

Land Acquisition for Jenelata Dam Building in Gowa; A Comparative Study

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Abstract

This article aims to uncover the views of Islamic law as a universal rule does not only discuss the relationship between humans and God but also the relationship between humans and other humans. The order of life in society as part of the interaction between humans creates various problems. Land becomes an object of economic driving for humans and the state whose users cannot be separated from politics and law, as well as having a function to create life together. The research method used is field research and is qualitative and comparative. Sources of data used in this study come from primary and secondary data. The result of this research is that the purpose of this land acquisition is for the public interest. In Islamic law, land acquisition for public purposes is included in one of the objectives of Islamic law (maqashid syariah). Islamic law teaches to help each other in terms of goodness, by having joint ownership of objects that have been held, the soul is calm because the needs have been provided. An object that is used as a public facility is a valuable asset so that the procurement process also uses a well-ordered system.

Keywords:

Land Acquisition; Dam Building; Land Law; Islamic Law

Abstrak

Artikel ini bertujuan untuk mengungkap pandangan hukum Islam sebagai aturan yang berlaku universal tidak hanya membahas hubungan manusia dengan tuhan tetapi membahas juga hubungan manusia dengan manusia lainnya. Tatanan hidup dalam masyarakat sebagai bagian betuk interaksi antara manusia melahirkan berbagai problem. Tanah menjadi suatu objek penggerak ekonomi bagi manusia maupun negara yang penggunaannya tidak dapat dipisahkan dari politik dan hukum, sekaligus memiliki fungsi untuk mewujudkan kehidupan bersama. Metode penelitian yang digunakan adalah penelitian lapangan (field research) dan bersifat kualitatif dan komparatif. Sumber data yang dipergunakan dalam penelitian ini bersumber dari data primer dan sekunder. Hasil penelitian ini adalah bahwa tujuan dari pengadaaan tanah ini adalah untuk kepentingan umum. Dalam hukum Islam pengadaaan tanah untuk kepentingan umum termasuk dalam salah satu tujuan syariat Islam (maqashid syariah). Hukum Islam mengajarkan untuk saling tolong menolong dalam hal kebaikan, dengan adanya kepemilikan bersama atas objek yang telah diadakan jiwa menjadi tenang karena kebutuhan sudah disediakan. Objek yang dijadikan sebagai fasilitas umum adalah sebuah harta yang berharga sehingga dalam proses pengadaannya juga menggunakan sistem yang tertata dengan baik.

Kata Kunci:

Pengadaaan Tanah; Pembangunan Bendungan; Undang-Undang Pertanahan; Hukum Islam.

Introduction

The land is an essential requirement for every living thing. Humans, animals and plants need land as a place to live and stand on. The land also serves as a source of life for those living through agriculture and plantations, and trade so is as a burial place when people die. Currently, the complexity of human needs has made the activities that develop in society even more complex. Land becomes an object of economical driving for humans and the state whose users cannot be separated from politics and law and function to create a life together.

Al-Qur'an tells many verses relating to the earth or land as a gift from God Almighty. To humans, it is shown by the number of words al-ard revealed by the Koran. The land has a populist value. In policymaking, decision-making, and policy implementation, it is necessary to carry out deliberation without unilateral decisions, physical pressure, weapons, physical abuse, destruction of property, moral pressure, and other security threats. The land also has the value of justice for all people and is on the side of the people.¹

In this case, the Indonesian constitution, Article 33 paragraph (3) of the Indonesian Constitution states that:

Earth, water and the wealth contained therein shall be controlled by the State and used for the greatest prosperity of the people".

The meaning contained in this article is as follows: first, the State controls the Earth, water and natural resources contained therein. Second, the Earth, water and natural resources contained therein are used to prosper the people. Third, land has a strategic meaning for the nation's life because the land is a branch of state production that controls many people's lives. As a concrete manifestation of article 33 paragraph (3) of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Regulations, better known as the Basic Agrarian Law, was born. Law number 5 of 1960 concerning Basic Basic Agrarian Regulations is a national law in land for all Indonesian people.

In article 2 paragraph (1) of the Basic Agrarian Law, it is stated that:

"The State controls Earth, water and space, including the natural wealth in it at the highest level as the power of all the people".

Through the right to control of the State, the State as the governing body will always be able to control or direct the management of the functions of the Earth,

¹Agus Surono, "Perlindungan Hak Korban Pengadaan Tanah Untuk Pembangunan Jalan Tol Di Kabupaten Kendal". *Jurnal Penelitian Hukum De Jure* Vol. 17 no. 4 (Desember 2017) pp. 391-409.

water and space as well as the natural resources contained therein following existing regulations and policies, namely within the scope of juridical control with a public perspective.² The problem of land acquisition is very fragile in its handling because it involves the livelihoods of many people. When viewed from the government's need for land for development purposes, it is understandable that the available state land is minimal. Therefore, one thing that can be taken is the release of land rights.³

The current policy of land acquisition for the public interest is stipulated in Law Number 12 of 2012 concerning Land Acquisition for the Implementation of Development for Public Interest which revokes Presidential Decree Number 55 of 1993. The Presidential Decree No. 55/1993 is no longer suitable as a legal basis to carry out development for the public interest. In the future, the policies that have been issued are expected so that national development, specially developed for the public interest. It can be carried out as well as possible—one example of national development for the public interest in constructing the Jenelata dam in the Gowa Regency.

