

**GOVERNMENT LEGAL RESPONSIBILITY FOR PAYMENT OF COMPENSATION COSTS
FOR THE BUNTU KUNIK BERKENDEK TANA TORAJA AIRPORT CONSTRUCTION
PROJECT**

**(TANGGUNG JAWAB HUKUM PEMERINTAH PADA PEMBAYARAN BIAYA GANTI
RUGI PROYEK PEMBANGUNAN BANDARA BUNTU KUNIK MENGENDEK TANA
TORAJA)**

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ABSTRACT

The application of the precautionary principle at the stage of land acquisition for the construction of the airport, but not yet fully implementing the precautionary principle and implementation that is not transparent because it does not involve the full participation of the community, especially the people affected by the development and the inventory/identification of documents that were not carried out properly by the Land Acquisition Committee which resulted in an error in paying compensation. The research used in this research is qualitative research with data sources, namely data obtained from direct interviews with respondents and data sourced from literature studies.

Keywords: Precautionary Principle, Legal Consequences, Compensation

ABSTRAK

Penerapan prinsip kehati-hatian pada tahapan pengadaan tanah pembangunan bandara buntu kunik mengkendek tana toraja belum menerapkan prinsip kehati-hatian secara baik serta pelaksanaannya yang tidak transparan karena tidak melibatkan peran serta masyarakat secara penuh khususnya masyarakat yang terkena dampak pembangunan tersebut dan inventarisasi/identifikasi dokumen yang tidak dilakukan dengan baik oleh panitia pengadaan tanah yang telah adanya menimbulkan kesalahan pembayaran ganti rugi. Penelitian yang digunakan pada penelitian ini adalah penelitian kualitatif dengan sumber data yaitu data yang diperoleh dari hasil wawancara langsung dengan responden dan data yang bersumber dari studi kepustakaan.

Kata Kunci: Prinsip Kehati-hatian, Pengadaan Tanah, Ganti Rugi.

I. INTRODUCTION

Development is a human effort to manage and utilize resources that are used to meet the living needs of the Indonesian people. By having creativity, taste, and

initiative, humans have managed and utilized natural resources for the needs of the present generation and also consider future

generations in meeting their needs, this is in line with sustainable development.¹

It can be realized that economic development is not merely an economic process, but a process of political, social, and cultural change that includes the nation, within its power. National development is a reflection of the continuous desire to improve the welfare and prosperity of the Indonesian people fairly and equitably, as well as developing community life and the administration of an advanced and democratic state based on Pancasila. Land has an important role in the development and community life, including infrastructure in the industrial sector, housing, and roads. Land can be valued as a fixed asset that can be used as future savings. Land is the place of residence for most of humanity, apart from being a source of livelihood for people who earn a living through farming and plantations, ultimately land is also used as the final burial place for someone who dies.²

Land conflicts arise due to land procurement for the public interest, so to prevent ongoing conflict, the Government issued Law Number 2 of 2012 which is expected to be able to overcome conflicts in the implementation of land acquisition for the public interest, especially in procedures for determining compensation. These Legislative

Regulations have been amended in Law Number 11 of 2020 concerning Job Creation, the implementing regulations of which are also issued, namely Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest, however the author in this article still follows the Law - Law Number 2 of 2012 because the case discussed in this article occurred at a time when Law Number 2 of 2012 had not been revised in Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 19 of 2021 concerning Implementation of Land Acquisition for Development for the Purposes General. Compensation is the most important thing in the Land Acquisition process because compensation is the provision of compensation for losses suffered by land rights holders due to the transfer of those rights.³

Compensation is given to the entitled party based on the results of the assessment determined in the decision of the District Court/Supreme Court. Compensation is given to the entitled party based on the results of the assessment determined in the decision of the District Court/Supreme Court. The party entitled to receive compensation is responsible for the truth and validity of the

¹Salim HS, *Pengantar Hukum Sumber Daya Alam*, (Jakarta: Rajawali Pers, 2018), Hal. 19.

²Abdurahman, *Masalah Hak-Hak Atas Tanah dan Pembebasan Tanah di Indonesia*, (Bandung: Cet.2 Alumni,1983), Hal. 2.

