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# Jurnal Dinamika Hukum

Vol. 23 Issue 1, January 2023

E-ISSN 2407-6562 P-ISSN 1410-0797

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: [10.20884/1.jdh.2023.23.1.3436](https://doi.org/10.20884/1.jdh.2023.23.1.3436)

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## Maladministration in Land Acquisition of Public Interest (Case Study: Solo-Yogyakarta Highway Project)

Sudjito✉

Universitas Gadjah Mada

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### Abstract

This study aims to analyze land acquisition maladministration for the public interest. This juridical-normative research is descriptive-qualitative. The data were taken from documents, archives, previous research results, and other validated sources. Data analysis was carried out through the following stages: data reduction, data display, data processing, and data meaning. Conclusions are drawn inductively.

The results show: (1) Maladministration in land acquisition occurred due to deceitful practice regarding the contents of the regulation, as well as the assessment of compensation; (2) There was no discussion and consideration of compensation for non-physical components so that the amount of compensation is low; (3) The former holders of land rights feel very disadvantaged because non-physical compensation which includes: moving costs, solatium, Land Deed Official (PPAT) fees, a fee of Duty on the Acquisition of Land and Building Rights (BPHTB), and waiting for interest expenses, were not taken into account.

**Keywords:** Compensation; Maladministration; Land Acquisition

### Abstrak

Penelitian ini bertujuan untuk menganalisis perihal maladministrasi pengadaan tanah untuk kepentingan umum (Studi kasus: Jalan Tol Solo -Yogyakarta). Jenis penelitian ini yuridis-normatif. Sifat penelitian: deskriptif-kualitatif. Data yang diteliti sebatas data sekunder. Sumber data: dokumen, arsip, hasil-hasil penelitian sebelumnya, dan sumber lainnya yang tervalidasi. Analisis data dilakukan melalui tahap-tahap: reduksi data, display data, pengolahan data, dan pemakaian data. Kesimpulan ditarik secara induktif.

Hasil penelitian menunjukkan: (1) Maladministrasi terjadi ketika panitia melakukan deceitful practice, yakni praktik kebohongan atau tidak jujur terhadap publik tentang isi regulasi, maupun penilaian ganti kerugian; (2) Pemberian ganti kerugian komponen nonfisik, tidak dimusyawarahkan, dan tidak diperhitungkan, sehingga besarnya ganti kerugian menjadi rendah; (3) Bekas pemegang hak atas tanah sangat dirugikan karena ganti kerugian nonfisik yang meliputi: biaya pindah, solatium, biaya PPAT, biaya BPHTB, dan beban bunga tunggu, tidak diperhitungkan.

**Kata kunci:** Ganti Kerugian; Maladministrasi; Pengadaan Tanah

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## Introduction

It cannot be denied that administration is an integral part of a regulation implementation, so the purpose of the regulation can be achieved easily and with maximum results. Regulation means rules. Definition, regulation is often defined as rules made by the government or other authorities to control how something is done or how people behave. In this article, regulation is defined as a rule made by the competent authority in the form of a statutory regulation or positive law, whose purpose is to regulate something so everything runs orderly and smoothly. Thus, the primary function of regulation is as a guide, controller, or control for every action taken by members of society or citizens, even state administrators. This regulation exists in various fields of community life. Therefore, regulations

✉ Corresponding Author: [sudjito@mail.ugm.ac.id](mailto:sudjito@mail.ugm.ac.id)

are essential to determine what steps to take to achieve the goals of living together on a community and state scale.

In land acquisition for public interest development, the urgency of implementing regulations referred to as good administration, among others, is related to assessing compensation for land and other objects, which must be given to former land rights holders. Good administration always contains regulations that have *osial* or *populist* characteristics. This means it is oriented towards fulfilling the rights of the people affected or targeted by the regulation. No party is harmed in the case of land acquisition for the public interest. All rights of landowners or ownership of objects on it are protected and respected. This means everything is valued, and it is time to pay in full.

In this assessment activity, a series of actions, including recording data and information sequentially, both from within and outside, to provide information and make it easier to retrieve, partially or wholly. The administrative function (administration) in land acquisition for the public interest must be accompanied by communication, socialization, transparency, and accountable public services to all parties, especially landowners affected by land acquisition for the public interest (**Saintiff, 2021**).

It has become a common understanding that in the context of national development aimed at the prosperity of the Indonesian people, the Government does so with various instruments, one of which is the construction of the Solo - Yogyakarta Highway. To realize the construction of the highway, the Government conducted land acquisition. That is where the Government negotiates (deliberates) with the land rights owners, as stipulated in Law Number 2 in 2012 (hereinafter referred to as Law No.2/2012). In this Law No.2/2012, one of the underlying principles in land acquisition for the public interest is the principle of agreement. It is explicitly stated in Article 2 letter f that Land Acquisition for Public Interest is implemented based on the principle of agreement.

According to Amarul Haq Fityan, if the principle of deliberation is truly implemented, it is certain that the principle of *betterment*, which is the basic principle of land acquisition, can be achieved. The principle of *betterment* is a principle that states that "neither the party taking the land nor the party whose land is taken should be favored/disadvantaged" (**Fityan, 2021**).

The results of previous research as conducted by Mayasari, A., Santi, E. S., & Triyono in *Jurnal Law Review*, 1(2), 1-14, stated that in practice, land acquisition in Indonesia is often not follow the principles and provisions of the applicable law. Particularly concerning the disagreement over the value of compensation, the *betterment* principle is not realized. Further impact, some parties are

disadvantaged. The party that is often disadvantaged is the land rights holder. This occurs due to several reasons, such as 1) the rights and interests of landowners lack legal protection; 2) there is no common understanding and attitude among implementers, including court bodies, in implementing the policies outlined in the regulation; 3) the lack of government socialization about the existence of objections to compensation, so that there is an impression that the law does not or does not take sides to protect people whose land is needed for the continuation of development (Mayasari & Triyono, 2013).

