

Legal Protection for Land Holders

Anis Rifai
Universitas Sebelas Maret,
Surakarta, Indonesia
Email: anizrifai@gmail.com

M. Ikhsan Fathoni
Universitas Sebelas Maret,
Surakarta, Indonesia
mikhsanfathoni@gmail.com

Hartiwiningsih
Universitas Sebelas Maret,
Surakarta, Indonesia
Email: hartiwi50@yahoo.com

Abstract— Land acquisition is done by way of release or transfer of land rights of the holders of rights over land to government agencies that require ground. As a form of respect for the rights of holders of land rights, which require land-party in this case is the government agency, provide appropriate compensation on the basis of agreement between both parties through consultation. Form of legal protection given to holders of land rights is the determination of compensation based on the deliberations, the proper compensation that can provide a better survival than the level of socio-economic life before the affected land acquisition, and submission of objections to the amount of indemnification. Custody compensation cannot be the basis for taking land holders of land rights by Government agencies that require ground.

Keywords— *Land Acquisition, Legal Protection, Custody Compensation*

I. INTRODUCTION

One of government policy in the land sector and received serious attention from the government is the implementation of land acquisition for development purposes. Because the implementation of land acquisition for development purposes is one of the government's policies [1] the issue of land especially in the construction of housing and settlements is a quite sensitive issue [2] both in urban and rural areas because the need for land plays an important role as land to realize development in this case is physical development.

Development is a human effort in processing and utilizing the resources used to meet the needs and increase the welfare of human life itself. By possessing human creativity, taste, and initiative, we have managed and utilized natural resources to increase prosperity both for the present generation and for future generations. In the sense that the use of natural resources for the needs of the present generation must also consider and pay attention to future generations in meeting their needs in accordance with the concept of sustainable development.

Land cannot be opposed to humans because the land is one of the important factors in human life. [3] A land is a place of settlement other than housing, a place for human activities, even before death it still receives land. The land is one of the important natural resources for human survival, human relations with land are not only a place to live but more than that, the land provides resources for the struggle of human life.

The land is a natural resource that is a primary human need. There is almost no human activity that is not related to land, which becomes a problem when development must take place, meanwhile the availability of the state (land which is directly controlled by the state) is very limited. For the sake of the implementation of development, forced lands that are already owned or controlled by the people, are used to meet physical needs. In the acquisition of land for development purposes, it is not uncommon for collisions. [4]

Land as a gift from God Almighty has a very important function to build a just and prosperous Indonesian society. According to the Agrarian Law is a direct implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, "*Bumi, Air, Kekayaan alam yang terkandung di dalamnya oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat*", as well as embodying the aspirations of Indonesia in the renewal of the National Land Law. The Basic Agrarian Law was born in response to the demands and needs of the nation for national legal instruments that can regulate and provide legal guarantees and certainty of land rights which is one of the means in an effort to achieve the goals and ideals of independence.[5]

The Agrarian Law does not explain the definition of land acquisition and its implementation provisions which are a reference for managing land administration in Indonesia, but in fulfilling land needs for development, it is known as land acquisition for government interests, including in land acquisition activities for development for the benefits general. The construction of public facilities requires land as a container. The construction of these public facilities will have no problems if the land inventory is still large.

At present, it is very difficult to carry out development in the public interest on state land. The reality shows that development requires land, but on the other hand, the available state land to meet these needs is increasingly limited, because the existing land is partially own/owned by the community with a right. So that the momentum of development can be maintained, especially the construction of various facilities for public purposes that require parcels of land, the legal efforts of the government to obtain these lands in fulfilling development are carried out through the approach of freeing uprights and revoking rights. [6]

Therefore, the solution taken is by taking land rights. [7] Land acquisition activities (by the government in the context of implementing development in the public interest). This is what came to be called land acquisition. Development

that is currently being actively carried out by the government often clashes with land acquisition issues. In order not to violate the rights of the landowner, the land acquisition must be carried out with due regard to the principles of public interest following applicable legal provisions. [8]

Land acquisition is the activity of providing land by providing proper and fair compensation to the entitled parties as written in Article 1 number 2 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.

In Indonesia, land acquisition, especially for the implementation of development in the public interest carried out by the government and regional governments, is carried out by revoking land rights. [9] In this case, many problems arise because of regulatory weaknesses. The form of existing regulations cannot provide legal certainty guarantee for the implementation of land acquisition for the public interest. Besides, the material aspects of all existing regulations are inadequate, causing problems.

In the reality of life in the community land acquisition for development in the public interest causes turmoil in practice where there is coercion from parties both the government that sets the price unilaterally and the landowner demands prices that are considered unreasonable, while existing legal instruments are not able to accommodate two interests the difference, finally happens by way of coercion and intimidation of the community in terms of land acquisition for development in the public interest.

