

## Implementation of Land Procurement for *Waqf* Land Affected by the Solo-Ngawi Toll Road

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**Abstract.** The purpose of this study is to determine and analyze: 1). Implementation of land acquisition for *Waqf* land affected by the Solo-Ngawi toll road in Dibal Village, Ngemplak District, Boyolali Regency 2). Barriers and solutions to resolve the obstacles faced in the implementation of land acquisition for *Waqf* land affected by the Solo-Ngawi Toll road in Dibal Village, Ngemplak District, Boyolali Regency. The approach method in this research is juridical empirical, namely research that focuses on the behavior of individuals or communities in relation to law. The data used are primary and secondary data obtained through interviews and literature studies, while the data analysis method was carried out by qualitative descriptive analysis. The results of the research concluded that: 1) Implementation procurement of land to replace *Waqf* land affected by the Solo-Ngawi toll road in Dibal Village, Ngemplak District, Boyolali Regency, namely the planning, preparation stages, implementation stages, submission of land exchange permits for *Waqf* to the Regional Office, stages of submitting results, submitting certificates of *Waqf* to BPN. 2). Obstacles faced in the implementation of land acquisition to replace the donated land affected by the Solo-Ngawi Toll road in Dibal Village, Ngemplak District, Boyolali Regency that is, the tardiness permits, some of the *Waqf* land has disappeared or has died, it is difficult to find a replacement land that matches the value and area of the *Waqf* land affected by road construction. The solution to solve these obstacles, namely location data collection to speed up the issuance of permits, immediately look for a replacement Nadzhir, prioritizing deliberation and socialization. Deliberation to reach consensus is a way to get results that are fair to both parties.

Keywords: Land Acquisition; Public Interest; *Waqf* Land.

### 1. INTRODUCTION

Land plays an important role in the development process. To carry out this development, there is a process that must be followed, starting from the land acquisition process to building the building that will stand on it. Not only the building, but the land could also be acquired because it will be affected by the construction plan of public facilities such as roads or other public facilities. The

establishment of a housing estate on land requires a long process, from acquiring land to obtaining a building permit. The aforementioned process really depends on the status of the land. There are two types of land status known in Indonesia, namely land that has the status as State land, land that has the status as titled land.<sup>1</sup>

Land is very important in human life because most of life depends on land. Considering the important function and role of land for human life, it is necessary to have a legal basis that serves as a guideline and as a form of legal certainty in the implementation of land settlement, especially in matters, particularly in the issue of land rights procurement for public interests. Development for the public interest on State land, and as a solution that is taken is to take land rights to public interest.<sup>2</sup>

The Basic Agrarian Law itself provides a legal basis for taking land rights, as regulated in Article 18 public interest, namely, including the interests of the Nation and the State as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation according to the method. which is regulated by Act No. 65 of 2006, concerning amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development for Public Interest, which is further regulated by Act No. 2 of 2012 concerning Land Acquisition for Development for Public Interest. With this change, this has led to a much different arrangement from those stipulated in the previous laws and regulations, both regarding the definition of land acquisition,

Land acquisition referred to here is the activity of providing land by means of appropriate and fair compensation to entitled parties, namely the party who controls the land or owns the land acquisition object.<sup>3</sup> Meanwhile, compensation is appropriate and fair to the entitled parties in the land acquisition process. As for the aspects of adequate compensation, in principle, it must fulfill three aspects, namely economic aspects, sociological aspects, and philosophical aspects.<sup>4</sup>

The road as a means of transportation is absolutely necessary to support an increasingly complex development, including the Boyolali Regency which is affected by the Solo-Ngawi Toll Project. The construction of this Toll Road Project requires a long area of land and will automatically involve many parties. Meanwhile, what is meant by the parties here are the parties who have rights to the land that the development will go through and the parties who need the land, in this case the Government. This toll road construction project involves a lot of government land and community-owned land, which comes from buying and selling, grants and *Waqf*. According to the Land Acquisition Preparation Team for the Solo-Ngawi Toll Road, the donated land affected by the toll road project will be replaced according to its value.

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<sup>1</sup> Boedi Harsono. (2007). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Cetakan ke-11. Jakarta: Djambatan. p.344.

