

# THE OBJECTIVES FROM THE RIGHTFUL PARTY ON THE PROPERTY APPRAISAL BY THE APPRAISER FOR THE COMPENSATION IN LAND PROCUREMENT

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**THE OBJECTIVES FROM THE RIGHTFUL PARTY ON THE  
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COMPENSATION IN LAND PROCUREMENT**

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**Abstract:** *The important role of the appraisal frequently raises conflicts between the government as the land procurement committee for development for public interest with the society as the rightful party upon the said object of land procurement. Therefore, it is deemed necessary that there is deliberation based on the principle of consensus. The Act has given the opportunity to the party who feels disadvantaged to counter in a form of objection referred to the court, so he or she can petition for compensation in conformity with his or her right. The consensus shall be on the form of the compensation (especially in a form of money). In case there is a disagreement on the amount of the compensation, such change on the amount of the compensation shall be made according to Article 37 paragraph (1) of Act Number 2 of 2012, but by filing a complaint to the court because the appraiser is a professional and independent institution whose tasks should based on Indonesian Appraisal Standard (SPI) and may not be contradictory to Indonesian Appraisal Code of Conduct (KEPI).*

**Keywords:** *Compensation; Objection; Property Appraisal by Appraiser; Land Procurement*

**INTRODUCTION**

<sup>1</sup> Land basically has two very important meanings in human life, namely as social as-

<sup>1</sup>ts and capital assets. Land as a social asset is a means to bind unity in the social environment for living and life, while land as a

<sup>1</sup> capital asset is as capital in development. In the case of land as a natural resource that is so strategic for the nation, state and people, then in our constitution namely on the Article 33 paragraph (3) of the 1945 Constitution, explains that all natural wealth is controlled by the state. This state authority is re-regulated by the Basic Regulations on Agrarian Principles, Act Number 5 of 1960 hereinafter abbreviated as UUPA.

At present, the need for land as capital assets is increasing, because of the many developments in the physical field both in the city and in the village. And such development requires a lot of land. The need for land availability for development need provides an opportunity for land acquisition for the project, both for the interests of the state/ public interest and for business purposes. Land limitations and the amount of development cause friction. When the development requires land as the main means, while on the other hand most of the people also need more land as a place of settlement and place of livelihood.<sup>1</sup> For this reason, the government needs to issue a policy so that development is maintained, especially the construction of various facilities for the public interest. And to obtain these lands is carried out through land acquisition.<sup>2</sup>

In the Act concerning on Land Acquisition for Development in the Public Interest Number 2 of 2012 the President Regulation Number 71 of 2012 which has been amended by the President Regulation Number 40 of 2014 was changed again with the President Regulation Number 30 of 2015, and amended again

with the President Regulation Number 148 of 2015, it has been clearly stated that Land Procurement is an activity to provide land by giving fair and adequate compensation to the rightful parties. If we then think that the land acquisition is for the public interest, then by itself, all procurement processes or land acquisition activities for the implementation of development are all for the benefit of the nation and the state and the community while maintaining guarantees in terms of the legal interests of the entitled parties, namely the ruling party or the owner of the land acquisition object.

Procurement of land destined for development for the public interest is also inseparable from the existence of the Land Appraisal Institution as the party charged with evaluating the land to be used for the public interest, by having the role of determining the compensation value that will be obtained by the right holder on the land or the right party. This is because the results of his work, namely conducting an assessment, will be used as a basis for deliberation on the determination of the amount of compensation from the land acquisition object. Therefore, a professional and credible appraiser is absolutely necessary if the implementation of land acquisition really puts forward the principles of humanity, democracy and justice that reflects the balance of the rights of the parties that need each other, namely between the right parties together with institutions that need the land.

The existence of the Land Appraisal Institution, as the duty bearer as mandated in detail in the Act Number 2 of 2012 concerning Land Acquisition for Public Interest as described in Article 31 paragraph (1), namely the Land Institution determines the Appraiser in accordance with the provisions of

<sup>1</sup> Abdurahman. 1991. *Issue of Revocation of Land Rights and Land Acquisition in Indonesia*. Revised Edition. Bandung: Citra Aditya Bakti. P.9

<sup>2</sup> Bernhard Limbong. 2012. *Agrarian Reform*. Jakarta: PT. Dharma Karsa Utama. P.127

The Legislation. According to the Article 31 paragraph (2) it states “The Land Institution announces the Appraiser that has been determined as referred to in paragraph (1) to carry out the valuation of land acquisition objects.”

In Article 33 of the Act Number 2 of 2012 is in line with the Article 65 of the President Regulation Number 71 of 2012 as amended by the President Regulation Number 40 of 2014 and then amended again by the President Regulation Number 30 of 2015, and amended again by the President Regulation Number 148 of 2015 concerning Land Procurement for Development in the Public Interest (hereinafter referred to as the Land Acquisition President Regulation), that the task in detail regarding the amount of compensation from the appraiser is carried out by appraisers with each field land which includes:

1. Land;
2. Land and underground space;
3. Buildings;
4. Plants;
5. Objects related to soil; and/ or
6. Other losses that can be assessed.

