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Formulation of the Meaning of Non-Physical Losses in the Renewal of Land Procurement Law For the Development for A Worthy and Fair Public Interest

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ABSTRACT

Many land cases and disputes are ensued and persisting through many public interest projects. The government of the Republic of Indonesia has issued such regulation since the decade of 1970 until the recent that is intentioned to just process in land acquisition. The two last Presidential Regulations (number 71 the year 2012 are issued negotiation process and consensus between landowner and committee of land acquisition (P2T) have not reflected justice. This article is being aimed to deliver more clarification concerning the compensation aspect of land acquisition for public interests in Indonesia. This research is normative juridical research, then the approach used is a concept approach, historical approach, case approach. Legal material analysis techniques using systematic interpretation, grammatical, teleological interpretation. The results showed that Inequality is appeared by limitation of consent given by landowner is only and then after that period P2T be deemed has authority to occupy the land and do such clearing without needs landowner permit. That authority is based on those regulations by deposit sums of money at district court as well known as "consignatie". Consignatie itself is a payment method solution under the Indonesian Civil Code for any contractual scheme which ought not applicable through unsuccessful negotiation between landowner and P2T clear different transactions to the Civil Code.

Keywords: Land acquisition, landowner, non-physical compensation, calculation arrangements.

JEL classification code: K0, K1, K2, K3, K4.

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1. Introduction

The provision of non-physical compensation in the context of land acquisition for development in the public interest, is expected to provide guidance on the assessment of compensation for land acquisition for development in the public interest to avoid becoming a protracted problem that causes development delays. The formulation of non-physical compensation in the procurement of land for development for public purposes that is feasible and fair is a major problem in land acquisition. That is because in the context of acquiring land which generally uses the procedure of relinquishing rights, buying and selling and compensation, through this procedure there are a series of stages that must be taken correctly and in accordance with the law (Adhim, 2019). Granting compensation is the only condition for the release of land rights that are more suitable and fair (Goldie, 2018).

The existence of clarity of procedures for relinquishing rights and granting compensation in practice is apparently not as easy as what is written in the legislation. It can be seen from the emergence of many cases and instead become a prolonged dispute. Examples of major cases that have occurred are in the context of land acquisition conducted around the Kedungombo Reservoir in Central Java and new cases after the enactment of Presidential Regulation Number 36 of 2005 and Presidential Regulation Number 65 of 2006, which regulates Land Acquisition for Implementation of Development in Interest General (Adrizal, 2018).

Why do problems or disputes like that still occur, even though normatively there are guidelines in the legislation? For the time being, it can be explained that the main cause is nothing but the problem of granting physical compensation that has not been agreed upon coupled with non-physical compensation which is often ignored (Mulyadi, 2017). The agreement regarding the provision of non-physical compensation carried out apparently still has weaknesses in providing complete legal certainty. The definition of due diligence is the fulfillment of legality both legally and materially.

Legal certainty in the material sphere is the existence of weaknesses in the formulation of norms regarding the basis for calculating the value of non-physical compensation, whereas formally it is concerned with the settlement procedure. According to Article 15 of Presidential Regulation Number 71 of 2012, the basis for calculating the amount of compensation is based on (Langelo, 2018):

1. The Sales Value of the Tax Object (NJOP) or the actual actual value by taking into account the Sales Value of the current Tax Object based on the evaluation of the Institution/Land Price Appraisal Team appointed by the committee;
2. The sale value of buildings estimated by the regional apparatus responsible in the building sector.
3. The sale value of plants estimated by the regional apparatus responsible for agriculture.

The Head of National Land Agency (BPN) has issued Regulation of the Head of BPN No. 6 of 2015 which regulates the stages of land acquisition that must be carried out by the city and district government Land Procurement Committee (P2T) teams. In general, regulations which constitute Amendments to the Regulation of the Head of BPN RI No. 5 of 2012 already contains land issues in detail and detail (Subekti, 2016). This BPN Head Regulation is an operational regulation from Presidential Regulation (Perpres) No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest which has been changed to Perpres No. 40 of 2014 and amended by Presidential Decree No. 99 of 2014 concerning the second Amendment on the Implementation of Land Procurement for Development in the Public Interest, then amended by Presidential Regulation No. 30 of 2015 concerning the third Amendment on the Implementation of Land Procurement for Development in the Public Interest, and amended by Presidential Regulation No. 148 of 2015 concerning the second Amendment on the Implementation of Land Procurement for Development in the Public Interest. The difficulty often faced by the City and Regency P2T team is the difference in market prices and prices that have been set in the tax object sale value (NJOP). In many cases, land prices are often the result of deliberations between the P2T team and landowners who ask for a higher price than NJOP.