In article 1 of Government Regulation Number 37 of 2010 concerning Dams defines the dam as follows:

“A dam is a building in the form of a landfill, masonry, concrete, and masonry constructed to hold and collect water. It can also be constructed to hold and accommodate mining waste (tailings) or accommodate mud to form a reservoir.”

The Jenelata Dam will later function as flood control, irrigating around 26 thousand hectares of agricultural land and producing 7MW of hydroelectricity. The construction of this dam is highly dependent on the availability of land, one of which is land acquisition for the community in Tanah Karaeng village, which already has certified property rights and those that are still in the form of girik.

Although in the implementation of land acquisition for the dam construction infrastructure, it has been normatively regulated clearly and in detail the stages or procedures according to the provisions of the laws and regulations. In reality, there are still various problems that generally occur due to several things, including problems. normative data, the value of the amount of compensation, the existence of administrative errors in the implementation of the land acquisition stage, and even rejection by the villagers.

² Bernard Limbong, *Politik Pertanahan* (Jakarta: Margaretha Pustaka, 2014), pp. 50.

³ Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, (Cet. II; Jakarta: Sinar Grafika, 2008) pp. 45-46.

Literature Review

Legal Standing for Land Acquisition

1. Definition

The definition of land acquisition, according to John Salindeho, has the meaning of providing us to achieve a state of existence because in striving for and providing it is tucked into the meaning of holding it in that state. Meanwhile, in conducting, we find something that is available, except we do not do so. So, the two terms are the same but seem different, have a meaning that leads to an act of making land available for public purposes.⁴ Meanwhile, according to Imam Koeswayono, land acquisition is a legal action by the government to obtain land for specific interests by providing compensation to the owner (either individual or legal entity) according to specific procedures and nominal amounts. There are various definitions of land acquisition that are regulated in statutory arrangements. Changes in regulations will be followed by a pattern of changes in the meaning of the land acquisition agency itself.

In the statutory regulations, the term land acquisition was first regulated in Presidential Decree Number 55 of 1993. It was implemented by Public Interest article 1 paragraph (1), which reads as follows: Land acquisition is any activity to acquire land utilizing providing compensation to those entitled to the land.

However, the definition of land acquisition was later amended again in the provisions of Article 1 paragraph (3) of Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for Public Interest. Land acquisition is any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants and objects related to land or revocation of land rights.

The provision of this definition has been criticized by the public so much that it has been amended in Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development for Public Interest in article 1 paragraph (3) which reads:

Land acquisition is any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants and objects related to the land.

⁴ John Slindeho, *Masalah Tanah Dalam Pembangunan*, (Jakarta: Raja Grafindo Persada, 1987). pp. 31.

In 2012 the government enacted Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest and Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest. The provisions of article 1 and number 2 define land acquisition as follows:

“Land acquisition is the activity of providing land by giving appropriate and fair compensation to entitled parties.”

There are two (2) types of land acquisition: first, land acquisition by the government for public interests, while the second is the land acquisition by the government for private interests, including commercial interests and not commercial or non-social interests. Land interests for public interest by the government are implemented by releasing or handing over land rights. Apart from that, land acquisition is carried out by buying and selling, exchanging or other agreed methods.

2. Regulation of Land Acquisition

Before the enactment of Presidential Decree Number 55 of 1993 concerning Land Acquisition for Public Interest, the juridical basis used in the land acquisition was:

- a. Minister of Home Affairs Regulation No. 15/1975 Concerning Provisions Regarding Land Acquisition Procedures.
- b. Minister of Home Affairs Regulation No. 2/1976 concerning Use of Land Acquisition Procedures by Private Parties.
- c. Minister of Home Affairs Regulation No. 2/1985 concerning Procedures for Land Acquisition for the Needs of Development Projects in the District Region.
- d. Presidential Decree No. 55/1993 concerning Land Acquisition for the Implementation of Development in the Public Interest. (This Rule Revokes The Above Three Rules).
- e. Presidential Decree No. 36/2005 concerning Land Acquisition for Implementation of Land Development for Public Interest (this Perpres revokes Presidential Decree No. 55/1993).
- f. Presidential Decree No. 65/2006 concerning Land Acquisition for the Implementation of Development for Public Interest. (This Perpres revokes Perpres No. 36/2005).

3. Land Acquisition Process

Land acquisition is any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants and objects related to the

land. Sarjita argues that land acquisition is any activity to acquire land by providing compensation to those entitled to the land.⁵

Presidential Decree Number 55 of 1993 with Presidential Regulation Number 36 of 2005 and Presidential Regulation Number 65 of 2006 and in Law Number 2 of 2012 provides the following definition or definition of land rights procurement:

- a. In article 1 point 1 of Presidential Decree Number 55 of 1993, it is determined that the meaning of land acquisition is:

Any activity to acquire land by giving compensation to those entitled to the land. The meaning of this article is that whoever wants to acquire land can also be categorized in terms of land acquisition. It can be understood when the title of the presidential decree is written "land acquisition for the implementation of development for the public interest", in this case, there is a certificate that is affirmed, which are the aims and objectives as well as the executor of the land acquisition activity.