For most people, land is their place of residence and source of livelihood, so their land acquisition by other parties must consider the economic and social impacts resulting from it, so that the existence of Land Appraisers for land rights holders whose land will be used as development projects for the benefit of general, it becomes very important because under certain conditions the holder of the right to the land must surrender his land to the Government, with the reason that the public interest is a common interest.

Different things have been applied previously, namely through the President Regulation Number 36 of 2005 jo the President Regulation Number 65 of 2006, concerning

Land Appraisal Institution or Team is regulated separately outside the duties and authority of the Land Acquisition Committee, although the Land Procurement Committee must still coordinate with the Land Price Assessment Institution/ Team as one of the mechanisms for land acquisition carried out by the land procurement committee.

General Provisions Article 1 paragraph (12) the President Regulation Number. 36 of 2005 confirms that the Land Price Assessment Institution/ Team is an institution or professional team and independent to determine the value/ price of the land to be used as a basis for reaching agreement on the amount/ amount of change loss. This provision is clarified in the Regulation of the Head of the National Land Institution Number 3 of 2007 concerning Provisions for the Implementation of the President Regulation Number 36 of 2005 concerning Land Procurement for Development in the Public Interest As Amended by the President Regulation Number 65/ 2006 concerning Amendments to the President Regulation Number 36 of 2005 which separates the explanation of Land Price Appraisal Institutions and Assessment Land Price Team.

Meanwhile in the President Regulation Number 71 of 2012, the assessment team is a public appraiser or appraiser, which has been described in Article 63 paragraph (1) which states: “The determination of the amount of compensation is carried out by the Chairperson of the Land Procurement Institution based on the results of the appraisal or public appraisal services.” Paragraph (2): “The Appraiser or Public Appraiser as referred to in paragraph (1) is held and stipulated by the Chairperson of the Land Acquisition”. In Article 63 paragraph (3) which states that the procurement of Appraisal services as referred

<sup>1</sup> to in paragraph (1) is carried out in accordance with the provisions of the legislation in the Government Procurement of Goods/ Services. Likewise in Article 63 paragraph (4) states that the implementation of procurement of Appraisers as referred to in paragraph (1) is carried out no later than 30 (thirty) working days.

In the event that the selection of the Appraiser as referred to in Article 63 cannot be implemented, the Chairperson of the Land Procurement Team appoints a Public Appraiser (the President Regulation Number 71 of 2012). So if we reflect on the President Regulation Number 36 of 2005 jo the President Regulation Number 65 of 2006 and refers to the provisions of implementing the President Regulation Number 36 of 2005 namely the Regulation of the Head of the National Land Institution Number 3 of 2007, the authority of the land acquisition committee to carry out land acquisition while evaluating the price of land to be released to carry out development for the public interest in its implementation, often cannot be objective. Given the urgency of the land appraisal Institution through the Act Number 2 of 2012, was given a special regulation concerning the land appraisal institution which was then stated in the President Regulation Number 71 of 2012.

The law essentially must be sure and fair. Certainly as a guideline of behavior must support an order that is considered reasonable. Just because it is fair and implemented with certainty the law can carry out its functions. Then, certainty and justice are not just moral demands but factually characterize the law.<sup>3</sup> So that later, is the important role of Land Ap-

praisal, especially in determining the value/ price of land as a basis for compensation for land that will be taken over by the government and the impact of the valuation on land rights holders in obtaining fair and adequate compensation. Then, it is important to encourage the establishment of the Act Number 2 of 2012, to regulate land appraisal institutions. In this paper the author wants to answer the question about:

1. How is the legal review of property appraisal of an appraiser linked to the Act Number 2 of 2012 and the President Regulation Number 71 of 2012?
2. How is the regulatory procedure to object the value of compensation in the procurement of land destined for development in the public interest?

#### METHOD

This study is a normative legal research. Normative legal research is a library research where the method used in legal research is done by observing and researching the existing library material. The type of this research is theoretical research using a case approach and legislative approach. The case approach is carried out by examining decisions related to legal issues. The legislative approach is carried out by providing an analysis of all laws relating to legal issues and reviewing the suitability between one law and another, or with the Constitution. The nature of this research is prescriptive analysis, and will analyze and provide legal solutions to the problem formulated in this study.

