of public roads and toll roads. There is a significant difference. Public roads are built and can then be used by all elements of society, while toll roads are built but then access to them can only be enjoyed by the whole community. This is where the meaning of the public interest should then be reduced to certain criteria that embrace justice as the direction of its goal.

#### Dimension of Justice in Compensation

The implication of land acquisition for development in the public interest results in the revocation of land rights. As a substitute, the government provides compensation or compensation for this matter according to the provisions of the prevailing laws and regulations. Therefore, in the event that the rights to land belonging to a person or customary rights in a community are revoked for the sake of the public interest, the government should compensate the land in order to provide justice and benefit to those entitled.

With regard to the valuation of land prices, the government must pay attention, especially to customary law communities, the local wisdom of these communities in relation to the nature around where they live. So that in a development carried out in the public interest, the compensation process should not only assess material values, but the compensation must be an accumulation of material and immaterial compensation. As the mandate contained in the Pancasila which is derived in the Basic Law that land, water and air in the unitary state of Indonesia are utilized maximally for the benefit of the community. Citizens' property rights with regard to land ownership and the public interest of the government as state administrator in charge of development should be balanced.

In order to achieve the balance objective, in a land acquisition, compensation for land acquisition needs to take into account the factors of the parties whose land is the object of land acquisition. The amount of compensation for land acquisition should be carried out in two directions until a consensus is reached by the parties. According to Greenberg (1996), perceptions of procedure are more useful for explaining attitudes toward institutions, and distributive justice perceptions have a greater influence over attitudes towards a result of decision. All the same, universality of this role not absolute and the role of justice varies according to organizational contexts and types of rewards. Treambly et al. (2000) suggested that distributive and procedural justice dimensions must be present if attitudes toward rewards are to be properly understood, and perceptions of organizational justice and compensation satisfaction can independently influence attitudes toward the organization. Justice perceptions may have

consequences on other elements that can affect organization's performance, such as job satisfaction and organizational commitment.

Regarding the importance of the value of compensation based on this agreement, A.P. Parlindungan in his book on land (Parlindungan 1993) states that a party or person who is affected by a land acquisition who is then deprived of their land rights must receive the same minimum compensation as before their land title was revoked due to land acquisition. Of course, it would be even better if the compensation went beyond the situation before the land title was revoked. This is because it is feared that people who are deprived of their rights to their land will become more deprived of their lives.

#### Consignment in The Perspective of Justice

Consignment comes from the Dutch language, which is from the word *Consignatie* which means "deposit of money or goods at the court for the payment of one debt. The offer of payment which is followed by custody at court releases the original debtor by means that are lawful according to law." (Mulyati and Ikhwansyah 2019). The consignment as a mechanism to pay compensation due to land acquisition for development in the public interest can only be carried out in a number of conditions. First, the actor in land acquisition is the government. Second, an agreement has been reached from both the government and the owner of the land or building that is the object of the land acquisition.

The problem that arises later is that the government often uses consignment as justification to carry out development on land owned by the community on the grounds that they have made concessions on loss money which has not been approved by the District Court. Regulations regarding the practice of consignment can be seen in the Civil Code where consignment is described as a method that is usually carried out in an agreement in which a debtor repays his debt by entrusting a debt payment to the court. This consignment or deposit can be carried out in objects in the form of money or objects in the form of other movable objects. If seen from the formulation of the Article regarding the consignment in the Civil Code, namely Article 1408 it states that: "as long as the debtor does not take what is deposited, the debtor can take it back, in that case, the people who are in debt and the guarantor of the debt are not released". The formulation of this article assumes that if the party affected by land acquisition, in this case the people, does not take compensation that has not been agreed upon in the Court, then the compensation can be taken back by the government as the party organizing the land acquisition. And the community whose land is the object of land acquisition will lose their land and will not receive compensation.

In essence, the legal relationship that arises as a result of land acquisition for development in the public interest is a legal relationship in the civil domain. This legal relationship is like in a sale and purchase transaction where the agreement or consensus of the parties is a crucial factor in its implementation. As stated in the principle of *pacta sunt servanda*. In Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, compensation for land acquisition is stipulated through the land agency with a maximum period of 30 working days. Starting from the completion of the assessment of the object for compensation is carried out. That is the basis for providing compensation to the land owner whose land is the object of land acquisition.