In that regard, Pambudi, H. (2021), as an activist and observer of social issues, in a statement published in solopos.com entitled "Land Acquisition for Solo-Jogja Highway," provides evidence regarding one concrete example of the non-implementation of the principle of *betterment* is land acquisition for the public interest, the Solo -Yogyakarta Highway. According to Pambudi (2021), this project requires a budget of IDR 26.6 trillion for land acquisition and physical development. The number of villages affected by the project is 74, consisting of four districts, i.e., Boyolali District, Karanganyar District, Klaten District, and Sleman District. The total land area that needs to be acquired is 6,495,905 m<sup>2</sup>. By the end of 2020, the land acquisition had reached 1,614 parcels. It was also explained that in the land acquisition process completed at the end of 2020, various problems arose in the affected communities, especially related to the compensation value, which was considered too low, maladministration, and potential human rights violations (Pambudi, 2021).

### Research Problems

The problems of this research focus on: 1. Why maladministration in land acquisition occurs; 2. Whether maladministration is indeed related to the assessment of compensation; 3. Whether maladministration is indeed detrimental to the rights of former landowners.

### Research Methods

This research analyzes the maladministration of land acquisition for the public interest (Case study: Solo -Yogyakarta Highway). This type of research is juridical-normative. The meaning of data truth is returned to the applicable positive legal norms. Nature of research: descriptive-qualitative, which overviews the problem/object under study. As stated by Sugiyono (2005), a full, thorough, comprehensive description of the object under study, in this case, maladministration in land acquisition for the public interest (the case of the Solo-Yogyakarta Highway), is attempted to be presented in full. However, due to limited resources and for the sake of efficiency, the data studied is considered sufficient to be limited to secondary data. Data sources are documents, archives, previous

research results, and other validated sources. Data analysis was conducted through the following stages: data reduction, data display, data processing, and data interpretation. Conclusions were drawn inductively.

## Discussion

### Literature Review

#### 1. Valuation of Compensation in Land Acquisition

Article 1 point 2 of Law No. 2/2012 states that land acquisition is an activity to provide land by giving proper and fair compensation to the entitled parties. According to Article 1 point 10 of Law No. 2/2012, what is meant by compensation is adequate and fair compensation to the entitled parties in the land acquisition process. The basis for providing compensation is the result of an agreement in deliberations that determine the form and/or amount of compensation, as stipulated in Article 37 of Law No. 2/2012. Article 2 of Law No. 2/2012 stipulates that one of the principles that serve as the basis in the implementation of land acquisition for the public interest is the principle of agreement. In the explanation of the article, it is affirmed that the "principle of agreement" means that the land acquisition process is carried out by deliberation of the parties without coercion to obtain mutual agreement.

Imam Koeswahyono (in an article entitled "Critical Review of Law No.2 of 2012, A Critical Note on the Law on Land Acquisition for Development Purposes No.2 of 2012", as published in PPHA Journal, 17 March 2012) stated that the discussion about the value and price of objects affected or becoming the object of land acquisition activities for development purposes is often one of the roots of land disputes, between the subject of land rights and those who need land for development activities. It is stated that value is the meaning (worth) of an item/object, so objects have value if objects have meaning for someone, which is often linked to market value. Meanwhile, price is the amount of money paid in a transaction to get the property rights of an object. Thus it can be formulated as  $\text{price} = \text{cost} + \text{interest factor} \& \text{market}$ . Value and price can be the same or different depending on the reasonableness of the measure:

- a. An eligible and entitled seller is willing to sell his property;
- b. A capable and feasible buyer is willing to purchase the property;
- c. There is sufficient time to bargain
- d. There is sufficient time to show the property sold to the market
- e. Prices that do not change/fluctuate over a period of time
- f. Not considering special offers.

Value and price have an important meaning in conducting valuation activities, that is, budgeting/estimating the value of an interest in a property for a certain purpose, among others, to calculate losses in land acquisition activities that must follow the principle of *betterment*, which is a principle that emphasizes the provision of compensation that is not beneficial and not detrimental to both parties. According to Imam Koeswahyono, economically, this may be the case. Still, from a legal perspective, it seems that implementing this principle creates injustice

regarding land rights, which is usually the disadvantaged party (**Koeswahyono, 2021**).

Regarding the application of the principle of agreement in land acquisition for development in the public interest, it is stated by Gozali, D. S. in an article entitled "Application of the Principle of Agreement in Land Acquisition for Development in the Public Interest" as published in *Jurnal Yuridika*, 32 (3), 393), that the principle of agreement of the parties exists both in the preparation stage and in the implementation stage of land acquisition. The agreement is carried out in public consultation activities in the preparation stage. Article 1 point 8 of Law No. 2/2012 states that public consultation is a dialogic communication process or deliberation between interested parties to reach an understanding and agreement in planning land acquisition for development in the public interest (**Gozali, 2017**).

It is also stated by Gozali, D. S. that at the activity stage, compensation is determined through deliberation to determine the form and/or amount of compensation. The result of the agreement in this deliberation is the basis for granting compensation. The definition of the principle of agreement, as mentioned in the Explanation of Article 2 of Law No. 2/2012, and the use of the term agreement followed by the term deliberation, is important to note. For this reason, an understanding of deliberation is needed to understand the meaning of the agreement itself (**Gozali, 2017**).

