


# Position of Consignment in Land Acquisition Whose Whereabouts Are Unknown

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## Abstract

**Introduction:** Consignment as an act of depositing compensation is contained in Article 1 paragraph (9) of the Supreme Court Regulation Number 2 of 2021 and compensation in court is also explained in the Civil Code in Article 1404 of the Civil Code.

**Purposes of the Research:** The purpose of this study is to examine the position of consignment in land acquisition where the whereabouts of the heirs are unknown. This study helps in seeing the procedures and position of consignment in land acquisition for heirs whose whereabouts are unknown.

**Methods of the Research:** The research method used in this writing is normative research methods. Thus, this research collects data using library research, namely in the form of scientific materials such as legislation, books, official documents, publications and research results.

**Findings of the Research:** Based on the applicable regulations, the position of the consignment where the position of the consignment that has been entrusted by the land acquisition committee to the district court against the owner and heirs who are unknown or the owner and heirs whose whereabouts are unknown is the full right of those who are unknown so that the consignment must be kept until the owner or heirs appear, so that if the owner and heirs do not appear for a long time it will not change the position of the consignment because it has become the full right of the owner and heirs.

**Keywords:** Consignment; Land Acquisition; Heirs.

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## INTRODUCTION

Consignatie or *Consignatie* comes from the Dutch language which means the deposit of money or goods at the court to make payment of a debt.<sup>1</sup> In general, consignment is only known as a limited offer of cash payment followed by storage or custody as regulated in the Civil Code, hereinafter referred to as (Civil Code). Where in Article 1404 of the Civil Code: "If the creditor refuses to pay, then the debtor can make an offer of cash payment for what he has to pay, and if the creditor also refuses it, then the debtor can entrust his money or goods to the Court."

According to the provisions of Article 42 paragraph (2) of Law Number 2 of 2012 concerning the Acquisition of Land for Development for the Public Interest. Consignment can be carried out if the entitled party is unknown or whose whereabouts are unknown so that compensation is entrusted to the court. In addition, regulations regarding consignment

<sup>1</sup> Marni Emmy Mustafa, "Penawaran Pembayaran Tunai dan Konsinyasi di Pengadilan Untuk Pengadaan Tanah Bagi Pembangunan untuk Kepentingan Umum", (Vol XXVII-334, Majalah Varia Peradilan, 2013), p. 24.

are also regulated in Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Public Interest. Where in Article 10 Paragraph (2) it is explained that after the deliberation as referred to in Paragraph (1) is not reached, the land procurement committee can determine the amount of compensation as intended in Article 13 letter (a) and entrust monetary compensation to the district court whose jurisdiction includes the location of the land concerned.

The definition of consignment as an act of depositing compensation is found in Article 1 Paragraph (9) of Supreme Court Regulation Number 2 of 2021 concerning Amendments to Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Depositing Compensation to the District Court in the Procurement of Land for Development in the Public Interest. The granting of consignment is an obligation from the government in land procurement. So that in providing consignment, the government must first check with the National Land Agency regarding the status of the land to be procured. The granting of consignment itself is considered feasible and fair in accordance with the provisions mentioned in Article 1 Paragraph (3) of the Supreme Court Regulation Number 2 of 2021.

However, what if the provision of compensation in the procurement of land for the development of the public interest has been carried out on lands with the status of property but there is one of the lands whose existence is not known from the owner and heirs so that the consignment or the deposit of compensation in court for the land in question is carried out. Where in this case the construction of a hospital has been carried out for the public interest, but the court as a place of custody of compensation also cannot make a summons or notice to the landowner related to the existing consignment due to the unknown existence of the owner and his heirs.

This is a question related to the position of the consignment whether the consignment that has been established on the land is canceled due to the absence of the owner and heirs or the consignment remains kept by the court until the emergence of the owner or legal heir of the land. But what about the time limit of the ongoing custody whether the consignment will expire if the owner or heirs do not appear within a certain time limit.

## METHODS OF THE RESEARCH

The research method used in this writing is using a normative research method, namely legal research conducted by examining literature materials or secondary data.<sup>2</sup> According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced,<sup>3</sup> Thus, this research collects data using literature studies, namely in the form of scientific materials such as legislation, books, official documents, publications and research results.

## RESULTS AND DISCUSSION

### A. Procedure for Arrangement of Consignments in Land Acquisition

National development carried out in order to fulfill the mandate of the Preamble to the Constitution of the Republic of Indonesia in 1945 from year to year continues to increase. At

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<sup>2</sup> Soerjono Soekanto dan Sri Mamuji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2013, p. 13.

