

Legal Analysis of the Application of Criminal Elements in Land Acquisition for Development Interest General

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ABSTRACT

The definition of land acquisition is essentially a legal act in the form of releasing land rights from the entitled party before the competent authority by receiving compensation. In the issue of land supply by the state is very necessary in the implementation of national development and it can be ascertained that the availability of land for development activities becomes its own problem related to land prices, land status and acquisition mechanisms as well as criminal problems arising from land acquisition. However, in its implementation, we often find irregularities that occur, both in the collection of physical data and juridical data, there can also be elements of inaccuracy and abuse of authority which leads to the imposition of elements of criminal acts. The arrangement of laws and regulations has been such that in its implementation it does not cause legal problems starting from the planning stage, as well as in its implementation, for this reason, socialization of land acquisition legal arrangements to land acquisition implementers, entitled parties and all parties involved is the key to success in land acquisition activities.

Keywords: Criminal element, Indemnity, Land acquisition.

Introduction

Government has set policy organization governance in the agrarian/ land and spatial planning sectors as outlined in something political law through formation Constitution number 6 of 2023 concerning About Determination Regulation Government Replacement Constitution Number 2 of 2022 Concerning Creation Work Become Law, as base law businesses government For creation field Work through Activities : 1) Facilitation , Protection and Empowerment of MSMEs; 2) Improvement Ecosystem Investment and Convenience 1) Business; and 3) Investment Central Government and Projects National Strategy.

In provision land For Investment Central Government and Projects National Strategy implemented through activity procurement land for development For interest general, which in principle implementation procurement land this also respects right basic man specifically to entitled party as the sacrificial party on control and ownership the land that must be released For interest development project strategic national. The entitled party Already as it should be must guaranteed interest law, respected right basic on control and ownership land for development national.

In things, stages procurement land possible in implementation happen intersecting errors with accountability law , the emergence action criminal and suspected cause loss state finances . According to SR Sianturi state that elements criminal includes: 1) The existence of subject; 2) existence error; 3) action nature oppose law; 4) a prohibited actions or required by law/legislation and against those who violate it threatened criminal; and 5) in something time, place and circumstances certain (Yagus Suyadi, 2023). Acts oppose law dalak implementation procurement land intended always connected with action criminal corruption that can or potential cause losses to state finances as formulated in Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption and the Law Number

20 of 2001 concerning Change on Constitution Number 31 of 1999 concerning Eradication Action Criminal Corruption .

In implementation criminal For activity procurement land can occurs at the stage planning namely the process of compiling Document Planning Land Acquisition (DPPT), or can also happen in implementation activity procurement land concerned control and ownership land by the rightful party. Mastery land with state land status , forgery document acquisition land that is the basis of rights object procurement land , lack of carefulness or abuse authority by the organizer activity procurement land and can also occur at the time implementation evaluation change losses incurred by the appraiser land (*appraisal*) that works Because No guide Minister of Finance Regulation No. 101/PMK.01/2014 regulates that assessment by the assessor must done in accordance with Standard Indonesian Assessment (SPI), Procedure evaluation in frame procurement land For interest general arranged in SPI 306.

Related with element action criminal corruption which refers to the emergence of loss state finances in activity procurement land , as arranged in Article 2 and Article 3 of the Law Number 31 of 1999 concerning Eradication Action Criminal Corruption as changed with Constitution Number 20 of 2001, elements harm state finances or the country's economy is the core element (*bestandeel delict*) exists action criminal corruption based on the fulfillment of element actions that have been done formulated Constitution No with element emergence consequences (loss) state finances or the country's economy) in question.

Research Method

Writing paper This is study law juridical normative research ingredients related laws with issues, problems implementation procurement land and arrangement law about implementation element criminal in series stages activity in procurement land for development For interest general. In study law normative known a number of method approach, start from approach regulation legislation (*statute approach*) is carried out with examine substance arrangement law procurement land along with regulation legislation implementation. In general, the source reading can differentiated become two namely: source reference general and sources reference specific. Theories and concepts in general can found in source reference general, which is in the form of buk text, or encyclopedia (H. Moh. Kasiran, 2008), next something analysis normative juridical in essence emphasize on method deductive as handle main, and method inductive as a work procedure supporting. Normative analysis especially use ingredients literature as research data sources (Amiruddin and H. Zainal Asikin, 2006). Meanwhile approach analysis and concept (*analytical approach and conceptual approach*) about principles norm procurement land, implementation procurement soil and deepen understanding about aspect implementation law criminal in series implementation stages procurement land start from planning until with implementation procurement land.