Considering that this research is a legal research from the normative side of the law, the source of the legal material includes primary legal materials, secondary legal materials and tertiary legal materials. The collec-

<sup>3</sup> Sugono Bambang and Harianto Aries. 2001. *Legal and Human Rights Assistance*. Bandung: Mandar Forward p.93

<sup>1</sup> tion process of legal material in this research is carried out by means of literature study, where library research aims to examine, and trace legal material in the form of legislation and literature that can support the research material discussed. After that we do the legal processing. The processing of legal materials can be done by classifying the legal materials according to the problem that will be discussed in this study, so that they can answer the legal issues that will be discussed in this study.

## ANALYSIS AND DISCUSSION

### The Property Appraisal by the Appraiser the Land Procurement

Land acquisition as a form of activity to acquire land has been found not only at this time, but also found in the past, even before the independence of Indonesia (the Dutch colonial period), although with different designations or terminology. In addition to the terminology of Land Acquisition, there is also the term Land Acquisition and *Prijsgeving*. Various types of terminology exist, certainly based on different legal rules and also based on different legal politics. In terms of time, the politics of law and the regulation of Land Procurement that has been and is still in force in Indonesia can be grouped into three periods, namely the Dutch colonial period, the period 1945-1960 and the period after the enactment of the UUPA.

In the Dutch colonial era, the land that was not included in the land of the state, when needed for the benefit of the government or the public interest could be carried out through legislation namely *prijsgeving* (land acquisition) and *onteigening* (revocation of land). *Prijsgeving* settings are found in the 1893 *Gouvernement Besluit* Number II

(*Bijblad 4909*) which then undergoes several changes until the settings in the 1932 *Gouvernement Besluit*, Number 23 (*Bijblad 12746*), on January 8<sup>th</sup>, 1932 concerning *Voorschriften omtent het verkrijgen van de vrijbecshikking oven ten behoeve van lande benodigde gronden* (The Regulation on taking over the land for government purposes).

During the years 1945-1960, at the time of the Indonesian nation proclaimed its independence, there was a change from the colonial system to the national legal system. The Indonesian government has the authority to determine the National Law by changing and replacing all legal provisions made and derived from the Dutch colonial government with the provisions of national law. However, in the condition of the new government, it is not possible to replace all existing legal regulations in a short time, so that there are rules from the government stating that all state bodies and regulations that exist until the founding of the state of Indonesia, as long as they have not been held the new ones according to the Constitution, are still valid as long as they do not conflict with the Constitution.

Then, in the period after the enactment of the UUPA, in its arrangement it gives recognition and protection to individual land rights. The granting of land rights is not absolute but is limited in its implementation by the necessity to pay attention to its social functions. As stipulated in Article 6 of the UUPA, this states that all land rights have social functions. So, that the *prijsgeving* and *onteigening* provisions become inapplicable.

The difference between the value of land acquisition between the right parties and the government that needs land for development does not often lead to disputes in the Court. Even though this has been regulated through

<sup>1</sup> legal instruments regarding compensation, the arrangement has been in 1960 through the UUPA. As stated in Article 18 of the UUPA, it is stated that for the public interest, including the interests of the nation and the state and common interests, rights to land can be revoked by providing adequate compensation and in the manner regulated by law through Revocation of Land and Property Rights -The existing items above are mentioned in the Act Number 20 of 1961. In addition, the Presidential Instruction emerged regarding the Revocation of Land and Property Rights Above, namely Presidential Instruction Number 9 of 1973. This Presidential Instruction was a form of implementing regulations of the UUPA and the Act Number 20 of 1961.

The Minister of Indonesia Affairs Regulation Number 15 of 1975 gives a new terms namely Land Procurement and Land Procurement Committee (P2T). Land acquisition is an activity of releasing rights to their land by providing compensation. While the Land Acquisition Committee (P2T) in carrying out its duties P2T is guided by the regulations that apply based on the principle of deliberation and local public prices (regulated in The Minister of Indonesia Affairs Regulation Number 1 of 1975). In its development, the regulation regarding Land Procurement for Public Development was issued in the Presidential Decree Number 55 of 1993. In this Presidential Decree, compensation in land acquisition is granted for rights to land, buildings, plants and other land-related objects. The amount of compensation is estimated and proposed by the P2T. In Article 15 of this Presidential Decree, the procedures for calculating compensation are regulated.

The new independent assessment really got the role of this region after the Presiden-

tial Decree of the *Orde Baru* Regime product was replaced with a new rule in the form of the President Regulation Number 36 of 2005, subsequently refined with the President Regulation Number 65 of 2006. According to this regulation, the definition of compensation is the replacement of losses both physical and/or non-physical, as a result of land acquisition to those who have land, buildings, plants, and/or other objects related to land that can provide better survival from the level of socio-economic life before being land acquisition. To implement it, the the President Regulation Number 65 of 2006 was published by the Indonesian National Land Institution Regulation No. 3 of 2007. This regulation regulates in more detail the procedures for land acquisition, starting from the planning stage, location determination, to land acquisition procedures.