<sup>3</sup> Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Group, 2007, p. 35.

the same time, the population continues to grow and in line with the increasing development and results, so that the needs of the population in Indonesia are increasing and diverse. One of the things included in national development activities is development for the public interest. This development for the public interest must continue to be pursued in line with the increasing number of people accompanied by increasing prosperity,<sup>4</sup> For this reason, in the process of land acquisition for public interest development, it is necessary to pay attention to a series of regulatory processes that have been in effect. regarding this land acquisition, Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest has been issued with its implementing regulations, namely the Regulation of the Minister of State for Agrarian Affairs Number 1 of 1994. Land acquisition in this Presidential Decree is a series of activities carried out by government agencies to obtain land by providing appropriate compensation to the parties entitled to the land and solely used to meet land needs for the implementation of development in the public interest.

The regulation regarding consignment institutions that has been regulated in Presidential Regulation Number 65 of 2006 which was later amended by Law Number 2 of 2012 lists several different forms of regulation. These different arrangements are contained in the requirements required by a depository or consignment institution for objects that have not been deposited at the consignment institution as well as the conditions for the application of consignment so that the consignment can be considered valid in the procurement of land for the public interest.

Based on the provisions of the Civil Code, there are requirements for the deposit of money in the District Court, this is contained in Article 1406 of the Civil Code which explains that the effort of a legitimate deposit (storage), does not require a control by the Judge, it is sufficient that: 1) That the deposit is preceded by a statement notified to the receivable, which contains the designation of the day, time and place where the offered goods will be stored; 2) That the cyber debtor has released the goods offered, by depositing them in the treasury of storage or custody at the Court committee, which in case of dispute, will adjudicate it, accompanied by interest until the day of deposit; 3) That by the notary or bailiff, both accompanied by 2 witnesses, a news report is made, explaining the nature of the currency offered, the rejection of the receivables or that he did not come to receive it so that finally the depository himself is carried out; 4) That if the cyberreceivables do not come to receive it, the news of the storage is notified to him. With a reminder to take what has been entrusted.

Regarding the payments that have been regulated in Article 1407 of the Civil Code, that the costs incurred in carrying out the implementation of cash and storage payment offers must be borne by the receivable, if the acts have been carried out according to the law, which then Article 1408 of the Civil Code will regulate the right of the debtor to take deposits, that is, as long as what has been entrusted is not taken by the receivable, the debtor can take it back in that case the people who are also in debt and the debt insurers are not exempted. The debtor's rights will be forfeited as stipulated in Article 1409 of the Civil Code, that is, if the debtor himself has obtained a judge's decision that has absolute force, then with this decision the offer that has been made will be declared valid, then he can no longer take back

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<sup>4</sup> Eny Rochaida, "Dampak Pertumbuhan Penduduk Terhadap Pertumbuhan Ekonomi Dan Keluarga Sejahtera Di Provinsi Kalimantan Timur," *Forum Ekonomi* 18, no. 1 (2016): 14-24, p. 15.

what has been entrusted to compensate for losses from the debtor and the debt insurers, Even though it is with a cyber receivables permit.

As for the application of consignment specifically in the procurement of land for the public interest, it is contained in Pasal 48 paragraph (1) of the Regulation of the Head of the National Land Agency Number 3 of 2007 concerning the provisions for the implementation of Presidential Regulation Number 36 of 2005 concerning the procurement of land for development for the public interest which explains that compensation can be consensual by fulfilling the following conditions: a) The person entitled to compensation is unknown or whose whereabouts are unknown; b) Land, buildings, crops, and other related objects; c) The ownership is still disputed and there has been no settlement agreement from the parties involved; d) Land, buildings, crops, and other objects related to land are being confiscated.

The amount and form of compensation that has been consensual will be determined unilaterally by the Land Acquisition Committee. This is certainly a denial of the essential element in the deliberation mechanism which requires a unanimous agreement between the parties who need the land and the parties who own the land.<sup>5</sup> Furthermore, the implementation of consignment in Land Acquisition for the Public Interest in Law Number 2 of 2012 with implementing regulations regulated in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 dated August 7, 2012 State Book of the Republic of Indonesia Number 156 concerning the Implementation of Land Acquisition for development in the public interest. In Article 86 paragraph (3) it has been stated that the deposit of compensation is carried out under the following conditions: a) The entitled party has rejected the form and/or amount of compensation from the results of the deliberation and has not filed an objection to the court; b) the entitled party has rejected the form and/or compensation based on the decision of the District Court/Supreme Court which has obtained permanent legal force; c) the entitled party is unknown or unknown; d) the object of Land Acquisition to be compensated: (1) is currently the object of the case in the Court; (2) the ownership is still disputed; (3) placed confiscated by the authorized official; or (4) become a guarantee at the Bank.