Procurement of land for development in the public interest is one manifestation of the social function of land, land acquisition as an initial step of development that meets the improvement of the welfare of the people of the community itself. Land acquisition for development in the public interest can only be carried out on the basis of the consent of the owner of the land rights on the basis and form of compensation given to the owner of the land rights themselves. Because it represents the government to acquire land in principle, land acquisition is carried out by way of consultation between the party who buys the land and the holder of the land rights needed for development. [10].

II. LEGAL PROTECTION OF SOCIETY OF LAND RIGHTS

Indonesia as a state of law must protect all the people of Indonesia and all of Indonesia's blood spilled to advance public welfare, educate the nation's life and participate in carrying out world order based on eternal independence, eternal peace, and social justice, this can be seen in the country's goals contained in the fourth paragraph The 1945 Constitution. [11]

Legal protection in the acquisition of land for public purposes can be broadly interpreted as respecting individual rights to land. This relates to the consequence of the state's recognition of one's land or a customary law, the state must provide legal certainty of the rights to the land so that it is easier for someone to defend their rights against interference from other parties. [12]

In its function to protect human interests, the law has goals and objectives to be achieved. The main purpose of the law is to create an orderly society that creates order and balance. With the achievement of order in society, it is hoped that human interests will be protected. [13]

For human interests to be protected, laws must be enforced and enforced. In enforcing the law three elements must always be considered, namely legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtigheit*). One form of implementing legal certainty is the protection of arbitrary actions. Society expects legal certainty because with legal certainty the community will be more orderly because the purpose of the existence of law is for public order. Also, the community expects benefits in the implementation of law enforcement. Laws are created to regulate people, so the implementation of law or law enforcement must provide benefits or usefulness for the community.

In the acquisition of land for public purposes, individual interests are confronted with the interests of the community or the public interest, where the government wants public interests to be prioritized for the implementation of development plans at these locations. But on the other hand for the holders of land rights who are victims, consider their relationship with the land is not just a human relationship with property, because of the possibility that the land they occupy has provided jobs and economic income for their families for decades so it is very reasonable if the residents own the land difficult to release the land to be used in the public interest because of social factors and economic factors earlier.

As a manifestation of the most essential form of legal protection in land acquisition for the public interest is the issue of providing fair and just compensation to the entitled parties as referred to in Article 1 number 2 of Law Number 2 of 2012, namely that land acquisition is an activity of providing land by means of providing proper and fair compensation to the rightful parties, so that to obtain proper and fair compensation there must be a basis and method of calculating the price of land compensation which is formulated so that it becomes feasible and fair in accordance with the sound of the law.

Another form of protection and respect for land rights in the acquisition of land for public purposes is by holding deliberations in advance with the landowner to determine and determine the amount of compensation given to those entitled to the land. [14] Arrangements for protection of land ownership other than those contained in the 1945 Constitution are also contained in Law Number 39 of 1999 concerning Human Rights which is regulated, as follow:

- a. Article 36 paragraph (1) and (2) concerning the right of ownership (including the land) as human right and guarantee of no arbitrary deprivation of property by anyone.
- b. Article 37 paragraph (1) concerning the requirement to revoke ownership rights is in the public interest by giving compensation and must be based on law.

Legal protection of land ownership as described above explains that the right to control land by individuals is a human right that must be protected. The taking of community land by anyone, including by the government, must not be carried out arbitrarily for any reason, including reasons of

public interest. If forced community land is taken for development in the public interest, then the taking must be based on law and by providing reasonable compensation. Concerning this matter, Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest also requires the same matter, namely land acquisition by providing appropriate and fair compensation to entitled parties. Related to land acquisition for public use, it is carried out following regional spatial plans, national/regional development plans, strategic plans, work plans for each agency that requires land.

If analyzed based on the theory of legal protection that examines and analyzes the form or purpose and purpose of protection that focuses on the legal protection provided to the community, the community based on this theory is the people who are in a weak position both economically and weakly from a juridical aspect. So that land acquisition carried out by the government in the public interest must be able to protect the rights and interests of those who are entitled to the land, where they are expected to be willing to relinquish their rights to the land and in return for providing proper and fair compensation.

Legal protection in the acquisition of land for public purposes can be analyzed in the rule of law by limiting the understanding of the public interest in land acquisition, protecting land rights and protecting compensation. Protection of land rights is protected by the 1945 Constitution which affirms in Article 28 letter h paragraph 4 that “*setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil secara sewenang-wenang dan harus diimbangi dengan ganti kerugian*”. It is expected that the compensation in addition to payment in monetary value must also be able to provide better survival than the level of socio-economic life before being affected by land acquisition, resulting in a balanced compensation.