Results and Discussion

Respect for Human Rights in Land Acquisition

The state guarantees that every person has the right to have private property rights and these property rights may not be taken over arbitrarily by anyone. For the basis of regulations in the land sector as stated in Article 33 paragraph (3) of the 1945 Constitution which is the legal basis for the issuance of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as "UUPA"), the use of land is not solely for the benefit of the rights holder but in cases where it is necessary for the public interest, then in Article 18 it is stated that for the public interest, including the interests of the nation and state and the common interests of the people, land rights can be revoked, by providing appropriate compensation and in a manner regulated by law.

The implementation of development programs carried out by government agencies, *ex officio*, requires land as a location for the physical realization of public facilities and infrastructure. meaning from interest general meant, not potential make people miserable but aim For increase prosperity And welfare people (Hardianto) Djanggih and Salle, 2017). The existence of Law Number 2 of 2012 provides legitimacy and support for the acceleration of the implementation of infrastructure development projects that are being massively carried out by the government. However, empirically there are implications that intersect with human rights, especially in the aspect of land acquisition (Agus Suntoro, 2019). Land acquisition for the public interest, in principle, the state can guarantee the availability of land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and society while still guaranteeing the legal interests of the entitled parties, which in implementation based on Constitution Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Based on Constitution Number 6 of 2023 concerning Determination Regulation Government Replacement Constitution Number 2 of 2022 concerning Creation Work Become Invite Law . Provisions This as base activity procurement land in frame give ease and smoothness in procurement land For interest creation work . In activity procurement land For interest common in it There are 10 (ten) principles, namely a). humanity ; b) justice ; c). benefit ; d) certainty ; e). openness ; f). agreement ; g). participation ; h). welfare ; i). sustainability and j). harmony.

In principle procurement land namely humanity and welfare, then affected party object procurement land in essence notice mark right basic humans should be get mark change loss or proper replacement so that get chance For can carry out a better life good . However on the other hand can We understand that based on the provisions Article 18 of the UUPA states " For interest general, including interest nation and state and interest together from people, rights on land can revoked, with give change reasonable and justifiable loss regulated manner with Law ". Looking at from provision the that use land must customized with his condition and nature than his rights, so that can beneficial For well-being and happiness holder his rights and for society and state, so if in planning development Already set For greater interests wide or interest general, then right individual the can released through mechanism procurement land. In implementation activity procurement land can We meet fact laws that are empirical that development infrastructure especially in aspect procurement land experience various intersecting issues with right basic human . Data covered by the Subcommission Monitoring and Investigation Indonesian National Commission on Human Rights regarding conflict conflict - based agrarian infrastructure in 2017 reached 32 (three tens two) cases of 269 cases agrarian. Thus In this case, the Consortium Updates Agrarian Affairs (KPA) in 2018 report, noted conflict infrastructure totaling 16 (4%) cases of a total of 410 conflicts agrarian which reaches 807,177 hectares and involves 87,568 families in various provinces in Indonesia.

Procurement land For interest general in principle is liberation land that is force in This The Indonesian government can free land from owner land even by the owner No wish For sell land However, based on principle justice, principles benefits and principles welfare, even though procurement land the nature force, but change the losses incurred to owner land No may result in decline level life entitled party as condition before he did activity procurement land. This is can proven in evaluation change losses incurred institution the so-called independent with " assessor land, " more tall from price market local. Based on provision Standard Indonesia's assessment number 306 was used as reference by the assessor land in do evaluation every object field land, so that can explained related determination change fair loss with form mark replacement reasonable, which contains: 1). indications mark loss physical, namely mark change loss for (i) land, (ii) space on ground and underground land, (iii) buildings, (iv) plants, (v) related objects with land, and (vi) other possible losses assessed. 2).

Indications mark non- physical losses, namely mark change loss in the form of (i) premium, namely loss on lost work or business, or loss emotional (*solatium*), (ii) cost transactions, namely cost moving and taxes in accordance provision applicable legislation, (iii) waiting period compensation (interest), and (iv) losses remainder land, namely the decline mark land consequence taking part field land. Size mark change losses assessed by the appraiser or assessor public is value at the time announcement determination location development For interest common at this stage preparation with taking into account the waiting period at the time payment change loss, whereas size mark change loss is mark single For field by field designated land based on results evaluation Assessor the is final and binding, so need common understanding on fulfillment element criminal corruption on activity procurement land.

