

Land Acquisition of Toll Roads for Public Interest in The Kendal District

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Abstract. The purpose of this study was to: 1) determine the procurement of land for public purposes on a motorway in Kendal. 2) Knowing the Notary PPAT role in proving the juridical data on compensation for land acquisition. 3) To analyze the challenges and solutions implementation of land acquisition for public use on the highway in Kendal. The method used is a socio-legal approach. Socio-legal is an approach taken by seeing something legal reality in society, and is an approach that is used to look at the legal aspects of social interaction in the community.

Based on data analysis concluded that: 1) the implementation of land acquisition for public purposes toll on the motorway in Kendal includes 4 stages of land acquisition planning phase, preparation phase by forming a team preparation, the implementation phase of land acquisition, and the outcome of the submission phase. 2) The role of the Notary / PPAT of completing related legal compensation and transfer of land rights. 3) The obstacles that occur freely buying and selling land, the process of inheritance, their absentee land ownership, does not agree with the price offered. The solution that the government should provide compensation based on the value of compensation, so that it can realize a fair society, and prosperous.

Keywords: Land Acquisition; Torts; Highway.

1. Introduction

Land has a very important role for human life, as a common people depend on the land. The problem of Land acquisition is very vulnerable in handling, because in it concerns the lives of many people, when seen from the government's need to be land for development purposes, it is understandable that the ground state available is limited, therefore the only way to taken is to liberate the land belonging to the community, both of which have the master rights based on customary law and other rights under the Basic Agrarian Law (BAL)⁴. Compensation issues have become the most sensitive component in the process of land acquisition. Negotiations regarding the form and amount of compensation is often the most lengthy process and protracted due to the absence of a meeting point agreed upon by the parties concerned⁵.

The protracted process that is detrimental to the course of development itself. In instances such as highway construction projects Kendal that still leaves unresolved land acquisition problems of citizens. When viewed in a broader scope then it turns out it is becoming a common problem in Indonesia. If it is not anticipated that clearly can disrupt the development of the country, while the land rights by an individual are things that need attention in equal parts by the Government. It can be said that in many cases of land acquisition for the construction of the form and amount of compensation a major problem.

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⁴ Adrian Sutedi, 2008, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan*, Ed. 1, pub. 2, Sinar Grafika, Jakarta, p. 45

⁵ *Ibid*, p. 396

Often it happens that the land affected residents in the development plan in fact refused to types and amounts of compensation even refused to negotiate anything with a variety of personal reasons⁶.

Article 1 paragraph 2 of Presidential Regulation No. 71 of 2012 stipulates that "land acquisition is the activity of providing soil by provide proper compensation and fair to the parties entitled to ". Then Article 86 of Presidential Decree No. 71 of 2012 stipulates that if an agreement does not occur in the deliberations in determining the form and amount of compensation the Land Acquisition Committee will entrust compensation to the chairman of the District Court building site area for public use. Judging from the meaning of these provisions can be said there is an element of coercion from the government to acquire the land property rights. While the Constitution of the Republic of Indonesia of 1945 prohibits abuses, such as those contained in the provisions of Article 28 h of subsection (4) which provides that "Every person shall have the right to private property and property rights should not be taken over arbitrarily by anyone ".

Based on this background Writer lifting the title "Land Acquisition Of Toll Roads For Public Interest In The Kendal District". This study tried to answer the question about the implementation of the land acquisition for public use on the highway in Kendal, Notary PPAT role in proving the juridical data on compensation for land acquisition and procurement of obstacles and solutions for the public land on the highway in Kendal.

Research Methods

The method used is a socio-legal approach. Socio-legal is an approach taken by seeing something legal reality in society, and is an approach that is used to look at the legal aspects of social interaction in the community. Specification of the research was analytic descriptive describes the applicable laws and regulations associated with the law theories and practice implementation⁷.

Primary data were collected by interview. Type of interview used in this study using a free guided interview, is a combination of free and guided interview⁸. Secondary data is data obtained from a review of the literature or the review of the literature or library materials related to the problem or research materials that are often referred to legal materials⁹. Analysis of the data used in this research is the analysis of qualitative data that have been obtained from field studies and literature study then analyzed qualitatively with the aim of getting a conclusion of the research problem¹⁰.