³ Ni Wayan Lusiana Sari, *Kewenangan Pemerintah Daerah dalam Mengendalikan Pembangunan Kawasan Bandar Udara*, (Denpasar Bali, Jurnal Prefensi Hukum Vol. 1, No. 2, Fakultas Hukum Universitas Warmadewa, 2020), Hal. 3.

proof of control or ownership submitted. Anyone who violates this will be subject to criminal sanctions.⁴

Article 75 paragraph (1) of Presidential Regulation Number 71 of 2012 which has been amended in the fourth amendment, namely Presidential Regulation Number 148 of 2015, states that in deliberations as intended in Article 68, implementation prioritizes the provision of compensation in the form of money.⁵ Compensation means that when providing land for development, the government often finds it difficult to reach an agreement with rights holders and can trigger conflict because rights holders feel that their rights to forms of compensation other than money as specified in the law are being ignored. In the land acquisition process, people who own the land often submit compensation amounts that are quite large, so the government itself has difficulty meeting the demands of the rights holders, so it is often very difficult to reach an agreement between the two parties.

This is where the problem lies, where the people whose land is affected by the construction of the airport, feel that the compensation they receive is inappropriate and unfair. The government can provide compensation to residents for IDR 250,000.00 (two hundred and fifty thousand rupiah) per square meter. Meanwhile, if estimated,

⁴Soedaryo Soemin, *Status Hak dan Pengadaan Tanah*, (Jakarta: Sinar Grafika, 1993), Hal. 82..

⁵Article 75 paragraph (1) Presidential Regulation Number 148 of 2015

according to residents the price of land in that place could reach IDR 2,000,000.00 (two million rupiah) per square meter.⁶This protracted process will certainly hinder and also be detrimental to the ongoing development process itself, which in this case is the construction of the dead-end airport route to Tana Toraja which, among other causes, is the problem of compensation for relocated communities. If you look more broadly, it seems like a problem of compensation. Losses in land acquisition are a common problem in Indonesian society. This problem must of course be anticipated by the Government if it does not want the development process to be hampered and waste a lot of time.⁷

The state as the ruling body will always be able to control or direct the management functions of earth, water, and space as well as the natural resources contained therein by existing regulations and policies, namely within the scope of juridical control with a public aspect.⁸However, to build public facilities like those mentioned above, land is needed as a container. In this case, the land supply is still very large, and the construction of public facilities will not encounter problems.

⁶<https://www.lekatnews.com/2020/02/belum-tuntas-pelunasan-ganti-rugi-lahan.html> diakses pada tanggal 10 November 2020

⁷Supriadi, *Hukum Agraria*, (Jakarta: Sinar Grafika, 2007), Hal. 29.

⁸Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara Paradigma Baru Untuk Reformasi Agraria*, (Yogyakarta: Citra Media, 2007), Hal. 5.

In the implementation of Article 6 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, it is carried out by the Government. Land Procurement referred to here is the activity of providing land by providing adequate and fair compensation to the entitled parties. The compensation process is appropriate and fair compensation to the entitled parties in the Land Acquisition process. In principle, the aspects of adequate compensation must fulfill three aspects, namely, economic aspects, sociological aspects, and philosophical aspects.⁹The compensation process carried out by the local government to communities affected by the development is not by Law Number 2 of 2012 or other laws and regulations that regulate this compensation issue. The process that occurred was not by existing regulations, where payments were made incorrectly to parties who were not the owners of the rights to the land, giving rise to problems from landowners demanding that compensation payments be paid to them as the actual landowners. This compensation case was disputed in court, this case even reached the cassation level at the Supreme Court and the decision was final or had permanent legal force. In the main case of Supreme Court Decision Number 207 K/PDT/2013, dated 27 November 2014, it was stated that the legal

heirs of Puang Sesa Bonde were hereditary to Puang Randanan, Puang Mengkendek, and the Plaintiffs had the right to inherit the land of Tongkonan Busan Pitu Buntu Pitu Lombok which is a legacy of Puang Sesa Bonde.

The main point of the case also states that the actions of the Land Acquisition Committee 9 regarding the construction of a new airport in Lembang Simbuang, Mengkendek District, Tana Toraja Regency deviated from applicable procedures laws, and regulations. In its view, the Supreme Court also sentenced the Regent of Tana Toraja and Committee 9 for Land Acquisition for the Construction of the Airport to pay the heirs of Puang Sesa Bonde, namely appropriate and fair compensation and the amount of cash value.