Understanding from loss state finances based on Article 1 number 22 of the Law Number 1 of 2004 concerning State Treasury is state/ regional losses is lack of money, letter valuable , and goods , which are real and certain the amount as consequence actions oppose law Good on purpose or negligent . Based on the thing the need examined element related state losses with actions oppose law in activity procurement related land with interest entitled party on right basic control and ownership the land for plan development For interest general.

About arrangement procurement land component standard service public designed For give access information as wide as possible to public so that public made easy reach service the basis that leads to welfare society . Besides that, with fulfillment standard service said, can minimize actions maladministration like extortion, irregularities procedure, delay protracted and so on which is gap occurrence action corruption. With fulfillment standard service public said, the hope is only make Indonesia a reality *welfare state* that can fulfil need base as form mechanism equality to existing gaps (Butar, Ian Edward Hamonangan Butar, Benediktus Peter Lay, Vivian Evelyn Christine, Mariano Kornelis Atini Amloki, Vinsensius Taek, Elias Ronaldo Mawar, and others,2023).

Procurement land for development For interest general, in explanation Article 49 of the Law Number 9 of 2004 concerning Changes to the Law Number 5 of 1986 concerning The State Administrative Court is mentioned that interest general is interest nation and state, or interest public together and/or interest development. In Regulation Government Number 19 of 2021 concerning Implementation Land Acquisition for Development Interest General, definition interest general is interest nation, state and society that must implemented by the Central Government/Regional Government and used as much as possible For prosperity people. From the perspective law, in theoretical can it is said that interest general is *resultant* results weigh up that's all Lots internal interests public with apply primary interest become interest general. In general practical and concrete Finally handed over to the judge to weigh up which interest is more important? main from other interests in proportional (balanced) with still honor other interests.

Understanding objective-rational from perspective law about interest general required Because law the is means main For ensure interest general, at the same time interest individual, with the goal of justice can implemented. This means law must give strict limits so as not to interpreted by the government For other interests (Edi Rohaedi , Isep H. Insan and Nadia Zumaro, 2019). Development for interest general, in Constitution Number 2 of 2012 states there are 18 kinds type development For interest general, even criteria development For interest general the based on Article 10 of the Law Number 6 of 2023 is expanded into 24 types development For interest general. Criteria the give clear and definite boundaries on interest common and become base or reference that development carried out enter in criteria interest general or no, so its implementation is also through different mechanisms with stages procurement land or form acquisition land other.

With thus, in activity stages procurement land is also based on the principle base general service public that started from stage planning, stage preparation, stage implementation and stages handover results. In compilation Document Planning Land Acquisition (DPPT) based on provision Articles 6 to with Article 8 of the Regulations Government Number 19 of 2021 in conjunction with Article 19 to with Article 28 of the Regulation of the Minister of ATR/ Head of BPN Number 19 of 2021, regarding cargo and management compilation document planning procurement implemented with right, then besides can accountable in a way law in the sense of accountability the penalty will give influence in smoothness implementation procurement land and plans development.

A number of case found many rejection on plan development by the community, things This show lack of planning well, no optimally task team preparation in socialize plan development as poured in DPPT, therefore That if There is authorized party, manager goods and/or users goods and communities affected impact or his power given chance For give views/responses to location plan development. Next results agreement on plan location development in consultation public poured in the " Minutes of Agreement on Development Location." When there is authorized party, manager goods, and/or users goods, and/ or affected communities impact or his power that is not agreed or object on location plan development, implemented consultation public repeat or can also be done through team objections formed by the Governor.

After implemented consultation public repeat implemented Still there is objecting party on location plan development, agencies that require land report object to governor through team preparation, Governor form team study For do study on object location plan development consisting of from above: a. secretary area province or appointed official as chairman concurrent member; b. head regional office as secretary concurrent members; c. agencies that handle affairs government in the field of planning development area as member; d. Head of the Regional Office of the Ministry of Law and Human Rights Basic Man as members; e. regent / mayor city or appointed official as members; and f. academics as members. The Study Team is tasked with: 1). taking inventory the problem that becomes reason objection; 2). do meeting or clarification with the objecting party; and 3). make recommendation accepted or rejected object.

Based on the recommendations of the Study Team Governor emit letter accepted or rejected object on location plan development and have authority For issue "determination location" as base implementation procurement land. Important things that should be done after publication determination location is governor together agencies that require land announce determination location development For interest general which contains number and date decision determination location, map location development, aims and objectives development, location and area land required, estimate term time implementation Land Acquisition and Estimates term time development.

