

Reconstruction of Compensation Regulations for Owners of Shophouse Ownership Certificates Due to Market Development by the Government Based on Justice Values

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Abstract

One of the main challenges in land acquisition is ensuring that the process is carried out transparently, fairly, and respects the rights of affected communities. In this regard, the role of regulation becomes very important. Land acquisition regulations must be able to create a legal framework that provides legal certainty for all parties involved, while prioritizing social justice. Competent appraisers must determine the value of land transparently, based on market data and the socio-economic conditions of the landowner. A more accurate and fair assessment will ensure that affected communities receive compensation that is in accordance with the value of their property and the social conditions they experience. This study uses a socio-legal approach, examining law both as written norms and in their real-world application. It focuses on how regulations address compensation for shophouse (SHM) owners affected by government market construction projects. Key laws reviewed include Law No. 2 of 2012, PP No. 71 of 2012, PP No. 39 of 2023, and the Job Creation Law. The findings show these laws have not fully resolved conflicts between the government and affected communities, particularly regarding fair compensation. Regulatory weaknesses highlight a gap between legal objectives and their implementation. A justice-based reconstruction of regulations is needed to ensure a more inclusive and fair compensation mechanism. This reconstruction must include changes to relevant articles such as Articles 33 and 35 of Law No. 2 of 2012, Article 68 Paragraph (1) and Article 85A of PP No. 39 of 2023, and Article 68 Paragraph (1), Article 69 Paragraph (2), and Article 85A in PP No. 39 of 2023. This research is expected to be a foundation for creating a land acquisition system that is fairer, more transparent, and oriented towards community welfare, while also supporting the acceleration of sustainable national development.

Keywords: *Reconstruction; Regulation; Compensation; Shophouse*

Introduction

However, although land is recognized as a vital asset for life, Indonesia faces major challenges in its management. One of the main problems that often arises is the limited land available compared to the increasing need. Rapid population growth, urbanization, and large-scale infrastructure development have caused competition for land use to become increasingly intense. In rural areas, land is the main source of livelihood for farmers, while in urban areas, land is a very valuable commodity for economic activities, housing, and transportation. In addition, land also has a complex legal dimension. In the agrarian context, land not only includes the surface of the earth but also the space above and below it, including the natural resources contained therein¹. Land legal regulations cover various aspects, such as ownership, control, use, and utilization of land. This legal system reflects the need to maintain a balance between individual rights and collective interests, especially in land acquisition for public interest.

One of the main challenges in land acquisition is ensuring that the process is carried out transparently, fairly, and respects the rights of affected communities. In this case, the role of regulation becomes very important. Land acquisition regulations must be able to create a legal framework that provides legal certainty for all parties involved, while prioritizing social justice. In addition, regulations must also consider the social and economic impacts caused by land acquisition, so that the process is not only oriented towards physical development but also towards community welfare.

Land eviction is an action taken by the government with the aim of utilizing land for public interest. However, this process often causes problems, especially related to compensation. SHM owners often feel that the compensation value offered does not match the market price of their land. This has resulted in many complaints and protests from affected residents."The people do have the authority to be able to demand their rights to be given compensation for land used by the government, although the issue of compensation is still a serious problem."²

In the context of the development of the Morning Market by the government, shophouse owners with Freehold Certificates (SHM) often face problems related to the amount of compensation that is considered not to reflect the value of justice.³One of the problems that often arises is the difference between the government's assessment and the expectations of shophouse owners regarding the value of land and buildings. In addition, inconsistencies in the public consultation and deliberation process often cause dissatisfaction from the affected parties.

Compensation assessments are often considered less objective, so there is a need to strengthen the role of independent appraisers. Competent appraisers must determine land values transparently, based on market data and the socio-economic circumstances of landowners.⁴More accurate and fair assessments will ensure that affected communities receive compensation that is in line with the value of their property and the social conditions they experience. Land acquisition policies often do not involve in-depth social studies, even though the social impacts of evictions can be very large. To address this, it is important for the government to conduct empirical research involving affected communities before land acquisition decisions are made.