Based on the description as stated previously. It is reasonable to suspect that the process of implementing the land acquisition for the construction of the dead-end airport in Tana Toraja Regency is not taking place by applying the precautionary principle at every stage of its implementation. As a result, problems arise regarding the payment of compensation that is not on target, resulting in legal issues arising between people who own land rights and those who do not own land rights and the Regional Government as the implementer.

⁹Bernhad Limbong, *Pengadaan Tanah Untuk Pembangunan*, (Jakarta: Margaretha Pustaka, 20110, Hal. 369.

II. RESEARCH METHODS

This research uses empirical research methods. The research was conducted in Tana Toraja Regency as a research object, the research used was qualitative research with data sources, namely data obtained from direct interviews with respondents and data sourced from literature studies, data obtained and studied using qualitative analysis from this analysis, namely data Both primary and secondary laws will be identified for further use in analyzing problems related to this research.

III. DISCUSSION

3.1 Application of the Precautionary Principle in the Land Acquisition Stages Carried Out by the Tana Toraja Regency Government

Essentially land acquisition is carried out by the Government's action process to acquire land for various development activities, especially in the public interest. In principle, land procurement is carried out by applying the precautionary principle because in general land procurement is carried out by the Government/Agencies that require land for development in the public interest by holding consultations with land rights holders, whose land is needed for development.

The principle of control over land rights has not changed, however. However, in practice, law enforcement is not carried out consistently in implementing the land rights procurement process. Legal protection of individual rights in each period has never

been fair and has not been carried out correctly.

Based on the results of an interview with the Head of the Dispute Control and Handling Section of the Tana Toraja Regency Land Office, Andi Hamzah, SH., MH said that.¹⁰

"The land in the Buntu Kunik Mengkendek Tana Toraja Airport Development area belongs to the descendants of the late family. "AYK Andilolo is strengthened by the status of a property rights certificate owned by the descendants of the late AYK Andilolo, who live in the land area, are relatives/family who are entrusted with maintaining and utilizing the land and gardens in the area that will be used as a location for the construction of the Buntu Kunik airport."

Administratively, the Land Acquisition Process for Development in the Public Interest can be carried out carefully and with great care by an authorized official who is given the power/responsibility to carry it out. So that in the process a trust is created that can provide maximum benefits for the community whose land will be used as a Development Project for the Public Interest, as well as being able to provide a good assessment of the surrounding community for the Government.

To ensure legal certainty of land objects that will be used as the Buntu Kunik Mengkendek Tana Toraja airport area and to

¹⁰Interview with Andi Hamzah, SH, MH, Head of the Dispute Control and Handling Section of the National Land Agency, Tana Toraja Regency, on July 11, 2022.

ensure that there are no irregularities related to land acquisition for the implementation of the construction of the Buntu Kunik Mengkendek Tana Toraja Airport and not to harm the rights and legal interests of land rights owners. the real thing. In fact, in 2002, this descendant of the family of the late AYK Andilolo registered the land ownership status with the Tana Toraja Regency Land Office and did not receive any challenges/objections from any party at that time.

Where the process carried out starting from the stages up to payment and determining the amount of compensation is carried out unprofessionally, resulting in an error in the payment process where the compensation process is not paid to the actual owner of the land rights, in this case, namely. Family of the late AYK Andilolo. The process carried out was carried out carelessly by an authorized official, starting from the process of land acquisition stages by PP No. 19 of 2021 as the basis for implementing Law Number 11 of 2022, namely. Planning, in this planning process the Tana Toraja Regency Land Office was not directly involved during the process of identifying and inventorying the land that would be used as an airport construction area, everything was carried out by Pantia 9 at that time, even though formally the Head of the Toraja Regency Land Office was included in The composition of the Land Acquisition Committee 9 at that time, whose name has now changed to the Land Acquisition Task Force (Satgas).

After holding what was known as socialization and counseling regarding the plans for the construction of a dead-end kunik airport in the Simbuang Mendek area of Tana Toraja, the land procurement committee at that time began land acquisition activities by carrying out what was called measurements and installing stakes. The installation of the stakes was carried out by the Land Acquisition team based on the installation of the stakes, measurements, and determination of the boundaries of the land areas affected by the Bunu Kunik airport development plan were carried out by the Tana Toraja Regency Land Office.