Stages Land Acquisition

Furthermore about procurement land for development For interest general implemented through a number of stages, namely stage planning, stage preparation, stage implementation and stages handover results, the parties involved with implementation procurement land covering parties: 1) Agencies that require land; 2) Determination of Location and Location Map; 3) Implementation Land Acquisition; and 4) Entitled Parties. Matters relating to related plan development For interest general in a way substance poured in document planning procurement land that differentiates between aspect acquisition land and aspects activity development. In Article 6 of the Regulations Government Number 19 of 2021, regulated in a way details

procedures preparation of DPPT which includes : a). aims and objectives plan development ; b). Conformity Activity Utilization of Space; c). priority development national / regional ; d). location land ; e). area land required ; f) . description general land status ; g). estimate term time implementation Land Acquisition ; h). estimates term time implementation development ; i). estimates mark land ; j). plan budgeting ; and k. preferences form Change Loss .

After published decision Governor about Determination of procurement location land, then in implementation procurement land Agencies that require land submit application implementation procurement land to Head of the Regional Office of the National Land Agency (BPN) Province with attached: a). DPPT; b). Documents stage preparation containing : (1). decision Location Determination with attached map location development ; (2). initial data Entitled Parties and Objects Land Acquisition; (3). initial data affected communities impact ; (4). minutes of agreement location development in Public Consultation ; (5). letter statement installation sign limit field land from leadership Agencies that Need Land. c). letter agreement release area forest or agreement use area forest , permit over function land agriculture food sustainable , permit switch use / disposal status asset village land , land waqf , land customary law , and/ or land BMN/BMD assets .

In frame effectiveness and efficiency with notice source Power existing humans , then The Head of the Regional Office can assign Head of the Land Office at the location plan Land Acquisition as chairman implementer Land Acquisition . Implementer procurement land consists of from a). Head of the Land Office as chairman concurrent members ; b). head section that handles affairs Land Acquisition or officials functional as members ; c). officials device area district / city same level echelon IV which handles affairs land as members ; d). sub-district heads or other local names for the location Land Acquisition as members ; e). village head / head village or other local names for the location Land Acquisition as members ; and f). officials functional in the section that handles affairs procurement land as secretary concurrent member .

For make things easier for the sake of smoothness implementation procurement land chairman implementer procurement land must coordinate with a). Agencies that require land; b). agencies/ institutions related; c). Assessor Land; d). figures society; and/ or e). other parties who are considered necessary. In implementation procurement land that needs get attention is at the time physical data collection as well as legal data, because concerning certainty object so that in physical data collection activities must based on the boundary points indicated by the owner land that gets testimony and consent limit owner bordering land. While in legal data collection, collected documents must can prove existence mastery real so that can categorized as candidate subject right or also called subject the law that is entitled.

In Article 18 of the Regulations Government Number 19 of 2021 concerning Implementation Land Acquisition for Development Interest General, the entitled party covering individuals, legal entities, social bodies, religious bodies, Central Government, Regional Government, government village, land bank, business entity state -owned , business entity owned by regions and business entities owned by a village that has or control Object Land Acquisition according to with provision regulation legislation. The entitled party consists of from from: a). holder Land Rights; b). holder Right Management; c). nazhtr For land waqf; d). holder tool proof written old rights; e). society law custom; f). controlling party state land with good faith good; g). holder base mastery on land ; and/ or h). owner buildings, plants, or other related objects with land (Ali Sam'un, Tamaulina Sembiring, & Ismaidar, 2024).

Nominative list regarding physical data and legal data become reference base in determination and stipulation size mark change losses, which are carried out by the assessor land (*appraisal*). In legal data collection become problem alone if in implementation No careful

and based on existence good faith Good from entitled party specifically concerning completeness document mastery or actual ownership and subject matter. Land status become problem alone if concerning the status of state land, because the status of state land exists temporary opinion experts who stated No Can given change loss, while if We understand state land with understanding land state property is ensured is as assets, so that No can given change loss or implementation giving change loss through mechanism in accordance with provision regulation underlying legislation. Definition state land is land under control directly by the state and not attached with something right on land, not land waqf, not land customary and/ or No is asset State/Regional Property. So that need equality perception regarding the status of state land with notice right basic human, interests development national elements too There is whether or not loss state finances in the procurement process land.

Application of Criminal Elements in Land Acquisition.