In that regard, inspired by the experience in his research on the implementation of land policy for public interest in North Jakarta, it was stated by Mulyadi, in his article entitled "Implementation of Land Policy for Public Interest in North Jakarta" as published in *Jurnal Aspirasi*, 8(2), 145-159, that Law No. 2/2012 does not provide the definition of agreement and also does not provide the definition of deliberation. In the past, the notion of deliberation was contained in Presidential Decree No. 55/1993 on Land Acquisition for the Implementation of Development for the Public Interest (hereinafter Keppres No. 55/1993) and Presidential Decree No. 36/2005, which are no longer valid. Article 1 point 5 of Presidential Decree No. 55/1993 states that what is meant by deliberation is a process or activity of listening to each other with an attitude of mutual acceptance of opinions and wishes based on voluntarism between the party holding the land rights and the party requiring the land, to obtain an agreement on the form and amount of compensation (**Mulyadi, 2017**).

Mulyadi also states that the same definition but with a slightly different one is found in Article 1 point 10 of Presidential Regulation No. 36/2005, which formulates the definition of deliberation as an activity that contains a process of listening to each other, giving and receiving opinions, and the desire to reach an agreement on the form and amount of compensation and other issues related to land acquisition activities based on voluntariness and equality between parties who own land, buildings, plants, and other objects related to land and parties who need land. It can be concluded that deliberation is a process or activity of listening to each other with an attitude of mutual acceptance of opinions and desires based on voluntariness between the owner of land rights and those who need land to obtain an agreement on the form and amount of compensation (**Mulyadi, 2017**).

Related to the causes of land acquisition disputes for the public interest Sufriadi, Y. (2011), in his research in Bengkulu entitled "Causes of Land Acquisition Disputes for the Public Interest (Case Study of Land Acquisition Disputes for the Public Interest in Bengkulu)," as published in *Jurnal Hukum Ius Quia Iustum*, 18(1), 42-62, (<https://doi.org/10.20885/iustum.vol18.iss1.art3>) states that if you pay attention to the laws and regulations governing the procedures for land acquisition for the public interest that apply and have been applicable and implemented in the practice of land acquisition for the public interest, the intended deliberation is only a formality, because the Government has determined the amount of compensation. In the so-called deliberation, the form and amount of compensation are determined by the Land Acquisition Committee, while the opinions and wishes of the landowners are considered. From this regulatory weakness, disputes often arise in land acquisition for development.

The results of other studies, as conducted by Kasenda entitled "Compensation in Land Acquisition for the Public Interest" as published in the *Journal of Legal Science Journal*, 2(2), show that according to Law No.2/2012 that compensation is a fair and just replacement to the entitled party in the process of land acquisition. The assessment of the value of compensation by the government is carried out parcel by a parcel of land, which includes: (1) Land; (2) aboveground and underground space; (3) Buildings; (4) Plants; (5) objects related to land; and/or other losses that can be assessed. The meaning of other losses that can be valued is non-physical losses that can be equated with monetary value, such as losses due to loss of business or work, costs of relocating, costs of changing professions, and the value of the residual property (Kasenda, 2015).

Juridically-normatively, Paragraph 3 of Law No.2/2012 regulates the assessment of compensation. Articles 31 to 36, mentioned below, have been regulated in detail.

Article 31 stipulates:

- (1) The Land Agency appoints the Appraiser in accordance with the provisions of laws and regulations.
- (2) The Land Agency announces the Appraiser that has been determined as referred to in paragraph (1) to carry out the valuation of the Land Acquisition Object.

Article 32 stipulates:

- (1) The appraiser determined as referred to in Article 31 paragraph (1) shall be responsible for the appraisal that has been carried out.
- (2) Violation of the obligations of the Appraiser as referred to in paragraph (1) shall be subject to administrative and/or criminal sanctions following the provisions of laws and regulations.

Article 33 stipulates:

The assessment of the amount of the value of Ganti Kerugian by the Appraiser as referred to in Article 32 paragraph (1) is carried out parcel by parcel of land, including:

- a. land;
- b. above-ground and underground spaces;

- c. building;
- d. plants;
- e. objects related to land; and/or
- f. other losses that can be assessed.

Article 34 stipulates:

- (1) The value of Compensation for Loss assessed by the Appraiser as referred to in Article 33 is the value at the time of the announcement of the determination of the location of development for the Public Interest as referred to in Article 26.
- (2) The amount of the compensation value based on the Appraiser's appraisal results, as referred to in paragraph (1), is submitted to the Land Institute with the minutes.
- (3) The value of Compensation for Loss based on the appraiser's assessment, as referred to in paragraph (2), shall be the basis for the deliberation on determining Compensation for Loss.

If specific parcels of land affected by Land Acquisition have remains that can no longer function following their designation and use, the Eligible Parties may request a full replacement of their parcels of land.

Article 36 regulates:

Compensation can be given in the form of the following:

- a. money;
- b. replacement land;
- c. resettlement;
- d. shareholding; or
- e. other forms agreed upon by both parties

Thus, the value of compensation assessed by the Appraiser is the value at the time of the announcement of the determination of the location of development for the public interest. The amount of compensation value based on the appraiser's assessment result is submitted to the Land Agency with the official report. The compensation value based on the Appraiser's result becomes the basis for the deliberation on the determination of compensation.

If certain land parcels affected by Land Acquisition have remains that can no longer be functioned following their designation and use, the entitled Party may request a full replacement of the land parcels. What is meant by no longer able to function is a plot of land that can no longer be used in accordance with its original designation and use, for example, a divided residential house so that part of it can no longer be used as a residential house. In connection with this, the party who controls/owns the land may request compensation for the entire land.