<sup>2</sup> Fauzi Noer. (1997). *Tanah Dan Pembangunan*, Cetakan I. Jakarta. Pustaka Sinar Harapan. p.7

<sup>3</sup> Article 1 paragraph (2) of Act No. 2 of 2012 concerning Land Acquisition for Development for the public interest.

<sup>4</sup> Bernhad Limbong. (2011). *Pengadaan Tanah untuk Pembangunan*. Jakarta: Margaretha Pustaka. p. 369.

For this reason, it is necessary to support all parties, especially *Nazhir*, to be able to actively participate in the implementation of the release. Continuously related to the form of compensation, for example a mosque, that means there must be an agreement between *Nazhir* and the toll road operator. Likewise for others, including graves, the cost of moving the graves will be borne by the toll authorities or toll operators. The donated land assets affected by the toll will be exchanged or replaced, rebuilt in another place agreed upon by the *Waqf / Nazhir* manager, with the executor of land acquisition, according to the value of the previously donated land. Regarding the physical value of the donated land, his party will immediately conduct verification.

The implementation of the project is related to statutory regulations, namely Presidential Decree Number 55 of 1993 and Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for Public Interest which was later updated by Presidential Regulation Number 2 of 2012 concerning amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest. Compensation at the same time shows the protection and respect for land rights and individual interests that have been sacrificed for the public interest.<sup>5</sup>

Based on this background, the title: "Implementation of Land Procurement for *Waqf* Land Affected by the Solo-Ngawi Toll Road (Study on the Implementation of Land Replacement for *Waqf* Land in Dibal Village, Ngemplak District, Boyolali Regency.) This research attempts to answer problem about the Procurement of Land for *Waqf* Land Affected by the Solo-Ngawi Toll Road in Dibal Village, Ngemplak District, Boyolali Regency, Obstacles and solutions in the Implementation of Land Procurement for *Waqf* Land Affected by the Solo-Ngawi Toll Road in Dibal Village, Ngemplak District, Boyolali Regency.

## **2. RESEARCH METHODS**

The approach method used in this research is normative juridical. Normative juridical, namely research that emphasizes the science of law and tries to examine the rules of law that apply to the subject matter.<sup>6</sup>The research specification used is descriptive analytical. Primary data collection was carried out by interview method. This type of interview used in this study using free guided interviews, is a combination of free and guided interviews.<sup>7</sup> Secondary data is data obtained from a review of the literature or a review of various literature or related library materials.

## **3. RESULTS AND DISCUSSION**

### **3.1. Implementation of Land Acquisition for *Waqf* Land Affected by the Solo-Ngawi Toll Road in Dibal Village, Ngemplak District, Boyolali Regency**

Land is an asset of the Indonesian nation which is the basic capital for development towards a just and prosperous society. Therefore, its utilization must be based on the

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<sup>5</sup> Maria S.W. Sumardjono. (2001). *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Jakarta: Kompas. p.80

<sup>6</sup> Soerjono Soekanto and Sri Mamadji. (2009). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada. p.1

<sup>7</sup> *Ibid.* p. 84

principles that grow and develop in Indonesian society. In this case, efforts to make land into merchandise, objects of speculation and other things that are contrary to the principles contained in Article 33 paragraph (3) of the 1945 Constitution must be avoided.<sup>8</sup>

Based on this formula, it can be seen that the term land acquisition was born due to the limited availability of land for development, so that it is done by providing compensation to those entitled to the land.<sup>9</sup> Meanwhile, according to Article 1 paragraph (3) Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Development for Public Interest is any activity to acquire land by giving compensation to those who release or hand over land, buildings, plants, and related objects. with land or by revocation of land rights.

Dibal Village is located in Ngemplak District, Boyolali Regency, Central Java. Dibal Village has an area of 269.3303 hectares with a stretch from west to east as far as 2 km and a west to south span of approximately 1.5 kilometers. The area of Dibal is divided into four hamlets, eight community units (RW), and 30 neighborhood units (RT). This village is in the position of developing Adi Sumarmo Airport as an international airport and traffic for pilgrims to the Donohudan Hajj Dormitory. In addition, Dibal Village is also crossed by the Solo-Ngawi toll road.<sup>10</sup>

In the construction of the Solo-Ngawi Toll Road in Dibal Village, many problems were related to land acquisition. Land issues under development for public interest as regulated in Act No. 2 of 2012 can not be separated from the issue of *Waqf*. In essence, *Waqf* property (*Waqf* land) as regulated in Article 40 of Act No. 41 of 2004 concerning *Waqf* and Government Regulation Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning *Waqf*, that *Waqf* assets that have been donated are prohibited from being used as collateral, confiscated, granted, sold, inherited, exchanged, or transferred in the form of other transfer of rights.