Implementation element criminal organization procurement land is also often touch with issue law fundamental like right basic human, principle justice, principles balance between state interests with interest public Good in a way individual and groups, also aspects law criminal in its implementation. In matter procurement land culminating in aspects criminal Yagus Suyadi formulate elements action criminal as loaded in the Criminal Code, namely: 1) Every person; 2) the existence of element error; 3). Action nature oppose law; 4) a prohibited actions or required by law/legislation and against those who violate it threatened criminal; and in something time, place and circumstances certain. While in action criminal corruption as loaded in Article 3 of the Law Number 31 in conjunction with Law Number 20 of 2001, includes elements: 1). Everyone; 2). Profitable self Alone or other people or something corporations; 3) misuse authority, opportunity, or existing facilities to him Because position or position; 4) detrimental state finances or the country's economy. In service land state land that is not understood as an asset controlled by an individual or legal entity can given service land and land rights are issued throughout fulfilling legal data and physical data on field land intended .

In matter procurement land can cause criminal , then confirmed in implementation found intentional action or negligence that has been fulfil element criminal , thing This often We meet existence The subject of the Haka knows the party who has the right No show honesty in collection of legal data so that fulfil element criminal as poured in Article 391 of the Law Number 1 of 2023 concerning The Criminal Code (KUHP) is related forgery document, Article 392 related forgery letter , Article 502 related profitable self Alone or other people in a oppose law. Then existence element negligence and abuse authority in implementation procurement detrimental land state finances or found element criminal in the form of consensus wicked or conspiracy that ultimately arise loss state finances .

Action criminal corruption according to the Big Indonesian Dictionary (KBBI) corruption interpreted as misappropriation or misuse of state funds (companies and so on) for profit personal or other people, whereas Baharuddin Lopa to interpret corruption as something action related crimes with bribery, manipulation, and acts other as actions oppose detrimental laws state finances and the state economy, as well as harm welfare and interests general. Detrimental state finances in line with " State/Regional Losses " is lack of money, letter valuable, and goods, which are real

and certain the amount as consequence actions oppose law Good on purpose and negligent. So that state/ regional losses connected with existence findings existence element actions oppose threatened law with articles criminal .

Corruption arranged in a way complete in Constitution Number 31 of 1999 and its changes in Constitution Number 20 of 2001, which formulates action criminal corruption to 30 (three tens) types action criminal corruption . Thirtieth type the simplified to in 7 groups action criminal corruption, that is related corruption with: 1) loss state finances, 2) bribery, 3) embezzlement in position, 4) extortion, 5) deed cheating, 6) collision interest in procurement, and 7) gratification. Groups action criminal corruption it is very possible happen in series activity procurement land that is direct related direct with state finances. Audit Board Finance (BPK) is in charge inspect management and responsibility answer state finances carried out by the Central Government, Regional Government, other State Institutions , Bank Indonesia, State-Owned Enterprises, Service Agencies General , Regionally Owned Enterprises, and institutions or other bodies that manage state finances, if in inspection found element criminal will made into base investigation by officials authorized investigator in accordance with regulation legislation.

Conclusion

Based on background the back that has been described, then can concluded that:

1. Activities procurement land should also uphold tall right basic man related with control and ownership the land that becomes object procurement land, so that entitled party must get change fair and just compensation which is embodiment principle right control the country in order to for reach as big as possible prosperity people in the sense of nationality, welfare and independence in an independent, sovereign, just and prosperous Indonesian society and state based on the rule of law.
2. In implementation activity procurement land often We meet element actions against the law that can cause loss state finances, starting from the DPPT preparation process to with activity collection of physical data and legal data until with implementation procurement land, related absence carefulness or absence professionalism of the implementers and misuse authority, opportunity, or existing facilities to him Because position or position.

Suggestion

Based on exposures the above, then the suggestion is as follows following:

1. It should be need There is understanding together in respect right basic man between implementers and officers enforcer law related control and ownership public with a right base state land which is essentially No land state property (assets) and also carried out guidance comprehensive technical related with activity procurement land to the implementers procurement land, agencies that require land and *stakeholders* related supporters with activity procurement land.
2. It should be need build cooperation, coordination and collaboration with apparatus enforcer law related with norm procurement land, application element action criminal in implementer procurement land because law enforcement officers law have duties and functions escort project strategic national and implementation principle justice need put forward for the benefit together Good interest general and interests personal owner land as the sacrificing party right the basis on control and ownership land For interest general

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