

Analysis of the Legality of the Enactment of Law Number 2 of 2012 in the Implementation of Land Acquisition for Development for Public Interest, from a Review of Fulfillment of Legal Basic Values.

Ismiyanto¹, AL Sentot Sudarwanto², I Gusti Ayu Ketut Rachmi Handayani³
^{1,2,3}. Faculty of Law, Universitas Sebelas Maret, Surakarta.

Abstract: *This study aims to conduct a study and analysis of the substance of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, in order to ascertain whether the law has met the basic values of the law, so that it can be seen to what extent its validity is valid from philosophical, juridical, and sociological reviews. This research is a normative or doctrinal legal research, using a statute approach, while the type of data is secondary, obtained from document review and literature study of primary, secondary and tertiary legal materials. The analysis technique uses an interactive model. The results of this study indicate that the land acquisition legal system or Law Number 2 of 2012 has validity from a juridical review, but does not have validity from a philosophical review and from a sociological review. Based on the results of the above research, it is recommended that the Government immediately revise Law Number 2 of 2012.*

Key words: *validity, land acquisition, fair*

A. INTRODUCTION

According to Lawrence Meir Friedman, as quoted by Satjipto Rahardjo, so that the law can work according to its function, there are 3 (three) important elements in the legal system that must be considered: First, the legal structure, namely a pattern that shows how the law is carried out according to its formal provisions. This structure shows how the courts, lawmaking and other legal entities and processes run and are carried out. The second is the substance of the law, namely the rules used by legal actors when conducting legal relations. The three demands or requests are referred to as legal culture. These demands come from the people or users of legal services. (Satjipto R. p. 154)

Law is a human work in the form of norms containing behavioral guidelines. It is a reflection of the human will about how society should be cultivated and where it should be directed. Society wants justice to be created in society, and its interests served by law. It also wants in society to have rules that guarantee certainty in their relationship with each other. By Gustav Radbruch, these three values are referred to as the basic values of law, namely justice, usefulness and legal certainty. Furthermore, it is explained that a legal system that has

accommodated the basic value of justice means that it has valid validity from a philosophical viewpoint, while a legal system that has accommodated the basic value of utility means that it has validity from a sociological review, and a legal system that has accommodated the basic value of legal certainty means having validity of the juridical review. It also means or applies to the opposite situation.

In this discussion, as a legal system Law No. 2 of 2012 will be analyzed from the aspect of fulfilling the basic legal values or validity of the philosophical, juridical, and sociological views based on Gustav Radbruch's theory of "the basis of law enforcement". The analysis is intended to determine whether the land acquisition legal system: "has binding legal force and has provided legal certainty", and "reflects the application of the principle of justice" and "provides benefits to the community" in its application.

B. RESEARCH METHOD

The type of this research is doctrinal or normative legal research (as it is written in the book). Types of secondary data are obtained through document review and literature study in the form of primary legal materials, secondary legal materials and tertiary legal materials. This study uses a statute approach, while the data analysis technique uses a qualitative approach with an interactive model

C. DISCUSSION AND RESULTS

1. Analysis of the validity of the enactment of Law No. 2 TH 2012, from the aspect of Fulfilling the Basic Values of Justice or a Philosophical Review.

Law has the power to apply philosophically if the rule of law is in accordance with the ideals of law as the highest positive value, which according to Pancasila is a just and prosperous society. Meanwhile, according to Gustav Radbruch, law applies philosophically if the basic value of justice is fulfilled. The fifth precept of Pancasila provides a foundation for realizing justice for the Indonesian nation, namely "Social Justice for All Indonesian People". This precept contains the values that every rule of law, both statute and court decision reflects the spirit of justice. Therefore justice based on Pancasila must be realized, elaborated and realized into Indonesian legal norms. As an indicator of the fulfillment of Pancasila justice, if everyone gets treatment in accordance with human values, and has the right to get everything that is related to the needs of his life. Meanwhile, according to John Rawl, the conception of social justice must be seen as providing a standard on how aspects of the basic structure of society should be measured. As for the principles of justice which are applied to the basic structure of society, it is stated that everyone has the same rights to the broadest basic freedoms, as broad as the same freedom for all people. Including this basic freedom is the freedom of a person to maintain property (personal).