Therefore, it is necessary to reconstruct the regulation of compensation for the owner of the Certificate of Ownership (SHM) in the development of the Morning Market based on the value of justice. This reconstruction aims to ensure that the rights of land and building owners are respected, and to encourage a compensation mechanism that is fairer, more transparent, and oriented towards the welfare of the community.

¹Larasati, R. *Transparency in Land Acquisition for Public Interest*. Journal of Law and Development, Vol. 48, No. 3. 2018.

²<https://journal.universitasbumigora.ac.id/index.php/fundamental>. Marga Adi Santoso, Unlawful Acts of Compensation for Land Rights by National Strategic Projects. 2022. accessed on July 14, 2024 at 15:30 WITA

³ <https://mediakaltim.com/tolak-pembangunan-pasar-pagi-pedagang-pemilik-shm-ganti-rugi-tidak-adil>

⁴Mr. Soemarjono, Maria S. W. *Policy Land Between Regulation & Implementation*, Kompas, Jakarta, 2001.

Research Methods

This study uses a socio-legal research method, an approach that examines law not only as a written norm, but also in the context of its application in society. ⁵This approach is used to understand how regulations related to compensation for shophouse Ownership Certificate (SHM) owners due to the construction of the Market by the government are applied in practice and to what extent these regulations reflect the value of justice.

Discussion

1.Regulation of Compensation for Owners of Market Shophouse Ownership Certificates Due to Market Development Due to Market Development by the Government That is Not Based on Justice Values.

a.Law Number 5 of 1960 concerning Basic Agrarian Principles.

In Chapter 6 UUPA it is stated that:

"All right on land have function social".

However, in Article 2 paragraph (3) it is stated that the interests of society and individual interests must balance each other so that in the end the main goal can be achieved, namely: prosperity, justice and happiness for the people as a whole. Related to function social, so become a matter Which appropriately that land it must be maintained properly, in order to increase its fertility and prevent damage. ⁶The obligation to maintain this land is not only borne by its owner or the relevant rights holder, but is also a burden for every person, legal entity or agency that has a legal relationship with the land (Article 15).

Legally, UUPA also applies the basic principles in land acquisition. The provisions of national land law regarding the provision of protection to the people are based on the following principles:

- 1) The control and use of land by anyone and for any purpose must be based on land rights provided by land law. national, namely Right Owned by, Right for Business Purpose, Right Building Use or Right of Use. (Article 4 UUPA).
- 2) Control and use of land without any basis for rights is not justified, in fact the perpetrator was threatened with sanctions criminal (Law Number 51 Prp 1960).
- 3) Land ownership and use based on rights provided by national land law, are protected by law against interference from party either way, either way by fellow citizens, as well as even by the ruler.
- 4) The law provides several legal means to deal with the disturbances encountered.
- 5) Disturbances from fellow members of the community through civil lawsuits in the district court or requesting protection from the Regent or Mayor, according to Law No. 51 Prp 1960 above.
- 6) Interference by the authorities through lawsuits in the District Court or State Administrative Court.
- 7) Under normal circumstances, required by anyone and for any purpose including for projects in the public interest - the acquisition of land that is owned by a person or civil legal entity, must

⁵Marzuki, Peter Mahmud. **Legal Research**. Kencana, Jakarta, 2016. p. 32

⁶ Imam Koeswahyono, "Tracing the Constitutional Basis of Land Acquisition for Public Development Interests". Constitutional Journal of PPK-FH Universitas Brawijaya. Vol. 1 No. 1, August 2008.

through deliberation for reach agreement, Good regarding the transfer of land to parties who need it, as well as regarding compensation to those entitled to it.

- 8) Therefore, in normal circumstances, to obtain the required land, there is no justification for any form of coercion by any party against the party entitled to the land to hand over the land and receive compensation to which they have not agreed.

b. Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

Based on Law Number 2 of 2012 and Presidential Decree Number 71 of 2012, only compensation for land is concerned, while compensation for buildings, plants and objects in... above ground no standards mentioned certainly. The amount of compensation for buildings, plants and other objects will be determined later by the respective government agencies/state institutions. However, based on Law Number 2 of 2012 which Followed up in Presidential Decree Number 71 of 2012.