The installation of the stakes was carried out on April 10 2011 and lasted for 7 days, the pegging activities started from Rantedada to Tampo Village, Mengkendek District, Tana Toraja Regency. This activity should involve parties from village/lembang officials where the land/location that will be used as the Bunu Kunik airport construction project is located, but everything is carried out by the Land Acquisition Committee itself by appointing the people they have determined. This activity must involve parties who are considered to know about the land because these parties are more competent in knowing about the rights to the land that will be used as the airport development project. This activity must involve the head of the village/Lembang and several local community leaders in the hope that these community representatives can find out about the planned

project for the construction of a dead-end airport in the Simbuang area, Mengkendek sub-district, Tana Toraja district.

Regarding measuring and determining the boundaries of the land, there was a problem where the land owners who held the certificate of ownership of the land were not directly involved in the stages of land acquisition. The parties who are disadvantaged by this process do not object to the land acquisition process carried out by the government, but they hope that the land acquisition process is carried out fairly and transparently so that it can create a situation that is safe, peaceful and conducive to the creation of legal certainty and protection of rights. -the rights of the heirs of the family of the late AYK Andilolo, because the land they own is inherited from their ancestors, so the heirs hope that this process will not harm the sense of justice of the family of the late AYK Andilolo.

3.2 Legal Consequences of Errors in Payment of Compensation in Land Acquisition for the Construction of Buntu Kunik Airport

Just like an ordinary action, a legal action will of course give rise to consequences or effects, in this case, there are legal consequences. That a legal act is any action carried out intentionally to give rise to rights and obligations. A legal act is any action of a legal subject (human or legal

entity) whose consequences are regulated by law because these consequences can be considered as the will of the person carrying out the law.¹¹The law requires a peaceful, serene, and harmonious society as an ideal. It is appropriate for the State to place the law in its proper position, meaning that the law is a reference in acting by what is included in Article 1 paragraph (3) of the 1945 Constitution "The State of Indonesia is a State of Law". The rule of law means that every action carried out by a legal subject must comply with applicable law. Human thought about the rule of law began to develop from the nineteenth to the twentieth century.¹²The rule of law is essentially rooted in the theory of legal sovereignty which requires that the highest authority in a State is the law, in the sense of law as commander and law as the Rule of the game.¹³

As a Public Official, a person who occupies a position in the Government is given the authority by law to make a policy whose benefits can be felt and by the applicable laws and regulations, so that all parties, not only the Government but the community which is the most important part of a State or region. Regarding the responsibilities that the Government has in terms of procuring land for development in the public interest, it is only permissible for

¹¹Dewa Gede Sudika, *Pengantar Ilmu Hukum*, (Klaten: Penerbit Lakeisha, 2020), Hal. 123.

¹²Ending Wahyati Yustina, Yohanes Budisarwo, *Hukum Jaminan Kesehatan*, (Semarang: Penerbit Universitas Katholik Soegijapranata, 2019), Hal. 19).

¹³Ibid

officials who are given the power to carry it out, all must comply with existing norms so that in carrying it out no errors can arise that can arise. The government is asked to be responsible for its actions. Responsibility for an official who occupies a position within the Government is very important. It is a form of vigilance in exercising his authority because, without responsibility, anyone can act arbitrarily or outside the corridors of applicable law.

Responsibility is very closely related to what has been given, meaning that when an official is given authority, it means that a public official is automatically attached to a responsibility which is to give a warning if a public official does something that is contrary and is proven to violate the provisions of the laws and regulations. If the invitation is valid then that is where the thing called accountability will arise.

According to the author, the responsibility imposed on the government/agency is not firm, because the sanctions imposed on officials who made mistakes in paying compensation for the Bunu Kunik airport construction project to shorten Tana Toraja have not been implemented properly, even though there has been a decision from the Court. Agung punished the Land Acquisition Committee to pay compensation to the actual land owners. Because in the previous process, compensation was paid to parties who were not the actual owners of the land, the parties

who were paid were only authorized by the party who controlled the land rights to work on it, so problems arose in the process of paying compensation

which resulted in a lawsuit filed by the family of the late AYK Andilolo against the Land Acquisition Committee.

As in the case that the author studied, the actions carried out by the land procurement committee violated three provisions, namely criminal provisions, where there were legal acts that gave rise to criminal acts in the form of state losses due to the process of paying compensation. Civil Provisions, where in the process of paying compensation it is suspected that there is a party receiving it, who should not be eligible to receive the compensation, thereby causing losses to the party who should receive the compensation but is not paid, whereas the administrative provisions are the process from data collection to the payment process carried out in a non-transparent/closed manner from the public. So in this case, if it is stated what sanctions will be given to the government/agency in making this payment error, then it is appropriate to use civil sanctions, criminal sanctions, and administrative sanctions because the actions have harmed many parties resulting in huge losses to the State which have resulted in there was a payment error made by the Government/Institution which needed land for the construction of the Bunu Kunk Mendek Tana Toraja airport construction project.