. Juridically-normatively, compensation can be given in the form of (1) Money; (2) Replacement land; (3) Resettlement; (4) Shared ownership; or (5) Other forms agreed upon by both parties. Resettlement means providing replacement land to the entitled party to another location per the agreement in the land acquisition process. Meanwhile, compensation through share ownership is the participation of shares in development activities for the related public interest and/or its management based on an agreement between the parties. Other forms



agreed upon by both parties include a combination of 2 (two) or more forms of compensation.

Subekti, in his research titled "Policy on Granting Compensation in Land Acquisition for Development in the Public Interest," as published in *Jurnal Hukum Yustisia*, 5(2), found evidence that at the implementation stage of land acquisition, the activity of determining compensation is determined by deliberation activities to determine the form and/or amount of compensation based on the results of the compensation assessment (**Subekti, 2016**).

There is also other evidence that the valuation of this compensation, according to the provisions of Article 37 of Law No. 2/2012, is carried out by the Land Appraiser, which according to the provisions of Article 1 point 11 of Law No. 2/2012 in conjunction with Article 1 point 11 of Presidential Regulation No. 71/2012 in conjunction with Presidential Regulation No. 148/2015 is an individual who conducts valuation independently and professionally who has received a license to practice valuation from the Minister of Finance and has been licensed by the Ministry to calculate the value or price of land acquisition objects. Neither Law No. 2/2012 nor its implementing regulations, namely Perpres No. 71/2012 and Perkaban No. 5/2012, specify valuation standards in the legal regulations used by Land Appraisers. Neither Law No. 2/2012 nor its implementing regulations explain the position of the results of the valuation by the Land Appraiser, whether it is a fixed result that cannot be changed or can still be changed during deliberations with the entitled parties.

### **1. Administration and Maladministration**

In the Great Dictionary of Indonesian Language (*KKBI*) administration is defined as efforts and activities that include setting goals and determining ways of fostering organizational development. Another definition of administration distinguishes between administration in a narrow sense, which includes activities such as note-taking, correspondence, light bookkeeping, typing, agendas, and other activities of a technical nature. As for administration in a broad sense, it is the entire process of cooperation of two or more people to achieve goals through using certain facilities and infrastructure efficiently and effectively (Anonymous. Definition of Administration (Prawiro, 2023).

In that regard, experts define administration variously, according to their respective perspectives and focus of attention. According to Arthur Grage, the administration organizes the communication and service of an organization's records. Meanwhile, according to Ulbert, administration, in a narrow sense, is the preparation and recording of data and information in sequence, both from inside and outside, to provide information and make it easier to get back either partially or completely. This definition is also known as Administration. According to George Terry, the administration is planning, controlling, and organizing office work and mobilizing those who do it to achieve predetermined goals.

From various sources, it can be briefly described regarding administrative functions, as follows (Umam, 2021):

1. Planning. Planning is an activity to collect initial data, data processing, to develop a plan, to make a certain job, or project.



2. Organising. The next administrative function is to arrange and build work communication between members of the organization so that unity of effort will be achieved to achieve the goals of an organization or company.
3. Procurement of labor (staffing). Staffing is an administrative function to find, assess, evaluate, and establish working relationships with employees or laborers and dismiss them if they are no longer needed.
4. Providing guidance (directing). The next administrative function is to provide guidance, provide suggestions, and input for the improvement of an activity that is being carried out so that the task can be carried out optimally and get satisfactory results.
5. Coordinating. The function of administration is to coordinate all the interests and objectives of the organization or company being implemented so that they can be united and in line with the same place and time.
6. Reporting. The function of administration as a report is to provide information about what has been done in an activity as a form of accountability.
7. Budgeting. Budgeting is an activity that manages and plans ongoing financial or budgetary matters.

The elements of administration are (Umam, 2021):

1. Organization. An organization is a place where administrative activities are usually carried out. The people who work in a business will be gathered in a container.
2. Management. Management is the primary tool for the implementation of administration. It includes organizers, movers, managers, and operational personnel.
3. Communication. The administration also has the element of organizing patterns between departments.
4. Staffing. This relates to the use of labor. In administration, there are interconnected processes, such as recruitment, placement, utilization, and dismissal.
5. Finance. This relates to the financing of the cooperation contract from how the funds are obtained to their accountability.
6. Supplies. This administration deals with the procurement of goods, storage, and destruction of goods. The administration will record all items in an organization or company.
7. Administration. Administration includes various kinds of recording, storage, and delivery.
8. Public Relations. The administration will then regulate how an organization or company relates to the community to consumers.

It is a fact that sometimes the above functions and administration elements are not fulfilled. As a result, what is called maladministration occurs. In general,

maladministration is behavior or actions against the law, exceeding authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the delivery of public services carried out by the state and government administrators. Within the scope of the general understanding above, maladministration must include (1) unlawful behavior or actions, (2) exceeding authority, using authority for purposes other than those for which the authority is intended, (3) there is negligence or neglect of legal obligations in the delivery of public services carried out by state and government administrators, (4) material and/or immaterial losses arise for the community and individuals.