2. Research method

The type of research chosen is normative legal research or doctrinal legal research, namely legal research that conceptualizes law as the norm (Wignyosoebroto, 2002), because this research is

normative legal research, so as to solve or answer the proposed problems (legal issues), conceptual approach, case approach and historical approach are used (Marzuki, 2011). The legal material from normative research can be divided into three namely,

1. Primary legal material, is the main legal material in this study, consists of laws and regulations relating to land.
2. Secondary legal law, includes library materials that provide explanations about primary legal materials³¹ such as books, works from the legal community, literature, magazines, newspapers, electronic media as well as other data references relating to the issue of compensation for land acquisition for development in the public interest (Hermansyah, 2009).

The technique of searching primary and secondary legal materials is done by studying literature and internet searching (Rahardjo, 2000). The processing of legal materials is carried out by systematizing written legal materials. Analysis of the materials that have been collected must be done according to methods of analysis or interpretation (interpretation) of known law, such as authentic interpretation, interpretation according to grammar (grammatical), interpretation based on the history of the law (historical wets) or based on the history of law (historical rechtshistoris), systematic interpretation, sociological interpretation, theological interpretation, functional interpretation or futuristic interpretation (as an estimate). Of the several ways of analysis or interpretation (interpretation) the authors choose analysis using systematic interpretation, grammatical (grammatical), teleological interpretation (Abdlatif & Ali, 2010).

3. Results and discussion

3.1 Legal arrangement of land acquisition for development for public interest and provision of compensation

In the chronology of land acquisition arrangements for development in the public interest, of course, the first time referring to various articles of the BAL (Act No. 5 of 1960) which regulates the reasons for the termination of land rights due to the release of rights and revocation of rights.

In principle, as explained in General Explanation number 2 of Law Number 20 of 1961 concerning Revocation of Land Rights and Objects Above, if necessary land and/or other objects belong to another person for any purpose must first be sought so that the land can be obtained with the right agreement, for example on the basis of buying and selling, exchanging or providing compensation (Harsono, 2003). But this method does not always bring the expected results, because there is a possibility that the person has the right to ask a price that is too high or not willing at all to release the land that is needed. Because the public interest must take precedence over the interests of individuals, if the intended action is indeed in the public interest, in a compelling condition, that is, if the deliberations cannot bring the expected results, there must be authority based on the law on the Government to be able to take and control the land concerned appropriately and fairly. The withdrawal is carried out by revoking the rights referred to in article 18 of the Basic Agrarian Law. So revocation of rights is the last resort to acquire land and/or other objects needed for development in the public interest. In the meantime, in carrying out the revocation of rights the interests rather than the entitled ones must not be ignored. Therefore, in addition to the authority to revoke rights, Article 18 also includes guarantees for those entitled, namely that the revocation of rights must be accompanied by the provision of adequate and fair compensation must also be carried out in the manner stipulated in the Act.

The dynamics regarding land acquisition for development are regulated in various regulations including the Minister of Home Affairs Regulation which has been revoked with the enactment of Presidential Decree Number 55 of 1993, namely:

- a. Regulation of the Minister of Home Affairs Number 1 of 1975 concerning Provisions Regarding Procedures for Land Acquisition;
- b. Regulation of the Minister of Home Affairs Number 2 of 1976 concerning Use of Land Acquisition Programs in the Interest of the Government for Land Acquisition by Private Parties;
- c. Regulation of the Minister of Home Affairs Number 2 of 1985 concerning Procedures for Land Procurement for the Purposes of Development Projects in District Areas.