2. Results And Discussion

2.1 Implementasi of Land Acquisition of Toll Road for Public Interest In Kendal

According to the provisions of Article 13 of Act No. 2 Of 2012 on Land Procurement states that "land acquisition for public purposes is carried out through the following stages: planning, preparation, execution, delivery of results." The term public interest is a concept

⁶ Albert Morangki, 2012, *Tinjauan Terhadap Kewenangan Pemerintah Daerah Dalam Penyelenggaraan Urusan Di Bidang Pertanahan*, Vol.XX/No.3/April-June.

⁷ Sumardi Suryabrata, 1993, *Metodologi Penelitian*, Rajawali, Jakarta, p.19

⁸ *Ibid.*, p. 84

⁹ Mukti Fajar dan Yulianto, 2010, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, p. 156

¹⁰ Sudarwan Denim, 2002, *Menjadi Peneliti Kualitatif*, Pustaka Setia, Bandung, p. 62

that is very common in the absence of a more specific explanation for operations in accordance with the meaning contained in these terms. In a simple sense of the common good can be said for the purposes, needs or interests of the people or the broad objectives. The public interest includes the interest of the nation as well as the common interests of people with a concern with the social, political, psychological, and *Hankamnas* on the basis of national development with regard to national security and insight archipelago. Under the provisions of Article 13 of Act No. 2 of 2012 which includes four stages in the procurement of land for development in the public interest often there is a problem that is in the planning stages that do not involve the community and also in the stage of implementation is often inconsistent with the provisions of the legislation include the problem of determining the data nominative no valid and also the problem of calculating damages by improper appraisal principles based on market prices, so that people affected by land acquisition tends any losses.

Implementation of land acquisition for public purposes toll on the motorway in Kendal according to Act No. 2 In 2012, generally consists of four stages, which can be described as follows¹¹:

- The planning stage; Agencies that require advance planning land acquisition for public purposes based Spatial Planning and Development Priorities listed in the Plan Medium Term Development Strategic Plan, Government Work Plan Agencies concerned in the form of documents. In the planning stage of land acquisition in practice there are still some planning that is not in accordance with the Spatial Plan and Strategic Plan, which is often less involve the community from the beginning. Usually the people involved in the process of planning their procurement plans for the development of land for the benefit of the time at the end of the process.
- Preparation phase; In conducting land acquisition documents have been received by the Governor to form the next preparatory team for land acquisition within a maximum period of 10 days. During the preparation stage the problem is rarely exercised because it is still one way, namely by the Government and not involving the public, so that there is relatively no problems in implementation.
- Implementing Land Acquisition; Based on the determination of the construction site to the public interest, which requires land agencies propose the procurement of land to the Chief Executive of the Land Acquisition equipped with Planning Document for Land Acquisition, Development Location Determination, preliminary data and objects party entitled to land acquisition. Then the implementation of land acquisition carried out by the Head Office of the National Land Agency as the Chief Executive of the Land Acquisition. During the implementation phase of land acquisition often raised problems related to data collection and the object affected by land acquisition. Besides other problems that often arise are related to the determination of the amount of compensation based on the appraisal calculations are not marked to market. The calculation is quite contrary to the principles in Act No. 2 of 2012 which in essence that the proper compensation should be based on an appraisal by basing the calculation of market prices, so that people affected by land acquisition is not harmed.
- Results submission; Chief Executive of the Land Acquisition submit the results of land acquisition in the form of plots of land and land procurement documents to the agency requiring the land with the land procurement data, at least 7 (seven) days since the release of the object rights for land acquisition, and accompanied by an official report shall be used by agencies that require land for registration. Agencies that require land shall apply for a certificate of land rights to local land office no later than 30 (thirty)

¹¹ Interview with mr. Ahmad Ilham, Staff Land Acquisition of BPN Kendal, 20th November 2018

days.

2.2 The Role Notary PPAT In Proving The Juridical Data On Compensation Land Acquisition For The Benefit Of Toll Roads In The Kendal District

According to Article 15 (1) UUJN that Notary authorized to make authentic deeds, deeds throughout the manufacturing is not assigned or excluded to the officer or others. Granting authority to the officials or other agencies, such as the Civil Registry Office, does not grant qualifications as Acting General but merely functions as Officer Works just when to make the deeds prescribed by the law, and they remain in his position as before as Officer Country¹².