The case of compensation for the Bunu Kunk Kendek Tana Toraja airport construction project has been included in the form of criminal liability because there has been a civil decision with final legal force from the Supreme Court regarding the land affected by the land acquisition project for the public interest in the Bunche airport construction project. kunik shortens tana toraja. The Regional Government of Tana Toraja Regency, in this case, the Land Acquisition Committee, was given a sentence based on the Supreme Court's decision to pay the heirs of the late AYK Andilolo as the party entitled to the land.

This Civil Decision has provided a legal confirmation that the compensation payment money was wrongly paid to another party who had no right to receive/obtain compensation for land acquisition in the Bunkukunik Mendek Tana Toraja airport construction project. Of course, based on regulations by Law Number 2 of 2012 concerning Land Acquisition and other derivative regulations, if it is related to the authority of the land procurement committee in the sense that there is a mistake in paying, then criminal responsibility is either in terms of the form of error, due to intention or due to negligence in carrying out duties and authority, automatically become the responsibility of the land acquisition committee.

With this decision which has permanent legal force, the punishment of the Regional

Government of Tana Toraja Regency, in this case the Land Acquisition Committee, means that the State must pay a second time, or in other words, the legal meaning is that the previous payment was wrongly paid to someone who was not entitled or not the owner of the rights to the land. Juridically, the author thinks that every civil decision in court has a legal force that is valid and binding and the proof and implementation of the decision must be clear.

The land procurement committee does not have full authority to register land objects and the objects on them and any legal subject holding rights to the land has the right as owner to obtain compensation payments, this is where the full responsibility related to errors in compensation payments can be submitted completely to the Land Procurement Committee, because the land procurement committee within its authority has fully intervened in the inventory process of land acquisition along with other objects on it and the legal subjects holding rights to the land.

The criminal element regarding wrongful payment as the intention of causing state losses, cannot be avoided by the presence of a civil decision, and this will of course be very coherent or compound to determine the element of an unlawful act in carrying out authority by the land procurement committee, whether because there was an error as an intentional act. or negligence in carrying out the authority

inherent in the land acquisition committee. The legal parameters are very clear and unequivocal, namely with the emergence of a Supreme Court decision that has permanent legal force, the legal status of the land procurement committee is no longer inevitable as a form of accountability, so the party from the land procurement committee should be the party representing/acting on behalf of the Government. /Agencies that need land for the Bunu Kunik airport construction project shortening Toraja land is no longer inevitable, so they should be held accountable to the court together.

Based on the descriptions above, it is necessary to provide input regarding land acquisition for development in the public interest, such as the construction of the Buntu Kunik airport, which must be carried out with due regard to the precautionary principle. By paying attention to the precautionary principle, the development process will run well and smoothly. State losses, losses to society, and will avoid actions that can be categorized as abuse of authority.

To realize legal certainty and public tranquility, the Supreme Court decision Number 207/Pdt/2013 must be implemented immediately. The implementation of this Supreme Court decision is to restore people's rights and public trust in the law and government officials.

IV. CONCLUSIONS

The conclusions from the results of this research are as follows:

1. The land acquisition stages for the construction of the Buntu Kunik airport have not yet implemented the principles of good care by the Government Tana Toraja Regency. This is characterized by implementation that is not by existing provisions where the process of inventory/identification of documents/data on ownership of land rights is carried out without being thorough and paying close attention to existing documents/data and does not fully involve the role of the community, especially affected community members. development. This lack of application of the precautionary principle has led to errors in compensation payments, where compensation is paid to parties who are not entitled to it.
2. The legal consequences that arise from errors in paying compensation for land acquisition for the Buntu Kunik Tana Toraja airport construction project are lawsuits by community members holding land rights who do not receive compensation. This lawsuit has received permanent legal force through the Supreme Court decision. This legal decision has obtained permanent legal force, as well as the results This Supreme Court decision has legal consequences for the Tana Toraja

Regency Government to pay compensation to the entitled parties and at the same time demand a return which has been paid to unauthorized parties.

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