



Is the procedure for indemnity procurement of railway construction land

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Abstract

This research uses normative juridical methods, supported by the Case Approach. The awarding of compensation in the procurement of land for the construction of railways in Barru Regency has staged in the implementation of land procurement, namely, planning stages, preparation stages, implementation stages that include inventory and identification, assessment of compensation, deliberation of compensation determination and compensation, and the last stage of submission of results. And the efforts made by the Government to solve the problem of the implementation of land compensation for railway construction in Barru Regency, namely to solve the problem with consensus deliberation, mediation, and persuasive approach and to understand and understand the social function of the land.

Keywords: indemnification, land procurement, and railway construction

Introduction

The need for land as a capital asset is increasing in connection with the increased incentive of development activities. As we know that development activities, especially development in the physical field both in the city and in the village, of course, require a lot of land as a shelter for development activities. The need for land availability for development purposes provides opportunities for land acquisition for various projects, both for the benefit of the state / public interest and for business purposes, on a large and small scale. Considering that the available state land is no longer adequate in number, then to support the various interests above that are the objects are land rights, whether owned by individuals, legal entities, and indigenous peoples.

However, problems arise with regard to the availability of land for development. Conflicts of interest occur when on the one hand development requires land as its main means, while on the other hand most of the community also needs land as a place of settlement and livelihood.

Paradoxical situations are inevitable. The paradox is that when the land is taken for granted and used for development purposes, it is clear that the human rights of citizens are sacrificed even though we adhere to the principle of rule of law that guarantees the protection of human rights. On the contrary, when we uphold the principle of rule of law, of course development efforts will be hampered. To that end, the government has issued a policy so that development can still be maintained, especially the construction of various facilities for the public interest that require land. The legal policy of the government to obtain these lands is carried out through land procurement.

Normatively, it is affirmed that all land rights have a social function. That means, the right to any land that exists in a person, its use is not solely for personal interests, especially if it causes harm to the community. The use of land must be adjusted to its circumstances and the nature of its rights so that it is beneficial, both for the welfare of its owner and for

the benefit of the community and the state. That means the procurement of land in the public interest is one of the manifestations of the social function of land rights. Land procurement is seen as the first step of the implementation of equitable development to improve the welfare of the people or the community itself, both to be used for the public interest and the private interest. The procurement of land for development can only be done based on the approval of the land rights holder regarding the basis and form of compensation granted to the holder of land rights..

Therefore, deliberation with the land procurement committee, landowners, and local governments in this case the Barru Regency Government. Deliberation is conducted as a form of effort to listen to the opinions and wishes of the parties, with the willingness of the indemnity agreement.

Indemnity is the most critical component in the land procurement process. Negotiations on the form and magnitude of compensation are often a protracted process, resulting in the absence of a word of agreement between the parties. The train construction project covering the area of Makassar City, Barru Regency, and Pare-pare City, is planned with a total length of 145 km, for the Barru Regency area itself must free up land starting from the Barru-Pangkep border to the Barru-Parepare border, with an estimated cost of up to 30 billion rupiahs, including the construction of stations, outside the land acquisition budget. The Makassar-Parepare railway construction project in the initial stage, is planned to consist of five main stations, which will be built in each district / city along the Railway, in addition there is also a buffer station This project began planned since 2014, until 2015 has been carried out the installation of the first rail on November 13 in Lalabata Village, Tanete Rilau Sub district, Barru Regency, which was witnessed directly by the Director General of Railways of the Ministry of Transportation (Kemenhub), Hermanto Dwiatmoko, and the Governor of South Sulawesi, at that time Mr. Syahrul Yasin Limpo.

The first phase which has a length of 145 km is part of the

Trans Sulawesi Railway line, and Barru Regency became the first area to become the construction site of a railway line outside Java and Sumatra. But in the process since 2014 until now various problems arise in its implementation including the compensation mechanism.

Method

This research uses a juridical normative approach, which is research conducted with an approach to the norms or substance of law, legal principles, legal propositions and legal comparisons. This method is supported by the Case Approach which is one type of approach in normative legal research that researchers try to build legal arguments in the perspective of concrete cases that occur on the ground, of course, the case is closely related to cases or legal events that occur in the field. Research conducted is descriptive analytical, namely describing, analyzing, inferring problems that are the object of research.