a. Legal structure:

Legal structure is a pattern that shows how the law is carried out according to its formal provisions. This structure shows how the courts, lawmaking and other legal entities and processes run and are carried out. From the existence and working system of the legal structure, it can be seen that the legal structure in the legal system for land acquisition at the stage of land acquisition implementation for development for the public interest, particularly in the process of determining the form and / or amount of compensation for the entitled parties; First, the Appraisers are appointed and determined by the Land Agency or the Government. Second, the Land Agency or land acquisition committee which is in charge of conducting deliberations with the Entitled Party in order to determine the form and / or amount of compensation, all of whose members are also from government elements. Third, the District Court which is in charge of deciding objections submitted by Eligible Parties as well as the Land Institution and the Supreme Court which decides cassations made by Entitled Parties and the Land Institution, also comes from elements of the Government in a broad sense. Fourth, agencies requiring land acquisition for development are also on behalf of the government. In this legal structure, there is no independent institution that can compromise the disagreement between the Entitled Party and the Land Agency or the Land Acquisition Committee in determining the form and / or amount of compensation.

From the description and facts, it can be understood that the community or Entitled Parties do not have strong bargaining power, so it is unlikely that they will get their rights fairly. This is due to the absence of broad opportunities for the entitled parties to retain their rights, in an effort to obtain appropriate compensation. From this it can be concluded that the legal structure in the land acquisition legal system does not reflect the application of the principles of justice, so it does not have valid validity from a philosophical view.

b. Legal substance:

The substance of the law is the rules that are used by legal actors when conducting legal relationships. In this context, these regulations are contained in Law Number 2 of 2012. The provisions include: 1) in Article 31, it is stipulated that the Appraiser determined by the Land Agency in carrying out the assessment of the Land Acquisition Object does not involve the Entitled Party as the subject of land acquisition rights. 2) in Article 37 it is determined that the Compensation Value based on the Appraiser's assessment shall be the basis for deliberation between the Land Agency and the Entitled Party in determining the form and / or amount of compensation. The result of the agreement in the deliberation will be used as the basis for giving compensation to the entitled party. From the 2 (two) provisions of the Article it can be seen that the

provisions of the Articles limit the opportunity for the Entitled to participate in conducting an assessment of the Land Acquisition Object. 3) Article 38 stipulates, in the event that there is no agreement regarding the form and / or amount of compensation between the Entitled Party and the Land Institution, the objection shall be submitted to the District Court, even up to the appeal to the Supreme Court. The provisions of the articles in the land acquisition law do not recognize the existence of an independent institution which is expected to compromise the disagreement between the Entitled Party and the Land Institution or the Land Acquisition Committee in an effort to find a settlement with a win-win solution.

A study of the substance of Law No. 2 TH 2012 shows that there is no broad opportunity for the community to defend their property, in an effort to get proper compensation. This means that the law has not applied the principles of justice, especially in the process and mechanism of determining the form and / or amount of compensation for the entitled party, after giving up their land rights. This means that the legal substance in the legal system of land acquisition does not fulfill the basic value of justice or does not apply from a philosophical perspective.

c. Legal culture

According to Lawrence Meir Friedman, besides structure and substance there is one more important element in the legal system, namely the element of demand or demand. Because it was difficult to find the right term, the term legal culture was chosen. The existence of requests from parties entitled to implement the legal system for land acquisition, unless motivated by interests, also shows that there are factors, such as ideas, attitudes, beliefs, expectations and opinions regarding the legal system. People consciously want the implementation of the legal system for land acquisition because of a positive assessment of the legal system. Thus the decision to ask implementers

2. Analysis of the Legality of the Enactment of Law No. 2 TH 2012, from the aspect of Fulfilling the Basic Value of Legal Certainty or a Juridical Review.

Law Number 2 of 2012 has the force in effect from a review of the basic value of legal certainty or validity of a juridical review, if the formal requirements for the formation of that law have been met. The positive legal theorists state that the goal of law is "legal certainty". They assume that order or order would not be possible without definite lines of life behavior. Order will only exist if there is certainty and for legal certainty it must also be made in a definite form, namely in writing. Therefore, the main thing for legal certainty is the regulation itself. Thus, it can be understood that the indicator for the realization of

legal certainty is the existence of a regulation or law itself, which is made in writing and the formal requirements for the formation of the regulation or law are fulfilled.

