

Reconstruction of Land Procurement Policies and its Compensation for Interests of National Strategic Projects

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Abstract - The process of implementing land acquisition in Indonesia is still not in accordance with the value of justice because there are still obstacles and conflicts between the government and land rights holders, causing delays in the construction process of public facilities which are included in national strategic projects. This encourages the author to conduct research with issues that are specifically raised the problem of what are the weaknesses in the implementation of land acquisition and compensation for the benefit of national strategic projects and how to reconstruct land acquisition policies and compensation for the benefit of national strategic projects. The research method used is socio-legal research by emphasizing primary data as the main source and supported by secondary data.

The results showed that the land acquisition that occurred in Indonesia currently still has a sense of injustice over the achievements of the community who gave the land, which led to conflicts in the community. The cause of the conflict in the land acquisition process, wherein the provision of compensation, there is currently an assessment of land objects below the market price to the community. This is what causes conflict, thus hampering the development process of national strategic projects. In order to obtain legal certainty and achieve a sense of justice, it is necessary to reconstruct existing regulations, by replacing the word compensation with appropriate compensation therefore the compensation given must be adjusted to a proper price.

Keywords:- Reconstruction, Land Procurement, National Strategic Project.

I. INTRODUCTION

In the history of Indonesia, especially during the New Order era until 2001, there have been 1,497 land dispute cases occurred, with the area of land that became the object of the dispute reaching 1,052,514.37 hectares, where the number of community members who fell as victim reached 232,177 families. Other data shows that at the end of 2001 there were 1,753 disputed cases. Then in 2007 it increased to 2,810 cases. In connection with this, as happened before in 2009-2017, where the Semarang-Solo Toll road construction project with a toll road length that was built reached 75.8

kilometers which crossed 6 (six) regencies/ cities, where toll road construction was carried out, divided into 5 (five) sections or sections, namely Tembalang-Ungaran (11.2 Km), Ungaran-Bawen (11.9 Km), Bawen-Salatiga (18.8 Km), Salatiga-Boyolali (20.9 Km) and Boyolali-Kartosura (13 Km), is constrained by land acquisition due to the extreme increase in land prices [1]. this problem is actually not really a new thing as it has happened over time. Moreover, at this time land acquisition plans have been planned for the construction of the Bawen-Magelang-Yogyakarta toll road at the end of the Bawen toll road and the plan for the construction of the Solo-Klaten-Yogyakarta toll road, which is still in the land acquisition stage. The aims and objectives of the construction of the Bawen-Jogjakarta and Solo Jogjakarta toll roads which are integrated with the Trans Java Toll Road as a whole are to increase the stability and capacity of the road network in serving transportation that will connect major cities, namely Jogja, Solo, and Semarang. The increase in economic growth in the city was often known at that time as *Joglo Semar*. Of course, the traffic flow connecting these big cities is experiencing high density, so that the presence of toll roads can increase productivity by reducing distribution costs and providing access to regional and international markets.

Prior to the plan for the construction of the Bawen-Jogjakarta road and Solo Jogjakarta toll roads, the Semarang-Solo toll road had been built. The Semarang-Solo Toll Road is part of the Trans Java Toll Road System, where the Semarang-Solo toll road is 72.64 KM which passes through 5 districts/ cities, namely Semarang City, Semarang Regency, Salatiga City, Boyolali Regency, and Karanganyar Regency. The Semarang-Solo toll road is also equipped with 6 rest areas or rest areas and with 5 toll gates, namely in the Banyumanik area of Semarang City, Ungaran Semarang Regency, Bawen Semarang Regency, Tingkir City of Salatiga, Mojosongo, Boyolali Regency, and Colomadu Karanganyar Regency [2].

