

THE IMPORTANCE OF SPATIAL PLANNING IN LAND ACQUISITION FOR PUBLIC INTEREST BASED ON LAND SAVING MODEL REGULATION

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Abstract

Land acquisition for public interest is a process that must be done by the government and local government in realizing the development of infrastructure that will support the economic growth and competitiveness of the nation. However, in practice there is a conflict of interest between the rightful party (landowner), the community with the government and the local government due to many factors which one of them is related to the non-establishment of spatial planning, as in the issuance of permits for housing construction around the airport that disserve residents of the housing. By using the doctrinal method and the concept of pengayoman and progressive law and also thickest version rule of law, this paper offers land acquisition regulation for public interest based on land saving model which is based on the establishment of spatial planning system. Land saving model will be a saving of land owned by the government in line with the spatial planning document to simplify the process of land acquisition for public interest. Spatial planning system which includes: spatial planning and spatial planning detail have an important role in the actualization of this model, because the spatial planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district level will be the basis of this model. Through an established and sustainable spatial planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

Keywords: land, acquisition, spatial, planning, development.

A. Introduction

Article 33 Paragraph (3) of the 1945 Constitution, affirms that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. These provisions are elaborated further by Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles, which provides that the right of state control authorizes the state to organize and administer the use, stockpiling and maintenance of the earth, water and space, as well as land for nation building interests.

Development carried out by the state is basically done for the benefit of the nation with the greatest benefit to the welfare of the people. Development has a variety of forms and types, one of which is the development to meet the public good or for public interests (public purpose). (Team DPR RI -2012) The development of this model is basically done to accelerate the process of economic development.

The acceleration of economic development is an important issue that is a priority policy of the governments of countries in the world. The emergence of China and India as new countries have good economic growth, so that the starting position is calculated as an influential country in the world. China and India have managed to build the acceleration of the economy with appropriate policies related to utilization of comparative resource (natural resources) and competitive resources (human resources). Indonesia as a sovereign country should also be able to overtake China and India in the context of building a significant economic acceleration. (Ade Arif Firmansyah et all ,2015)

The advantage of Indonesia's resources to accelerate the process of economic development requires adequate infrastructure as its ingredients, in this context development is done by building a specific infrastructure aimed for the public interest. Infrastructure development for the public interest requires land as a place to be used for development, so it will be related to the mechanism of land acquisition for the public interest. (Ade Arif Firmansyah,2014)

Public land acquisition will be related to the development of the economic sector in a broad sense which of course the private sector also contributes to the expansion of its business. The private parties have an interest in the land acquisition because in reality they are in desperate need of infrastructure development such as roads, ports, airports and so forth both in terms of investment and utilization. In addition to the interests of the government and the private sector, the wider community's interest in infrastructure development to facilitate life is also in the land acquisition process. However, other interests that should not be forgotten are the interests of those whose land is used and those affected in infrastructure development.

Although public land acquisition is currently designed to support economic growth and the nation's competitiveness. However, in the implementation there is a conflict of interest and conflict between the direct affected people, the community and the government and the local government, even give the negative impact to indirect affected due to many factors, one of which is related to the non-establishment of spatial planning documents. For example, airport expansion is linked to spatial planning aspects and residential development permit around it. Based on several studies conducted, the noise level of airport activity has caused various problems, ranging from decreased hearing levels to rising blood pressure of residents in the area around the airport. Some of the research that has been done and proved the problem are: (Ade Arif Firmansyah et all ,2016)

1. Research in Neglasari and Selapang Jaya urban areas Tangerang, Banten, around Soekarno Hatta Airport. The number of respondents 150 people, from the results of the study known only 12 people (8%) respondents who did not experience communication disorders, the rest as many as 138 people (92%) have communication problems. (Arif Maskur, 2012)
2. Research in the area around Ahmad Yani Airport Semarang, The noise measurements show that the Cakrawala housing has noise exposure above the noise level (NAB) level of 69 dBA (NAB 55dBA), while the Semarang Indah Housing has exposure noise below the NAB of 51 dBA. These results indicate that exposure to noise affects blood pressure ($p = 0.00$). The increase of respondent's blood pressure at Cakrawala Housing has higher percentage that is 83,3% for cystole blood pressure increase and 59,9% for diastole blood pressure increase compared with Semarang Indah Housing with percentage 69,9% for systole blood pressure increase and 49, 9% for increased diastolic blood pressure. Exposure to chronic noise due to flight activity has a significant effect on blood pressure. (Hani Afita et all, 2013)

The reality of the problems that arise above is due to the absence of harmonization between the spatial planning aspect and the unstable model of land acquisition regulation for public interest which is currently in effect. This paper will further describe the importance of spatial planning document in the land saving model regulation offered as a solution in realizing the land acquisition for the public interest that is more friendly and minimize the conflict that synchronized with spatial planning document.

B. Research Method

This research is done by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses a statutory approach and a conceptual approach. (Peter Mahmud, 2005) The data were analyzed qualitatively by

describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis then concluded deductively.

C. Result and Discussion

The provision of the right to control the state underlies the philosophical side of the land acquisition for the public interest, (Mahfud MD, 2010), as its juridical side refers to Article 18 of the UUPA whose contents "For the public interest, including the interests of the nation and the State and the common interest of the people, land rights may be revoked, Compensate appropriately and in a manner regulated by law".