Analysis and Discussion

As stipulated in Law No. 22 of 1999 concerning local government, the local government is given the authority to manage development and government. Similarly, in the Field of Land submitted to the local government as mentioned in Article 11 paragraph (2) which states "*The areas of government that must be implemented by the District and City Regions include public works, health, education and culture, agriculture, transportation, industry and trade, investment, environment, land, cooperatives, and labor*".

Furthermore, Law No. 32 of 2004 on Local Government regulates the authority of the Regional Government in the field of Land, that the district/city government must organize affairs in the field of land as a form of autonomous regional implementation. Therefore, local governments have the authority in managing development and government in order to improve services to the community.

The juridical basis for land procurement in the public interest in Indonesia refers to the provisions in Article 18 of Law No. 5 of 1960 concerning the Basic Rules of Agrarian Principals which states "In the public interest, including the interests of the nation and the State as well as the common interests of the people, the rights to land can be revoked, by indemnifying properly and in a manner regulated by law". The provision does not regulate the provisions in the previous article, namely in Article 4 paragraph (1) and Article 9 paragraph (2) of Law No. 5 of 1960 on the Basic Rules of Agrarian Principals that allow and allow the control and use of land individually. Furthermore, the provisions of Article 21, Article 29, Article 36, Article 42, and Article 45 which contain the requirements of land rights holders also show the principle of ownership and use of land individually Indonesian people.

Article 33 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 states clearly that the earth, water, and natural wealth contained therein are controlled by the state and used as much as possible for the prosperity of the people. This clearly contains a very basic constitutional mandate, namely that the use and use of land must be able to bring the greatest welfare to all Indonesian people. This means that every right to land is required certainty regarding the subject, object, and exercise of its right authority.

What is meant by the state is that the state is authorized to (1) Organize and organize for its use, supply, and

maintenance; (2) Determine and establish the rights that can be owned, namely earth, water, and space in accordance with applicable provisions; (3) Regulate and establish legal institutions on earth, water, and space.

Land procurement for development purposes has a long history because it has existed since colonial times known as *Onteining*. The legal basis of land procurement for the public interest is The Minister of Home Affairs Regulation No. 15 of 1976, Presidential Decree No. 55 of 1993, Presidential Regulation No. 36 of 1995, Presidential Regulation No. 65 of 2006. The regulations were later repealed after the enactment of Law No. 2 of 2012 on Land Procurement for Development in the Public Interest.

The concept of the right to control land by the State was born from the above article then the concept was spelled out in Article 2 of Law No. 5 of 1960 on the Basic Rules of Agrarian Subjects. There mentioned the authority of the state which includes, among others: regulating and organizing the allocation, use, supply, and maintenance of the earth, water, and space, determining and regulating legal relations between peoples and the earth, water and space, determining and regulating legal relations between peoples and legal acts concerning the earth, water and space.

The form of "development" efforts within the framework of National Development by the current government is to organize land procurement in the public interest. Land procurement activities for development purposes, based on certain principles or principles and divided into two subsystems:

1. Procurement of land by the government because of the public interest.
2. Procurement of land by the government because it is not in the public interest (Commercial).

Law No. 2 of 2012 on land procurement became the legal basis in current land procurement activities. Based on the provisions of Article 13 of Law No. 2 of 2012, the Implementation of Land Procurement is carried out through the following stages:

- a. Planning
- b. Preparation
- c. Implementation, and
- d. Submission of results.

To procure land in the public interest at a predetermined location, agencies that require land submit the implementation of land procurement to the Land Agency. The stage of the implementation of the land procurement is based on the provisions of Article 27 Paragraph (2) of Law No. 2 of 2012, covering:

1. Inventory and identification of land tenure, ownership, use, and utilization.
2. Indemnity Assessment.
3. Deliberations on the determination of Compensation for Damages.
4. Compensation, and
5. Agency land release.

The goal is to provide land for the implementation of development to improve the welfare and prosperity of the nation, state, and community. The provision of compensation in the procurement of land for the construction of railways has staged in the implementation of land procurement, namely:

Planning

At the planning stage, the implementing agency makes land procurement planning following regional spatial plans and medium-term development priorities, strategic plans and work plans of the relevant local governments. The planning is in the form of Land Procurement planning documents compiled based on feasibility studies. Next, it was handed over to the provincial government.

Preparation

At the preparatory stage, the implementing agency together with the provincial government submitted a development plan based on the Land Procurement Plan Document to the community, which was carried out directly or indirectly. Conduct initial data collection of the location of the development plan, and conduct a public consultation of the development plan. Initial data collection is done to collect data of the parties in this case the owner and land object. The initial data collection is carried out with a period of 30 working days from the notification of the development plan. Initial location data is used as data in the conduct of public consultations.