The Semarang-Solo toll road which was inaugurated by President Joko Widodo and fully operational in 2017 connects Semarang City and Solo City. The existence of this toll road is also act as an access to support for natural tourism around the Trans Java toll road so that at the same time tourist can enjoy culinary tours that are served in each region, especially in Semarang City to Solo City. An

important role for the community on the Semarang-Solo toll road in order to strengthen connectivity and support the potential for regional development, especially to increase the smooth flow of goods and services. The existence of this toll road has an important meaning as accessibility to support the economy in areas that are traversed such as Semarang, Salatiga, Boyolali, Sukoharjo and Solo.

The construction of the Semarang-Solo toll road in the process did not escape conflicts in the community regarding land acquisition. The process of land acquisition for public facilities carried out by the state. The conflict with the community in the construction of public facilities that are often faced by the government is the process of land acquisition, so it takes a long time in terms of land acquisition. Some of the obstacles faced in the land acquisition process for the construction of the Semarang-Solo toll road include mismatching land prices, the passing of regulations on new land acquisition in the middle of the land acquisition process, the status of the land to be used for public facilities, land appraisal that for one another is not the same, which often created disputes over land ownership that takes a long time in the socialization process to the community.

Along with the development of society and to smoothen the course of development for the public interest, on the one hand, the government needs a fairly large land area. On the other hand, holders of land rights to be used by the government for development purposes must not be disadvantaged. To regulate this, it is necessary to have a legal rule that is acceptable to the community. In connection with the above, the authors then are interested to research whether Reconstruction of Land Acquisition Policies and Compensation for the Interests of National Strategic Projects is needed or not.

This problem are what urges the author to study it in a research as an effort to build a better law wherein this study is concentrated on 2 main problems as follows:

1. What are the weaknesses in the implementation of land acquisition and compensation for the benefit of national strategic projects in Indonesia Currently?
2. How to reconstruct the policies on land acquisition and compensation for better and beneficial national strategic projects in Indonesia?

II. METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the

factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (socio-legal approach). The sociological juridical approach (socio-legal approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [3].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources, While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed[4].
2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies [5].

III. RESEARCH RESULT AND DISCUSSION

A. Weaknesses In The Implementation Of Land Acquisition And Compensation For The Benefit Of National Strategic Projects In Indonesia Currently

Land acquisition is the most crucial problem and has high conflicts in toll road construction. If this problem is not resolved immediately, it will have an impact on delays in toll road construction, as well as on other related problems. Land acquisition problems are mainly related to land compensation, socialization, land ownership status, the existence of disputes, the emergence of land speculators, and moreover, the issue of compensation for institution land like Perhutani's land used for toll roads as the problem related to Perhutani land acquisition is actually not only related to the compensation value itself but also what needs to be considered is the ecological value of the forest area which has been converted. Ecologically, immaterial values need to be taken into account in terms of pollution reduction, the ability to conserve water, and aspects of food security despite its economical effect[6].

Matters related to toll road land acquisition are regulated in several laws. The Regulation of the Minister of Public Works Number 10/ PRT/ 2006 indicates that land acquisition is any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants, and objects related to land or with revocation of rights. Land acquisition is carried out by the Land Procurement Committee (PPT) where the Land prices are determined by a professional and independent Land

Price Appraisal Agency/ team. The land acquisition process for the Semarang-Solo toll road also faces many problems such as the investors and the Land Acquisition Committee (P2T) have an inaccurate perception of Perpres No. 36/2005, which was later revised by Presidential Decree No. 65/2006.

One aspect that is highlighted is that the government can force legal owners of land to be deprived of their rights by force, for the sake of public interest. Meanwhile, the side of deliberation and the processes (logic) of determining the amount of compensation were not studied in-depth. The procurement of toll road concessions is carried out based on the principles of fairness, openness, transparency, competition, accountability, mutual benefit, mutual need, and mutual support (Regulation of the Minister of Public Works Number: 27 / PRT / M / 2006). In the Regulation of the Minister of Public Works Number: 04 / PRT / M 2007, it is stated that the cost of land acquisition is provided by the Business Entity through the Land Acquisition Account as stated in the PPJT. The cost of land acquisition that can be financed in advance by the BLU-BPJT is the cost of land compensation. The TPT can report to the Directorate General of Highways and BPJT if there is an increase in land acquisition costs which are estimated to result in changes in land acquisition costs stipulated in the PPJT. There are six elements that are responsible for land acquisition, namely: (1) Toll Road Regulatory Agency, (2). Toll Road Business Entities, (3). Directorate General of Highways, Ministry of Public Works, (4). Land Acquisition Committee, (5). Land Acquisition Team, (6). National Land Agency