*Waqf* for the Muslim community can mean worship, if the *Waqf* in the form of land or building is used for public purposes such as land that is "donated" for building places of worship, for the purposes of financing the poor, and so on. *Waqf* land is basically "land for God."<sup>11</sup>

In Act No. 41 of 2004 it is stated that, *Waqf* assets are allowed to exchange with other *Waqf* land objects if the *Waqf* assets that have been donated are used for public interest in accordance with the General Spatial Plan (RUTR) based on the provisions of the applicable laws and regulations and does not conflict with sharia. The process of compensation for the donated land is not as easy as compensation in general. Compensation for *Waqf* property cannot be given in the form of money as stipulated in

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<sup>8</sup> Arie Sukanti. (2008). *Kewenangan Pemerintah dibidang Pertanahan*. Rajawali: Jakarta. p.83

<sup>9</sup> Oloan Sitorus and Dayat Limbong. (2004). *Pengadaan tanah untuk Kepentingan Umum, Mitra Kebijakan Tanah Indonesia*. Yogyakarta. p. 5

<sup>10</sup> [www.Boyolalikab.go.id](http://www.Boyolalikab.go.id), accessed on 20 December 2020, at 19.00 WIB

<sup>11</sup> Brahmana Adhie and Hasan Basri Nata Menggala. (1998). *Reformasi Tanah*. Jakarta: Mandar. p.3

Act No. 2 of 2012 letter (a). Compensation for *Waqf* property must be in the form of land whose value and benefits are the same as the original *Waqf* property.<sup>12</sup>

Article 2 of Act No. 2 of 2012 concerning Land Acquisition for Development for Public Interest states that land acquisition for the public interest is carried out through the stages of planning preparation, implementation and submission of results.

Based on this Article, the implementation of land acquisition for the donated land affected by the Solo-Ngawi toll road in Dibal Village, Ngemplak District, Boyolali Regency, starts with several stages, namely:

1. The planning stage is the initial stage in land acquisition for development for the public interest. In the land acquisition planning stage in Boyolali Regency, it begins with the preparation of planning documents carried out by the Ministry of Public Works & Public Housing (PUPR) as an agency requiring land. After receiving the Decree on Location Determination, within 14 (fourteen) days the government agency requiring land is required to publish the development implementation plan for the public interest to the community, by means of socialization, either directly or indirectly, using printed media, electronic media, or other media.
2. The preparation stage, the land acquisition preparation team formed by the Governor then conducts outreach to entitled parties / communities whose land is affected by toll road construction and is continued with public consultations.
3. Implementation stages. Article 49 Paragraph (1) of Government Regulation Number 25 of 2018 explains that the process of compensation for donated land must wait for permission from the Minister of Religion. This is also explained in the procedure for the *Waqf* land ruislag. For *Waqf* land under 5000 m<sup>2</sup>, Article 49 Paragraph (3) explains that the Minister of Religion gives a mandate to the Regional Office of the Provincial Ministry of Religion to issue a permit or recommendation for a ruislag permit for the *Waqf* land.<sup>13</sup>

Submission of the Land for *Waqf* Swap Permit to the Regional Office of the Ministry of Religion of Central Java Province through the Boyolali Regency Ministry of Religion After it was discovered that the donated land being managed was affected by the toll road construction project, Nadzir prepared the swap documents as well as the replacement land to apply for the Wakaf land swap permit to the Minister of Religion / Head of the Regional Office of the Ministry of Religion. *Nazhir* submits a written application to the Head of the Regional Office through the Head of the Office by attaching:<sup>14</sup>

- a. *Waqf* asset documents include the *Waqf* Pledge Deed or the replacement deed of the Wakaf Pledge Deed and the *Waqf* certificate or property certificate as well as other evidence of legal ownership of assets in accordance with the provisions of laws and regulations;
- b. The exchange property document is in the form of a certificate or other proof of legal ownership of the property in accordance with the provisions of the statutory regulations.