Then in 2012, a regulation was issued concerning Land Procurement for Development in the Public Interest as outlined in the Act Number 2 of 2012. In this Act, fulfillment of land destined for public interest is pursued through four stages, namely planning, preparation, implementation and delivery of results. If viewed in passing, what is in land acquisition seems to only concern the legal aspects, but if reviewed further, to fulfill the element of justice in land acquisition, the law is only one of several important aspects of land acquisition for the development of public interests. The legal aspect only solves the problem of land acquisition in terms of law and regulations that are applied and developed. From the legal perspective, It has been proven that it is insufficient to overcome land acquisition problems, even though laws and regulations continue to be improved.<sup>4</sup>

<sup>4</sup> Sudjarwo Marsoem, Wahyono Adi, and Pieter G. Manoppo. 2015. *Complete Guide to Change the*

<sup>1</sup> Steps to procure land owned by residents are usually carried out through the process of providing compensation and relocation to landowners who are taken for infrastructure development. The process of providing compensation and relocation in practice is not easy. Land or agrarian conflicts that involve many elements of society should be avoided and minimized. Certainly, to create that condition is not easy.<sup>5</sup>

All this time, the compensation received by the landowners was not limited to the physical value of their land. The replacement is limited to the multiplication of the land area with the NJOP of a plot of land. The value of the replacement is still possible to be reduced by the power of ruling elements who ask for rations. It can also be reversed, the value of the replacement can be enlarged to get a larger state money disbursement. In short, after their land has been displaced, the owner has difficulty in having an equivalent piece of land. Not to mention the social losses experienced because the owner was uprooted from his social life so far. This kind of compensation practice makes landowners get compensation that makes them suffer losses. This condition can turn to the current land regime. Land Acquisition Law for Development in the Public Interest Number 2 of 2012, became a differentiator from land acquisition practices in previous eras. Giving compensation that provides benefits to the community must be understood, if the acquired land gives implications for remaining guaranteed:

1. A house to be inhabited properly;
2. Sustainable sources of economic livelihood

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*Profits of Land Procurement Mapping Strategic Solutions for Infrastructure Development in Indonesia.* Jakarta: Renebook p. 49.

<sup>5</sup> *Ibid.*, p. 13

can still be accessed; and

3. Community social cultural relations with relatives and family are not lost.<sup>6</sup>

In the General Provisions of the Act Number 2 of 2012 stated that the Land Appraiser, hereinafter referred to as an appraiser, is an individual who conducts an independent and professional assessment that has obtained a license to practice appraisal from the Minister of Finance and has obtained a license from the Land Institution to calculate the value/price of land acquisition objects. The Appraiser Position in the Land Acquisition process is very important, as in the Act Number 2 of 2012, Article 31 paragraph (1) states that the land Institution determines the appraiser in accordance with the provisions of the legislation. Article 31 Paragraph (2) reads: The Land Institution shall announce the Appraiser that has been determined as referred to in paragraph (1) to carry out the valuation of the Land Acquisition Object.

In the process, the procurement of development land that is intended for the public interest, the appraiser conducts an assessment of the amount of compensation based on field or plot of land intended to include: land, to the space above the ground and underground, to buildings, or plants, and other objects relating to land; and/ or other losses can be assessed. By the appraiser, the value of the compensation is the value at the time of the announcement of the establishment of the construction location, the amount of the assessment result is then submitted to the Land Institution the Land Acquisition team leader who appoints the appraiser, where the appraiser's assessment of the value of compensation is used as the basis for deliberation on compensation, as stated in the Act Number 2 of 2012 article 34

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<sup>6</sup> *Ibid.*, p. 16

1 paragraph (3) which states that the value of compensation based on the results of the appraisal assessment as referred to in paragraph (2) becomes the basis for deliberation on the determination of compensation.

Furthermore, in Article 37 of the Act Number 2 of 2012 states:

1. The land Institution conducts deliberations with the entitled party within a period of 30 (thirty) working days from the result of the assessment from the appraiser being submitted to the land Institution to determine the form and/ or amount of compensation based on the compensation assessment as referred to in Article 34.
2. The result of the agreement in the deliberation as referred to in paragraph (1) becomes the basis for giving compensation to the rightful parties contained in the report letter of the agreement.

In Article 66 paragraph (4) the Act Number 71 of 2012 stated that the amount of compensation as referred to in paragraph (1) was used as a basis for deliberation to determine the form of compensation.

So, that it is clear that as in Article 1 number 11, and Article 31, Article 34 and Article 37 of the Act Number 2 of 2012, if related to Article 65 and Article 66 paragraph (4) of the President Regulation Number 71 of 2012, the Appraiser only conducts an assessment of the amount of compensation alone, then the results of the appraiser's assessment, by the Land Institution Chairperson of the Land Procurement Team are used as a basis for deliberation to determine the form of compensation to the rightful parties, which is felt appropriate and according to the parties' wishes, based on the magnitude of the results of the assessment by the appraiser of the said land acquisition object.