The use of the consignment method in land acquisition for the public interest is based on the administrative and technical guidelines of the general and special civil civil courts book II Edition 2007 of the Supreme Court of the Republic of Indonesia in 2008 where one of the topics is about the offer of cash payment followed by consignment, this refers to the provisions that have been regulated in Articles 1404 to 1412 of the Civil Code.

## **B. Consignment Position in Land Acquisition for Heirs Whose Whereabouts Are Unknown**

Based on Article 1 number 10 of Law Number 2 of 2012 concerning Land Acquisition for the Public Interest, compensation is a proper and fair replacement to the entitled Party in the land acquisition process. According to Limbong, compensation is a reward received by the holder of land rights in lieu of the value of the land, including that on it, that has been released or handed over.<sup>6</sup> The principle of indemnity is that the landowner has the right to reasonable compensation. The basis of the assessment used is the *fair replacement value*.

Based on land acquisition regulations, if the party who is entitled refuses the form or amount of compensation, the compensation money can be deposited in the local district

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<sup>5</sup> Gunanegara, *Rakyat dan Negara Dalam Pengadaan Tanah Untuk Pembangunan*, Jakrta: Tatanusa, 2008, p. 226.

<sup>6</sup> Limbong, *Bank Tanah*, Jakarta: Margaretha Pustaka, 2013, p. 30



court, with the deposit of the compensation money, the rights to the land owned or controlled by the entitled party are released. Based on Government Regulation Number 19 of 2021 concerning Land Acquisition for Public Interest Development (hereinafter abbreviated as Government Regulation Number 19 of 2021), where Article 89 has been regulated regarding the custody of compensation which reads as follows: 1) Agencies that Need Land submit an application for Compensation Custody to the chairman of the District Court in the area where the development is located for the Public Interest; 2) The custody of Compensation as intended in paragraph (1) shall be submitted to the District Court in the area of the construction site for the Public Interest after the determination of the custody approval by the District Court; 3) The application for the custody of Compensation as intended in paragraph (1) is made in the event that: (a) the Entitled Party rejects the form or amount of Compensation based on the results of the deliberation and does not file an objection to the District Court; (b) The Entitled Party rejects the amount of Compensation based on the decision of the District Court/Supreme Court; (c) the Entitled Party is unknown and/or the Entitled Party is unknown; (d) The Object of Land Acquisition to be awarded Compensation: (1) is currently the object of the case in court; (2) the ownership is still disputed; (3) placed confiscated by the authorized official; or (4) be a guarantee at the bank. 4) Compensation for Losses entrusted to the District Court as intended in paragraph (2) in the form of money in Rupiah; 5) The implementation of the deposit of Compensation as intended in paragraph (2) is made in the minutes of the deposit of Compensation; 6) The District Court shall receive the custody of Compensation as intended in paragraph (5) for a maximum period of 14 (fourteen) days.

Article 89 Paragraph (3) Letter C of Government Regulation Number 19 of 2021 has been clarified that Consignment will be carried out if the entitled party is unknown or the entitled party is not known so that if in the process of implementing land acquisition for the public interest the party entitled to the land is not found, compensation in the land acquisition process will be entrusted to the court to fulfill the obligations of the government agency that requires soil.

Regarding the settlement of disputes or consignment procedures for compensation for one or more owners of land, buildings, plants, or objects related to land that are not found to be domiciled by government agencies that require land, this may cause difficulties in carrying out the consignment. As a solution, the government agency must make efforts to find the residence of the owner of land rights whose residence is unknown in print and electronic media with the cost of installing advertisements borne by the government agency that needs the land. If within 30 days after the placement of the advertisement the place of residence is still unknown, or there is no response, the government agency that needs the new land can award compensation to the local District Court. However, on the other hand, if there is a response within 30 days after the placement of the advertisement, the government agency that needs the land must hold a deliberation with the parties guided by the land procurement committee to determine the form and amount of compensation.

According to Tohari, the assumption of the custody of compensation is that the determination of compensation based on the assessment by the Appraiser has met the objective-rational requirements and that the obligations of the implementer of the Land Acquisition and the agencies that require the land have been completed with the deposit of compensation in the district court and that the compensation is taken or not by the objecting party, it is no longer the responsibility of the land procurement executive committee and

the agencies that Concerned.<sup>7</sup> Article 92 of Government Regulation Number 19 of 2021 states that: (1) in the event that the Party Entitled to receive Compensation is not known its existence as referred to in Article 89 paragraph (3) letter c) the implementer of the Land Acquisition shall submit a notice of the absence of the Entitled Party in writing to the sub-district head and village head/ village head or other names; (2) in the event that the Entitled Party has known its existence, the Entitled Party shall submit an application to the District Court of the place of deposit of Compensation with a letter of introduction from the chief executive of Land Acquisition.

