



Obstacles in the implementation of Aceh's province authority regarding land's procurement for development of public interest

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Abstract

Currently, the Government of Aceh applies Act Number 2, 2012 on Land's Procurement for Development of Public Interest as a reason for land procurement for the development of public interest. Relation to the authority of the Aceh Government especially in conducting the procurement of land for the development has been worded in Article 144 of Act Number 11, 2006. This research aims to explore the obstacles faced by the Government of Aceh in conducting its authority concerning land procurement for public needs development. This is normative legal research by reviewing laws. The findings are the obstacles faced by the Government of Aceh in conducting the authority of land procurement for public interest development the draft of Qanun Aceh regarding Land regulating technical directives of land procurement has not been passed and recently it is being evaluated in the Home Affair Ministry. The central government has not followed the Presidential Regulation Number 23, 2015 on the Transfer of Regional Office of Aceh Land Agency and Regional/Municipalities to be Aceh Land Agency and Regional/Municipality Land Agency and the Government has not revised the Government Regulation Number 3, 2015 regulating the Authority of the Government regarding Land.

Keywords: obstacles, Aceh government authority, land's procurement for development of public interest

Introduction

The land is an important resource for the human being.^[1] The land area has only increased slightly but the utilization continues to increase ^[2] because the land is not only used as development capital^[3] but also as a location for infrastructure development ^[4]. Currently, infrastructure development that continues to increase and is sustainable always requires land ^[5] hence that land becomes a determining factor and plays a very important role in the development carried out by the government ^[6]. Pembangunan insfratraktur yang memerlukan tanah melalui kegiatan pegadaan tanah bagi pembangunan untuk kepentingan umum di Aceh saat ini terus meningkat. The development of infrastructure that requires land through land pawnshop activities for development for the public interest in Aceh is currently increasing. Aceh is one of the 5 (five) provincial regions that carry out special autonomy, which is centralized asymmetrically ^[7] in Indonesia and has specialties and privileges in the administration of government, including the implementation of land acquisition for development in the public interest.

Currently, the basis for implementing land acquisition for development in the public interest is contained in the provisions of Law Number 2, 2012 concerning Land Procurement for Development in the Public Interest as amended by Law Number 11, 2020 concerning Job Creation. Nanum for the Aceh Government, through Article 144 of Law Number 11 of 2006, also regulates the provision of land for the development of social and public facilities, road infrastructure networks, as well as irrigation and utilities. However, currently, the Aceh Government is still using Law Number 2, 2012 concerning Land Procurement for Development in the Public Interest as amended by Law Number 11, 2020 as the basis for implementing land acquisition for development in the public interest ^[8]. Thus, it is necessary to study further the obstacles of the Aceh Government in the implementation of the authority in the field of land acquisition for development in the public interest

Research Method

This is a normative juridical method. The data are collected from secondary data that are laws, books, the latest scientific journals, and searches for other law-related materials. In the normative approach, the author uses a comparative approach, a conceptual approach, and a legal approach. This method only looks at laws and regulations as the norm, but the wetting will be prescriptive

Results and Discussions

Article 7 paragraphs (1) and (2) of the Law Number 11, 2006 stipulate that the Aceh and Regency/Municipal Governments have the authority to regulate and manage government affairs in all public sectors, except for government affairs which are under the authority of the Government. Government affairs which are the authority

of the government include government affairs of a national nature, foreign policy, defense, security, judicial, national monetary and fiscal matters, and certain affairs in the field of religion. If you look at the provisions of Article 7 of Law Number 11, 2006, government affairs in the land sector are not included in national government affairs, but become the authority of the Regional Government. The authority of the Government of Aceh in the land sector is expressed as regulated in Articles 144, 113, and 253 of Law Number 11, 2006.

Regarding the implementation with the authority of the Aceh Government, especially in the implementation of land acquisition for development in the public interest, it is regulated in Article 144 of Law Number 11 of 2006, as follows:

In terms of providing land for social and public facilities, road infrastructure networks, as well as irrigation, and utilities, the relinquishment of land rights is carried out according to this Law.

The relinquishment of land rights as referred to in paragraph (1) must be carried out by providing an appropriate compensation mutually agreed upon as compensation for the revocation of rights.

To carry out the waiver, the Governor forms an Assessment Team for the Revocation of Rights and Replacement following the laws and regulations.

Further provisions regarding the procedure for relinquishing land rights and the appropriate amount of compensation as referred to in paragraph (2) shall be regulated by Aceh Qanun.