Furthermore, the President Regulation Number 71 of 2012 Article 68 paragraph (3) stated deliberation as referred to in paragraph (1), carried out directly to determine the form of compensation based on the results of the compensation assessment as referred to Article 65 paragraph (1). And Article 68 paragraph (4) mentions in deliberation as referred to paragraph (1), the land acquisition executor submits the amount of compensation resulting from the compensation as referred to Article 65 paragraph (1).

In the community so far, there is often a perception that the value set by the land acquisition committee based on the assessment of the Appraiser is absolute, and cannot be changed again. Occasionally, if there is a difference of opinion about the amount of compensation, based on the valuation of the property by the appraiser of the land acquisition object, then the one who is often blamed is the assessor himself, because it is felt that the Appraiser is the one who carries out the assessment as an independent institution, not the government have an interest in the object of land acquisition.

It should be borne in mind that the assessment results from an independent appraiser are the results of the appraiser who conducts an assessment based on "maps of land plot, nominative lists and data needed for appraisal from the Chairperson of Land Acquisition", as stipulated in Article 65 paragraph (2) of the President Regulation Number 71 of 2012. So, that the appointed Appraiser is obliged to be accountable for the results of the assessment, but the Land Institution as Chair of Land Procurement is equally important to be responsible for the data submitted to the Appraiser, which should have been through the Inventory and Data Identification Results, map plot

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of land and nominative lists, as being used in the process of determining the value of compensation by the appraiser.

The difference point of views regarding the accountability for the amount of compensation value makes conflict between the community as the right party with the government stakeholders, which incidentally must be discussed together, with reference to the deadline set by the Act.

Actually, the problem is not at the deliberation, but at the value of compensation that is not based on justice for the landowners (for example using NJOP as the main base). For this reason, although deliberation is not the main problem, in this law it is deemed necessary to eliminate deliberation in determining the form and amount of compensation because the deliberation is no longer relevant considering the determination of the amount of compensation is determined by professional and independent assessors. Thus, the value of compensation will be close to the real value and close to the expectations of landowners who have sacrificed for the nation and the State.

In contrast to the above opinion, which expressly states that deliberation in determining the form and amount of compensation is irrelevant, because the amount of compensation has been carried out by an independent and professional appraisal institution, but this is not in line with one of the principles mandated in the Act Number 2 of 2012, namely the principle of Agreement, in this principle Deliberation is the most important element in determining the form and amount of the compensation value.

But, in fact, when in deliberation as mandated by the Act Number 2 of 2012, is about deliberation regarding the form and / or mag-

nitude of compensation, as in the Act Number 2 of 2012 Article 37 paragraph (1) jo the President Regulation Number 71 of 2012 Article 66 Paragraph (4) and Article 68 Paragraph (3) and Paragraph (4), then there are also some views which state that this is a contradiction in regulations. Partly, observing Article 37 paragraph (1) of the Land Acquisition Law for Development in the Public Interest jo the President Regulation Number 71 of 2012 Article 66 Paragraph (4) and Article 68 Paragraph (3) and Paragraph (4), both the government and the public as the party entitled to view, that the deliberation is about the amount of compensation, not compensation so that the amount of the assessment from the Appraiser is not absolute, and vice versa, that in the existing deliberation only determines the form of compensation rather than the amount of compensation, so it becomes absolutely what the assessor has determined in his assessment of the object of land acquisition, so that both directly and indirectly, these differences in views cause a problem, the conflict that can be prolonged between the community as the rightful party and the government concerned, and often leads to a dispute to the court.

It may be forgotten that in the arrangement clearly stated the phrase that reads “the form and/ or magnitude of compensation”, the sentence which is flexible and alternative, is also a unity and interrelated, regardless of how much compensation has been assessed by an independent Appraiser, as the executor of the assessment task that has been appointed by the Chairperson of Land Acquisition. Form of compensation as referred to in Article 36 of the Act Number 2 of 2012 jo Article 74 of the President Regulation Number 71 of 2012, namely in the form of money, replacement land, resettlement, share ownership, or other

<sup>1</sup> forms approved by both parties.

Further described in the President Regulation Number 71 of 2012 Article 75 paragraph (1) which states that in deliberation as referred to in Article 68 the Land Procurement Institution prioritizes compensation in the form of money. Thus, when talking about deliberation about forms of compensation, even though there are other forms of compensation other than the form of loss in the form of money, but what is preferred in compensation is in the form of money, so that it cannot be denied in the deliberations will also arise regarding debate about the difference in the amount of compensation value desired by each party, which is closely related to the assessment results of the appraiser, then it is not uncommon that the assessment conducted by the appraiser is as a form of assessment in favor of the government which incidentally is the party who also appointed the assessor to assessing the land acquisition object.