The forms of maladministration are actions taken by state or government officials, due to their relationship with the following elements (Hasanah, 2016):

1. Mis Conduct is doing something in the office that is against the interests of the office.
2. Deceitful practices, namely practices of lying, and dishonesty towards the public. The public is treated to misleading information, information that is not true, for the benefit of bureaucrats
3. Corruption occurs due to abuse of authority, including using authority for purposes other than the purpose of granting authority, and with these actions for the benefit of enriching himself, other groups, or corporations that harm state finances.
4. Defective Policy Implementation is a policy that does not end with implementation. Political decisions or commitments only stop until the discussion of laws or the passing of laws, but not until they are followed up into reality.
5. Bureaupathological bureaucratic illnesses include:
  - a. Indecision is the absence of a clear decision on a case. So a case that has occurred is left halfway or floating without a clear final decision. Usually, such cases involve several high-ranking officials. Many cases are discontinued in practice.
  - b. Red Tape is a bureaucratic disease related to service delivery that is convoluted and takes a long time, even though it can be completed quickly.
  - c. *Cicumloution* is an illness of bureaucrats who are used to using too many words. Many promises but not fulfilled. Many sweet words to calm the turmoil of the masses. Sometimes there are many words of controversy between elites whose nature can confuse the public.
  - d. Rigidity is a bureaucratic disease that is rigid. This is the separation model's effect and the bureaucratic character's impersonality. This disease can be seen in bureaucratic services that are rigid and inflexible, which are standard according to the rules, without looking at case-by-case.
  - e. Psycophancy is the tendency of bureaucrats to curry favor with their superiors. There is a symptom of *Asal Bapak senang* (as long as you're happy). The tendency of bureaucrats to serve their

superiors rather than serving the public and conscience. This symptom can also be said to be loyalty to individuals, not the public.

- f. Overstaffing is a symptom of the illness in bureaucracy in the form of a swelling staff. Too many staff reduces efficiency.
- g. Paperasserie is the tendency of bureaucracy to use a lot of paper, a lot of forms, and a lot of reports, but it is never used as its function should be.
- h. Defective accounting is a defective financial audit. This means that financial reporting is not as it should be, there is double financial reporting for the sake of trickery. Usually, this financial error is the markup of financial projects.

From the same source, information was also obtained that the forms of maladministration committed by bureaucrats were:

1. Dishonesty, various acts of dishonesty include: using public goods for personal use, accepting money, etc.
2. Unethical behavior, these unethical actions are those that may be legally innocent but violate the ethics of being an administrator.
3. Disregarding of law, act of disregarding the law also includes the act of underestimating the law for one's interests or the interests of one's group.
4. Favoritism in interpreting the law, is the act of interpreting the law for the benefit of the group, and tends to choose the application of the law that benefits the group.
5. Unfair treatment of employees, this action tends to the treatment of leaders to their subordinates based on the like and dislike factor. Liked people tend to get more facilities, even though their achievements are not good. Conversely, people who are not favored tend to be treated as limited.
6. Gross inefficiency is the tendency of a public agency to waste state finances.
7. Covering up mistakes, the tendency to cover up one's own mistakes, the mistakes of one's subordinates, the mistakes of one's institution, and refusing to cover one's mistakes.
8. Failure to show initiative, a tendency not to take initiative but to wait for orders from above, even though the regulations allow him to act or take policy initiatives.

Related to maladministration, as described above, the *Ombudsman* is an institution that plays a strategic role in prevention and prosecution. As is known that the Ombudsman is a state institution that has the authority to oversee the implementation of public services organized by state and government administrators, including those held by State-Owned Enterprises, Regionally-Owned Enterprises, and State-Owned Legal Entities as well as private entities or individuals assigned the task of organizing certain public services, some or all of

which are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget.

In its strategic position, specifically, the *Ombudsman RI* believes that the most common forms of maladministration are protracted service delays, abuse of authority, procedural irregularities, neglect of legal obligations, non-transparency, negligence, discrimination, unprofessionalism, lack of information, arbitrary actions, legal uncertainty, and mismanagement. Maladministration is very vulnerable and can lead to corruption. It was also stated that one of the reasons why the region was rated red by the *Ombudsman* was because the head of the Regional Apparatus Organisation (OPD) did not read the public service law and did not have concern for public service standards. Future *Ombudsman* assessments will focus on administrative services that fulfill practical, participatory, accountable, sustainable, transparent, and fair elements.

In the context of land acquisition for development purposes, especially the construction of the Solo-Yogyakarta Highway, the role of the *Ombudsman* needs to be seen and studied as a unit with the reality of maladministration that occurs in it.

## **Results of the Research and Discussion**

### **1. Causes and Forms of Maladministration in Land Acquisition**

In the land acquisition for the national strategic project of the Solo-Yogyakarta Highway, this research found evidence that maladministration has occurred. The evidence includes the attitude or actions of the Land Acquisition Committee that hid the value of the non-physical compensation component that must be given to the community. Non-physical losses include job or business loss, including change of profession, emotional losses (*solatium*), and others.

Article 33, letter f of Law No.2/2012, states that other losses that can be valued must be given to the former right holder. In the explanation of the article, it is stated that what is meant by "other losses that can be valued" are non-physical losses that can be equated with monetary value, such as losses due to loss of business or work, costs of relocating, costs of changing professions, and the value of the residual property.

Referring to the opinion of Maria SW Sumardjono, provides a critical note on the rights of former landowners regarding land acquisition for development purposes. It is stated that it is time for the land acquisition policy to rely on the principles of democracy and uphold human rights by paying attention to the following matters (Koeswahyono, 2012):

1. Land acquisition is a legal act that results in the loss of a person's physical and non-physical rights and the loss of property temporarily or permanently;
2. The compensation provided must take into account: 1. loss of rights to land, buildings, crops, 2. loss of income and other sources of livelihood, 3. assistance to move to another location by providing an alternative new location equipped with proper facilities, 4. assistance to restore income so that a situation equivalent to the situation before the expropriation is achieved;

3. Those displaced by land expropriation should be taken into account in the granting of compensation should be expanded.
4. To obtain accurate data on those affected by evictions and the amount of compensation, a basic & socio-economic survey must be conducted;
5. There should be an agency responsible for the implementation of expropriation and resettlement;
6. The method of deliberation to reach an agreement must be fostered
7. There needs to be a means of accommodating complaints and resolving disputes arising in the land expropriation process.