When looking at land acquisition regulations before Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, the acquisition of land for development is more dominant as a legal means to displace people, because it does not provide direct benefits to the community socially and economically. Injustice is felt by the community whose land is affected by the project, among others in the determination of the project, the community is often not heard or notified in advance, only notified for the benefit of development if someone defends their land, is considered as dissenters. Most community complaints submitted to the DPR concern the unfair treatment experienced by members of the community who hold land rights whose land has been released for public interest or development interests, particularly in the case of land compensation.

The reasons for the emergence of the things mentioned above are partly due to the absence of a deep understanding of the concept of balance and harmony between the public interest and the interests of the individual. Apparatus implementing land acquisition more favor the interests of the government or the authorities. The partisanship of the implementing apparatus to the interests of the government or entrepreneurs is driven by the desire to achieve the targets that have been determined as a measure of the work

performance of the relevant officers, also because certain benefits can be enjoyed by the authorities concerned.

In addition, other causes include compensation that is suppressed so that the community cannot participate in enjoying the future benefits created by sacrificing their land rights. The profits created due to the increase in land value as a result of the development project are mostly enjoyed by other parties.

Land acquisition activities for the development of public interests, based on theory and principles are divided into two systems, namely, land acquisition by the government because of public interests and land acquisition by the government because it is not public (commercial) interests. The taking of people's land through the release of rights or acquisition of land or land acquisition which often causes conflicts. This conflict is caused by weak regulation. Juridical problems in taking public land for development in the public interest are formal juridical and material juridical aspects. [15]

One of the substantial weaknesses of land issues, especially land acquisition so far is the problem of legal products in the land sector. Before the issuance of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, in addition to the Agrarian Law Number 5 of 1960 and Law Number 20 of 1961, Land Regulations were made only limited to Presidential Regulation, Presidential Regulation, and Ministerial Regulation.

Land acquisition regulations should be in the form of laws that have binding legal force because they regulate substantive matters and involve the livelihoods of many people, this has triggered various problems in the implementation of land acquisition. [16] The presence of the land acquisition law is certainly very positive and is a step forward in land regulation, because of the consequences as a country that adheres to the Continental European legal system, Indonesian legal products must be oriented to the law. On one hand, land acquisition policies for the public interest concern the lives of many people, and on the other hand, it concerns Human Rights. [17]

Dimensions of the lives of many people and human rights are the two central subjects in the foundation of the Pancasila state and the 1945 Constitution, therefore it must be actualized and balanced in legal products in the form of laws, this is confirmed in Article 8 of Law Number 10 of 2004 that the regulation on the taking of people's land must be in the form of a legal product of the law, further in the provision of Article 11 of Law Number 10 of 2004 that the contents of the Presidential Regulation is the material ordered by law or to implement government regulations. [18]

Legal protection of land ownership as explained previously explains that the right to control land, both individual property rights and customary rights are rights that must be protected. The taking of community land by anyone, including by the government may not be carried out arbitrarily even for any reason, including reasons for the public interest. If forced community land is taken for development in the public interest, then the taking must be based on law and by providing appropriate compensation. [19]

Legal protection of the rights of a person is the main goal in the administration of a country, it is because that legal

protection is a guarantee of the security of human rights for the realization of a law enforcement, so that legal protection has an impact on law enforcement, meaning that it is that when legal protection is created for the person and the rights attached to it, then the law enforcement has run well.

The land sector which does not provide legal protection to the ownership of land rights as a whole is not in line with Pancasila, the 1945 Basic Law and Human Rights.

Legal protection in the acquisition of land for public purposes can be broadly interpreted as respecting individual rights to land. This relates to the consequences of state recognition of one's land or a customary law community, the state is obliged to provide legal certainty of the rights to the land so that it is easier for someone to defend their rights against interference from other parties. [20]

When compared with some of the provisions governing land acquisition for public use previously, namely the Minister of Domestic Affairs Regulation Number 15 of 1975, the Minister of Domestic Affairs Regulation Number 2 of 1976, and the Minister of Domestic Affairs Regulation Number 2 of 1945, which in the contents and spirit of the legal regulations on basically pay attention equally to the interests of the public and the interests of the parties. The impression appears as if the law is not enough to provide legal protection to landowners, who generally consist of small people, due to the implementation that is not under the spirit and contents of the regulations and laws.

The implementation of land acquisition has several principles as implied in the legislation and related provisions that govern them [21]:

- a. The control and use of land by anyone and for any purpose must have a basis for their rights.
- b. All land rights are directly or indirectly sourced from the nation's rights.
- c. The way to obtain land that has been claimed by a legal entity must be through an agreement between the parties concerned.
- d. In a forceful situation, it means another way taken so that the president has the authority to revoke rights, without agreement on the subject of rights according to Law Number 20 of 1961.