From the description above by linking the differences of views that exist, the authors argue that deliberation as intended in the Act Number 2 of 2012 Article 37 paragraph (1) jo the President Regulation Number 71 of 2012 Article 66 Paragraph (4) and Article 68 Paragraph (3) and Paragraph (4), in addition to the afore mentioned deliberation, it is absolute regarding the form of compensation, but it is also possible to conduct deliberations on changes in the amount of compensation from an independent appraiser and professional, as long as the parties, both the government and the rightful parties, found concrete data that the assessment of the appraiser is not in accordance with the data on maps of land plots as well as nominative lists as well as other supporting data as material for conducting assessments, or incompatibility of results of

inventory and data identification issued by the government through the Land Acquisition Committee, both the data of the rightful party and the object of land acquisition, with the actual data that is available and owned by the rightful party.

The deliberations carried out should remain on the deliberation of the form of compensation only, although it does not rule out the possibility that the closely related will lead to deliberation on the amount of compensation, as in Article 36 of the Act Number 2 of 2012 jo the President Regulation Number 71 of 2012 Article 74, and if there is a debate about the form of compensation in the form of money with the difference in the amount of compensation value desired by the parties, then the change to the amount of the compensation value is not done in the context of Article 37 paragraph (1) of the Law on Land Procurement for Development For the Public Interest, but through legal remedies submitted to the Court, thus, the appraiser is still a professional and independent assessment, while referring to the Indonesian Assessment Standard (SPI) and not deviating from the Assessment Code of Ethics Indonesia (KEPI).

In this case, deliberation is only enough for the deliberation that determines the form of compensation as mandated by the President Regulation Number 71 of 2012 Article 66 paragraph (4) and Article 68 paragraph (3) and paragraph (4), and deliberation on the amount of compensation value does not need to be carried out because the Appraiser is a professional and independent institution, which if desired the amount of compensation value through the objection mechanism submitted to the Court, which in the process allows the party entitled to submit comparative data to the object of land acquisition, or

<sup>1</sup> can also propose an independent Appraiser as a comparison of the assessment, according to the data of the party entitled to conduct an assessment of the land acquisition object in question.

Towards an independent Appraiser, the Indonesian Appraisal Standards Preparation Committee (KPSPI) in early 2013, published a Guide to the Implementation of Indonesian Assessments 18 (PPPI 18). As is known, KP-SPI is one of the compartments within the Indonesian Appraiser Professional Society (MAPPI) which is recognized in Indonesia. It was not yet widely disseminated because of the change in SPI in 2007 to SPI in 2013, the PPPI 18 was changed to SPI 306.

This standard of assessment is issued to provide assessment guidance to assessors in order to realize the implementation of good land acquisition. This standard, among others, provides guidance on the general concepts and principles of assessment, the basis of the assessment used and the appropriate assessment approach applied to each valuation object. All this indicates collaboration between the government and an independent appraisal Institution which is in fact a private party in the land acquisition management process.

In practice in the field, this collaboration does not always run smoothly because problems often arise. In the experience so far, problems that arise are generally caused by several factors:<sup>7</sup>

1. Differences in Motivation of Each Party in Collaboration;
2. Differences in Capability, Competence, and Understanding in Working on Projects;
3. Different Data Quality Even Insufficient;

4. Weaknesses in coordination and collaboration;
5. Understanding of the Regulatory Elements;
6. Inequality of Understanding and Mastery of Technical Aspects and Project Administration;
7. Economic, Social and Cultural Conditions of the Community;
8. Conflict of Interest.

Thus, from the description above, it can be said that the appraisal of the provision of land for development for the public interest is an institution that can still be said to be independent of the results of the valuation of its properties, even though this institution is appointed by the Land Acquisition Committee in this case is BPN (as Chair of the Land Acquisition Committee) so that it is a bit more, tied to the emotional relationship between the appraiser to the institution that appoints it to conduct an assessment of the land acquisition object intended for development in the public interest. However, it does not rule out the possibility of non-independence from the appraiser, as a result of the appointment of the institution that appointed it, and not a few of these appraisal institutions only conduct an assessment based on nominative data provided by the institution that appoints it, without going directly to determine the value of compensation for both physical and non-physical within a certain time limit determined by law based on SPI 306 and without prejudice to the appraisal code of conduct in conducting an assessment.

#### **The Procedure of Objection to the Value of Compensation in Land Procurement**

The land acquisition is often hampered due to the failure to reach an agreement on the

<sup>7</sup> Sudjarwo Marsoem, Wahyono Adi, and Pieter G. Manoppo. 2015. *Op. cit.*, p. 91.

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value of the land acquisition, in this case the arrangement is based on the result of property valuation by the appraiser which is used as a basis for deliberation by the government in determining the value of compensation to the rightful party. The difference about the value of land acquisition between the rightful parties and the government that needs land for development does not infrequently lead to disputes in the Court. In fact, this has been regulated through legal instruments concerning compensation or compensation whose arrangements have been in 1960 through the UUPA.