- b. Article 1 point 3 of Presidential Regulation Number 36 the Year 2005 defines *land acquisition* as any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants and objects related to land or with revocation of land rights.
- c. Article 1 point 3 of Presidential Regulation Number 36 the Year 2006 defines that land acquisition is by giving compensation to those who release or hand over land, buildings, plants and objects related to land".

This definition is almost the same as the meaning of Presidential Regulation Number 36 of 2005. However, it eliminates the last words of the definition, namely removing the words "or with revocation of land rights".

- d. In Law Number 2 of 2012, it is stated that the definition of land acquisition is "the activity of providing land by providing appropriate and fair compensation to entitled parties". This law does not mention that the revocation of land rights as part of land acquisition, or that revocation of land rights is not part of land acquisition as referred to in Law Number 2 of 2012 includes: above-ground and underground and underground spaces, buildings, plants, objects related to land or others that can be valued.

The similarity between the terms revocation of rights, land acquisition and land acquisition lies in providing "compensation" for each of these activities, which is given to the owner of the land right.

⁵ Sarjita, Masalah Pelaksanaan Urusan Pertanahan Dalam Era Otonomi Daerah: Keppres No 34 Tahun 2003, (Tugu Jogja: Yogyakarta, 2005), pp. 43.

The land acquisition requirements include:

- a. This can only be done if it is based on a pre-determined regional spatial plan.
- b. If a regional spatial plan has not been determined, it is based on the existing regional or city spatial plan.
- c. The land has been designated as the location based on a location determination decision letter stipulated by the governor/mayor/regent for anyone who will make a purchase must first obtain written approval from the regent/mayor or governor following his / her authority.

Land Acquisition on Shariah Perspective

The legal basis that is used as a reference according to Islam regarding land acquisition for the public interest cannot be separated from the al-Qur'an, a hadith narrated by the hadith expert and the Prophet's message. Al Quran emphasized that Allah bestowed great bounties on humans by creating the earth, water and natural resources contained for humans to be used by humans to maintain their survival and for humans to serve Allah Almighty to their families and society.⁶

According to Islamic law, the relationship between the ruler as a legal entity (public) and the holder of land rights as the person in control is that the ruler can obtain rights to land, as is the case with other (private) laws. It was done by having a legal relationship between 2 (two) parties with land rights holders by buying and selling, exchanging, and other legal relationships. It must be guaranteed that there is a balance of rights and obligations between the parties. One party is prohibited from imposing his will on the other party.

According to Islamic law, the usual way of buying and selling can be used as a guide in land acquisition, namely voluntary guarantees and guarantees of the balance of rights and obligations.⁷ To understand the fundamental actions in Islamic law, it is better to review the history of the Prophet Muhammad and his companions who moved (hijrah) to Medina. When the Messenger of Allah entered Medina, the Ansar embraced him and offered him a house to rest. However, Rasulullah SAW answered wisely: "let the camel walk because he was ordered.

⁶ Musleh Herry, *Pengadaan Tanah Untuk Kepentingan Umum (Perspektif Al-Qur'an)* Jurnal Ulul Albah, Vol. 9 No. 2 (2008), pp. 241

⁷ Muhammad Majdy Amiruddin, Nasrullah bin Sapa, and Abdul Syatar, "Uncovering Wasathiyah Values on Sharia Banking," *Al-Mashrafiyah: Jurnal Ekonomi, Keuangan, Dan Perbankan Syariah* 4, no. 2 (2020): 15–28, doi:<https://doi.org/10.24252/al-mashrafiyah.v4i2.14676> UNCOVERING.

Rasulullah saw. continued his journey, and his camel stopped (crouched) on a plot of land belonging to two orphans named sahal and Suhail, both children of Amr Bin Amarah under the care of As'ad Ibn Zarzarapp. The place is drying dates belonging to the two orphaned boys. By Abu Ayub Al Ansari to live in his house. After several months there, he planned to build a mosque. The place chosen was the place where his camel was holding him.

Rasulullah saw. summoned the two orphans to buy the land as a place to build a mosque. The two children persisted in not selling their land to Rasulullah saw. unless they were only willing to donate it. However, he also persisted in not wanting to take the land, even though it was in the form of waqf. He did not want to take the land as a gift, but he wanted to buy it. In the end, he managed to buy the land from the hands of the two orphans at an agreed price of ten dinars, and the one who paid it was Abu Bakr.

From this description, it is understood that Rasulullah saw. did not just take someone's land but instead bought it at a fair price, even though the person gave it up for free because they were aware that the purpose was for the public interest.