If no agreement is reached in determining the value of compensation, which is followed by a deliberation process between the parties involved in land acquisition, then the party entitled to compensation can file an objection to the district court for a decision within 14 working days. The existence of Law Number 2 of 2012 negates the existence of consignment to transfer government responsibility in land acquisition. In line with this the use of consignment cannot be justified as the Supreme Court once decided in case No. 3757PK/Pdt/1991 dated 6 August 1991, in which the consignment was declared inapplicable in terms of land acquisition by the government.

The problem then is that the existence of the 2 laws above does not close the opportunity for the practice of consignment to continue. The Supreme Court's decision as mentioned above does not become jurisprudence which absolutely must be followed and implemented by district courts that carry out consignment practices.

Talking about compensation, Law Number 2 of 2012 also regulates that compensation for land can be given in several forms, namely in the form of: Money; Replacement land; Resettlement; Shareholding; and other forms agreed by both parties (Subekti 2016). At the consignment, the types of compensation as contained in Law Number 2 of 2012 can only be made in the form of money. Meanwhile, replacement land, resettlement, share ownership, and other forms agreed by both parties are not regulated for its application. If traced further, the provisions regarding deliberation to reach an agreement in compensation for land acquisition that exceeds the stipulated time limit, namely 30 days, can be categorized as human rights violations committed by the government against parties whose land is the object of land acquisition.

The practice of consignment is also full of conflicts with the norms contained in the constitution. One of them is in Article 23 paragraph (1) which states that the state budget as a form of state financial management is stipulated annually by law and its implementation is carried out openly and responsibly for the greatest interest of the people. With the existence of a consignment, compensation that should be properly given to the party whose land is the object of land acquisition for the public interest has a bad effect. This is because the consignment opens the possibility that the party whose land is the object of development for the public interest may lose the land and at the same time do not receive compensation.

Therefore, regulatory reform in land acquisition for development for the sake of interest is very much needed to prevent consignment practices to provide justice to the community as parties whose land is the object of land acquisition. Such regulatory reform should close the possibility of reopening consignment practices in the future. Some of the ways are by revising existing procurement regulations to make them more responsive and accommodate community rights. Apart from that, it needs to be reiterated that not all land acquisition is purely carried out in the public interest, as above has been conveyed through examples of

public roads and toll roads. So, then it is necessary to differentiate regulations in case a land acquisition is actually carried out in the public interest or only for a more commercial interest.

Another factor that is no less important is in terms of compensation. Compensation should be done in a fair and reasonable manner. So that parties whose land is the object of land acquisition are not at risk of experiencing impoverishment due to land acquisition. In addition to emphasizing the development aspect, the land acquisition paradigm for the public interest should also pay attention to the welfare aspects of the party entitled to compensation in the land acquisition as well.

## CONCLUSION

The consignment as a mechanism to pay compensation due to land acquisition for development in the public interest can only be carried out in a few conditions. First, the actor in land acquisition is the government. Second, an agreement has been reached from both the government and the owner of the land or building that is the object of the land acquisition. The problem that arises later is that the government often uses consignment as justification to carry out development and owned by the community on the grounds that they have made concessions on loss money which has not been approved by the District Court.

Regulatory reform in land acquisition for development for the sake of interest is urgently needed to prevent consignment practices to provide justice to the community as parties whose land is the object of land acquisition. Then it is necessary to make a distinction in land acquisition for the public interest which can truly be accessed by the general public from land acquisition that is commercial in nature. In addition, compensation for land acquisition must be oriented towards justice and welfare for the party whose land is the object of land acquisition. Therefore, the suggestion that the author can give is that the existence of a consignment institution should be eliminated in terms of land acquisition for development for the public interest, because it does not accommodate the spirit or values of Pancasila and is a tool that can be abused. So that for the good of society, the consignment needs to be eliminated.

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# THE COURT'S AUTHORITY OVER CASH PAYMENT AND CONSIGNMENT ON LAND ACQUISITION FOR DEVELOPMENT FOR PUBLIC INTEREST IN LAMPUNG PROVINCE

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