Public consultation is carried out to get an agreement on the location of the development plan from the entitled party. Public consultation is conducted by involving entitled parties and affected communities and carried out at the site of the development plan or in an agreed place. Public consultation is re-conducted if there are parties who object to the development site plan.

Landowners who object can file a lawsuit with the State Administrative Court, and can also make legal cassation efforts to the Supreme Court, until there is a court ruling that has permanent legal force and the basis can be continued or not the procurement of the land. The establishment of the construction site is given within 2 years and can be extended for a maximum of 1 year. If the period of determination of the construction site is not fulfilled, the determination of the construction site in the public interest is carried out a re-process of the remaining land that has not been completed. The governor along with agencies that require land announce the establishment of the construction site as a notification to the community that at the site will be carried out for the public interest.

Implementation

Based on the determination of the development site, the implementing agency submitted the implementation of land procurement to the land agency. The implementation of land procurement includes:

- a. Inventory and Identification, including activities: measurement and mapping of fields per plot of land, and collection of data of entitled parties and land procurement objects. Inventory and identification are carried out within a maximum of 30 business days. The results of inventory and identification must be announced at village offices, sub-district offices, and where land procurement is carried out. The announcement of inventory and identification results covers the subject of rights, area, location, and land field map of land procurement objects. If it does not receive the results of the inventory, the entitled party can object to the land agency. Furthermore, land agencies conduct verification and repairs. The results of the announcement or verification and improvement then

become the basis for determining the party entitled to the awarding of compensation.

- b. Indemnity Assessment, conducted by an appraiser set and announced by the land agency following the decision of the laws and regulations. The designated appraiser assesses the object and is responsible for its assessment. Assessment of the amount of compensation by the appraiser is carried out the field by the plot of land, including land, above ground and underground space, buildings, plants, objects related to the soil, and/or other losses that can be assessed. The value of the compensation assessed is the value at the time of the announcement of the establishment of the construction site. The amount of compensation value is conveyed to the land agency with the news of the event and becomes the basis of deliberation on the determination of compensation. If certain plots of land are affected by land procurement there are remnants that can no longer be functioned following their designation and use, the entitled party can request the complete replacement of the plot of land.
- c. Deliberations on The Determination of Compensation, Land Institutions conduct deliberations with the landowning community after assessment, and the assessor determines the form and or service of the magnitude of the compensation. After deliberation gave birth to the agreement of the parties, regarding compensation is contained in the news of the event and then becomes the basis for awarding compensation for losses.
- d. Compensation, on the object of land procurement, is given directly to the entitled party. Compensation is given to the entitled party based on the results of the assessment stipulated in the deliberations and/or decisions of the District Court / Supreme Court. Payment of compensation is made accompanied by the submission of evidence of power or diversity of objects and the release of rights by landowners to the implementing agency through the land agency.

Submission of Results

At the stage of submission of results, land agencies submit the results of land procurement to the implementing agency. The submission of proceeds is made after the awarding of damages to the landowner and the release of rights and or the award of damages has been deposited in the District Court. The implementing agency has been able to carry out the development as planned.

Before the establishment of the construction site, first submitted a notice to the entitled party. Agencies that require land can carry out development activities even if there are objections or lawsuits over the implementation of the land procurement. Law No. 2 of 2012 and Presidential Regulation No. 71 of 2012 is not strictly regulated how the composition of the Team or Land Procurement Committee. However, if reviewed in Article 6 paragraph (5) of Presidential Regulation No. 65 of 2006 states that the membership of the committee varies depending on the location of the land procurement carried out.

The duties of the Land Procurement Committee are as follows

1. Conduct inventory and local research on the state of the soil, plants growing, and buildings
2. Negotiating with land and building rights holders.

3. Estimate the amount of compensation that will be paid to the entitled.
4. Make news of land liberation events accompanied by fatwas/considerations.
5. Witness the implementation of compensation payments to those entitled to the land, buildings/plants.

In establishing the magnitude and form of land compensation, the Land Procurement Committee with the landowners concerned has reached an agreement in deliberation with due regard to the will of the land rights owners. The landowners are concerned and get the right to receive compensation for residents whose land, buildings, plants, or related to other land are affected by the construction of railways. To determine the parties entitled in the process of compensation for the project, the inventory, and identification of the ownership, ownership, use, and utilization of land, in this case, the Land Procurement Committee confirms the inventory officer of the Government Agency responsible for the field concerned.