Based on the verses of the al-Qur'an, the hadith of the Prophet Muhammad, and the Prophet Muhammad's message, it can be understood that according to Islamic teachings, the use of other people's land for public purposes is still justified. Islamic law highly respects the property rights of others and respects them fairly. Even though its use is for public purposes, the land is not taken just like that, but with fair compensation. The process is following the applicable trade regulations and is carried out voluntarily.⁸

Islamic countries that are members of the Islamic Conference (OIC) organization have issued a declaration on humanity according to Islamic law as the only reference source based on the al-Quran and sunnapp. Human rights are called the Cairo declaration (CD) because the declaration was born in Cairo on August 5, 1990. Article 15 C states that:

- a. Every one shall have the right to own property acquired legitimately and shall be entitled to the right of ownership, without prejudice to oneself, others, or society in general. Expropriation is not permissible to expect for public interest requirements and upon payment of immediate and fair compensation. (All will have the right to own a right of ownership which has

⁸ Musleh Herry, Pengadaan Tanah Untuk Kepentingan Umum (Perspektif Al-Qur'an) Jurnal Ulul Albah, Vol. 9 No. 2 (2008), pp. 244.

been obtained utilizing a legitimate way, and will become the right of ownership, without being obliged to him or the general public. The acquisition is not permissible except for the needs of the public interest (general) and for the payment of compensation which is fair and immediate).

- b. Confiscation and seizure of property are prohibited except for a necessity dictated by law. (Confiscation and Confiscation of property rights are prohibited as expected for a necessity to apply the law).⁹

Fiqh scholars have different opinions about the law of land acquisition for the public interest. Imam Abu Yusuf stated that the country's leader might not take anything out of the hands of anyone except with permanent and ma'ruf rights. It means that a priest or a ruler cannot necessarily control rights, objects or from someone but with the law that allows it.¹⁰ Muhammad Arafah Ad-Dasuqi Al-Maliki stated that if a state leader forces the landowner to sell his land for the expansion of mosques, public cemeteries and roads needed by the general public, then the law of buying and selling is valid.¹¹ Syeikh Sulaiman Bin Muhammad Bin Umar Al-Bujairimi Al-Syafii believes that the contract transaction carried out by someone forced into his property is without rights because there is no will. Meanwhile, the government's actions to buy people's land must be fair or adequate, and it is all done in the public interest.¹² According to the Hanbali School, state leaders have the right to force landowners to sell their land to the state for road development or expansion as long as, in this case, there is an urgent benefit for the wider community.¹³

Land Acquisition Procedure

1. Land Acquisition Procedure on Indonesian Legal System

Acquisition of land is a way to acquire land for development for the public interest. Article 18 of the Basic Agrarian Law states that: "for the public interest, including also for the interests of the nation and the state and the common interests of the people, land rights can be revoked, by providing appropriate compensation and following methods regulated by law. invite. "This provision forms the basis for

⁹ B. Lopa, *Al-Qur'an Dan Hak Asasi Manusia* (Jakarta: Pt Dana Bhakti Prima Yasa), pp. 104.

¹⁰ Yusuf, Abu, 1979. *Al-Kharaj* (Beirut: Darul Ma'rifat, Tt), pp. 23

¹¹ Ad-Dasuqi Muhammad, *Hasiyah Al-Dasuqiy Alasy Syahril Kabir, Juz III* (Beirut: Maktab Ad-Dirasat Wal-Buhuts Fi Darrul Fikr, Tt) pp. 6

¹² Sulaiman Bin Muhammad, *Bujairini Alal Minhaj, Juz II* (Beirut: Dar Al-Kitab Al-Arobi, Tth), pp. 174.

¹³ Al-Mardhawi., *Al-Inshaf Fi Ma'rifatir Rajih Minal Khilaf, Juz VII* (Beirut: Maktab Ad-Dirasat Wal-Buhuts Fi Darrul Fikr, Tth), pp. 102.

the elaboration of land acquisition in Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest. Article 1 point 2 of the law stipulates that: "land acquisition is the activity of providing utilizing providing appropriate and fair compensation to entitled parties.

Land acquisition for development for the public interest is carried out in stages stipulated in Law Number 2 of 2012 and its implementing regulations. Following Law Number 2 of 2012, land acquisition for the public interest is carried out through the following:

a. Planning

Land acquisition planning for the public interest is based on the Regional Spatial Plan and development priorities stated in the medium-term development plan, strategic plan, the government work plan of the relevant agency.¹⁴

Land acquisition planning for the public interest is compiled based on a land acquisition planning document compiled based on a feasibility study carried out following the provisions of laws and regulations.

Planning documents are determined by the agency requiring land and submitted to the provincial government.¹⁵ At least contains: 1) Purpose and objectives of the development plan; 2) Conformity with regional spatial planning and national and regional development plans; 3) Layout of land; 4) The required land area; 5) General description of land status; 6) Estimated time of land acquisition implementation; 7) Estimated period of development implementation; 8) Estimated value and; 9) Budget plan.

b. Preparation

The agency requiring land and the provincial government shall carry out the land acquisition planning document¹⁶ 1) notification of development plans; notification of development plans is conveyed to the community on the development location plan for the public interest, either directly or indirectly; 2) preliminary data collection on the location of the development plan; Initial data collection of entitled parties and land acquisition objects is carried out within 30 (thirty) working days from the notification of the development plan. The results of the initial data collection on the location of the development plan are used as data for the implementation of the development plan public consultation. 3) Public consultation on development plans; Public consultation on development plans is carried out to obtain agreement on the

¹⁴ Pasal 14 ayat (2) undang-undang nomor 2 tahun 2012

¹⁵ Pasal 15 undang-undang nomor 2 tahun 2012

¹⁶ Pasal 16-pasal 19 undang-undang nomor 2 tahun 2012

location of the development plan from the entitled parties and the affected community and is carried out at the location of the development plan in the public interest or an agreed location. The opportunity is outlined in the form of an agreement report. Based on this agreement, the agency requiring land submits a request for location determination to the Governor.