3.2 Difference in calculation of value of object to be freed (Land, building, plant and non-physical): Problems of inconsistent and absurd normative formulation

Furthermore, to become a guideline for the implementation of Law No. 12 of 2012 was issued Presidential Regulation (Perpres) No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest which has been changed to Perpres No. 40 of 2014 and amended by Presidential Decree No. 99 of 2014 concerning the second Amendment on the Implementation of Land Procurement for Development in the Public Interest, then amended by Presidential Regulation No. 30 of 2015 concerning the third Amendment on the Implementation of Land Procurement for Development in the Public Interest, and amended by Presidential Regulation No. 148 of 2015 concerning the fourth Amendment on the Implementation of Land Procurement for Development in the Public Interest. The Head of BPN has issued Regulation of the Head of BPN No. 6 of 2015 which regulates the stages of land acquisition that must be carried out by the city and district government Land Procurement Committee (P2T) teams. In general, regulations which constitute Amendments to the Regulation of the Head of BPN RI No. 5 of 2012 already contains land issues in detail and detail. This BPN Head Regulation is an operational regulation from Presidential Regulation (Perpres) No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.

3.3 Regulation of the meaning of non-physical losses in the renewal of land procurement laws for development for fair and fair public interest

The granting of non-physical compensation in the framework of land acquisition for development in the public interest is expected to provide guidance on the assessment of compensation for land acquisition for development in the public interest as stipulated in SPI 306 2013. Provides an overview related to matters in the process of assessing the scope granting compensation for land for development for general interests that need to be considered and considered during the compensation assessment process.

The valuation approach with application methods and calculation techniques is an important part of the valuation that can be applied consistently so that it has uniformity in valuation of compensation and can produce a reliable assessment. The evaluation of non-physical compensation must be by those who have competence in carrying out an assessment for land acquisition for development in the public interest in accordance with the requirements (Hutagalung, 2003).

In fulfilling these competency bases, Appraisers who continuously maintain and enhance their knowledge through the CPD (Continuing Professional Development) program organized by the Appraiser Profession Association and other competent institutions recognized by the Appraiser Profession Association. As long as it is relevant, relevant and not regulated in the provisions of other laws and regulations, SPI 306 along with the Technical Guidelines must be used by Appraisers who are incorporated in the Team formed by the Governor as a reference in carrying out compensation assessments related to land acquisition for development for public purposes, whether related and/or not related to Law No. 2/2012.

1) Defining Appraisals for Indemnity

The definition of compensation compensation is compensation as referred to in Law no. 2 of 2012 can result from a combination of physical losses and non-physical losses on an object of valuation. This combination can be described as a sum of the Market Value indications for physical losses plus an indication of the value of non-physical losses that first take the following steps:

a) Implementation is a procedure that must be carried out by the Appraiser covering the Investigation stage, applying the appraisal approach and preparing the appraisal working paper.

b) Appraisal Report, is a document that includes the assignment instructions, the purpose and basis of the assessment, and the results of the analysis that produces an opinion of value. An appraisal report can also explain the analysis process carried out in conducting an appraisal, and state the important information used in the analysis.

c) The scope of the assignment, is the basis for setting the appraisal agreement agreement, the level of depth of the investigation, determining assumptions and limits of the assessment.

d) Fair Use Value, is the value for the benefit of the owner based on equality with the Market Value of a parcel of land, taking into account the extraordinary elements in the form of non-physical losses resulting from the taking over of the said parcels of land.

2) Defining Fair Value Reimbursement (NPW)

Fair Reimbursement Value (NPW) is interpreted to be the same as the Compensation Value as referred to in Law No. 2 of 2012. NPW can be generated from a combination of physical losses and non-physical losses of an object of valuation. This combination can be described as a sum of the Market Value indications for physical losses plus an indication of the value of non-physical losses.

a) Market Value, is defined as the estimation of the amount of money that can be obtained from the exchange of an asset or liability at the valuation date, between buyers who are interested in buying and sellers who are interested in selling, in a bond-free transaction, where the marketing is carried out properly, where both parties each - to act on the basis of their understanding, being prudent and without coercion.

b) The highest and best use (hereinafter referred to as HBU), is defined as the most possible and optimal use of an asset, which is physically permitted, adequately considered, legally permitted, financially feasible, and produces the highest value of these assets.

c) Market Approach, this approach considers the compensation value of similar or surrogate property and related data, and produces estimated values through a comparison process. In general, the property being valued (the object of valuation) is compared to comparable property transactions, both those that have already taken place and properties that are still in the bidding stage of sales from a compensation process.

d) The Revenue Approach, this approach considers the income and costs associated with the property being valued and estimates the value through the capitalization process. Capitalization links income (generally net income) with a definition of value types through the conversion of income into estimated values. This process can use the direct capitalization method or the method. Discounted Cash Flow (DCF), or both.

e) Cost Approach; determine the value of the property by estimating the cost of acquiring land and the cost of replacing new development (something built) on it with comparable utilities or adapting the old property with the same usage, without considering among others the costs due to delays in development time and overtime costs. For older properties, the cost approach takes into account depreciation estimates including physical depreciation and other obsolescence (functional and external). Construction and depreciation costs should be determined by the results of the analysis of estimated construction and depreciation costs in accordance with the prevalence in the market or in the practice of valuation.