The provision of compensation to parties who are entitled to the procurement of land for the construction of railways in Barru Regency is done based on the results of the agreement in deliberation in the form of money. In the process of indemnifying the construction of railways in Barru Regency, the files that must be fulfilled in land ownership are attaching photocopies of Identity Cards, photocopies of Building Earth Taxes, and proof of land ownership, which is the payment through BRI accounts. The owner mechanism to the desk of the National Land Agency officer then LMAN deposit data then sign the news of the release of rights and finally to the bank officer's desk for the account book signature. After the former land rights holder receives compensation then a letter of receipt of compensation for land and buildings and other objects is signed by the Agency that requires land witnessed by all Land Procurement Committees in Barru Regency.

News of the event of awarding compensation as referred to in paragraph (1), attached:

- a. List of parties entitled to receive damages.
- b. The form and magnitude of the damages that have been given
- c. List and proof of payment/receipt
- d. News of land rights release or land handover.

Among the 7 subdistricts and 52 villages/villages in Kab. Barru, namely Tanete Riaja District, Tanete Rilau Subdistrict, Barru Subdistrict, Soppeng Riaja District, Mallusetasi District, Balusu Subdistrict, and Pujananting Subdistrict. The focus of the researchers to conduct research is in Mallusetasi Subdistrict, Mallawa Village which consists of five neighborhoods namely Joncongan, Mallawa, Tellulelange, Panampobo, and Jalan. From the data mentioned above, 266,524 square meters of land targeted, there are still 23,890 square meters that have not been paid because of the price discrepancy between landowners and Government Agencies that need land. Landowners tend to set high prices without thinking about the quality of the land or the benefits of the land itself.

The implementation of deliberations on the establishment of compensation form for the construction of the Barru-Parepare Phase II railway in 2016, for mallawa village itself was held on Monday, December 5, 2016. The Land Procurement Team submitted a land price offer in

accordance with what had been set by the Assessment Team (Appraisal) per square meter of land in the location of the railway construction, but deliberations on that day did not / there has not been an agreement. For some people who only have a small land if they release the land and get compensation, it cannot be used to buy land elsewhere. Deliberation of compensation payments in Mallawa Village, The Land Procurement Team delivered an offer not only for land losses but coupled with plantation products or growing crops to land and building owners. Indemnity on plants is considered high and quite profitable, this is because the type of plant that is set in advance has a fair selling value.

The construction of infrastructure as part of the Government Plan has been stipulated in Presidential Regulation No. 58 of 2017 which is a change to presidential regulation No. 3 of 2016 on Accelerating the Implementation of national Strategy Projects, The policy is planned to consist of 245 projects ranging from national roads or non-toll national strategic, toll road buildings, infrastructure projects of railway facilities and infrastructure, airport revitalization and construction projects, port infrastructure development, electricity and so on, with an estimated budget of Rp. 4,700 trillion.

The amount of compensation in the implementation of compensation to residents whose territory is affected by the construction of the railway is considered not detrimental and worthy, especially since the value received is quite high above the market price. However, some communities that are only affected by the procurement of partial land, make land that is not affected by land procurement cannot be reused, so this is considered quite concerning. Landowners who have not agreed with the Land Procurement Committee regarding the form or magnitude of compensation to all residents of Mallawa Village affected by the construction of the railway, then the Land Procurement Committee seeks to conduct deliberation again until a firm agreement is reached or the amount of compensation. The continuous approach carried out by the implementing agency is expected to be able to explain to the community about the purpose and purpose of land procurement for the public interest, so that in the process the community can easily release the land.

If the deliberation efforts are not successful, then the Land Administration Committee will make news of the indemnity offer event, then the award of compensation will still be given but entrusted to the District Court whose jurisdiction includes the location of the land for the implementation of railway construction. The form of compensation according to Article 1 paragraph (11) of Presidential Regulation No. 36 of 2005 and Presidential Decree No. 65 of 2006 states that compensation is reimbursement for losses both physical and/ or non-physical as a result of the procurement of land, buildings, plants and/or other objects related to the land that can provide better survival from the socio-economic life rate before being exposed to land procurement. Therefore, compensation must meet aspects of the recovery of the social condition of the community, especially landowners.