Pursuant to Article 144 of the Law Number 11, 2006, further provisions for the implementation of land acquisition for development in the public interest are regulated in qanun. If the Draft Aceh Qanun on Land has not been ratified, then the Aceh Government does not yet have a basic technical guideline for the implementation of land acquisition for development in the public interest which is carried out under the given authority. Although currently, the Government of Aceh in the implementation of land acquisition for development for the public interest is still using Law Number 2, 2012 as amended by Law Number 11, 2020. If you read Article 144 of Law Number 11 of 2006, the mechanism for land Acquisition Island for development for the public interest is different from the mechanism regulated in Law No. 2 of 2012 as amended by Law Number 11, 2020. The most important difference is in terms of the agreement to determine the amount of compensation. Article 34 paragraph (3) and paragraph (4) of Law Number 2 of 2012 as amended by Law Number 11, 2020, states that "The amount of compensation value based on the results of the Appraiser's assessment is final and binding and the amount of Compensation used as the basis for determining the form of Compensation. This means that the determination of the value of compensation is not through an agreement or price discussion, the deliberation is only to determine the form of compensation. Price deliberations are important in a compensation for land acquisition for development in the public interest because the essence of deliberation is a unanimous agreement between the landowner and the state regarding the compensation value ^[9].

Meanwhile, in Article 144 paragraph (2) of Law Number 11, 2006, the relinquishment of land rights must be carried out by providing an appropriate compensation that is mutually agreed upon in return for the revocation of rights, which in this case means having to go through deliberation to determine the value of compensation. It can be concluded that the provisions of Article 144 paragraph (2) of Law Number 11 of 2006 provide space for the Aceh Government to regulate the deliberation on the amount of compensation.

However, currently, the Aceh Government is still using Law Number 2, 2012 as the basis for implementing land acquisition for development in the public interest. The provisions of Article 144 of Law Number 11, 2006 cannot be applied yet because there are no technical instructions, namely more detailed regulations in a statutory regulation which in this case is regulated in an Aceh Qanun. The Aceh government has drawn up the Draft Aceh Qanun on Land and discussions have been held with the Aceh House of Representatives. In 2021, the Draft of Aceh Qanun on Land was sent to the Ministry of Home Affairs for evaluation. Currently, it is still in the evaluation and discussion stage with the Aceh House of Representatives, the Aceh Government, and related Ministries and institutions since 2021 ^[10].

Furthermore, to see how far the authority in the field of land acquisition for development for the public interest is given, it depends on the regulation in Government Regulation Number 3 of 2015 concerning National Government Authorities in Aceh. In Government Regulation Number 3 of 2015, not all authority in the land sector is given ^[11]. For example, the authority to measure and issue certificates is still under the authority of the regional office of BPN/Land Office, so that the stages of land acquisition for development for the public interest, one of which is the measurement of land parcels, and the stages of handing over of results whose activities are land certificates, are still under the authority and carried out by BPN Regional Office/Land Office ^[12]. The Government of Aceh has submitted a proposal for a revision of Government Regulation Number 3 of 2015 because the contents and contents contained things that were not under the agreement during the discussion of the Draft Government Regulation between the Aceh Government Team and the Central Government Team so that some of the existing contents and content reduced and detrimental to the Aceh Government. However, until now, this revision has not been completed, the Aceh Government has only sat down 2 (two) times in discussion with the relevant Ministries and Institutions to discuss the revision, and so far it has not been completed. ^[13]

Furthermore, to see how far the obstacles to the implementation of the authority in the field of land acquisition for development in the public interest are implemented, it is closely related to the implementation of Presidential Regulation Number 23, 2015 concerning the Transfer of the Regional Office of the Aceh Land Agency and the Regency/City Land Office to the Aceh Land Agency and the Aceh Regency Land Office. /City. Until now, the transfer has not been implemented by the central government. ^[14] If the Regional Office of the Aceh Land Agency and the Regency/City Land Office become the Aceh Land Agency and the Aceh Regency/City Land

Office, the implementation of the Aceh Government's authority in the administration of land acquisition for development in the public interest can be fully implemented by the Aceh Government.

If you look at the provisions of Presidential Regulation Number 23, 2015, the transfer of the Regional Office of the Aceh National Land Agency and the Regency/City Land Office to the Aceh Land Agency and the Aceh Regency/City Land Office should have been carried out on 7 February 2016 ago and the Transfer Team had to set in March 2016 ago.

Conclusion

To sum up, the obstacles faced by the Government of Aceh in conducting the authority of land procurement for public interest development are first, the draft of Qanun Aceh regarding Land regulating technical directives of land procurement has not been passed and it is being evaluated and reviewed by the House of Representative of Aceh with the ministry and related institution since 2021. Secondly, *the* central government has not followed Presidential Regulation Number 23, 2015 on the Transfer of Regional Office of Aceh Land Agency and Regional/Municipalities to be Aceh Land Agency and Regional/Municipality Land Agency. Finally, the Government has not revised Government Regulation Number 3, 2015 regulating the Authority of the Government with Land.

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