Based on Article 92 Paragraph (2), it can be seen that if the party whose identity is initially unknown or unknown is known, the party has the right to take the consignment that has been entrusted to the court by submitting an application to the district court where the compensation is deposited using a letter of introduction from the chief executive of land acquisition. However, if in the future the chief executive of land acquisition who has made a consignment to the district court no longer serves as the chief executive of land acquisition, the entitled party can use a letter of introduction from the head of the regional office or the head of the local land office as mentioned in Article 99 of Government Regulation Number 19 of 2021, that: in the event that the chief executive of Land Procurement no longer serves as the chief executive of Procurement Land, Compensation entrusted to the District Court as intended in Article 89 paragraph (2) can be taken by the Entitled Party with a letter of introduction from the Head of the Regional Office or the Head of the local Land Office.

Based on the Supreme Court Circular Letter Number 4 of 2008, it is explained that if within 6 (six) months the consignment money is not taken by the recipient of the money after notification, then the consignment money will be deposited into the state treasury. This opinion is based on the provisions of the Supreme Court Circular Letter Number 4, where the consignment money that has been entrusted to the court is considered as unowned money. However, what about the consignment money that is entrusted but the owner and heirs are unknown or whose whereabouts are unknown. Consignment that is carried out because the entitled party is unknown or the entitled party is unknown, may be considered unfair because in the consignment process there must be a rejection from the entitled party related to the amount of compensation. But if this happens, the consignment will still be entrusted to the court because the construction carried out is in the public interest so that it can be interpreted that whether or not the consignment is accepted by an unknown party or a party whose existence is unknown.

The party whose whereabouts are not known are the parties who after the deliberation of the determination of compensation between the entitled parties and the implementers of land procurement by including agencies that need the land, but the parties who are entitled are not present and their whereabouts are unknown. The condition of the object of land acquisition is that the owner of the object is unknown or the owner is known, but his whereabouts are unknown. The object, whose owner is unknown, has been collected during the inventory and land plot identification stage. Village officials also try to find the landowner or heirs if the owner is deceased and search through the family of the landowner. However, if it is still not found, then the landowner in the data is NN (No Name).

A person who at the time of being released his land for the public interest is not in the place and has been contacted and searched but the news is not known, then based on the

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<sup>7</sup> Tohari, *Pengadaan Tanah untuk Siapa Peniadaan Tanah dari Siapa*, Jakarta: Bhumi, 2014, p. 575

provisions of Article 468 of the BW it is affirmed that if upon a third summons the person who may be declared missing or his attorney does not come to face, even though it has been advertised in the newspaper, then at the request of the prosecutor, The court may declare that there is a legal presumption that a person has died from the day he or she should be deemed to have left his place of residence, or from the day of the last news of his or her life, which day must be clearly stated in the judgment. The position of a missing person according to the Civil Inheritance Law, to decide the missing person, must obtain a decision from a judge who has the force of law, and if the person returns, then the rights in the inheritance must be returned to the lost person who has returned, in the case of the prosecution of inheritance rights by the heirs who were previously declared missing in accordance with Article 482 of the Civil Code which in essence explains, If the person who is absent or declared missing returns home after there is a legal suspicion that the person has died, then all that is his rights while dealing with the property must be returned by those who have enjoyed it before. The object of land acquisition that is unknown to the owner or the entitled party is unknown, then the compensation money cannot be paid by the institution that needs the land. The land acquisition implementer submits a notice of the absence of the right party in writing to the sub-district head and village head. The compensation money is submitted for the custody of compensation in the District Court by the agency that needs the land. If the entitled party is known, they can take compensation money in court through a letter of introduction from the Chief Land Acquisition Executive. Therefore, if the owner is unknown, then without any deliberation, the money can be entrusted to the court in the form of a consignment until the owner of the land is known so that he can cancel the consignment.

## CONCLUSION

The implementation of land acquisition, especially for the development of the public interest, the government is required to follow directions and instructions as stipulated in laws and other regulations that regulate the implementation of land acquisition for the development of the public interest, to provide appropriate compensation in the provision of compensation which goes through the consignment process in the district court, the land acquisition committee in its implementation must be The procedure for the custody of the alternate custody has been regulated in various laws and regulations. The position of the consignment that has been entrusted by the land acquisition committee to the district court against the unknown owner and heirs or the owner and heirs whose existence is unknown is the full right of those who are unknown so that the consignment must be kept until the appearance of the owner or heirs, so that if the owner and heirs do not appear for a long time, it will not change the position of the consignment because has become the full right of the owner and his heirs.

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