As is often the case, often the rightful parties never want to give up or give up their rights to land for those who need it. If because the rightful parties do not want and voluntarily are willing to give up or release their land, then automatically raises disputes in the land acquisition activities intended in the public interest. The land dispute has two settlement channels, namely the general court if *objektumlitis* concerns the rights or ownership of the land, while the settlement of land disputes through the State Administrative Court is carried out if it is related to administrative defects or the validity of procedures for controlling land titles.<sup>8</sup>

Disputes in the activities of land acquisition that are intended for the public interest based on its nature there are two types, namely: First the dispute that is state administration, which becomes the object of the dispute is a Decree issued by the Governor concerning the determination of the construction location that is intended for public inter-

est. Second, the civil dispute, the object of the dispute is the matter of not reaching an agreement in the deliberation to determine the form and/ or magnitude of compensation between the Land Institution (BPN RI) and the rightful party, which causes harm to the rightful party.

In the civil law procedure, the regulations are regulated as to how the aggrieved party submits their case to the Court, how the party attacked is defended, how the judge performs his duties against the litigant parties, how the judge checks and decides the case, so that it can be resolved fairly, how to carry out the judge's decision. Thus, the obligation is also a right that has been arranged in such a way in civil law, it can be fulfilled and should be obtained accordingly. By going through court, people get certainty about their rights that must be respected by everyone. Civil Procedure Law can also be called formal civil law, because regulating the process of resolving cases through a formal court, civil procedure law maintains the application of civil law, so that the rights and obligations of the parties are obtained and fulfilled as they should.

Likewise regarding civil disputes concerning compensation for land acquisition intended for development in the public interest, where the dispute regarding the lack of achievement of an agreement in conducting deliberations to determine the form and/ or amount of compensation between the BPN Land Acquisition Committee and the rightful parties, which results in loss to the rightful party, which results in objections, in the Supreme Court Regulation (hereinafter abbreviated as Perma) of the Republic of Indonesia concerning Procedures for Submitting Complaints and Custody of Indemnification to the District Court in Land Acquisition for Development in the Public Interest set forth

8 M. Aulia Reza Utama. 2017. "The Role of Land Courts in Badamai Settlement", *Law Journal of the University of Lambung Mangkurat*. Vol. 2, Issues 1. March. P.76

1 Perma Number 3 of 2016. Article 1 number 5 Perma Number 3 of 2016 states the notion of objection. Those who can raise objections include:

1. The party who has the right or through his attorney who is present who rejects the results of the Determination of the Determination of Losses; and/ or;
2. The rightful party who is absent while not giving power, rejects the Determination of Loss Determination Consultation.

The objection referred to in writing here is submitted in the form of an application whereby the objection request at the latest 14 (fourteen) days is submitted after the results of the Determination of the Determination of Losses. The rightful party who objects to the results of the deliberation and submits an objection to the District Court is declared as the objection applicant, consisting of individuals or legal entities, social bodies or religious bodies, or government agencies that are controlling or having the object of land acquisition in accordance with the regulations, includes:

1. Holders of land rights;
2. Holders of management rights;
3. *Nadzir* or *waqf* land;
4. Owners of ex-customary lands;
5. Customary law community;
6. The party who controls state land in good faith;
7. Holders of land tenure on land; and/ or
8. The owner of the building, planting, or other objects related to the land;

The Land Institution is the organizing institution of the government that carries out the affairs in the land sector as well as the Respondent's Objection, in accordance with the real hierarchy as the chief executive in terms of land acquisition and the Institution that needs land.

The authority attached to the Court is the authority to examine, hear, decide and settle disputes over objections to the form and/ or amount of compensation, the determination of which is based on the deliberation of compensation, which in this case the objection is filed in the form of an Application. Submission of an application is made using Indonesian language and an objection must be submitted in writing by the Objection Applicant, in which the application contains:

1. Identity of Applicant Objection;
2. The identity of the respondent object contains;
3. Complete and clear mention of the establishment of the construction site;
4. Mention of the time and place of implementation and the minutes of the results Change and Loss Determination Deliberation, in the event that the Objection Applicant has an official report on the results of the Determination of Compensation;
5. Description which is the basis of the objection;
6. The main matters that are applied for in the application.

The objection as described above, besides being written can also be a digital format that is stored electronically, in storage media, among others in the form of solid discs or similar (*disharmony*). The objection submitted by the Objection Applicant is signed or by its attorney by attaching an introduction to the evidence in the form of:

1. Evidence relating to the identity of the objection applicant;
2. A photocopy of a letter of evidence to prove that the Applicant is the party entitled to the land acquisition object.