The existence of Law Number 2 of 2012 concerning Land Acquisition places more emphasis on the realization of legal protection for owners of land rights in legal reform relating to land acquisition in the implementation of development for public use. Provisions regarding legal protection in the statute of the law addressed to the owner of land rights are clearly stated in the article by article which regulates them.

The legal protection of the community whose land is taken for the public interest which has been formally stated in the laws and regulations needs to be continually improved consistently and consistently. It is a matter of the state taking up land rights for the benefit of society as a whole, but respect for basic human rights should be given proportionately. According to Maria S.W. Sumardjono, that in achieving objectives in the form of legal certainty, justice and expediency, what is needed is a perspective of thinking to fulfill formal and substantial matters in realizing respect for basic human rights. [22]

The law is essentially a protection of human interests. For human interests to be protected, laws must be enforced and enforced. In enforcing the law, Sudikno Mertokusomo, three elements must be considered, namely legal certainty (*reshttsicherheit*), expediency (*zweckmassigkeit*) and justice (*gerenchtigkei*). The existence of legal certainty is legal protection against arbitrary actions which means that a person will be able to obtain something that is expected under certain circumstances. People expect legal certainty because the existence of legal certainty will be the more orderly society.

In general, the 1945 Constitution has given protection to land rights as regulated in Article 28 letter h paragraph (4) which confirms that: " *Every person has the right to have private property rights and these rights must not be taken arbitrarily and must be balanced with compensation.* "

Specifically for legal protection to landowners in land acquisition activities in the public interest, there is an obligation to provide adequate compensation for landowners. Provisions in Article 33 of Law Number 2 of 2012 concerning Land Procurement have determined the assessment of the amount of compensation carried out by appraisers who will assess parcels per plot of land which includes: land, ground and underground space, buildings, plants, objects relating to land and or other assessed losses. The provision of Article 33 which explicitly regulates the basis and method of evaluating the amount of compensation in the acquisition of land for public purposes, is considered to be far more advanced when compared to the provisions on compensation stipulated in Perpres No. 65 of 2006 concerning Land Procurement for the Implementation of Development in the Public Interest where the determination of compensation in the Presidential Regulation is only determined on land, buildings, plants, and other objects related to land.

The existence of demands for proper and fair compensation should be understood because of the social impacts that will be felt by the community. Therefore, with proper and fair compensation, people will use it to start rebuilding their lives in a new place. [23]

Parties who feel objected to the loss of land acquisition for development in the public interest can file an Application for Objection to the District Court, as stipulated in Article 38 paragraph (1) and paragraph (2) of Law Number 2 of 2012 concerning Procurement Land which states:

Article 38

(1) In case there is no agreement regarding the form and / or amount of the Compensation, the Authorized Party can file an objection to the local district court no later than 14 (fourteen) working days after the deliberation on the determination of the Compensation as referred to in Article 37 paragraph (1).

(2) The district court decides the form and / or amount of compensation in no later than 30 (thirty) working days from the receipt of the objection.

That related to the procedure for filing an objection, it is regulated further in the Republic of Indonesia Supreme Court Regulation Number 3 of 2016 concerning Procedures for Filing Objection and Depositing Indemnity to the District Court in Land Procurement for Development for Public

Interest. The said Regulation stipulates that the Objection as referred to in Article 3 shall be submitted no later than 14 (fourteen) days after the results of the Consultation for Indemnification. [24]

Ideally, in the process of land acquisition for the development of public interest, the expected goal is that the interests of development can proceed without having to harm or cause a decrease in the level of life of the landowner and the owner of land rights or objects on it, after the acquisition process is carried out. Therefore, the existence of compensation is a form of legal protection given to landowners if the upper and or lower ground space contains objects that have economic value in which compensation can be requested.

Then another form of legal protection in the acquisition of land for public purposes is allowed to hold deliberations between landowners and those who need land. The purpose of the deliberation is to determine and determine the amount of compensation given to the land owner.

Besides, the regulation regarding guarantees of certainty and legal protection of land rights in several laws and regulations are:

- a. Article 19 paragraph (2) letter c, Article 23 paragraph (2), and Article 38 paragraph (2) UUPA, which states that certificates are a strong evidence.
- b. In a general explanation of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that : *"In order to provide legal certainty to holders of land rights in this government regulation, affirmation is given regarding the strength of proof of certificate, which is declared as a strong means of proof by the agraria law"*. For this reason, it is provided that as long as it has not been proven otherwise, physical data and juridical data contained in the certificate must be received as correct data, both in daily legal actions and in disputes in court.
- c. Then in the explanation of Article 32 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration confirms that "the certificate is a proof of strong rights, in the sense that as long as it cannot be proven otherwise the physical data and juridical data contained therein must be accepted as correct data ".