The Governor determines the location within 14 (fourteen) working days from the receipt of the application for determination by the agency requiring land.

Public consultation on development plans is carried out within a maximum period of 60 (sixty) working days to implement the development plan consultation. Some parties object to the development location plan; repeated public consultations are carried out with the objecting parties within 30 (thirty) working days.

c. Implementation

The agency requiring land proposes the implementation of land acquisition to the land agency. The implementation of land acquisition includes 1) inventory and identification of control, ownership, use and utilization of land, which includes ¹⁷ a) area by area measurement and mapping, and b) data collection of entitled parties and objects of land acquisition resulting from the announcement or verification and improvement is determined by the land agency and subsequently becomes the basis for determining the entitled parties in granting compensation. 2) assessment of compensation; the land agency determines and announces an appraiser following the provisions of the statutory regulations to carry out an appraisal of the object of land acquisition. The valuation of the value of compensation by the appraiser is carried out in the plot of land covering¹⁸ a) land; b) above ground and underground space; c) buildings; d) plants; e) objects related to land; and f) other assessable losses. 3) deliberation on the determination of compensation; The land agency shall conduct deliberations with the entitled parties within 30 (thirty) working days since the results of the appraiser's assessment are submitted to the land agency to determine the form / or amount of compensation based on the results of the compensation for losses. The result of the agreement in deliberation becomes the basis for giving compensation to the entitled parties, which is included in the minutes of the agreement.¹⁹ 4) giving compensation for losses; the provision of compensation for the object of land acquisition is given directly to the entitled party and can be

¹⁷ Pasal 28 undang-undang nomor 2 tahun 2012

¹⁸ Pasal 33 undang-undang nomor 2 tahun 2012

¹⁹ Pasal 37 undang-undang nomor 2 tahun 2012

given in the form:²⁰ a) money; b) replacement land; c) resettlement; d) share ownership; or e) any other form agreed by both parties. 5) release of agency land; The release of land acquisition objects for public interest owned by the government is carried out in accordance with the provisions of the laws and regulations governing the management of state / regional property.²¹ The release of land acquisition objects for public interest controlled by the government or controlled / owned by state-owned / regional-owned enterprises is carried out based on law number 2 of 2012.

The release of the agency land acquisition object is not given compensation for losses, except:²² a) the object of land acquisition which has already stood a building that is actively used for the implementation of government tasks. Compensation for losses are provided in the form of land and / or buildings or relocation. b) the object of land acquisition that is owned / controlled by state-owned / regional-owned enterprises. Compensation is given in the form of money, replacement land, resettlement, share ownership or other forms agreed by both parties. c) the object of village treasury land acquisition. Compensation is given in the form of land and / or building or relocation.

d. Submission of results

The land agency submits the results of land acquisition to the agency that requires land after²³ already implemented; and / or compensation has been deposited in the district court.

2. Land Acquisition Procedure on Shariah Perspective

Islamic law is a source of moral and legal teachings to regulate all aspects of life. The source of Islamic law is the Qur'an and the sunnah of the Prophet. These two sources are also called the main arguments of Islamic law because they are the primary evidence (arguments) of Allah's law.²⁴ As for the meaning of Islamic law is a set of rules based on the revelations of Allah and the Prophet regarding the behaviour of mukallaf, which are recognized and believed to be binding on all Muslims. ²⁵ The use of land in Islam is based on the principles that apply in Islamic law in the context of the welfare of individuals and the social welfare of society in general.

²⁰ Pasal 36 undang-undang nomor 2 tahun 2012

²¹ Pasal 45 undang-undang nomor 2 tahun 2012

²² Pasal 46 undang-undang nomor 2 tahun 2012

²³ Pasal 48 undang-undang nomor 2 tahun 2012

²⁴ Satria Effendi dan M. Zein, *Ushul Fiqh*, (Cet. III; Jakarta: Kencana, 2009), pp. 77.

²⁵ Amir Syariuddin, *Ushul Fiqh 1*, (Cet. V; Jakarta: Kencana, 2011), pp. 6

Procurement of land in Islam can be done through *ihya 'al-mawat*, which is working on damaged land..²⁶ Imam al-Mawardi and ar-Rauyani defined no man's land as land that is neither cultivated nor remote. Cultivating no man's land is allowed based on several hadith reports before the existence of *ijma 'among the scholars.*²⁷ Among other things, a hadith narrated by Jabir bin Abdullah that the Prophet said: "whoever works on the land is not anyone, then he is the one who has the right to the land and what animals eat for him is alms". The new acquisition of what he has worked on has made land not under the owner or dead land into property rights.