Procedure for filing objections according to PERMA Number 3 of 2016, as stated in Ar-

**1** Article 8 paragraph (1) Objection is submitted to the Court whose jurisdiction covers the location of the object of land acquisition. Furthermore, in Article 8 paragraph (2) the Registrar is obliged to conduct administrative objections and examine the preliminary evidence as referred to in Article 7. To the Chairperson of the Court, the Registrar then submits the registered case file, and then the Judge's appointment is made by the Chief Justice in order to conduct an examination and adjudicate the existing objections, the court clerk appoints the substitute clerk to record the proceedings. The judge then subsequently issues the determination of the day of the hearing by also including the schedule scheduling plan, where it must be carried out on the same day that is since the Registrar submits case files, Appointment of Judges who examine and hear Objection, the clerk appoints the substitute clerk and the judge announces the determination of the trial day. Planned schedule of hearings contained in Article 11 paragraph (3) Perma No. 3 of 2016.

Furthermore, regarding the summons of the trial, the summoning of the first session was accompanied by the determination of the Judge who tried it, containing the day and date of the first trial and the planned schedule of the trial. An order to complete the completeness of other evidence, in addition to the preliminary evidence notified to the applicant of the objection, in addition to that, instructed the Respondent to object to the completeness of the evidence presented, and the order also to prepare witnesses and/or experts to be submitted at the trial based on the schedule plan the trial that has been given, if it is necessary for the objection applicant and/ or the objector to submit their respective witnesses and/ or experts. A summons by a replacement confis-

icator must be received by each objection applicant and the objector or his attorney within the period determined by the law, which is no later than three days before the trial day. Then, by attaching changes to the schedule at the next trial, the bailiff or substitute bailiff returns to summon the trial to the parties.

The obligation of the Court to carry out the law in terms of deciding an objection in terms of both the form and amount of compensation with a time limit specified within 30 (thirty) days, since the case the Application is registered in the Registrar's Office. Court hearings are carried out as well as other civil case hearings conducted in trials that are open to the public, excepted without mediation procedures, without going through the submission process in the form of exceptions, or reconciliation, or intervention, even replication and duplication, as well as conclusions from the parties as a whole.

Regarding to the matters that have been decided in the District Court on the objection submitted, whether by the objection applicant or by the objection defendant, legal action can be taken, but the legal remedy for the District Court's decision regarding the objection can only be made a cassation without appeal. . The duration of an application for cassation is 14 (fourteen) days after the court decision is pronounced.

The obligation of the Supreme Court of the Republic of Indonesia to decide upon the cassation application within 30 (thirty) days after the application for cassation is registered at the Supreme Court, which then is the final decision on the final and binding objection without any other legal remedies .

## **CONCLUSION**

The assessment issued by the Appraiser

<sup>1</sup> often results problems between the Government as the committee for the procurement of land and the community as the party entitled to the object of land acquisition coupled with the existence of conflicts regarding Article 37 paragraph (1) and (2) of the Act Number of 2012 with Article 66 paragraph (4) The President Regulation Number 71 of 2012. The deliberation in question is absolute deliberation about the form of compensation, so if there is a debate about the form of compensation in question is more to the value of the compensation, the change to the amount of compensation is not done as mentioned in Article 37 paragraph (1) the Act Number 2 of 2012, but through legal objection efforts submitted to the Court, because the appraiser is a professional and independent institution.

The law provides space for those who feel aggrieved to fight in the form of objections in the form of a lawsuit filed in the Court with a specified time limit, so that the effort to defend their rights, the rightful party who feels aggrieved over the intended compensation can be carried out. Appraisers are independent and active assessors. The assessment carried out by the appraiser must be in accordance with the requested data, based on the results of the Inventory and Identification of data in the form of maps on land parcels and nominative data, as well as other data as supporting data for the process of determining the value of compensation, in order to minimize conflict between the parties. Deliberations referred to Article 37 paragraph (1) and (2) of the Act Number 2 of 2012 is a discussion on the form of compensation based on the principle of Agreement as Article 66 paragraph (4) of the President Regulation Number 71 of 2012, and if there is a dispute concerning the amount of compensation, a legal remedy

should be made in the form of a lawsuit filed with the Court.

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- The Act Number 5 of 1960 concerning Agrarian Principles.
- The Act 2 of 2012 concerning Land Procurement for Development in the Public Interest.
- The Republic of Indonesia President Regulation Number 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.
- The Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2016

concerning Procedures for Submitting Objection and Custody of Losses to the District Court in the Procurement of Land for Development in the Public Interest.

The Regulation of the Head of the National Land Institution of the Republic of Indonesia Number 3 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition.

# THE OBJECTIVES FROM THE RIGHTFUL PARTY ON THE PROPERTY APPRAISAL BY THE APPRAISER FOR THE COMPENSATION IN LAND PROCUREMENT

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