



Juridical analysis of implementation of land procurement compensation for toll road construction

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Abstract

The Land Procurement Law requires compensation to communities affected by land acquisition for the public interest fairly and properly so that the community can live a better life. However, in the construction process of the Sigli-Banda Aceh Highway section, especially Session IV and Session V, there are several obstacles. The data used are secondary data and primary data derived from library and field research. The results of the study found that the process of compensation for community land in land acquisition for the construction of the Sigli-Banda Aceh Highway, especially sessions IV and V, has been carried out since July 2018 and has achieved 98% and 81.19% progress, respectively. Next, legal efforts made by the community holding land rights are related to the provision of compensation, namely deliberation and legal remedies for litigation at the Jantho District Court. The conclusion obtained is that the process of providing compensation to the community for land acquisition for the construction of the Sigli-Banda Aceh Highway segment has not been carried out optimally. There are still many obstacles in the process of implementing compensation to the community due to the uncertainty of the norms governing the determination of the nominal compensation to the community. Furthermore, litigation and non-litigation legal efforts that have been carried out by the community in demanding compensation have not had a fair impact on the community holding land rights. The conclusion obtained is that the process of providing compensation to the community for land acquisition for the construction of the Sigli-Banda Aceh Highway segment has not been carried out optimally. There are still many obstacles in the process of implementing compensation to the community due to the uncertainty of the norms governing the determination of the nominal compensation to the community.

Keywords: land acquisition, highway construction, compensation implementation, sigli-banda aceh highway

Introduction

One of the parameters of a country's welfare cannot be separated from the aspect of development. One of the reasons development is considered an indicator of progress is because the State as the highest institution is required to provide infrastructure for the community to achieve the function of benefit for the entire community so that when the facilities and infrastructure are adequate, the community can use the facilities provided by the State to achieve prosperity.

In realizing development to achieve prosperity, the State has the authority to manage the resources owned to achieve the prosperity of the nation. This is as stated in article 33 paragraph (3) the 1945 State Constitution of the Republic of Indonesia: "Earth, water and space, including the natural resources contained therein, are controlled by the State and used as much as possible for the prosperity of the people."

Based on this article, the State is given the authority to regulate the allocation of natural resources contained in the earth, water, and space to be utilized for the community in achieving prosperity. In the political realm, the State is recognized as the source, owner, and at the same time the holder of the highest power in the life of the state, with the authority it has as the ruler of natural resources. Article 33 paragraph (3) of the 1945 State Constitution is also the basis for the formation of a national agrarian law that is oriented towards the welfare of the community.

One of the development efforts within the framework of national development organized by the Government is development in the public interest. The development for the public interest requires land whose procurement is carried

out by prioritizing the principles contained in the 1945 State Constitution of Republic Indonesia and the national land law, including the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony following the values of the nation and state.

In general, inland acquisition activities, the word 'proper' is meant to provide a reasonable price to the entitled party. Furthermore, the word fair is meant to provide a guarantee of proper compensation to those who are entitled to the land acquisition process so that they get the opportunity to be able to carry out a better life (Zarkasih, 2015).

Aceh as one of the provinces in the Republic of Indonesia, which is located in the western region of the island of Sumatra, is currently under construction of the Sigli-Banda Aceh toll road section. The implementation of toll road construction for the public interest cannot be separated from the technical aspects of land acquisition or land acquisition by the regional government which is also accompanied by a compensation mechanism.

Based on the description above, the identification of problems, namely (1) How is the process of implementing compensation for community land which is the object of land acquisition for the construction of the Sigli-Banda Aceh toll road section, (2) What are the obstacles faced by the community in providing compensation for land acquisition for the construction of the Sigli-Banda Aceh toll road section, and (3) What efforts have been made to resolve the problems related to the low compensation value for land acquisition for the construction of the Sigli-Banda Aceh toll road section?

Methods

Based on the formulation of the problem in compiling this research, the type of research used is the type of research Empirical Jurisdiction. The legal sources used are secondary data with primary legal materials, secondary legal materials, and tertiary legal materials. The nature of this research is descriptive-analytical research and concluding using the deductive method. For primary data, researchers conducting interviews. Meanwhile, to obtain secondary data, the researcher conducted a literature study. Literature study is research on library materials related to this research.

Discussion

Land Procurement with Compensation for the Construction of the Sigli-Banda Aceh Toll Road section

The relinquishment of rights carried out by the community on their land is an obligation that must be carried out when it is faced with the public interest. The act of relinquishing these rights must of course be followed by receiving compensation for the land they have submitted to the government for the implementation of land acquisition. The provision of compensation for community land in the land acquisition process is fundamentally regulated in Article 9 paragraph (2) of the land acquisition law, namely: "Land Procurement for Public Interest is carried out by providing appropriate and fair compensation."