According to Law Number 12 of 2011 concerning the Formation of Legislations, whose existence has been amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, in Article 1 of its General Provisions explained about the limitations including the following: Formation of Legislation is the making of Legislation which includes the stages of planning, preparation, discussion, ratification or stipulation, and promulgation. Legislation is a written regulation that contains legally binding norms and is established or stipulated by a State institution or authorized official through the procedures stipulated in the Legislation. Laws are Legislative Regulations established by the House of Representatives with the joint approval of the President.

Law Number 2 of 2012, is a statutory regulation which is made through the stages of planning, drafting, deliberating, ratifying or enacting. The draft law comes from the Government. In its discussion, the Special Committee of the People's Representative Council of the Republic of Indonesia (DPR RI) sought to obtain input from various related parties, including Government / Regional Agencies, BUMN, BHMN, academics, and NGOs. All of this is solely because the Special Committee wants the law to have concern for the rights of the people, provide certainty for investors, and guarantee the implementation of development planned by the government. The law is formed by the House of Representatives with the joint approval of the President.

From the results of the above analysis, it can be seen that Law Number 2 of 2012 was made in a written form, legalized by the President of the Republic of Indonesia and promulgated by the Minister of Law and Human Rights on the same date, namely January 14, 2012, because its formation has met its formal requirements. . Therefore it can be concluded that Law Number 2 of 2012 has met the basic value of legal certainty or has the validity of the enactment of the Juridical review. Besides this, because the law was made by the competent authority, the law has binding legal force for the community.

3. Analysis of the validity of the enactment of Law No. 2 TH 2012, from the aspect of Fulfilling the Basic Value of Use or a Sociological Review.

The valid strength of the sociological review here is that the point is the effectiveness or results of the use of law in life together. What is meant is that the validity or acceptance of the legal system in that society regardless of whether the legal regulations are formed according to formal requirements or not. So the enactment of the legal system

is a reality in society, which according to the theory of recognition, that the legal system has the power of effect from a sociological view if it is accepted and recognized by the community. Therefore, it is an indicator that the legal system has the force of effect from a sociological review if the existence of the law is accepted and recognized by the community because it is considered useful.

a. Legal structure

On the basis of the results of the analysis of the validity of the legal structure, which is examined from the aspect of basic philosophical values, it shows that the existence of the legal structure does not reflect the application of the principle of justice. In addition, on the basis of the information provided by the Head of Land Acquisition at the Surakarta City Land Office, it was found that the current community (Th 2020) is actually happy if their land is affected by the land acquisition project because it is considered that the compensation provided is adequate. However, on the other hand, for the same interest, it is known that many people refuse the compensation given to him. This contradiction indicates that the existence of a legal system for land acquisition does not have the power to be used as a reference, which is important for the community to have an agreement on the form and / or amount of compensation. Therefore, Law No. 2 TH 2012 from the aspect of the legal structure is considered to be of no benefit to society.

b. Legal substance

Based on the results of the analysis of the validity of the validity of the legal substance in Law No. 2 TH 2012 from a philosophical review, it does not reflect the application of the principle of justice, so it is felt to be unfavorable for the community. Because of this, the existence of legal substance in the legal system for land acquisition, the provisions of which do not benefit the community.

c. Legal culture

From all the results of the analysis of the validity of the legal structure, legal substance, and legal culture studied from the aspect of basic philosophical values, it is known that the land acquisition legal system does not reflect the application of the principle of justice, and the community does not really care about its implementation. Thus it can be concluded, that Law No. 2 TH 2012 does not have the validity of the aspect of fulfilling the basic utility value for society or a sociological review.

D. CONCLUSION

Law No. 2 TH 2012 has binding power, and has provided legal certainty, so the law has validity from a juridical review. However, this law does not have validity from the aspect of

fulfilling the basic values of justice or a philosophical review. Likewise, this law does not have validity in terms of fulfilling the basic value of use or validity from a sociological review. Because of this, it is recommended that the Government together with the DPR make revisions to Law No.2 of 2012.