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest is the main regulation that serves as the legal basis for the land acquisition process in Indonesia. This law was born with the aim of accelerating the development of national infrastructure which is often hampered by land acquisition problems. In practice, this law is expected to provide justice for all parties, both the government, investors, and landowners.

Law No. 2 of 2012 replaces the previous regulation which was considered less effective, namely Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest. This law harmonizes various legal aspects, such as the protection of community rights and the government's need to use land for the public interest.

2. Implementation of Compensation Regulations for Owners of Market Shophouse Ownership Certificates Due to Market Development by the Government That is Not Based on Justice Values

Although the regulation has set out an ideal compensation mechanism, its implementation in the field still encounters many obstacles that hinder the realization of justice for affected market shophouse owners. Several factors such as inequality in compensation values, slow bureaucracy, and minimal community involvement in the deliberation process are often the root of the problem. In some cases, shophouse owners do not even receive appropriate compensation due to low transparency in determining the compensation value. In addition, the payment process is often delayed, causing shophouse owners to experience economic difficulties because they have to find new business locations without any certainty of replacement funds.⁷ Furthermore, the influence of political and economic interests in market development also complicates the compensation process, which should be transparent and accountable. Many shophouse owners feel that compensation decisions benefit certain parties more than the affected community. This situation triggers the potential for legal and social conflicts that further worsen the economic conditions of shophouse owners who lose their businesses.

Imperfections in the implementation of compensation regulations can cause various legal and social impacts that are detrimental to society and hinder the development process. Some implications that may arise due to inconsistencies or weaknesses in this regulation are as follows:

1. Increasing Legal Disputes – The ambiguity and unfairness in the process of determining compensation can cause many shophouse owners to feel disadvantaged and eventually file a lawsuit in court. Protracted legal disputes not only disrupt social stability, but also cost a lot of money for all parties involved.

⁷ https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf .

2. Public Distrust of Government – The mismatch between existing regulations and practices in the field often creates legal uncertainty that is detrimental to many parties. This can reduce public trust in the government and the policies taken, and create social tensions that have the potential to worsen socio-political conditions.

3. Social and Economic Disruption – Affected shophouse owners often experience significant economic and social hardship. Losing their business premises without adequate compensation not only threatens their economic viability, but can also lead to wider social disruption, such as unemployment, internal migration, and increased social tensions in local communities.

3. Regulation of Compensation for Owners of Market Shophouse Ownership Certificates Due to Market Development Due to Market Development by the Government Based on Justice Values.

Regulations governing compensation for owners of market shophouse ownership certificates can be found in several laws and regulations in Indonesia. Some related articles that need to be considered include:

1. Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest

Article 1 number 2 of Law No. 2/2012 regulates land acquisition for public interest which is the legal basis for the government in conducting land acquisition for the construction of public projects, including the construction of markets. This article states that "land acquisition for public interest is carried out in a fair, transparent and responsible manner."

Article 3 paragraph (1) of Law No. 2/2012 states that the purpose of land acquisition is to provide land for the public interest by considering justice for affected parties. Therefore, it is important to ensure that affected shophouse owners receive compensation in accordance with a fair and reasonable value.

Article 13 of Law No. 2/2012 regulates the method of compensation assessment carried out by an independent assessment team. This is important to avoid non-objective assessments, which could be detrimental to shophouse owners. In this case, the compensation value given must reflect a fair and reasonable market value.

2. Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA)

Article 18 of the UUPA regulates land rights, including ownership rights. This article states that land ownership rights can be taken by the state for the public interest by providing appropriate compensation. This article underlines the principle that land acquisition must be accompanied by the provision of fair and appropriate compensation in accordance with the rights protected by law.

3. Government Regulation No. 19 of 2021 concerning Amendments to Government Regulation No. 71 of 2012 concerning Land Acquisition for Development in the Public Interest

This Government Regulation further regulates the procedures for land acquisition for development carried out by the government, including in terms of determining compensation. Article 4 of PP No. 19/2021 stipulates that the government must strive for a fair mechanism in carrying out land acquisition, one of which is by providing compensation in accordance with the market value and real conditions of the land taken.