<sup>12</sup> Rizki Fitria, *Pemberian Ganti Kerugian Tanah Wakaf Dalam Pelaksanaan Pengadaan Tanah Untuk Pembangunan Jalan Tol*, Jurnal Undip Volume 8, Nomor 2, 2019. p. 1437

<sup>13</sup> Interview with Endro Hudiyono- Team of Solo-Ngawi Toll Preparation, 20 December 2020

<sup>14</sup> *Ibid.*

- c. The results of the appraisal of the assets of the *Waqf* which will be exchanged and exchanged by the Appraiser or Public Appraiser; and
  - d. Nadzir identity card.
- 4. Submission of a Permit to Swap for *Waqf* Land to the Regional Office of the Ministry of Religion of Central Java Province After conducting an assessment, the Head of the Office of the Ministry of Religion issues a Decree of the Kakankemenag concerning the Balance of Value of *Waqf* Assets and Exchangeable Assets. The results of the assessment of the exchange of *Waqf* assets from the Head of the Ministry of Religion were then sent to the Head of the Boyolali District Office and to the provincial BWI. The provincial BWI gives approval to the Head of the Regional Office no later than 5 (five) working days after receiving the results of the assessment of the exchange of assets for *Waqf* assets from the Head of the Office; and Subsequently the Head of the Regional Office on behalf of the Minister issues a written permit to exchange assets for *Waqf* no later than 10 (ten) working days after receiving approval from the provincial BWI. The Head of the Regional Office of Central Java Province then issued a Decree of the Head of the Regional Office of the Ministry of Religion of Central Java Province concerning the granting of a license to change status or exchange of *Waqf* assets. The exchange of *Waqf* land can be carried out after obtaining a swap permit from the Head of the Office of the Ministry of Religion of Central Java Province
- 5. Stages of submission of results. Presidential Decree Number 71 of 2012 Article 113 which explains that agencies requiring land can start the implementation of toll road construction after the handover of land acquisition results by the chief executor of land acquisition. Thus, Article 51A Paragraph (3) of Government Regulation Number 25 of 2018 and Presidential Decree Number 71 of 2012 has explained that the toll road construction process can be carried out if a permit or recommendation for a *Waqf* land has been issued from the Minister of Religion, agencies requiring land to prepare land and / or temporary building, and land acquisition results have been submitted by the head of land acquisition executor. So here, the Ministry of PUPR as an agency requiring land does not implement Article 51A Paragraph (3) of Government Regulation Number 25 of 2018, Article 113 of Presidential Decree Number 71 of 2012, and most importantly the Ministry of PUPR does not implement the provisions in Article 20 Paragraph (2) of Presidential Decree Number 71 of 2012 in which the implementation of compensation for *Waqf* land is carried out in accordance with the provisions of laws and regulations in the field of *Waqf*.
- 6. Submission of Certificate of *Waqf* to BPN. After the swap process is carried out, the agency or party that will use the Wakaf land is required to apply for a *Waqf* certificate in *Nazhir's* name for the replacement land to the Boyolali Regency land office no later than 10 (ten) working days after obtaining written permission from the Head of the Regional Office. After receiving the application for a *Waqf* certificate, the local land office issues a certificate of *Waqf* in accordance with the provisions of laws and regulations. In this case, the Toll Road PPK as the party requiring land submits a replacement certificate for the *Waqf* land that is affected by development for the public interest to the local Regency / City National Land Agency.