In in-depth interviews with BPJT, several problems were identified related to land acquisition or acquisition for the construction of the Semarang-Solo toll road. These problems are as follows[7]:

- a. Land acquisition has not been carried out simultaneously with construction.
- b. Business entities are willing to bear the cost of land but object to the risks arising from the time and amount of land price.
- c. Prolonged implementation in the field due to a long process of deliberation and land speculators.

As is generally the case at the national level, based on the results of in-depth interviews the land acquisition process for the Semarang-Solo toll road, it also faces many problems as follows:

- a. The cost is very high. The main problem in land acquisition is closely related to land price agreements. The land price that had been set by the land acquisition committee (Perpres No.36 of 2005 Article 7) was initially rejected by the land owner because it was deemed too low. The community uses the highest NJOP for land acquisition issues. On average, residents ask for a price that is 40 percent above the normal price. The results of in-depth interviews with sources at the Central Java DPRD indicated that before the toll road was built, there were people (who knew the initial information about the toll road development

plan first) carrying out an act of "*buying and selling*" of this information. This condition is detrimental to the state because the difference in the basic price of the population is IDR 20,000 per m² and is sold by an individual to the government to be IDR 50,000 per m². The results of the DPRD investigation also showed that there was no transparency between the TPT Team and the community regarding the real price determination of land. In the FGD, it was revealed that the basic price determination by appraisal was not fully reported to BPN or TPT. So that TPT does not know for sure why land prices can be determined at this price range. This is quite difficult for the TPT when conducting socialization to the community.

b. Ownership disputes, the number of disputes over land ownership that triggers conflicts between fellow residents. In fact, to acquire land, the proof of the certificate must be clear. Another problem also arises because of land acquisition through land used for grave or waqf as to take care of this land acquisition, they must go to the Indonesian Waqf Board (BFI)[8].

c. The socialization takes a long time. The following difficulties occur because there is a long lag between the socialization and the land sale and purchase agreement with the availability of funds. This causes landowners to feel uncertain, and causes land prices to rise, which of course, are not in accordance with the original price agreement.

d. The attitude of the community that is less supportive, Perceptions of land owners about the rights to the land itself. For some communities, it is understood that land rights are the only party entitled to and cannot be contested ownership of the land. The efforts made by other parties, in this case, the government, to turn the land into public facilities (toll roads) - even though it has been carried out in accordance with procedures - have made the land acquisition process difficult. Many people and landowners think that Perpres No 65/2006 is negative. This regulation is accused of being an arbitrary tool to eliminate land rights under the pretext of in the name of public interest.

e. Land speculators who took part in the game. The problem has increased because for the Semarang-Ungaran location, there are other parties (brokers) who are playing. Some communities even use these third parties to represent the interests of several land-owners.

f. The number of factory locations and cottage industries along the Ungaran-Bawen toll road is also a problem in itself as shutting it down means closing their income.

g. Land acquisition for Perhutani, the Semarang-Solo toll road project also passes through forest areas, one of which is the Penggaron forest covering an area of 22.2 hectares in Ungaran Regency. For the construction of toll roads that cross-forest areas, before being built, a forest area lease-to-use permit must be issued and provide land compensation. The juridical basis for the use of forest areas for development purposes outside forestry activities is PP.No. 10 of 2010 concerning Procedures for Changing the

Designation and Function of Forest Areas and Permenhut No. P.32 / Menhut-II / 2010 concerning Forest Swapping.