Other legal regulations relating to legal protection of landowners are contained in Law Number 39 of 1999 concerning Human Rights, namely:

- a. Article 36 paragraph (1) and (2) concerning the right of ownership (including the land) as human right and guarantee of no arbitrary deprivation of property by anyone.
- b. Article 37 paragraph (1) concerning the requirement to revoke ownership rights is in the public interest by giving compensation and must be based on law.

The existence of legal protection to holders of land rights in the acquisition of land for public purposes is expected to provide a sense of justice for the people affected by the development so that the community can continue to guarantee their lives. Besides, legal protection is respect for one's land rights following law of national land.

III. STUDY CASE OF SISCA TINNEKE DENGHAH'S LAND

This case began with the need for the construction of the North Sulawesi Provincial Representative Audit Board Building, the BPK auction committee formed in December 2016 immediately sought land in Manado and was interested in landing on Jalan 17 August, owned by Siska Tinneke Dengah. Siska Tinneke Dengah as the owner of the land located on Jalan 17 Agustus, Kelurahan Bumi Beringin, Manado City, with Certificate of Ownership No. 140 Desa Bumi Beringin, Temporary Measurement Letter No. 896/1985 with 667 m2 and Landowner with a certificate No. 157/Desa Bumi Beringin, Provisional Measurement Letter dated 26 March 1985 No. 890/1985 with 2.204 m2.

Then Lurah local on dated 12 December 2006, issuing the sale price of the tax object (NJOP) amount of Rp650.000 until Rp1.500.000 per meter square. On 18 December 2006, Siska Tinneke Dengah conduction negotiation price with the BPK Auction Committee where the agreed price amount of Rp 3.400.000,- per meter squard. Furthermore Bank Negara Cq. BPK RI as made payment to Siska Tinneke Dengah sebesar Rp14.075.010.000,- (fourteen billion seventy-five million ten thousand rupiah) resulting in an overpriced price of Rp14.075.010.000,- (fourteen billion seventy-five million ten thousand rupiah) REDUCEDING with price of the land amount of (Rp6.429.000.000,-) + deduction and wage costs (Rp115.850.000,-) + PPH Tahun 2006 dan PPH Tahun 2007 (Rp740.790.000,-) total Rp7.285.640.000,- (seven billion two hundred eighty-five million six hundred and forty thousand rupiah) after the reduction is made, the total price is expensive = Rp6.789.370.000,- (six billion seven hundred eighty nine million three hundred seventy thousand rupiah);

Due to the sale and purchase of land on Jalan 17 Agustus, Manado owned by Siska Tinneke Dengah was alleged to have been overpriced, amounting to Rp6.789.370.000,- (six billion seven hundred eighty nine million three hundred seventy thousand rupiah), then Siska Tinneke Dengah committed criminal acts of corruption as regulated and threatened with criminal acts in Law Number 31 of 1999 which has been amended and supplemented by Law Number 20 of 2001 and the case is brought to the Corruption Court at the Manado District Court.

On 3 July 2014, Corruption Court at the Manado District Court in case Number: 04/Pid.Sus/2014/PN.Mdo sentenced him to 1 (one) year in prison and a fine of Rp50.000.000,- (fifty million rupiah) to Siska Tinneke Dengah. The verdict was corroborated by the Court of Appeal Corruption at the High Court of Manado with case Number: 06/PID.SUS/2014/PT.MND. dated 6 October 2014.

Furthermore, the Court of Criminal Acts of Cassation at the Supreme Court in Case Number: 657 K/PID.SUS/2015 dated 7 April 2015, sentenced him to 5 years in prison and a fine of Rp200.000.000,- (two hundred million rupiah) and imposed additional penalties to the Defendant to pay a replacement fee of Rp6.789.370.000,- (six billion seven hundred eighty nine million three hundred seventy thousand rupiah), if the replacement money is not paid any later than 1

(one) month after the decision has permanent legal force, then the property can be confiscated by the Prosecutor and auctioned off to cover the replacement money, and if the convicted person does not have sufficient assets to pay the replacement money, then he will be sentenced to 1 (one) year imprisonment to Siska Tinneke Dengah.