Valuation for the Purpose of Compensation Includes:

1. Compensation for physical (material) losses of land and/or buildings and/or plants and/or other objects related to the land.

2. Non-physical compensation (immaterial) consists of reimbursement for the loss of the release of rights from the land owner to be given in the form of money (premium), as well as other losses that can be calculated including transaction costs, interest (compensation for waiting periods), loss of remaining land, and types other losses through;

Investigation, which is carried out in the appraisal task must be based on the purpose of the appraisal in accordance with the Assignment Scope set forth in the assignment agreement and in accordance with the Basis of Value to be reported. The things that need to be considered in this Investigation procedure include:

1. The process of collecting sufficient data can be carried out by inspection, study, calculation and analysis carried out in the right way. The assessor must determine the extent to which the required data is sufficient for the purpose of the assessment.

2. If after conducting an Investigation it turns out that things are found that are not in accordance with what is stipulated in the agreed assignment scope; such as data from the assignor or other parties are not appropriate or inadequate that will result in the results of the assessment can not be trusted and trusted (credible), then the scope of the assignment must be adjusted and discussed

with the assignor. Changes or adjustments to differences in data and information must be stated in the official report agreed by the assignor.

3. Valuers must consider whether the information obtained is reliable or reliable, without affecting the credibility of the results of the assessment. This consideration can be done by conducting a review, if you have doubts about the credibility or reliability, then the information is not used. Matters that need to be considered by the Appraiser in reviewing existing data and information, such as information materiality towards the value conclusion; Competence from third parties; Third-party independence of the object of valuation or user rating and the extent to which the information is included in the public domain

4. The object of assessment in this assignment is calculated based on the amount of loss that will be affected to the relevant parcel of land. Such losses consist of physical losses and non-physical losses. The need for assessment input data in determining the amount of loss must be considered and prudent by the Appraiser.

3) Compensation Assessment Approach

a. Appropriate valuation approaches and methods to be used depend on considerations such as the basis for values and valuation objectives, the availability of information and data, and the methods applied by actors in relevant markets.

b. The purpose of the valuation as referred to by SPI 306 and the Technical Guidelines is for land acquisition for development in the public interest, where the object of the valuation will be compensated for including physical losses and non-physical losses.

c. Objects of valuation in determining physical losses include:

1. Soil; by designation such as agriculture, settlement, industrial or commercial;

2. The basement and the basement; (see Land Use Rights include the rights to the surface of the earth on which the building is based and the right to control the air space as large as the building and ownership rights to the building, and Land Use Rights include the rights to the surface of the earth which are the entrance/exits of the earth's body and rights build and use space in the body of the earth, as well as ownership rights to buildings in the form of space in the body of the earth);

3. Building; can consist of residential, industrial, commercial buildings;

4. Plant; can consist of annuals, horticulture or perennial/perennial plants;

5. Objects related to land; such as utilities and supporting facilities for buildings.

d. The object of assessment in determining non-physical losses include:

Compensation for the loss of the release of rights from the land owner that will be given a premium and is measured in cash based on the provisions of the applicable laws and regulations. This substitution may include matters relating to:

a) The potential for job loss or loss of business, including the transfer of profession.

b) Emotional losses (solutium), are intangible losses associated with expropriation of land used as a residence from the owner.

c) Matters not yet regulated in points a and b above should be determined based on the agreement of the relevant parties.

- Transaction costs, can include moving costs and taxes in accordance with applicable laws and regulations. Compensation for waiting periods (interest), i.e. the amount of funds calculated as a substitute for the time difference between the valuation date and the estimated date of compensation payment.

- Decrease in land value due to taking part of a parcel of land. In the event that the remaining land can no longer be used in accordance with its purpose, then it can be calculated the replacement of the entire parcel of land.