Article 6 of this regulation states that if the land to be taken for public interest is land that already has a certificate of ownership, then the party entitled to the land is entitled to receive compensation equivalent to the market value of the land. Therefore, the determination of the compensation value must be done objectively and based on the prevailing market price.

4. Regulation of the Minister of Home Affairs No. 28 of 2015 concerning Guidelines for Land Acquisition for Development

This Minister of Home Affairs Regulation also provides guidance on land acquisition for development carried out by local governments. One of the things emphasized in this regulation is the importance of transparency and community participation in the land acquisition process. Article 10 of this regulation states that affected landowners must be given the opportunity to provide input in the process of determining compensation.

Compensation for owners of market shophouse ownership certificates should not only be seen as a legal obligation, but also as an effort to realize a sense of social justice in society.⁸ Shophouse owners affected by market construction have the right to receive compensation in accordance with the market value of their land and buildings.

B. Reconstruction of Regulatory Norms for Compensation for Owners of SHM Pasar Pagi Shophouses Based on Justice Values.

The Importance of Regulatory Norm Reconstruction, the reconstruction of compensation regulatory norms aims to create a legal framework that is able to answer the needs of affected communities more comprehensively. This reconstruction does not only include technical changes in the wording of related articles, but also the transformation of the values underlying the regulation.

Reconstruction of Several Regulations Related to the Reconstruction of the Regulation on Compensation for Owners of SHM Pasar Pagi Shophouses by the Government Based on Value of Justice

Chapter	Before Reconstruction	Weakness	After Reconstruction
Law No. 2 of 2012 Article 33	"Compensation assessment is carried out based on market value by an independent appraiser."	Does not cover non-physical losses such as job loss, relocation costs, and waiting period losses.	Compensation assessments include market value as well as non-physical losses, such as job loss, relocation costs, transaction costs, and other socio-economic impacts.
Law No. 2 of 2012 Article 35	"Compensation is provided in the form of money, replacement land, resettlement, or a combination of these forms."	Does not clarify the mechanism for selecting the form of compensation based on the preferences of the affected community.	Compensation is provided based on an agreement with the affected community, taking into account social impacts, market values, and individual preferences regarding the form of compensation (money, replacement land, or relocation).
Law No. 2 of 2012 Article 36	"If no agreement is reached, the court will determine the amount of compensation."	Court processes often take a long time, which can prolong uncertainty for landowners.	The court is required to issue a decision within a maximum of 30 working days to ensure legal certainty for land owners.

⁸Suharto, S. *Provision of Compensation in the Land Acquisition Process* Sinar Grafika, Jakarta, 2015. p. 21

PP No. 71 of 2012 Article 68 Paragraph (1)	"The appraiser is tasked with assessing the amount of compensation for each parcel of land which includes land, buildings, plants and other objects related to the land."	There is no clear definition of "other losses" which could potentially lead to different interpretations and losses for affected parties.	The appraiser is tasked with assessing compensation covering land, buildings, plants, objects related to land, as well as non-physical losses such as loss of livelihood, transaction costs, and socio-economic impacts.
PP No. 71 of 2012 Article 69 Paragraph (2)	"The amount of compensation is a single value for each plot of land."	There is no explicit standard assessment method, often ignoring the value of non-physical losses such as businesses owned by affected parties.	The amount of compensation is based on market value which includes non-physical losses, such as loss of business and economic potential, with accountable valuation standards.
PP No. 71 of 2012 Article 70	"Compensation payments are made after an agreement or court decision."	It does not include a mechanism for providing advance payments to landowners during the negotiation or court process, which could ease the financial burden on affected communities.	Compensation payments can be made in stages, with a down payment of at least 50% of the compensation value proposed, during the negotiation or court process.
PP No. 18 of 2021 Article 12	"Management Rights give the holder the authority to use the land in accordance with statutory regulations."	It does not clearly regulate the compensation mechanism for parties who previously used land without formal documents but had the right to control it.	Management Rights must include compensation mechanisms for affected land users, including compensation or relocation rights for parties who have tenure rights even without formal documents.
PP No. 39 of 2023 Article 68 Paragraph (1)	"The appraiser is tasked with assessing the amount of compensation for each parcel of land, including land, above-ground and underground spaces, buildings, plants, objects related to the land, and/or other losses that can be assessed."	Does not define in detail "other assessable losses," thus opening up the opportunity for different interpretations and uncertainty in the implementation of compensation.	The appraiser is tasked with assessing the amount of compensation covering land, aboveground and underground space, buildings, plants, objects related to land, as well as non-physical losses such as loss of work, transaction costs, and socio-economic losses.