Considering, that for these reasons the Supreme Court hold:

Regarding the reasons of the Defendant:

That the reasons for the cassation of the Defendant cannot be justified, because the Defendant's actions together with Sjarief Hidayatulloh, SH., Wahyudi bin Ika Suwita, Muhammad Yasir, SE., Ak., Ambo Sappe alias Ambo, SH. in land acquisition for BPK RI Representative Office in Manado has been resulting in state losses, so it is a criminal act of corruption;

That the reasons for the Defendant's cassation are described in the cassation memory number I, II, III point 1, 2 letter A, item 1, 2, 3 letter B cannot be justified with consideration of the reasons / objections regarding the assessment of results Proof of appreciation about a reality, and other than that the reason / objection is a repetition of facts that have already been stated both in the examination at the hearing at the District Court, and in the memory of appeals at the High Court hearing. Reason/such objections are not subject to an examination of due cassation rates examinations in the cassation level only concern not being applied a legal regulation or legal regulation is not applied as such should be, or whether the method of prosecution was not carried out according to the provisions The Act, and whether the Court has exceeded the limit its authority, as referred to in Article 253 of the Law Criminal Procedure Law (Law Number 8 of 1981);

Considering, that based on the above considerations, it turns out, Judex Facti's decision in this case is not against the law and / or the law, the request for cassation from the Cassation Appellant II / The defendant must be rejected;

Regarding the reasons of the Prosecutor / Public Prosecutor:

That the reasons for the appeal of the Prosecutor / Prosecutor are described in cassation memory letters a, b, c can be justified, because Judex Facti has wrong in applying the rule of law with consideration as following:

1. That the decision of the Corruption Court at the District Court Manado considers that the amount of money is IDR 6,789,370,000. (six billion seven hundred eighty nine million three hundred seventy thousand rupiah) even though it is seen to be quite large does not mean that amount create a Land Acquisition Committee for Facilities Improvement Program and State Apparatus Infrastructure for BPK RI Representative Offices in Manado become rich, because it enriches itself or makes it get rich or enrich someone else or a corporation it is also necessary to calculate or audit the Procurement Committee's assets The land, so it can be used as a yardstick in ensure that whether the Land Acquisition Committee is rich from beforehand or how much the Committee's wealth increased This Land Procurement, is associated with the purchase of land owned by the Defendant Siska Tinneke Dengah (decisions page 134, 135), which consideration approved by the High

Court by affirming the a quo case decision. That consideration as mentioned above, is a consideration not right, wrong and contradictory, because according to Primair Prosecutor / Prosecutor's indictment General, the main defendant is Siska Tinneke Dengah, the owner of the land, so that must be proven first element of enriching yourself is Defendant Siska Tinneke Dengah, not the Land Procurement Committee the composition of the Committee consists of:

Steering : 1. Sucipto, SE., MM.
2. Drs.Poernomo Sidhi, MM.
3. Bambang Adiputranto, SH., Msi.
Chairman: Mohammad Hatta, SE.
Secretary: Sjarief Hidayatulloh, SH.
Members: 1. Wahyudi, SH.
2. Muh. Yasir, SE., Ak.
3. Ambo Sappe.

2. That Judex Facti is wrong in applying the law, because it is not properly consider things that are legally relevant, i.e the Defendant's actions together with Sjarief Hidayatulloh, SH., Wahyudi bin Ika Suwita, Muhammad Yasir, SE., Ak., Ambo Sappe namely Ambo, SH. in land acquisition work for BPK Representative Offices RI in Manado which is not based on NJOP Prices or General Market Prices, constitutes an act against the law;
3. That according to the legal facts and legal evidence, Defendant Siska Tinneke Dengah committed illegal acts together with Sjarief Hidayatulloh, SH., Wahyudi bin Ika Suwita, Muhammad Yasir, SE., Ak., Ambo Sappe aka Ambo, SH. (Convicted in accordance with the Decision Corruption Court at the Manado District Court Case Number : 05 / Pid.Sus / 2013 / PN.Mdo and Number: 06 / Pid.Sus / 2013 / PN.Mdo) is detrimental state finances amounting to Rp6,789,370,000 (six billion seven hundred eighty nine million three hundred seventy thousand rupiah) accordingly Appraisal Report from PT. Sucofindo Public Appraisal Service Office / Immanuel, Johny and Partners Reg. No. : 2.09.0064, Report No. : 003 / IJR-PST / PA-I / 2012 January 26, 2012 the total financial loss of the country has been justified the Panel of Judges in the a quo case decision page 134 and 147, then according to the Supreme Court Jurisprudence when a loss state finances amount to more than 100,000,000 (one hundred million rupiah) Article 2 paragraph (1) of Law Number 31 of 1999 applies as amended by Law Number 20 of 2001;
4. That the defendant's actions which violated the law resulted state financial losses due to price overpriced Rp6,789,370,000 (six billion seven hundred eighty nine million three hundred seventy thousand rupiah) which significantly enriched the Defendant's self or other people. The Defendant's actions fulfill the elements of Article 2 paragraph (1) Law Number 31 of 1999 as amended by Law Number 20 Year 2001;

Considering, that based on the above considerations of the Supreme Court argued, that the decision of the Corruption Criminal Court Level Appeals to the Manado High Court Number: 06 / PID.SUS / 2014 / PT.MND. on October 6, 2014 which upheld the decision of the Criminal Court Corruption at the Manado District Court Number: 04 / Pid.Sus / 2014 / PN.Mdo July 3, 2014 cannot be maintained anymore,

therefore it must be canceled and the Supreme Court will try the case itself.