According to al-Suyuti, land can be used as property rights through *ihya '*, inheritance, grants, exchange (buying and selling), *waqf*, *ghanimah* and alms. Scholars have stated that another way of relinquishing land is through *iqta* and *tahjir*. The release of land in Islamic land law consists of two ways, namely the concept of *ihya 'almwat* and *tahjir*. *Iqta* (cutting) determines certain lands to be cultivated by someone to have more rights over the land, provided that the land is not owned by someone else. The legal basis for *iqta* is a narration which states that: Rasulullah saw, assigned a piece of land in Hadramaut (Yemen) to Wail bin Hujar and sent Muawiyah to determine it. (PP.R. at-Tirmidhi). Rasulullah SAW did the same thing. For Zubar bin Awwan (from Abu Dawud bin Hanbal). Then the cleric Arasyddun (four great caliphs) also did the same thing as Abu Bakr did as-Siddiq for Zubair bin al-Khattab for Ali bin Ali Talib, and what Usman bin Affan did for Zubair bin Awwan, Sa'ad bin Abi. Waqqas, Abdullah bin Mas'ud, Usaman bin Zaid and Khabbab.

Fiqh scholars divide *Iqta* 'into three types, namely *iqta almawat* (empty land that someone cultivates, *iqta irfaq* (land used for public interest), and is also called *Iqta' al-amir* and *iqta 'al-ma-adin* (hidden treasure).

According to fiqh scholars, the law of *iqta amawat* or government action specifying a plot of land cultivated by a particular person who is considered competent in cultivating the land according to fiqh scholars is permissible. The goal is that the land becomes productive land and the community is helped. Whereas the law of *iqta 'irfaq* (*iqta al-amir*), according to the scholars of the Syafi'i and Hanbali Madzhab, is that the government can designate certain land for mosque yards, rest areas in markets and wide roads, with the status of use rights only, not property rights. During the determination of the land for the benefit of the people. If the

²⁶ Abdul Aziz Muhammad Azzan, *Fiqh Muamalat Sistim Transaksi Dalam Fiqih Islam*, Cetakan Pertama (Jakarta: Sinar Grafika Offset, 2010) pp. 349.

²⁷ Abdul Aziz Muhammad Azzan, *Fiqh Muamalat Sistim Transaksi Dalam Fiqih Islam*, pp. 65.

government needs the land, it can ask for it again, and the land use rights by the cultivator will end.

Related to Iqta Ma'adin (ar-Ma'adin-mine or source of mining goods), there is a circulation of fiqh scholars discussing ma'adin. The Hanafi School scholars state that ma'adin are all treasures buried in the ground, whether the existence of these assets is due to Allah's will such as gold, silver and iron ores, and treasures stored by ancient humans or treasures (rikaz / Kanz). Meanwhile, jumhur scholars distinguish between rikaz and ma'adin.

Tahjir, according to the Hanafi School of Religion, is the act of someone who wants to clean up the mawat land, but the ihya's efforts are not yet perfect. Alternatively, tahjir is to sign a piece of land using stone or wood. A fiqh expert has no difference regarding the person who performs tahjir, the right to own the land and the right to prohibit other people from controlling the land. Tahjir will fall when within a specific time because ihya is not thoroughly carried out.²⁸

In principle, Islam guarantees the protection of rights for everyone. Every right owner can claim the fulfilment of his rights. If there is a violation or destruction of rights, the right owner can demand compensation or compensation commensurate with their rights. With ownership of an object, including land, it must go through various procedures if the land is to transfer ownership.

Result and Discussion

Land Acquisition Procedure for Jenelata Dam Building in Gowa

The procedure for implementing land acquisition for the construction of the Jenelata dam begins with applying. The implementation of land acquisition for the construction of the Jenelata dam in Gowa Regency in Tanah Karaeng Village, carried out by the Ministry of Public Works and Public Housing to the National Land Agency of South Sulawesi Province. It can be seen with the issuance of the Decree of the Governor of South Sulawesi concerning the Location of Land Acquisition for the Construction of the Jenelata Dam, Gowa Regency, South Sulawesi Province. The interview with Abu Bakr stated that:

"Development for public interests requiring land must indeed be carried out through land acquisition. Before determining the location of the land, first make an application for the implementation of land acquisition. This also applies to the construction of the Jenelata Dam in Gowa Regency. The application for the

²⁸ Ensiklopedia Hukum Islam 3 IMS-MAJ (Jakarta: Pt. Ichtiar Baru Van Hoeve, 1996), pp. 733-735.

implementation of land acquisition for the construction of the Jenelata Dam was submitted by the Ministry of Public Works and Public Housing to the South Sulawesi National Land Agency. After the letter is received by the South Sulawesi National Land Agency, coordination of the Gowa Regency Land Office is carried out. After the coordination has been completed, the governor of South Sulawesi issues a letter to determine the location of land acquisition for the construction of this dam" (interview with Abu Bakar, S, SIT., M.M, head of the section of land acquisition and development of the land office of Gowa Regency, January 15, 2021).