Other maladministration occurred during the deliberations. In the deliberation on compensation, residents were only given information about the value of compensation covering physical losses, consisting of indications of the market value of land, buildings, plants, and additional non-physical losses (burden and interest on the waiting period). This kind of maladministration justifies the bad practice of conducting deliberations full of formalities and lies. This fact is consistent with the results of field research conducted by Amarul Haq Fityan (2021).

Whereas in Paragraph 4. of Law No.2/2012, regarding the Deliberation on the Determination of Compensation, the following matters have been regulated in detail:

Article 37

- (1) The Land Agency conducts deliberations with the Eligible Party within a maximum period of 30 (thirty) working days after the assessment results from the Appraiser are submitted to the Land Agency to determine the form and/or amount of Ganti Kerugian based on the results of the compensation assessment as referred to in Article 34.
- (2) The results of the agreement in the deliberation, as referred to in paragraph (1) shall be the basis for granting compensation to the Eligible Party as contained in the minutes of the agreement.

Article 38

- (1) Suppose there is no agreement on the form and/or amount of Compensation. In that case, the Eligible Party may file an objection to the local district court within a maximum period of 14 (fourteen) working days after the deliberation on the determination of Compensation as referred to in Article 37 paragraph (1).
- (2) The district court shall decide on the form and/or amount of compensation within a maximum period of 30 (thirty) working days from the receipt of the objection.
- (3) Parties who object to the decision of the district court as referred to in paragraph (2) may within a maximum period of 14 (fourteen) working days file a cassation to the Supreme Court of the Republic of Indonesia.
- (4) The Supreme Court shall give its decision within a maximum period of 30 (thirty) working days after the cassation request is received.

- (5) The decision of the district court/Supreme Court that has obtained permanent legal force becomes the basis for payment of compensation to the objecting party.

#### Article 39

If the Eligible Party rejects the form and/or amount of the Compensation but does not file an objection within the time as referred to in Article 38 paragraph (1), by law, the Eligible Party shall be deemed to have accepted the form and amount of the Compensation as referred to in Article 37 paragraph (1).

Reflecting on the maladministration described above, the government through the Committee for Land Acquisition for the Solo-Yogyakarta Highway construction project should have put forward the principle of *betterment* in the deliberation process of determining compensation. If the principle of *betterment* is put forward, certainly, misunderstandings among residents do not occur.

*Betterment* can be translated as an effort to make conditions better than before. The principle of *betterment* can briefly be interpreted as a principle that prioritizes the importance of paying attention to former land rights holders, so that their lives after the release of land for development purposes become better, and more prosperous, physically and mentally.

Although this *betterment* principle is not explicitly formulated in Law No.2/2012, it is implicitly regulated, among others, in the following Article 36:

#### Article 36

Compensation can be given in the form of:

- a. money;
- b. substitute land;
- c. resettlement;
- d. shareholding; or
- e. other forms agreed upon by both parties.

The Explanation to the Article states:

#### Letter c

What is meant by "resettlement" is the process of providing replacement land to the Eligible Party in another location in accordance with the agreement in the Land Acquisition process.

#### Letter d

What is meant by "form of compensation through share ownership" is the participation of shares in development activities for the relevant public interest and/or its management based on an agreement between the parties.

#### Letter e

Other forms agreed upon by both parties such as a combination of 2 (two) or more forms of compensation as referred to in letter a, letter b, letter c, and letter d.

Analyzed more sharply, the maladministration in land acquisition for the Solo-Yogyakarta Highway was caused by the following.

First, the Appraisal was unable to absorb the aspirations and difficulties of residents in finding replacement land. In several villages in Klaten District, the Appraisal did not meet with residents but only took market price comparison data,

which was then processed to be used as the basis for the fair replacement value (NPW). This was experienced by many affected residents who work as farmers and their rice fields were affected by the Solo-Yogyakarta Highway project.

Second, during the land acquisition process for the Solo-Yogyakarta Highway project, a lot of pressure developed from public officials. The public officials in question are those who are part of the Solo-Yogyakarta Highway project, such as commitment-making officials (PPK), prosecution officials, district government officials, National Land Agency officials, village heads, hamlet heads, and even heads of neighborhood associations (*RT/RW*). These officials promised that the price/value of compensation would be above the market price and suggested that residents accept whatever the value of the compensation given. If they did not accept, they were welcome to sue in court. The statement was made to minimize criticism of the land acquisition process and procedures and, simultaneously, became an effective means of intimidation for people in rural areas. People in rural areas are generally very unfamiliar with dealing with the courts.

Third, Article 37 of Law No. 2/2012 regulates the organization of deliberations, the granting of compensation, and the form and value of compensation. As this is crucial, it is necessary to quote the full text of the Article as follows:

- (1) The Land Agency conducts deliberations with the Eligible Party within a maximum period of 30 (thirty) working days after the assessment results from the Appraiser are submitted to the Land Agency to determine the form and/or amount of compensation based on the results of the compensation assessment as referred to in Article 34.
- (2) The results of the agreement in the deliberation, as referred to in paragraph (1), shall be the basis for granting compensation to the Eligible Party as contained in the minutes of the agreement.

Referring to paragraph (2) of Article 37 above, in fact, the valuation result of the Appraiser is only a basis for deliberation and not the final result of the amount of compensation. This is closely related to the provisions in Article 34:

- (1) The value of Ganti Kerugian assessed by the Appraiser as referred to in Article 33 is the value at the time of the announcement of the determination of the location of development for the Public Interest as referred to in Article 26.
- (2) The amount of the value of Ganti Kerugian based on the appraisal results of the Appraiser as referred to in paragraph (1) is submitted to the Land Institute with the minutes.
- (3) The value of Ganti Kerugian based on the appraiser's assessment as referred to in paragraph (2) shall be the basis for the deliberation on the determination of compensation.