In the Panel of Judges deliberations there was a difference of opinion (Dissenting Opinion) from one of the Judges namely Prof. Dr. Mohamad Askin, S.H. as a Member Judge with the following opinion:

- a. That apart from the reasons for the appeal of the Prosecutor, *Judex Facti* decision has made a mistake in the application of the law;
That the Defendant who sold his land was carried out on the basis of civil relations and negotiations with the BPK RI could not be blamed because from the very beginning the Defendant had indeed set a benchmark price of Rp5.000.000,-/M2;
- b. That the change in NJOP alue made by certain parties cannot be used as evidence of the Defendant's mistake because the Defendant did not know the ins and outs of making land price values based on NJOP submitted by the Prosecutor/Public Prosecutor. The element of error in making the price listed in the NJOP of the Defendant did not know. The Defendant's intention from the beginning that his a quo land would only be sold at a price of Rp5.000.000,-/M2 but with the negotiations carried out the agreed price was stated above;
- c. That the Defendant only carried out an act in the legal domain of the sale and purchase agreement, namely the scope of civil law;

Based on this, that the Defendant was not proven to have committed a crime, so the Defendant must be adjudicated from all lawsuits ex Article 191 paragraph (2) of the Criminal Procedure Code (*Ontslag Van Alle Rechtsvervolging*).

Considering, that because of differences of opinion within Panel of Judges and has been seriously attempted but not reached consensus, then according to Article 182 paragraph (6) Criminal Procedure Code Panel of Judges after deliberation take decisions with the most votes, i.e. grant the cassation request from the Cassation Applicant / Prosecutor / Public Prosecutor at the Manado State Prosecutor's Office;

Considering, that because of the appeal of the Prosecutor / Prosecutor The general was granted and the Defendant was found guilty and convicted, then the case costs at all court levels are charged to Defendant;

In this case, the author agrees with the opinion of Prof. Dr. Mohamad Askin, S.H., where the seller is free to determine the selling price of the land to be sold. The existence of Law Number 2 of 2012 concerning Land Acquisition places more emphasis on the realization of legal protection for owners of land rights in legal reform relating to land acquisition in the implementation of development for public use. Provisions regarding legal protection in the statutory provisions aimed at the owner of land rights are clearly stated in article by article which regulates them.

The legal protection of the community whose land is taken for the public interest which has been formally stated in the laws and regulations needs to be continually improved consistently and consistently. It is a matter of the state taking up land rights for the benefit of society as a whole, but respect for basic human rights should be given proportionately. According to Maria S.W. Sumardjono, that in achieving goals in the form of legal certainty, justice and expediency, what is

needed is a perspective of thinking to fulfill formal and substantial matters in realizing respect for basic human rights.

The law is essentially a protection of human interests. For human interests to be protected, laws must be enforced and enforced. In enforcing the law, Sudikno Mertokusomo, three elements must be considered, namely legal certainty (*reshtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerenchtigkei*t). The existence of legal certainty is legal protection against arbitrary actions which means that a person will be able to obtain something that is expected under certain circumstances. People expect legal certainty because the existence of legal certainty will be a more orderly society.

In general, the 1945 Constitution provides protection for land rights as stipulated in Article 28 letter h paragraph (4) which confirms that: "Every person has the right to have private property rights and these rights must not be taken arbitrarily and must be balanced with compensation."

Specifically, for legal protection to landowners in land acquisition activities in the public interest, there is an obligation to provide adequate compensation for landowners. Provisions in Article 33 of Law Number 2 of 2012 concerning Land Procurement have determined the assessment of the amount of compensation carried out by appraisers who will assess parcels per plot of land which includes: land, ground and underground space, buildings, plants, objects relating to land and or other assessed losses. The provision of Article 33 which explicitly regulates the basis and method of evaluating the amount of compensation in the acquisition of land for public purposes, is considered to be far more advanced when compared to the provisions on compensation stipulated in Presidential Regulation No. 65 of 2006 concerning Land Procurement for the Implementation of Development in the Public Interest where the determination of compensation in the Presidential Regulation is only determined on land, buildings, plants, and other objects related to land.