With the issuance of the Decree of the Governor of South Sulawesi concerning the Determination of the Location of Land Acquisition for the Construction of the Jenelata Dam, Gowa Regency, South Sulawesi Province, a land acquisition committee (P2T) was formed. This land acquisition committee was formed to assist land acquisition to develop development for the public interest. This committee has a significant role in land acquisition and implementation. The land acquisition committee acts as an extension of the government as an apparatus occupying the forefront of any land acquisition for public or other purposes. Interview with Abu Bakr:

"After the location determination and land acquisition permits are issued, the next step is the formation of a land acquisition committee team. This team will later play a role in regulating the road acquisition of land for the construction of this dam. These stages start from the inventory and identification stage, deliberations with land rights owners, determining compensation prices and resolving problems in the land acquisition process. "(interview with Abu Bakar, S, SIT., M.M, head of the section of land acquisition and development of the land office of Gowa Regency, January 15, 2021).

When viewed from its duties and authorities, this committee has a more dominant role than the agency/team for assessing land prices. The land acquisition committee is appointed or appointed by the local government based on the location where land acquisition is desired for the public interest. So, it could be regents, mayors, governors and domestic ministers. It has been confirmed in article 6 of Presidential Decree Number 65 of 2006.

In addition to task force A (task force A) and task force B (task force B), an appraisal team was also formed. A price appraisal team (appraisal team) is a team formed to assess the price of land if there is no land appraisal agency in the

regency/city concerned or its surroundings. The appointment of this team was carried out by the Ministry of Public Works and Public Housing, Directorate General of Water Resources, the Pompengan Jeneberang River Basin. They appointed KJPP Pung Zulkarna and colleagues.

In the next stage, the land acquisition team (TPT) and the land acquisition committee (P2T) of Gowa Regency carried out socialization/counselling to explain the purpose and objectives of land acquisition for dam construction to the community and in order to obtain availability from the owners. The implementation of this deliberation is a very determining factor for the smooth running of land acquisition. Therefore, it requires the ability, creativity and patience of the land acquisition implementers. Regarding this matter stated by Samsuddin M, following the interview:

"Implementation of land acquisition outreach / counseling for dam construction has been carried out at the village office involving the land acquisition team (TPT) and the land acquisition committee (P2T) of the Gowa district with the village apparatus of Tanah Karaeng and residents involved with the construction project" (Interview with Samsuddin M, Head of Manyampa Hamlet, On January 28, 2021)

After socialization and counselling regarding the plan for constructing the Jenelata dam, TPT and P2T in Gowa Regency began to carry out land acquisition activities by measuring and installing stakes. The installation of these stakes was carried out by the land acquisition team (TPT). Based on the installation of these stakes, measurement and determination of the boundaries of the land parcels affected by the plan to construct the Jenelata dam in Tanah Karaeng village are carried out by the Land Office of Gowa Regency.

After measuring and determining the boundaries of the locations affected by the dam construction project, data is collected. The data collection was carried out to clearly and in detail related to the physical and non-physical conditions of the land affected by the Jenelata dam construction project.

At the time of this research, the dam construction implementation stage was still collecting data. However, in the land acquisition process, starting from the planning, preparation, and implementation stages that have arrived at the data collection process of entitled parties and land acquisition objects following the provisions of statutory regulations governing land acquisition procedures for the public interest, namely Law Number 12 of 2012 concerning Land Acquisition for the Implementation of Development in the Public Interest.

Land Acquisition Analyses: Indonesian Legal System

The statutory rules govern the procedures for land acquisition for the public interest, namely Law Number 12 of 2012 concerning Land Acquisition for Public Interest. In implementing the procedures for constructing the Jenelata dam in Tanah Karaeng village, it follows the rules stipulated in Law Number 12 of 2012 concerning Land Acquisition for Public Interest. However, regardless of the compliance with these regulations, there are many obstacles faced in land acquisition for the dam's construction. Some of the constraints referred to are as follows:

1. The occurrence of free sale and purchase of land

The landowners' sale and purchase (land for sale) are carried out freely, without reporting to the authorities on land issues, in this case, the Gowa Land Office in South Sulawesi Province. After investigating further about this, it was found the reasons why the residents did this. The residents argued that there were concerns about the price of compensation provided by the government with the prevailing land price in the market. These conditions and situations have led to the emergence of land brokers. These land brokers buy people's land at a low price to intend that when the government provides compensation, the government will provide a higher price for compensation.

The land sale was carried out by residents freely and did not report to the authorities regarding land issues. In this case, the Gowa Land Office of South Sulawesi Province caused difficulties for the land acquisition committee. The names of landowners with existing certificates were different even though the land acquisition committee has informed that the land affected by the construction of the Jenelatan dam should not be sold freely to others, especially without the knowledge of the authorities, in this case, the Land Office of Gowa, South Sulawesi Province.

2. The occurrence of the inheritance process

In the event of an inheritance process, the heir obtains an inheritance in the form of the land but still has not followed up by changing the name. So that the legal documents and the reality of ownership of the land are different, this, of course, requires re-tracking to ascertain whom the party has the right to the land.