4) Other physical damage, such as parts of the building that were cut off due to land acquisition, thus requiring repair costs to function properly.

The application of valuation approaches and methods in the context of Market Value is closely related to the consideration of the Highest and Best Use (HBU). The consideration of HBU can be seen from the condition of the land being vacant (as vacant) or the soil in which the condition has been developed (as improved). In its analysis, Valuers must consider the criteria which include (Bahar, 2008):

- Legally permitted;
- Physically possible;

- Financially profitable;
- Produces the highest value (maximum productivity) of the property.

3.4 Applying the appraisal method approach to calculate non-physical losses for valuation objects

Applying the Approach to the Non-physical loss valuation method is regulated as follows if it is not stated differently then transaction costs may include moving and emptying fees, tax/Fees for Acquisition of Land and Buildings (BPHTB) and Land Deed Making Officer (PPAT) fees. The imposition of such loss costs includes:

a. The cost of moving and emptying is charged proportionally to the value of the physical loss of the residence, place of business and industry that is inhabited or used. Empty land and plants are not counted.

b. The tax burden/BPHTB and PPAT fees are imposed proportionally to the value of physical losses from land and buildings (eg residential, business, industrial, plantation). For property units, such as machinery and equipment are not counted. The tax burden is assumed to be the potential costs that will arise when procuring new property elsewhere. If there is a tax burden when taking over existing property rights, it can be calculated if it is in accordance with the applicable rules and regulations or according to the instructions of the local government or assignor.

c. Waiting compensation (interest) is calculated because there is a grace period between the valuation date (date of location determination) and the date of compensation payment. In calculating compensation for the waiting period, the Appraiser can provide additional costs with the following conditions:

d. The deposit interest rate of a government bank for a waiting period of less than 6 (six) months on NPW indications before the waiting period includes physical losses plus non-physical losses (premium includes solatium, transaction expenses, and other losses if any). The length of the waiting period is in accordance with the compensation payment schedule or can range from 3-6 months;

e. In the event that the valuation carried out has passed 6 (six) months from the date of location determination, the amount of the waiting period loss burden is taken as the difference in indication of the physical Market Value of the land at the time of the valuation date of the valuation date according to the location determination. Furthermore, the difference results become an addition in the determination of the NPW indication for the position of the valuation date at the location determination. To determine the actual NPW, the estimated waiting period after the date of the valuation until the planned payment period, can be added as mentioned in section C point 2) a above (Illustration 2 and 3).

f. Other non-physical losses that can be calculated by the Appraiser due to land acquisition for public use, among others:

1) Loss of residual land, where the remaining land can no longer function according to its purpose and there is an impairment;

2) Physical damage to the building that was cut and requires repair costs to function again.

Replacement of the remaining land is calculated using the market approach with the assumption that the parcels of land are in accordance with before the truncation, while the replacement of the damage to the building which was cut off is calculated according to the NJOP. There are conditions where the land owner for a residence, also owns:

a. Tread of untreated land;

b. Tread of land cultivated, such as for agricultural land that produces for the owner every year.

For the above conditions, Valuers can follow the following guidelines:

a. Land which has not been cultivated, is considered as vacant land by calculating the HBU on the valuation date.

b. The tread of land cultivated as agricultural land is calculated as follows:

1). Perennials/perennials that are commercially cultivated can be valued as a single business unit consisting of land, plants and other supporting facilities (as real property) for one period of the planting cycle;

2) Land with annual crops cultivated individually, but HBU on vacant land (without agricultural land) has developed, so land can be appraised separately as vacant land with HBU according to the valuation date, added to the present value of the plant assuming it is projected to one planting cycle period or not exceeding 1 (one) year;

a). Annual crops such as rice can be calculated using market data comparison methods or crop retention techniques with projections assumed for one period of the planting cycle or for 1 (one) year at a time.

b). Land with annual crops are cultivated individually, but HBU on land in an empty state (without agricultural land) remains as agricultural land or use in accordance with the designation at the date of assessment, the land can be assessed separately as vacant land with HBU according to its use, plus present value of plants assuming it is projected to be more than one planting cycle period or for a period of 1 (one) year at the most;

c). Seasonal plants such as rice can be calculated using the method of comparing market data or techniques to leave plants with the assumption that it is projected to be more than one period of the planting cycle or for 1 (one) year at the most.