Based on the article, it is known that a land acquisition process must be obliged to provide compensation to the community as a right they receive for the release of land rights that they have submitted to the State so that the State is obliged to provide compensation to the community. Meanwhile, what is meant by compensation is regulated more specifically in Article 1 paragraph (10) of the land acquisition law, namely: "Compensation is a proper and fair compensation to the rightful party in the land acquisition process."

Compensation has the same meaning as the meaning of compensation, namely: settlement of accounts receivable by providing goods that are worth the debt. Sumardjono (2009) explains that the compensation that must be given in land acquisition must be fair compensation which means that the provision of compensation does not make a person richer or poorer than the original situation. Meanwhile, what is meant by fair and proper compensation is the amount of compensation adequate to acquire land and/or buildings and plants elsewhere (Sutedi, 2008) ^[16]. Compensation in land acquisition also has meaning, namely: replacement of the value of land including buildings, plants, and/or other objects related to land as a result of the release or surrender of land rights (Abdurrahman, 2003) ^[13].

The price of compensation that will be obtained by the entitled party is measured or assessed from the variables of their land, this is as regulated in Article 33 of the Land Acquisition Law. The amount of compensation for the process of land acquisition belonging to the community affected by land acquisition for the public interest is determined by the assessment team by conducting an assessment of the variables as stated in article 33 of the land acquisition law. The compensation value resulting from the appraiser's assessment becomes the basis for deliberation to determine compensation between the land agency and the party entitled to compensation. The results of the agreement that have been approved by the entitled party and the implementing committee obtained from the deliberation

become the basis for providing compensation to the entitled party.

There are several mechanisms carried out by the procurement committee or task force in carrying out a land acquisition for the construction of the Sigli-Banda Aceh toll road section. The land acquisition and compensation process will be divided into several stages, namely the planning stage, the preparation stage, the implementation stage, and the result submission stage.

At the planning stage, the agency that requires land for the construction of toll roads will prepare a land acquisition planning document which includes administrative provisions, technical provisions, and the stages of preparing the land acquisition planning document for a team formed/appointed by the agency requiring land for infrastructure purposes. The Land Acquisition Planning Document for Public Interest is based on the Regional Spatial Plan and development priorities listed in the Medium Term Development Plan, Strategic Plan, and Government Work Plan of the relevant Agency.

The agency that prepares the land acquisition planning document in the construction of the Sigli-Banda Aceh toll road section is the Aceh Province Public Work and Public Housing (PUPR), which then assigns the task to the BPN Task Force which was formed specifically and independently by the BPN, village heads, police, BPN, Committee of Assessment to measure the land owned by residents.

Obstacles in the Compensation Process for Land Acquisition for the Construction of the Sigli -Banda Aceh Toll Road

The process of implementing land acquisition and compensation for community land rights holders in practice does not always run as expected. Often some factors will affect the process, both internal and external factors. The factors originating from within are related to government actions and attitudes from the community itself, while factors originating from outside are actions from outside communities who are not related as parties but have a major influence on the community holding the right to refuse to receive compensation.

In addition, there are also juridical obstacles in applying the law to the implementation of land acquisition which is often the cause of causing problems in procurement practices in the field. In carrying out land acquisition, of course, a legal rule is needed which regulates the mechanisms and legal limits and the principles of land acquisition considering that there are community rights that must be revoked for the common interest. There are several legal rules in the land acquisition process, including Law Number 2 of 2012 concerning Land Acquisition. The land acquisition law is still in use today and is the legal basis for the land acquisition process in Indonesia.

However, there are several legal problems related to land acquisition from a juridical point of view, namely the land acquisition law does not regulate further and specifically regarding the procedure for assessing compensation for community land that has been acquired for the public interest, but the land acquisition law only explains the criteria for land acquisition. what will be assessed by the assessment team to determine the amount of compensation that will be received by the community. In this regard, the assessment team does not have a clear legal basis or

benchmark in measuring the amount of compensation (Wiryadi, 2021). So they measure each of these criteria using only random sampling and interviews with local communities.

In addition to the absence of rules governing the assessment mechanism, a new problem has emerged, namely since the enactment of Law No. 11 of 2020 concerning work creation. The work copyright law regulates several changes that revoke the old land acquisition law. The regulation regarding land contained in the Job Creation Act has become a concern of the wider community, especially the provisions regarding the Land Bank contained in the Fourth Part concerning Land in the Job Creation Act. As stated in Article 125 of the Job Creation Law, the Land Bank is an agency established by the Central Government as a special agency that manages the land, whose assets are separated state assets. More specifically in paragraph (4), it is stated that the land bank functions to carry out the planning, acquisition, procurement, management, utilization, and distribution of land (Wiryadi, 2019).