3. There is absentee / guntai land ownership

Land ownership absentee or guntai island where the owner of the land is not located or domiciled in the land area. Based on data obtained in the field, many

residents have land status in absentia where the land and the people who own it are not in the same domicile, so the land is left to be invested. It is also an obstacle for the land acquisition committee to carry out land acquisition because the people are not in the land's domicile.

Absentee / guntai land ownership also affects the market price of land because the owner does not feel rushed to sell his land for any reason, including constructing a dam. Because if people are given a choice to refuse or accept to sell their land, they do not want to sell their land. However, because it is in the public interest, the residents wish to sell their land.

4. Desire for relocation

One of the problems that arise among residents whose land is affected by a land acquisition project for constructing a dam is the desire of residents to relocate. Interview with PP. Sampara as follows:

"Currently, there are 20 heads of families who have proposed relocation to him. Because indeed from the land acquisition side there was no relocation for residents whose land was affected by the Jenelata dam construction project. So that as the head of manyampa hamlets he took the initiative to propose relocation to the land acquisition committee" (Interview with PP. Sampara, S.IP, Head of Tanah Karaeng Village, on January 28, 2021)

The residents feel that the land acquisition committee needs to relocate. The victim of the land acquisition project will experience social and economic changes that include their sources of livelihood, income levels, business sustainability and other social unrest. Apart from having a socio-economic impact, it also impacts socio-culture, namely changes in residence and changes in the social environment.

Land Acquisition Analyses: Shariah

When viewed from the analysis of Islamic law, the practice of land acquisition for the construction of a dam in Tanah Kareang Village, in this case, is the procedure or stages of land acquisition following the rules in Islamic law even though in its implementation it uses a rule based on the law regarding land acquisition. This suitability can be seen from various things starting from the planning stage, preparation to the implementation stage.

Judging from the purpose of land acquisition, the purpose of land acquisition is for the public interest. In Islamic law, land acquisition for public purposes is included in Islamic law's objectives (maqashid Syariah). Islamic law teaches to help

each other in terms of goodness, with joint ownership of objects that the soul has held to be calm because the needs have been provided. An object used as a public facility is a valuable asset, so that the procurement process also uses a well-ordered system. After the object is used differently, it does not mean that it is lost or wasted but is used for more significant needs and of course, it is guarded by all circles, both the government and its users.

At the age of man, no one knows when he will leave the world. As a creature who is entrusted with maintaining his mandate, in this case, offspring does not mean only providing personal income but also having to maintain and educate in order to become a valuable successor to others. The creation of public interests will make it easier for the offspring to do various activities because they do not think about the acquisition of objects and make the journey of life more manageable. So that the inheritance left by the ancestors in the sense that the government does not burden their descendants. However, the inheritance given is a facility that supports the achievement of a better life. Because who today is better than yesterday is the lucky person. Neither is a country where the future government must be better than the current government so that this country is included in the state in government.

The practice of land acquisition also uses the concept of deliberation or *outraacpp*. Deliberations in Law No.2 of 2012 are carried out with public consultations. The parties that carry out the deliberations consist of the government, the agencies that need the land and the landowners whose land is to be acquired. Deliberations are held to reach an agreement to hold a spatial plan by the government so that it involves certain parties. Deliberation does not run by itself but through procedures established by the government.

Deliberation in Islam has the same objective: to obtain an agreement to release rights to land used for the public interest. The difference in this deliberation is that the parties holding the deliberation are humans, but Islam believes that Allah is in everything that His creatures do. So, in addition to aiming to get an agreement, it also aims to get the pleasure of Allah SWT. Apart from that, deliberation in Islamic law has no time limit. Deliberation is carried out by placing Allah SWT. As a party who knows everything and *musyawah* are carried out by placing Allah Almighty. As a party that knows everything and deliberations are carried out for good things. So that in Islamic law, in addition to related parties, there is also Allah SWT. Who oversees everything.

Apart from having the same goal, Islamic Law and Law Number 2 of 2012 still have differences. The difference is if this law discusses deliberation only in the material realm and does not address worship or spiritual satisfaction issues, whereas, in Islamic law, deliberation is not only to discuss material alone but also wants the pleasure of God.

Conclusion

The implementation of the procedures in the construction of the Jenelata dam in Tanah Karaeng village follows the regulations stipulated in Law Number 12 of 2012 concerning Land Acquisition for Public Interest. However, regardless of the compliance with these regulations, there are many obstacles faced in land acquisition for the dam's construction. Some of the constraints referred to are as follows: a—the occurrence of buying and selling freely; b. The inheritance process occurs; c. Absentee or guntai land ownership exists; d—the desire for relocation. The practice of land acquisition for the construction of a dam in Tanah Kareang Village, in this case, is the procedure or stages of land acquisition following the rules in Islamic law even though in its implementation it uses a rule based on the law on land acquisition. This suitability can be seen from various things starting from the planning stage, preparation to the implementation stage. Judging from the purpose of land acquisition, the purpose of land acquisition is for the public interest. In Islamic law, land acquisition for public purposes is included in Islamic law's objectives (*maqashid Syariah*). The inland acquisition also uses the concept of deliberation or outreacpp.

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