Maladministration in determining the amount and form of compensation in the land acquisition project for the construction of the Solo-Yogyakarta Highway in the form of unilateral interpretation of the results of the Appraiser's assessment. In practice or factual implementation in villages that have completed the payment



of compensation, no deliberation is carried out but solely refers to the results of the Appraiser's assessment. Residents were forced to accept whatever compensation value the Appraiser gave through the Committee. If they disagree (refuse), they will proceed with consignment through the court. The compensation money will be deposited in the Court, which can be taken at any time, but there will be no change (addition) to the amount.

Article 70 of Presidential Regulation No. 71/2012 states that if no agreement has been reached, compensation deliberations can be held more than once. In practice, the content of this regulation is hidden and not implemented by the land acquisition committee. Affected residents are only given information on the fair replacement value (NPW) provided by the appraiser and are forced to accept unconditionally. Read more about Article 70:

#### Article 70

- [1] The deliberation as referred to in Article 68 may be divided into several groups by considering the number of Eligible Parties, and the time and place of the deliberation to determine Compensation.
- [2] If no agreement has been reached, the deliberation as referred to in paragraph (1) may be held more than 1 (one) time.
- [3] The deliberations as referred to in paragraphs (1) and (2) shall be held within a maximum of 30 (thirty) working days after the appraisal results from the Appraiser are submitted to the Chairman of the Land Acquisition Organisation.

Analysis of the data described above shows that the causes of maladministration in land acquisition also occur at the time of the agreement between the Appraiser, along with all elements involved and/or incorporated in the land acquisition committee to provide the lowest possible compensation value. The committee, either individually or jointly, exerted psychological pressure on former land rights holders to immediately agree to the amount and form of compensation determined unilaterally.

Deliberation as the principle of land acquisition implementation was violated with empty promises and intimidation. The Committee ignores transparency at all stages of land acquisition implementation. Closure, lies, and efforts to conceal information, data, and assessment results are carried out by the Committee so that gaps in understanding of regulations and the practice of implementing regulations are inevitable.

All the causes and forms of maladministration in the land acquisition show that the Committee's concern about the administration's urgency is ignored. This phenomenon can be suspected as a sign of administrative, financial, and legal vulnerability of the Committee's decision.

### 1. Low Compensation Value

In the Indonesian Valuation Standards (*SPI*) on land acquisition for a public interest, what is meant by non-physical losses includes several components. Firstly, solatium (10%-30%) depends on the period of stay, and if you have a business, there

is business compensation. Second, the assumption of moving costs (1.5%). Third, the assumption of tax costs, namely the acquisition duty of land and building rights (5%). Fourth, the assumed cost of a land deed official or *PPAT* (1.5%). Physical and non-physical losses are then summed up and multiplied by the estimated length of the month the compensation money is disbursed and then multiplied by bank interest (0.5%). The final result of the sum (physical, non-physical damages, and interest expense for the waiting period) is the total compensation received by residents.

The low value of compensation received by former landowners, in the Solo-Yogyakarta Highway construction project, is inseparable from the violation of the provisions of Article 69 of Presidential Regulation No.148 the Year 2015, which was later amended in the 4th Amendment to Presidential Regulation 71 the Year 2012. The full text of the Article in question:

- (1) The Land Acquisition Organiser invites the Eligible Parties to deliberate on the determination of *Ganti Kerugian* by determining the place and time of implementation.
- (2) The invitation as referred to in paragraph (1) shall be delivered at the latest 2 (two) working days before the date of the deliberation on the determination of Compensation.
- (3) The deliberation as referred to in paragraph (2) shall be chaired by the Chairman of the Land Acquisition Executive or a designated official.

In the practice of providing compensation that has taken place, the non-physical compensation component is not conveyed to affected residents in deliberations. The low value of compensation received by former land rights holders can be analyzed as follows:

First, land acquisition for the public interest must be carried out by providing adequate and fair compensation to former right holders. The amount and form of compensation are decided based on the assessment results of the Appraisal Team. The valuation is carried out parcel by parcel of land, including land, aboveground and underground space, buildings, plants, objects related to the land, and/or other losses that can be valued. The compensation value assessed by the appraiser is the value at the time of the announcement of the determination of the development location for the public interest, which is final and binding. It is not easy to assess all objects of valuation. It should be, and for the sake of fairness, there should first be socialization about who is the appraisal team, how to work, and calculations in the appraisal. These things need to be communicated so that land rights holders understand. This is important so a common understanding can be easily reached and suspicions avoided.

Secondly, the amount and form of compensation need to be discussed. The assessment results of the Assessment Team are only opinions and not final decisions. Everything needs to be brought to the deliberation forum to be discussed to reach an agreement. If the deliberation is held once but no agreement has been reached, then there needs to be a second, third, and so on until the percentage of former land rights holders fulfills the statutory provisions. As an example and comparison, Amarul Haq Fityan found that in the acquisition of land

for the Yogyakarta International Airport (YIA) in Kulonprogo, deliberations took place four times.

Third, the form of compensation can be in the form of money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties. Even though compensation is generally given in the form of money, as evidence of transparency, the possibility of other forms of compensation must also be discussed during socialization or deliberation. By statutory provisions, the determination of the form and/or amount of compensation is carried out in deliberation with the entitled parties no later than 30 days after the appraiser submits the amount of compensation to the land institution based on the results of the compensation assessment. The results of the agreement in the deliberation then become the basis for providing compensation to the entitled parties, which is contained in the minutes of the agreement.