3). In the event that conditions are found outside points (2) and (3) above, compensation compensation can be calculated based on relevant and reasonable data, by presenting the source and reason..

All use of assumptions in calculating the unit cost of physical loss or non-physical loss must be done reasonably with reference to, among others, from:

1. Sourced fairness in the market;
2. Feasibility study that has been approved at the planning stage;
3. Terms and regulations that apply whether at the central or regional levels.

To determine the assumptions, the Appraiser can make an initial agreement with the local government or assignor as outlined in the Assignment Scope or a separate minutes related to unit costs in the calculation of non-physical losses that are reasonable and fair. Reference/Illustration in the Formulation of calculation of non-physical compensation based on the table below.

| | | |
|-----|---|----------------|
| a.1 | Indication of Market Value of Residential Houses (Land and Buildings) | Rp |
| | 100,000,000 | |
| a.2 | Non-Physical Losses | |
| | • Solutium 10% x Rp 100.000.000 | Rp. 10,000,000 |
| | • Transaction 8% Rp 100.000.000 | Rp. 8,000,000 |
| | ○ Assumption of Moving Costs 1.5 % | |
| | ○ Assumption of Tax Fees 5% | |
| | ○ Assumption of PPAT Fees 1,5% | |
| | • Expense of Waiting Period (6 months) @ % pa.. Rp. 3,540,000 | |
| | ○ 3% x Rp 118.000.000 | |
| | Sub Total Non-Physical Losses | Rp. 21,540,000 |

Illustration 1. Calculation of NPW for Ordinary Residential Houses.

Source: the results of the author's analysis

| | | |
|-----|---|-----------------------|
| a.1 | Indication of Market Value of Residential Houses (Land and Buildings) | Rp 100,000,000 |
| a.2 | Non-Physical Losses | |
| • | Loss of Operating Revenues | Rp 15,000,000 |
| | IDR 5 million per month, for 3 months | |
| • | Transaction 8% rp 100,000,000 | Rp 8,000,000 |
| ○ | Assumption of Moving Costs 2% | |
| ○ | Assumption of Tax Fees 5% | |
| ○ | Assumption of PPAT Fees 1% | |
| • | Expense of Waiting Period (6 months) @ 6% pa. | Rp 3,690,000 |
| ○ | 3% x Rp 123.000.000 | |
| | Sub Total Non-Physical Losses | Rp 26,690,000 |
| | Fair Replacement Value | Rp 126,690,000 |

Illustration 2. Calculation of NPW on Property and Business Sites
 Source: the results of the author's analysis

| | | |
|-----|---|-----------------------|
| a.1 | Indication of Market Value of Residential Houses (Land and Buildings) | Rp 100,000,000 |
| a.2 | Non-Physical Losses | |
| - | Solatium 10% x Rp. 100.000 | 10.000,000 |
| - | Transaction 8% x Rp. 100.000 | 8,000,000 |
| | Assumption of Moving Costs 1,5% | |
| | Assumption of Tax Fees 5% | |
| | Assumption of PPAT Fees 1,5% | |
| - | Expense of Waiting Period: | |
| | Indikator NP (pada tanggal pelaksanaan penilaian) Rp. 110 million | |
| | Difference in value (Rp.110 million-Rp.100 million) | Rp. 10,000,000 |
| | Waiting Period (6 months) @ 6% pa | 3,840,000 |
| | (3% x Rp. 128.000.000) | |
| | Sub Total Non-Physical Losses | Rp 31,840,000 |
| | Fair Replacement Value | Rp 131,840,000 |
| | Fair Replacement Value | Rp 126,690,000 |

Illustration 3. Calculation of NPW for Ordinary Residential Houses(Implementation of the assessment is more than 6 months after the location/assessment date)
 Source: the results of the author's analysis

3.5 Example of the practice of providing compensation for land acquisition (error in interpretation of rules)

In this section, we will describe some of the actual problems in the context of land acquisition taken from important cases that have occurred in court decisions and are still in the process of being resolved. Of course there is a connection with the problem at the normative level that has been described previously. The problems can be seen in the following description.