IV. REFERENCE

- [1] Supriadi, *Hukum Agraria*, Sinar Grafika, Jakarta, 2012, p. 88.
- [2] Bambang Panudju, *Pengadaan Perumahan Kota Dengan Peran Serta Masyarakat Berpenghasilan Rendah*, Alumni, Bandung, 2010, p. 23.
- [3] H, Idham, *Konsolidasi Tanah Perkotaan dalam Perspektif Otonomi Daerah*, Cetakan I, Alumni, Bandung, 2004, hlm. 1. Lihat juga dalam Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, Sinar Grafika, Jakarta, 2008, p. 45.
- [4] Suparjo Sujadi, ed., *Pergulatan Pemikiran dan Anekan Gagasan Seputar Hukum Tanah Nasional, (Suatu Pendekatan Multidisipliner)*, FHUI, Depok, 2011, p. 159.
- [5] Arie S Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, LPHI, Jakarta, 2005, p. 151.
- [6] Chaizi Nasucha, *Politik Ekonomi Pertanahan Dan Struktur Perpajakan Atas Tanah*, Kesait Blanc, Jakarta, 1994, p. 74.
- [7] M.Yamin Lubis, dan Abd. Rahim Lubis, *Hukum Pendaftaran Tanah*, Mandar Maju, Bandung, 2012, p. 4.
- [8] Sudikno Mertokusumo, *Mengenal Hukum*, Cetakan Ketiga, Liberty Yogyakarta, 2003, hlm. 45, Lihat Juga dalam Adrian Sutedi, Op. Cit, p. 74.
- [9] Adrian Sutedi, *Tinjau Hukum Pertanahan*, Pradnya Paramita, Jakarta, 2009, p. 123.
- [10] Andreas Jonathan Siregar, *Perlindungan Hukum Terhadap Pemilik Hak Milik Atas Tanah Dalam Rangka Pengadaan Tanah Untuk Kepentingan Pembangunan Pasar Kecamatan Medan Marelan*, Tesis, Fakultas Hukum Universitas Sumatera Utara Medan, 2018, p. 1-7.

- [11] Ediwarman, *Perlindungan Hukum Bagi Korban Kasus-Kasus Pertanahan (Legal Protection For The Victim of Land Cases)*, Cetakan I, Medan Pustaka Bangsa Press, 2003, p. 48.
- [12] Maria S.W. Soemardjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*, Jakarta, Kompas, 2001, p. 32.
- [13] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 2007, p. 48.
- [14] Mudakir Iskandar Syah, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum*, Jala Permata, Jakarta, 2007, p. 17.
- [15] Oloan Sitorus, *Pengadaan Tanah Untuk Kepentingan Umum, Mitra Kebijakan Tanah Indonesia*, Cetakan Pertama, Yogyakarta, 2004, p. 5.
- [16] Benhard Limbong, *Pengadaan Tanah Untuk Kepentingan Pembangunan*, Margaretha Pustaka, Jakarta Selatan, 2015, p. 326.
- [17] *Ibid*, hlm. 327.
- [18] Marsono, *Pendidikan Kewarganegaraan*, In Media, Jakarta, 2014, p. 17.
- [19] Andreas Jonathan Siregar, *Perlindungan Hukum Terhadap Pemilik Hak Milik Atas Tanah Dalam Rangka Pengadaan Tanah Untuk Kepentingan Pembangunan Pasar Kecamatan Medan Marelan*, Tesis, Fakultas Hukum Universitas Sumatera Utara Medan, 2018, p. 37-45.
- [20] Benhard Limbong, *Op.Cit.*, p. 326.
- [21] Maria S.W. Soemardjono, *Kebijakan Pertanahan Antara Regulas dan Implementasi*, Edisi Revisi, Kompas, Jakarta, 2006, p. 159.
- [22] Abdurrahman, *Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum*, Citra Aditya Bakti, Bandung, 1994, p. 23.
- [23] Maria S.W. Soemardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Kompas, Jakarta, 2008, p. 162.
- [24] Widyarini, *Kewenangan Pemerintah Daerah Dalam Pengadaan Tanah bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum*, Jurnal Hukum dan Dinamika Masyarakat, Vol. 4 No. 2 April 2007.
- [25] *Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2016 Tentang Tata Cara Pengajuan Keberatan Dan Penitipan Ganti Kerugian Ke Pengadilan Negeri Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*, Pasal 5.
- [26] Maria S.W. Soemardjono, *Tanah Dalam Perspektif Hak Ekonomi Sosial dan Budaya*, Kompas, Jakarta, 2008, p. 162.