### **3.2. Barriers and solutions in the Implementation of Land Acquisition for the Land of *Waqf* Affected by the Solo-Ngawi Toll Road in Dibal Village, Ngemplak District, Boyolali Regency**

Based on data in the field, there are several obstacles that occur in the implementation of the provision of compensation for donated land for the construction of the Solo-Ngawi toll road which is hampered for several reasons, namely:

1. The release of the donated land on the Solo-Ngawi toll road is constrained because the permit or recommendation for the provision of compensation for the donated land or ruislag for the donated land from the Minister of Religion has not been issued. This is due to the fact that in the land acquisition planning process for the construction of the Solo-Ngawi toll road, there is no identified *Waqf* land.
2. The release of the donated land is constrained because some of the *Nazhir* of the donated land used for the construction of the Solo-Ngawi toll road do not exist or have died. Substitution of *Nazhirs* who do not exist or have died in the community of Boyolali Regency has not been given much attention, and in changing *Nazhir* the community only does it symbolically by pointing directly without deliberation, and not submitting it formally to the local Office of Religious Affairs. So that when the donated land was procured for the construction of the Solo-Ngawi toll road, *Nazhir* of Dibal Village held a meeting to replace *Nazhir* which was then registered with the local District Office of Religious Affairs. This is what hinders the process of releasing the *Waqf* land and the process of compensation for the *Waqf* land or the ruislag of the *Waqf* land on the Solo-Ngawi road.
3. The next obstacle in the process of donated land acquisition for the construction of the Solo-Ngawi toll road is the difficulty in finding a replacement land that is in accordance with the value and area of the donated land affected by the toll road construction.

In essence, finding a solution, so as to achieve the maximum effort in land acquisition, is not easy, because there are often differences in interests between the government and the landowning community, but it is necessary to do this as a form of effort as follows:

1. There must be a joint commitment between the government and land owners regarding development plans categorized as public interest. This commitment can be pursued through the preparation of a regional spatial plan (RTRW) by involving the community in each region.
2. The owner of the donated land must immediately find a replacement *Nadzhir*, if he finds out that *Nadzhir* who is managing his land *Waqf* does not exist or has died. This is because *Nadzhir* played an important role in the process of releasing land or paying compensation.
3. The policy of land acquisition in lieu of *Waqf* for the public interest must contain the spirit of a balance of rights and obligations as mandated by Article 6 of the UUPA.

In addition, to overcome these obstacles, the Boyololali district government, in this case the land acquisition committee, for the implementation of land compensation must prioritize deliberation and socialization. Deliberative consensus is a way to get results that are fair to both parties. If things happen that are not desired, the government must continue to prioritize non-litigation settlement. In accordance with Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The

method of deliberation stated in article 6 paragraph (2) can be used as a reference for achieving fairest justice.

## **4. CLOSING**

### **4.1. Conclusion**

Based on the description and discussion above, the researchers' conclusions are as follows:

1. Implementation of land acquisition for *Waqf* land affected by the Solo-Ngawi toll road in Dibal Village, Ngemplak District, Boyolal Regency, namely the planning stage, the preparation stage, the implementation stage, the application for a permit to swap land for *Waqf* land to the Regional Office of the Ministry of Religion of Central Java Province After conducting an assessment, the stages of submission results, and submission of certificate of *Waqf* to BPN.
2. Obstacles and solutions in the implementation of land acquisition for *Waqf* land affected by the Solo-Ngawi toll road in Dibal Village, Ngemplak District, Boyolali Regency, namely permission or recommendation to provide compensation for *Waqf* land or ruislag for *Waqf* land from the Minister of Religion has not been published, part of the *Nazhir* of the *Waqf* land used for the construction of the Solo-Ngawi toll road that does not exist or has died, it is difficult to find a replacement land that is in accordance with the value and area of the donated land affected by the toll road construction. Solutions to resolve the obstacles faced in implementing the procurement of land to replace the donated land affected by the toll road Solo-Ngawi in Dibal Village, Ngemplak Subdistrict, Boyolali Regency, by collecting data on the location of the development plan, conducting a community socio-economic survey at the designated location, immediately looking for a replacement *Nadzhir*, if he finds out that *Nadzhir* who handled his land *Waqf* does not exist or has died, deliberation and socialization.

### **4.2. Suggestions**

The suggestions in this study are as follows:

1. The government needs to take steps to overcome these obstacles, especially in terms of improving land administration
2. For *Nadzir*, donated land managers are expected to be more active and pay attention to the completeness of the donated land administration documents, including the certificate of the donated land.
3. For people involved in toll road projects, they must participate in supporting the project for the livelihood of many people by surrendering their land for the project, because it will be beneficial for the welfare and prosperity of the people at large.

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