Regarding objections to the amount of compensation, it can be analyzed as follows. Suppose there is no agreement on the form and/or amount of compensation. In that case, the land rights holder, as the entitled party, may file an objection to the local district court within a maximum of 14 days after the deliberation on the determination of compensation. The district court must decide on the form and/or compensation amount within 30 working days of receiving the objection. If any party objects to the district court's decision, that party may file a cassation to the Supreme Court within a maximum of 14 working days.

Furthermore, the Supreme Court must decide within 30 working days of receiving the cassation request. The decision of the district court/Supreme Court that has permanent legal force becomes the basis for payment of compensation to the objecting party. It should be noted that if the party entitled to object to the form and/or amount of compensation does not file an objection within the stipulated time, the party is deemed to have accepted the form and amount of compensation resulting from the deliberation by law.

The low value of compensation as described above should not happen. In addition to adhering to the principle of *betterment*, GR No.71/2012 has regulated the source of funding in such detail.

#### Article 116

Funding for Land Acquisition for Development for the Public Interest is carried out by the Agency that requires the land, as outlined in the budgeting document in accordance with the provisions of laws and regulations.

#### Article 117

Funding for Land Acquisition for Public Interest is sourced from the State Budget and/or Regional Budget.

Article 117A (Presidential Regulation No.30 the Year 2015 - 3rd Amendment of Presidential Regulation 71 the Year 2012)

- (1) Funding for Land Acquisition for the Public Interest may first be sourced from the funds of the Business Entity as the Agency requiring the land that is authorized under an agreement, acting on behalf of state agencies, ministries, non-ministerial government agencies, provincial governments, and/or regency/city governments.

- (2) Funding for Land Acquisition by Business Entities as referred to in paragraph (1) is reimbursed by state agencies, ministries, non-ministerial government agencies, provincial governments, and/or district/city governments through the State Budget and/or Regional Budget after the land acquisition process is completed.
- (3) The repayment as referred to in paragraph (2) may be in the form of a calculation of return on investment value.

**Article 118**

- (1) In the case of Land Acquisition carried out by State-Owned Legal Entities/State-Owned Enterprises that receive special assignments, funding is sourced from internal companies or other sources in accordance with the provisions of laws and regulations.
- (2) The special assignment as referred to in paragraph (1) is in accordance with the provisions of laws and regulations.

**Article 119**

The allocation of funds for the implementation of Land Acquisition consists of compensation costs, operational costs, and support costs for activities:

- a. planning;
- b. preparation;
- c. implementation;
- d. delivery of results;
- e. administration and management; and
- f. socialization

**Article 120 (Presidential Regulation No.40 the Year 2014 - 1st Amendment of Presidential Regulation 71 the Year 2012)**

- (1) Further provisions regarding operational and supporting costs sourced from the State Budget are regulated by Regulation of the Minister of Finance.
- (2) Further provisions regarding operational and supporting costs sourced from the Regional Budget are regulated by Regulation of the Minister of Home Affairs.
- (3) Operational costs and supporting costs for land acquisition for development in the public interest carried out by State-Owned Legal Entities/State-Owned Enterprises that receive special assignments, refer to the Minister of Finance Regulation as referred to in paragraph (1).
- (4) Operational costs and supporting costs for land acquisition for development in the public interest in the context of upstream oil and gas infrastructure development, refer to the Minister of Finance Regulation as referred to in paragraph (1).

From the provisions outlined above, there is no justification for the reason that due to limited funds, the compensation given to former landowners is of low value.

**1. Loss of Rights of Former Landowners**

The low compensation value in the Solo-Yogya Highway project occurred due to the lack of consistent application of Law No. 2/2012 and Presidential Regulation No. 71/2012, consistently, especially regarding deliberation. This can be seen from the non-implementation of deliberations that relevant officials should have conducted through the land acquisition committee in the Solo-Yogyakarta Highway project. Of course, this phenomenon is unfortunate because the process of land acquisition for the public interest should prioritize the principle of *betterment*, which means that no party should benefit or be disadvantaged in land acquisition.

As a result of non-transparent information, administrative errors often occur, which residents do not understand. This is the case of the solatium miscalculation experienced by 12 residents of Kadirojo II, Purwomartani, Sleman, DIY. The residents were asked to return the excess money from the solatium miscalculation. Residents also do not know how long they have to wait for the compensation to be disbursed because the burden and interest of the waiting period are not disclosed openly.

Based on the data described above, it can be analyzed that the Committee has carried out a deceitful practice, namely lying or being dishonest with the public. The public is treated to tricky information or information that is not true. The actual compensation value is not worthy of being called compensation for profit or above market price. Above-market price or compensation includes non-physical compensation, including moving costs, solatium, legal fees, Acquisition Duty of Right on Land and Building fees, and waiting for interest expenses. These are all rights of the affected residents. If they buy replacement land or move, the land rights holder has to pay for all these matters.

## Conclusion

1. There has indeed been maladministration in land acquisition. The committee has committed deceitful practice, which is the practice of lying or being dishonest to the public about the content of regulations, as well as compensation assessment.
2. Former land rights holders feel very disadvantaged when non-physical compensation, which includes: moving costs, solatium, legal representative fees, Acquisition Duty of Right on Land and Building fees, and waiting for interest charges, are not taken into account. The costs of all these matters are the rights of residents affected by land acquisition. To buy replacement land or move, they must still incur their costs.

## Suggestion

Juridically-normatively, according to SPI, physical and non-physical losses should be added up and multiplied by the estimated number of months the compensation money will be disbursed, then multiplied by bank interest (0.5%). The final result of the sum (physical, non-physical compensation, and interest expense for the waiting period) is the total compensation received by residents. In the practice of providing compensation for the non-physical component, it is not conveyed to affected residents in deliberations. It is not taken into account either, so the amount of compensation is low.

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