The implementation of the release of land rights by the Land Procurement Committee is completed gradually and systematically. This means that it is not permissible to release land rights scattered so as to interfere with the use of landowners who have not been settled for compensation payments. In the construction of the railway in Barru Regency, the following problems are faced:

- a. The process of inheriting inheritance, where the heir in

obtaining the inheritance in the form of land, but still not followed up with the process behind the name, so that between legal documents and the reality of land ownership is different. This certainly requires a research to ascertain who is entitled to the land.

- b. The existence of absentee land ownership/guntai, where the landowner is not located or domiciled in the region where the land is located.
- c. Some land has not been released, because there is no agreement on the amount of compensation between landowners and the Government who need land, based on Presidential Decree No. 65 of 2006 explained that the determination of the amount of compensation is seen from the Selling Value of Tax Objects and real prices or market prices concerning the Selling Value of Current Tax Objects. In the implementation of the construction of the railway, some people do not agree with the price offered even though the Land Procurement Committee has considered large compensation following applicable legal procedures, but according to residents have not been able to make them better with the amount of compensation. In procuring land, there are always problems faced. So there need to be efforts from the government in this case the land procurement committee to overcome the problem, including:
 - a. The existence of an active role of the Land Procurement Committee in conducting consensus deliberations both in determining the small amount of compensation and the form of compensation to residents whose land is affected by the construction of railways. This consensus deliberation is needed considering that the problem that many encounter when procuring land is the absence of a price agreement between the implementing agency and the landowning community. The deliberations are aimed at getting an agreement between the two sides.
 - b. Mediation and approach persuasively. Mediation is carried out to people who have not agreed on the amount of compensation offered by the Land Procurement Committee. Mediation is an appropriate way to resolve problems without going through the courts. The mediation was carried out by the Land Procurement Committee to the community aimed at persuading the community to want to release the land.
 - c. Understanding and understanding the social function of the land. This understanding is carried out by the land procurement committee to the community utilizing socialization to communities whose land is affected by the construction of railways. The Land Procurement Committee socialized approximately 3 (three) times in Mallawa Village, the socialization discussed the construction of railways. In this regard, the implementing agency must provide an understanding to the community, especially landowners that each land has a social function which if the public interest wants, the community voluntarily relinquishes its ownership of the land. This is something that is not widely known by the public.

that include inventory and identification, compensation assessment, deliberation on compensation and compensation, and the last stage of submission of results. And the efforts made by the Government to solve the problem of implementing land compensation for railway construction in Barru Regency are to solve the problem with consensus deliberation, mediation and persuasive approaches, and understanding and understanding of the social function of the land.

Reference

1. Abdurrahman. *Masalah Pencabutan Hak-Hak Atas Tanah Dan Pembebasan Tanah Di Indonesia*. Revisi. Bandung: Citra Aditya Bakti, 1991.
2. *Masalah Pencabutan Hak-Hak Atas Tanah Dan Pembebasan Tanah Di Indonesia*, Bandung: Citra Aditya Bakti, 1983.
3. Agus Suntoro. "Penilaian Ganti Kerugian Dalam Pengadaan Tanah Untuk Kepentingan Umum: Perspektif Ham." *Jurnal Agraria Dan Pertanahan*, 2019.
4. Kasenda, Dekie Gg. "Ganti Rugi Dalam Pengadaan Tanah Untuk Kepentingan Umum." *Jurnal Morality* 2, 2015, 21.
5. Limbong, Bernhard. *Pengadaan Tanah Untuk Pembangunan*, Jakarta: Margaretha Pustaka, 2011.
6. Murad, Rusmadi. *Menyingkap Tabir Masalah Pertanahan*. Bandung: Mandar Maju, 2007.
7. Sitorus, Oloan. *Pelepasan Atau Penyerahan Hak Atas Tanah Sebagai Cara Pengadaan Tanah*. Jakarta: Dasamedia Utama, 1995.
8. Zarkasih, Hery. "Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum (Studi Kasus Pelebaran Jalan Raya Di Kota Praya Kabupaten Lombok Tengah)." *Jurnal Ius* 3, 2015, 17.
9. *Peraturan Presiden*, 2006.
10. *Undang-Undang Pemerintah Daerah*. Indonesia, 1999.
11. *Undang-Undang Peraturan Dasar Pokok-Pokok Agraria*. Indonesia, 1960.

Conclusion

The provision of compensation in the procurement of land for the construction of railways in Barru Regency has staged in the implementation of land procurement, namely, planning stages, preparatory stages, implementation stages