Land acquisition is the most crucial problem and has high conflicts in toll road construction. If this problem is not resolved immediately, it will have an impact on delays in toll road construction, as well as on other related problems. Land acquisition problems are mainly related to land compensation, socialization, land ownership status, the existence of a dispute, and the emergence of land speculators. According to authors, the implementation of the Semarang-Bawen toll road construction did not meet expectations. Things that do not meet this expectation are not entirely the fault of PT. Trans Marga Central Java itself, because there exists a land acquisition that takes time even though it is carried out by the Government.

The delay in land acquisition also has an impact on funds that have been planned to become inflated, this raises new problems faced by PT. Trans Marga Central Java. This lack of funds resulted in PT. Trans Marga Central Java must ask for additional funds from the bank that is the borrower of the funds, and the funds that must be paid are also larger. The budget swelling was not only due to the increase in the price of building materials, but also the cost of land acquisition for toll roads, for example, the Semarang-Ungaran segment, which was originally only budgeted between Rp. 247 billion and Rp. 250 billion, which are inflated to Rp.550 billion.

B. Reconstruction Of The Policies On Land Acquisition And Compensation For Better And Beneficial National Strategic Projects In Indonesia

In line with the concept of justice value, legal certainty is correlated with the determination of the value of compensation in Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for Public Interest, there is still a finding of habits in the governing regulations, this habit certainly creates a sense of injustice and a sense of uncertainty.

Etymologically, the regulation on the implementation of land acquisition for development in the public interest, namely Presidential Regulation Number 71 of 2012, of course, the word compensation can be interpreted as saying that the recipient of rights to land objects will experience losses for the release of rights to the land owned. It can also be justified if the appraisal team or public appraiser appointed by the chief executor of land acquisition provides an assessment below the market price, given the language habit of valuing objects on land, even though currently the valuation is below market value for land objects that will be used for the purpose of general does not happen like that.

In view of the occurrence of language habits that lead to multiple interpretations of the meaning in legal regulations, authors then formulate a theory where legal changes or reconstruction in Presidential Regulation Number 71 of 2012, where the spirit of the Presidential Regulation is the determination of the value of land objects that will be used as development for the public interest. The

provisions of the appraisal of the object to be given to the right recipient are called compensation so that it can be changed to an appropriate pronoun so that there are no multiple legal interpretations, and will also result in legal certainty where the value to be given to the land object will be appropriate and fair, with In this way, there will be no parties who are disadvantaged, especially the community.

Etymologically, as seen in The Indonesian Dictionary, the work "*Kelayakan*" or Feasibility has a synonym to fair; appropriate, or appropriate. Meanwhile, the word feasibility itself has the meaning of proper, appropriateness, or propriety. This will create legal certainty for the public and related parties.

Rationally, a person will give up his rights if the compensation for damages received is deemed appropriate, but often in an effort to acquire land the community feels dissatisfied with the set compensation, even the term "*compensation*" is perceived as certain that the person who relinquishes his land rights experiences or suffer loss. Although it cannot be denied that there are times when the compensation or compensation requested by the community is considered too high. Providing compensation in the implementation of land acquisition where all losses are physical and/ or non-physical in nature of the land, buildings, plants, and/ or other objects related to land.

The Release or transfer of land rights must be based on the principle of respect for land rights. Rationally, to protect someone's rights, every land acquisition must be carried out with appropriate compensation, and to be said to be feasible, the minimum compensation is that it is in accordance with Market Value. the selling value of the tax object which is used as the basis for the calculation has the potential not to fulfill the element of proper compensation. It is a common understanding that the sale value of tax objects often does not represent market value. Justice is meant if the owner/ holder of Land Rights has received compensation that is deemed adequate because the compensation has been able to be beneficial and provide them with a better life. For example, by giving up their land rights and then getting compensation payments which can then be used to finance their children's schooling, or they can use it for business capital, besides that, they can also occupy a new house that is in a better condition than their previous house[9].