Basically Land acquisition for public use can be done in three ways; First, land acquisition for public interests can be done by applying for the revocation of land title to the president. Second, land acquisition for public interest can also be done by releasing land rights. Third, the land acquisition for public interests can also be done by means of sale and purchase, exchange or other means agreed by both parties, provided that the required land area is not more than five hectare. (Ade Arif Firmansyah, 2014) However, public land acquisition is still a process in which there are mutually exclusive interests.

The intersection is evidenced by the large number of land cases. During the New Order period until 2001, there were 1,753 cases. Then in 2007 increased to as many as 2810 cases. (Yanto Sufriadi, 2011) Data from BPN up to September 2013, the number of land cases reached 4,223 cases (land cases in general). The number of completed cases reached 2,014 cases spread across 33 provinces throughout Indonesia. This condition arises because the substantive regulation of land acquisition for the public interest is partial and the need of land acquisition is incidental so it is prone to conflict, so the character of the regulation needs to be improved to realize the legal condition which is really inherent to the needs of society. The efforts is by applying land saving model regulation which nuanced pengayoman or rule of law substantive.

Tamanaha divides the rule of law into "the thinnest" which is a formal version of the rule of law and "the thickest" which is a substantive version of the rule of law. The thinnest formal version of the rule of law is the notion that law is the means by which the state conducts its affairs, "that whatever a government does, it should do through laws. The thickest substantive versions of the rule of law incorporate formal legality, individual rights, and democracy, but add a further qualitative dimension that might be roughly categorized under the label "social welfare rights." (Brian Z. Tamanaha, 2004)

In line with the concept of The thickest substantive versions of the rule of law above, the current regulation of land acquisition for the public interest must move from a view to bringing about a shelter for society and its formation must be interpreted progressively for the benefit of the people. According to Arief Sidharta, Pancasila as a legal goal to manifest pengayoman, to protect people passively by preventing arbitrary acts, and actively by creating a human condition that allows human society to take place fairly so that every human being gets the opportunity broad and equal to develop the full potential of his humanity. (Bernard Arief Sidharta, 2013)

Likewise with the idea of progressive law, according to Satjipto Rahardjo the idea of progressive law starts from the basic philosophical assumption that law is for man, not vice versa. Thus the existence of law is to serve and protect human beings, not the other way around. Law is regarded as an institution aimed at bringing people to a just, prosperous and happy life. Progressive law embraces a pro-justice legal ideology and a pro-people law (Satjipto rahardjo, 2009). The progressive legal character that requires the presence of law is associated with empowerment as its social goal, causing progressive law also close to the social engineering of Roscoe Pound. (Bernard L. Tanya, 2010)

One such effort is by using land saving model regulation that is close to the nuance of pengayoman or substantive rule of law. Land saving regulation model can be realized by harmonizing spatial planning with the regulation of land acquisition for public interest. The spatial planning documents must be harmonized as presented in table one below.

Table 1. Form and Kind of Spatial Planing Document

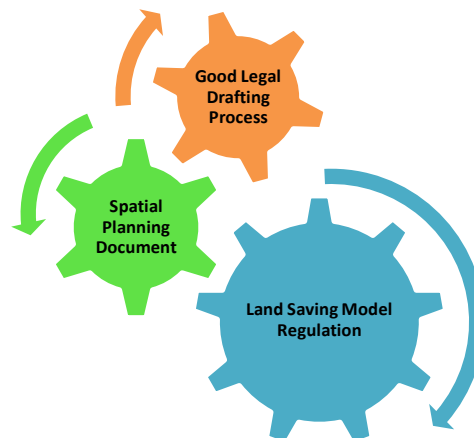
No	Spatial Planing	Law Form
1.	National Spatial Planing	Act
2.	Province Spatial Planing	Province Local Regulation
3.	Regency/City Spatial Planing	Regency/City Local Regulation
4.	Detail of Spatial Planing	Regent/Major Regulation

By harmonizing these spatial planning documents, as a basis of land saving regulation model will make the land acquisition process for the public interest better. However, there is one more thing to be done in the context of the policy regulation by placing it in a special chapter on public acquisition arrangements with due regard to the processes and mechanisms for the establishment of good legislation as legitimate legal norms.

According to Jimly Asshiddiqie, the establishment of a good rule must be based on the philosophical, sociological, juridical, political and administrative aspects and its validity must also be reflected philosophically, sociologically, juridically and politically. (Jimly Asshiddiqie, 2006) Philosophically, the formulation of Land Acquisition Regulations for public interests should refer to the ideals of Pancasila law. if the law is built on a foundation that is inconsistent with the spiritual structure of society, it is certain that community resistance to the law will be very strong. (Imam Syaukani dan Ahsin Thohari, 2008)

Based on the above description, the land saving model regulation close to the nuance of pengayoman and substantive rule of law is realized by harmonizing spatial planning and by integrating it in land acquisition regulation for public interests using good legislation corridor as presented in the following figure.

Figure 1. Spatial Planing Document Position in Land Saving Model Regulation



D. Conclusion

The Importance of Spatial Planning in land saving model regulation based on the concept of pengayoman and progressive law and also the thickest version rule of law theory, so that its elements must consider the welfare of society in the context of its philosophy. Spatial planning system which includes: spatial planning and spatial planning detail have an important role in the actualization of this land saving model, because the spatial planning program that has been arranged in a steady, synchronous and harmonic at the national level to the district level will be the basis of this land acquisition model. Through an established and sustainable spatial planning, the land acquisition process becomes easier and better directed to minimize the conflict and ultimately leads to development process that sustainable and oriented people's welfare.

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SEMARANG, 2017**