3.5.1 Deliberation that is not successful in the stages of land acquisition

Consignment to the District Court (PN). However, taking compensation funds between land and building acquisition is not the same. For consignment of buildings taken at PN. The price of the house is valued at Rp.116 million whereas land compensation is not through consignment and can be

taken at the municipal government. Per meter of land is valued at Rp.2.2 million on the grounds that Sundari's land is in trouble. The City Government says that the land of Sundari is being sued by her brother. Sundari's brother actually did not sue, Sundari was determined to defend the land and his house to the end.

Assistant II Sekarata Barata Fandi Sutadi acknowledged that his party had sent a letter of notification to five residents on Jalan Kedung Cowek and two residents on Jalan Kenjeran. The notice dated January 9 contained an appeal for residents to immediately take consignment money to the PN, no later than today. After that, residents are expected to immediately dismantle the building themselves. If the residents refuse to submit a consignment, the municipal government and East Surabaya Police will execute the residents' building. Execution of two houses on Jalan Kenjeran as MERR II-A access is carried out. While the execution of five houses for Suramadu access was carried out Thursday (January 15, 2009). Sutadi argued that the execution was in accordance with Perpres No. 36 of 2005.

According to Sutadi, consignment rules are indeed permissible and if there is a refusal, the state is allowed to execute citizens' buildings. City Government has coordinated with the police because what was done was according to procedures. If not, neither the court nor the police support the steps of the municipal government.

In a separate place, residents of the remaining land owners of Suramadu access continue to fight against the consignment plan. They have come to the East Java DPRD building. During the meeting, they were met by several members of Commission A. These landowners questioned the consignment procedure which they considered was not transparent. They requested that members of the council know about this problem as requested by M. Yunus, one of the landowners.

3.5.2 Cijago toll project: P2T is expected to have a family approach (Leave CONSINSION)

After giving a Decree (SK) to the new management of the Land Procurement Committee (P2T), the mayor and deputy mayor of Depok, as the person in charge of P2T, hopes that the P2T management will immediately take a persuasive approach to residents whose lands are affected by the Cinere-Jagorawi Toll Road (Cijago). The new P2T management immediately approached residents. The new P2T management refers to the Regulation of the Head of the National Land Agency No. 3/2007 concerning Provisions for Implementing Presidential Regulation No. 36/2005 on Land Procurement for Implementation of Development in the Public Interest. The new P2T Board has received the Mayor's Decree dated September 12, 2007, with Number: 821.29/209/Kpts/Pem. Otda/Huk/2007, with the chairperson of the P2T held by the Secretary of the City of Depok, and his secretary held by the Head of the Conflict and Case Dispute Section of the City of Depok. Yuyun Wirasaputra said that a family approach was a good step to find a solution to the Cijago toll compensation price. The new P2T management, he said, should be able to conduct dialogues as soon as possible before a meeting of TPT (Land Acquisition Team) of the central PU. The dialogue forum with several residents in the Cimanggis area was very appropriate before the meeting with the TPT.

That way, he said, residents will understand and want to attend the deliberations. So there is a meeting point, then residents immediately receive compensation for their land, buildings and plants. Meanwhile, the Mayor of Depok, Nurmahmudi Ismail. Confident that in the Cijago toll compensation meeting in the Cimanggis area there will be an agreement. Nurmahmudi is optimistic that in the third meeting with the residents there is a price agreement, because the current conditions are very conducive. Those who received compensation for their houses and land were residents. Therefore, the mayor wants residents whose lands are affected by displacement for the toll road project to agree on the price of compensation given by the TPT. The Mayor emphasized that with this, the TPT would not take consignment steps (the Depok District Court legal channels). TPT does not want a consignment, through deliberation is preferred. If through consignment or placing the money in the Depok District Court, a problem arises where the residents take compensation there according to established procedures.

3.5.3 Corruption Case in Land Acquisition

In the latest developments in land acquisition, there have also been cases of corruption. This is in line with the increasing performance of the Corruption Eradication Commission (KPK) in an effort to

eradicate corrupt practices. To clarify this issue the following is the case of the Former Deputy Governor of West Nusa Tenggara (NTB), submitted to the Court as the Defendant in the Case of Alleged Corruption of Land Acquisition.

On March 11, the Defendant who was then serving as Secretary and Acting Regent of Sumbawa and chairman of the land acquisition committee issued a decision letter from the Regent of Sumbawa No. 1397.a. Th.2001 dated November 6, 2001 concerning the determination of the location of the procurement of reserve land for the needs of the Sumbawa Regency government, and determining its location in the Seketeng Kelurahan (now Uma Sima) covering an area of 20,000 square meters (2 hectares), in accordance with the land offered by witness Lala Intan Gemala (who also been a defendant in the same case).