PP No. 39 of 2023 Article 85A	"In the event that the entitled party has been invited 3 (three) times in a row but does not attend, compensation can be deposited in court."	Does not provide clarity on follow-up consultation or mediation mechanisms to ensure affected parties have sufficient opportunity to express objections or receive information.	Before submitting compensation to the court, consultation or mediation must be carried out involving an independent third party to ensure that the rights of the entitled party remain protected.
Job Creation Law Article 121	"Land acquisition must take into account public interests and provide appropriate compensation in accordance with statutory provisions."	Does not explain in detail the objection mechanism if the affected party does not agree with the compensation value.	Land acquisition must take into account the public interest by providing adequate compensation, including space for objections that can be submitted through the courts to ensure justice for affected parties.
Job Creation Law Article 122	"The land acquisition process must support the acceleration of the development of national strategic projects."	There are no provisions governing the protection of indigenous peoples or vulnerable groups who are often significantly impacted by national strategic projects.	Land acquisition must ensure special protection for indigenous peoples and vulnerable groups, with inclusive consultation mechanisms and rehabilitation programs to minimize negative impacts on local communities.
Job Creation Law Article 123	"If the landowner does not agree with the compensation value, the government can deposit the compensation funds in court to continue the development project."	The consignment mechanism is often seen as an imposition that ignores fair negotiations between the government and landowners.	Consignment is only carried out after intensive negotiations between the government and the landowner, involving an independent mediator to ensure that the landowner's rights are protected.
ATR/BPN Regulation No. 13 of 2021 Article 6	"Compensation assessment is carried out based on market value taking into account the condition of the land and property."	Does not include non-physical loss elements such as socio-economic impacts or loss of livelihood.	Compensation assessments should include the market value of land and property, as well as socio-economic impacts such as job losses, relocation and other additional costs.

Reconstruction of regulatory norms for compensation for SHM shophouse owners in Pasar Pagi is an important step towards creating a more just, transparent, and inclusive land acquisition system. By integrating the values of justice, participation, and transparency, the reconstructed regulation can be an effective tool to protect the rights of affected communities while supporting sustainable national development. This approach is expected to be a relevant model to be applied in other land acquisition cases in Indonesia.

Closing

Conclusion

The regulation of compensation for owners of Certificates of Ownership Rights (SHM) of shophouses in the Market area still faces various challenges in reflecting the value of substantive justice. The applicable regulations, such as those stipulated in Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest, PP No. 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, PP No. 39 of 2023 concerning Amendments to PP No. 19 of 2021, and the Job Creation Law, have not fully provided a solution to the conflict of interest between the government and affected communities, especially in the context of determining the value of compensation that is considered fair. Weaknesses regulation change loss on procurement land for development in the public interest when is Land acquisition for the public interest is often one of the major challenges in national development. This process not only involves the acquisition of land owned by the community for public purposes, but also touches on aspects of social justice, which are often debated. In this context, regulations such as Law No. 2 of 2012, PP No. 71 of 2012, and PP No. 39 of 2023 are designed to regulate compensation mechanisms for affected communities. However, the implementation of these regulations still faces various weaknesses that reflect the gap between the objectives of the law and its implementation. The following is an analysis of the weaknesses in substance, structure, and culture in land acquisition. Substantial Weaknesses: Existing regulations, such as those stipulated in Law No. 2 of 2012, PP No. 71 of 2012, and PP No. 39 of 2023, still do not explicitly cover non-physical compensation, such as socio-economic impacts, job loss, and relocation costs. This makes affected communities feel less than just. Then Structural Weaknesses: Lack of socialization and transparency from the land acquisition committee and local government causes affected communities to not fully understand their rights. The land acquisition process often takes place without adequate consultation.

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