However, regarding compensation, the copyright law stipulates that for parties or people who refuse to receive compensation, the money will be deposited with the local district court. The rules are as regulated in article 42 of the work copyright law. In the regulation, it is explained that the party entitled to receive refuses the amount of compensation, then the compensation will be deposited with the local district court. The deposit of compensation in court also applies to parties who are entitled to receive compensation, but whose whereabouts are unknown. In addition, the object of land acquisition for which compensation will be given is being the object of a court case, is still being disputed, confiscated by the competent authority, and becomes a guarantee at the bank. This rule opens up opportunities for the government has the authority to evict land even if residents refuse to give compensation. The government just left the compensation to the district court.

The government has the authority to evict any land if it meets the 'public interest' requirements. These public interest requirements include, for upstream and downstream oil and gas industrial areas; special economic zones, industrial areas, tourism areas, and other areas initiated and controlled by the Central Government, regional governments, State-Owned Enterprises, or Regional-Owned Enterprises.

In addition to the juridical barriers as described above, there are also obstacles in the implementation process in the field in the compensation process that make it difficult for the community to obtain appropriate and fair compensation as stipulated in the law. The obstacles are as follows: Fair and proper compensation is one of the obligations that must be carried out by the government in carrying out land acquisition, including the construction of the Sigli-Banda Aceh toll road. However, the price set by the evaluation committee team was rejected by the community. The community believes that the price set by the evaluation committee team does not meet the value of justice for them.

Efforts to Resolve the Low Compensation Value for Land Procurement for the Construction of the Sigli-Banda Aceh Toll Road

Law Number 2 of 2012 concerning Land Procurement provides alternative legal remedies that can be taken by the

community if they do not agree with the compensation price determined in the deliberation. This is regulated in Article 38 of Law Number 2 of 2012 concerning Land Acquisition. The law provides an opportunity for people who object to the results of the deliberation to file an objection to the local District Court within 14 (fourteen) days after the determination of the results of the deliberation. Within 30 (thirty) days after the objection is filed, the district court is obliged to decide the form and/or amount of compensation for the community.

Non-litigation efforts are dispute resolution outside the court. Non-litigation is an attempt to bargain or compromise to obtain a mutually beneficial solution. One form of non-litigation effort in resolving compensation disputes in land acquisition is by conducting deliberation. Deliberation is a process of dialogical communication between interested parties to reach an understanding and agreement in planning land acquisition for development in the public interest.

Deliberations have an important role and have a positive impact on dispute resolution if carried out optimally and in collaboration with related parties such as the government who needs land and the people who own the land. The community needs to be involved or given to participate from an early age so that they are not antipathy to the government. Because without a good approach with the local community, the land acquisition process will be difficult to carry out so that it ends in physical clashes and the community does not want to give up their land.

Based on the results of the research, it is known that deliberation efforts in determining the price of land compensation have been carried out 5 (five) times on land acquisition for the construction of the Sigli-Banda Aceh toll road. The deliberations involved related elements such as the rights holder community, government, community leaders, and the compensation assessment committee. However, it is unfortunate that the deliberation efforts did not find a clear point and agreement between the community and the government, so that people who objected to the amount of compensation determined by the committee filed a lawsuit through litigation.

Litigation is a legal remedy that is carried out through the courts. The litigation process places the parties against each other, besides that litigation dispute resolution is the final means (ultimum remedium) after other alternative dispute resolutions do not produce results.

As regulated in Article 38 of Law Number 2 of 2012 concerning Land Acquisition, the Law provides an alternative legal remedy through litigation that can be carried out by the community if they do not agree with the compensation price determined in the deliberation. The community can file a lawsuit through the District Court regarding the nominal amount of compensation determined by the land acquisition committee, while related to land area disputes and the determination of the location of the pawnshop, the community can file a lawsuit at the State Administrative District Court in the jurisdiction. If since the issuance of the decision of the district court or the state administrative court, the public concerned still does not agree and object to the decision issued, the community can directly file a cassation case to the Supreme Court within 14 (fourteen) days

Conclusions

Legal efforts that have been made by the community

holding land rights in demanding compensation are through non-litigation efforts, namely deliberation and litigation legal efforts by filing a lawsuit to the Jantho District Court. The decision of the Jantho District Court stated that it rejected the lawsuit filed by the community as a whole. The implementing committee is to be able to complete as soon as possible compensation in the form of money or replacement land to the community who are entitled to receive compensation for land acquisition for the construction of toll roads. Communities to play an active role in the compensation process by establishing communication with local village officials and the implementing committee to achieve legal certainty for their land. The government needs to establish a legal regulation that clearly and firmly regulates procedures and mechanisms in determining the amount of compensation in land acquisition so that the assessment team has clear benchmarks and can provide justice and legal certainty for communities affected by land acquisition. It is necessary to establish an independent and free agency that has a role as a third party that will help people who do not understand legal regulations to achieve justice and feasibility in the compensation process in land acquisition for the public interest. So that equality will be achieved between the government as the executor of land acquisition and the local community as the holder of land rights to be procured.

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