Furthermore, without conducting research and inventory on land, buildings, plants and other objects related to the land whose rights will be released and its legal status and without holding consultations with the holders of land rights (witness M Faried Wadjedi) and government agencies in need of land, the defendant as the head of the committee published the decision letter of the Sumbawa Regency land acquisition committee No. 580.1/38/PPT/2001 dated November 7, 2001. This letter is about determining the amount of compensation money for an area of 2 hectares for Rp.525 million. The prosecutor explained that in the letter of consideration in the letter b in point b, the price was determined as if a consultation had been held with the land owner, measuring and inventorying the status of the land, the owner of the land and plants growing or other objects on it. When in fact it was never done.

The decree signed by the defendant was then used as the basis by Pimpro M. Endang Ariyanto to make land payments by transferring funds of Rp525 million to an account in the name of Lala Intan Gemala even though he was not the land owner. Therefore the actions of the defendant together Endang and Lala Intan, have resulted in state losses of Rp. 395 million in excess of the actual price of Rp. 130 million from a budget of Rp. 525 million. The defendant is threatened with crime in article 2 paragraph (1) jo article 17 jo article 10 of Law no. 31 of 1999 concerning Eradication of Corruption Crime in conjunction with article 55 paragraph (1) KUHP.

4. Conclusion

In the principle of economic democracy, prosperity and welfare of the people, the most priority, In the context of non-physical compensation in the procurement of land for development for public purposes, the government is tiered to make arrangements, control and supervision of non-physical compensation for the acquisition of land for development for public purposes, so that the main objective of non-physical compensation is achieved, that is, reasonable and fair.

The formulation of non-physical compensation in the procurement of land for development in the interest of the public that is appropriate and fair is intended to formulate arrangements for the form and amount of compensation other than physical as well as non-physical. The granting of non-physical compensation in the context of land acquisition for development in the public interest, is expected to provide guidance on the assessment of compensation for land acquisition for development in the public interest. Formulation for regulation in measuring non-physical compensation there are 3 (three) things that need to be considered: First, to measure non-physical compensation inherent in land rights, the formulation of future regulations should contain several principles, among others, the committee team to involve people who have competence related to non-physical losses; a. Related to the loss of customs / culture / cultural symbols to involve cultural experts / traditional leaders, b. Associated with religious losses to involve religious experts / religious leaders, c. Related to economic losses in order to involve economists to provide an overview related to losses in the economic field, second, the grace period for determining non-physical losses should be distinguished from the time for determining physical losses (88 days). Third, the government should set standards to minimize losses, if religious / cultural and cultural losses are standardized with due regard to local wisdom. When making arrangements, controlling and supervising non-physical compensation for land acquisition for development in the public interest, in order to pay attention to the main purpose of non-physical compensation that is feasible and fair, starting from the time of the non-physical compensation assessment process.

The valuation approach with application methods and calculation techniques is an important part that can be applied consistently so that it has uniformity in the evaluation of non-physical compensation and can produce reliable assessments. Assessment of non-physical compensation must be by those who have competence in carrying out the assessment. Implementation, is a procedure that must be carried out by the Appraiser covering the Investigation stage, applying the valuation approach and compiling the results of the valuation.

5. Suggestion

Based on the above conclusions, recommended solutions to avoid problems arising in the context of land acquisition in the public interest:

1. In order to enforce the law and provide legal certainty, the practice of applying consignment should be stopped, as exemplified by the Depok mayor in the case of land acquisition for the CIJAGO toll road. This is considered inappropriate if a more equitable, family-friendly approach can still be taken.

2. In order to mediate or resolve the problem of congestion in the deliberations on the determination of compensation, the court should be involved. That is considering that basically there has been a dispute that is seen from the non-achievement of consensus or agreement in the deliberations. The court is the only logical alternative in the Indonesian legal system ideally in resolving disputes and not trapped in rules that do not have legal legitimacy. This kind of practice is widely applied in other countries such as Japan, Taiwan, the United States. Another consideration is to prevent arbitrary actions that lead to corrupt practices in the context of land acquisition.

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