Another thing that according to the author needs to be considered is the need for an institution, agency that is directly appointed to supervise the land acquisition process. The basis for the need for supervision is to carry out control and monitoring so that there is no abuse of authority or it does not ran in accordance with existing regulations. The tasks and powers given to supervisors start from land acquisition planning to termination of the legal relationship between the entitled party and the object of land acquisition, considering that at this stage, the community has received or received certainty and rights that must be received for the loss of their rights to land.

Reviewing the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest, where the spirit of the Presidential Regulation lies in the points of compensation, as well as the determination of the value of compensation. Given that the point of compensation is the most decisive factor in taking rights to land owned by the community. So that the step in the implementation of land acquisition for development for public interest lies in the process of determining the value of compensation[10], in this connection the author has a basis for thinking about the implementation of reconstruction of several articles in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for Public interest where the articles that need to be reconstructed are Article 1 paragraph (10), Article 63 paragraph (1), Article 65 paragraph (1), Article 66 paragraph (1), (2), (3), and (4), Article 68 paragraph (3), as well as Article 74 paragraph (1) and paragraph (2).

Based on the language used in Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for Public Interest, the concept of language has an important position in the formulation, creation, and implementation of legal regulations. The existence of disharmonious language has resulted in legal uncertainty where the word "compensation" is used for the right to a plot of land that is officially owned by the holder of power over the field to be used for the public interest. The spirit of the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for Public Interest lies in the point of compensation, as well as the determination of the value of compensation.

The Points that use the term indemnity does not only contained in Article 1 paragraph (10), Article 63 paragraph (1), Article 65 paragraph (1), Article 66 paragraph (1), (2), (3), and (4)), Article 68 paragraph (3), and Article 74 paragraph (1) and paragraph (2), but also Presidential Regulation of the Republic of Indonesia Number 71 of 2012. Considering that these articles are the spirit of the Presidential Regulation of the Republic of Indonesia Number 71 of the year 2012 so that other articles as information on follow-up discussions on compensation need to be reconstructed. In other words, the article that raises the word for damages in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 needs to be adjusted to the language by using the appropriate pronoun. Thus, it will bring out legal certainty, as well as a sense of justice for the taking of the rights of an object that will be used for development in the public interest.

IV. CONCLUSION

1. The determination of the amount of compensation used as a basis for calculation is based on the provisions of Presidential Decree No. 36 of 2005 and Presidential Decree No. 65 of 2006 Article 15 which determines the basis for calculating compensation based on: (a) Sales Value of Tax Objects or real/ actual value by taking into account the Sales Value of Tax Objects for the current year based on the determination of the Agency or Team for assessing land prices appointed by the Committee, (b) Value selling of buildings estimated by the regional apparatus responsible for the construction sector, (c) The selling value of plants regulated by the regional apparatus responsible for agriculture. The Problem that is the injustice in the land acquisition process for the land acquisition process for the public interest of the Semarang-Solo toll road is that the land acquisition has not been carried out simultaneously with construction, which means that the Business Entity is willing to bear the cost of land but objected the risks arising from the inflation of the land price due to prolonged implementation in the field caused by the long process in deliberation and land speculators.
2. The spirit of the Presidential Regulation as well as the statutory regulations concerning land acquisition for the public interest lies in the point of compensation, as well as the determination of the value of compensation. Given that the point of compensation is the most decisive factor in taking rights to land owned by the community. It can be said that the success of the implementation of land acquisition for development for the general interest lies in the process of determining the value of compensation, related to this, the author proposes a reconstruction of several articles in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition For The Development For Public Interest where the articles that need to be reconstructed are Article 1 paragraph (10), Article 63 paragraph (1), Article 65 paragraph (1), Article 66 paragraph (1), (2), (3), and (4), Article 68 paragraph (3), as well as Article 74 paragraph (1) and paragraph (2).

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