Pursuant to Article 15 paragraph (3) UUJN, a notary has other powers stipulated in the legislation. Such powers, if a notary perform unauthorized actions that have been determined then the notarial deed is not legally binding or enforceable. Meanwhile, those who feel aggrieved by the actions of the notary may be sued civilly to the district court. Notary authority which will be determined later, is the authority that will arise and be determined by legislation.

According Boedi Harsono that the Land Deed Official (PPAT) that officials according to Article 1 of Government Regulation No. 37 of 1998 on the Regulation of Land Deed Official Position is the official who is authorized to make the deeds of authentic regarding certain legal actions regarding the land ownership or title to the unit home stacking¹³.

PPAT authorized to make the deed of covenants intended transfer of land rights, provide a new rights over land mortgaged land or borrow money and land rights as a dependent, as defined in Regulation No.10 of 1961 on Land Registry. Notary also instrumental in resolving the related law compensation and transfer of land rights¹⁴.

2.3 The Challenges And Solution On Implementation Land Acquisition For Public Interest On The Motorway In Kendal

In any implementation of land acquisition for the construction of public interest, there are always obstacles. In the construction of the Trans-Java Toll Road in Kendal this while the constraints faced as follows¹⁵:

- Any Sale and Purchase of Land Freely; The sale and purchase of land (Land sale) performed by the owner of the land freely, without reporting to the authorities on land issues, in this case the BPN. There is even a process of transfer of rights to land under the arms, on the other side of previously owned land has been designated as the location of which is crossed / affected by the toll road construction plan. Having explored further on the matter, there are two reasons why some people do that, they are: People are not aware of it and in the community know that people still sell their land because of the crush of economic and societal needs are growing.
- The process of Inherite; In the case of this inheritance process, where the heirs to inherit the form of land, but still has not been followed up with behind the name, so that the legal document with the reality of ownership of the land is different. It would

¹² Habib Adjie, 2008, *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, PT Refika Aditama, Bandung, p. 28

¹³ Boedi Harsono, 2005, *Hukum Agraria Indonesia Himpunan Peraturan Hukum Tanah*, Djambatan, Jakarta, p. 676.

¹⁴ Interview with mr. Muhamad Yasin, Notary & PPAT in Kendal, 20th November 2018

¹⁵ Interview with mr. Suhaeli, Staff Problem Solving and Controlling of Land BPN Kendal, 20th November 2018

require a search to ascertain who the person entitled to the land.

- Any absentee land ownership/*guntai*; The point of land ownership absentee */guntai* here is where the owner of the land is not being / or live in areas where the land is located, as is the case in the field where Indonesian Workers (TKI) which is quite a lot to invest the money to buy land in the region are. This may affect the market price of the land, because the owner does not feel the need to rush to sell their land for any reason, including for highways.
- Not Agree With Price Offered; Based on the regulation number 65 of 2006 on Land Acquisition for Implementation for Public Interest, explained that the determination of the compensation price views of taxable value (NJOP) and the real price or market price by considering the taxable value of walking. In acquisition for the construction of the Trans Java toll road in Kendal are most people still do not agree with the price set by the land procurement committee. Prices were in the land procurement committee set lowest price Rp.228.800 and highest price of Rp. 420.000.
- The existence of the Land Acquisition Committee Active Role In Doing Deliberation Consensus.

In conducting land acquisition, land procurement committee did a good consensus in determining the amount of compensation and the form of compensation to those whose land affected by the construction of the Batang-Semarang toll road in Kendal. Consensus is necessary to remember that the constraints most widely encountered while doing the land acquisition is no agreement between the land procurement committee with people who own the land.

3. Closing

3.1 Conclusion

From the discussion presented in the previous chapter can be concluded as follows:

- The procurement of land for public purposes on a motorway in Kendal through several stages: 1) The planning stage, the agency requires advance planning of land acquisition of land for public purposes. 2) the preparation phase, namely in conducting land acquisition documents have been received by the Governor to form the next preparatory team for land acquisition within a maximum period of 10 days. 3) Implementation of land acquisition. 4) Submission of the results, the Chief Executive of the Land Acquisition submit the results of land acquisition in the form of plots of land and land procurement data with land acquisition.
- The role of the Notary-PPAT in proving the juridical data on compensation of land acquisition for the benefit mum motorway in Kendal regency According to Article 15 (1) UUJN that Notary authorized to make the certificate is authentic, the whole making of the deed is not assigned or excluded to officials or other
- Obstacles and solutions implementation of land acquisition for public use on the highway in Kendal, among others: 1) The occurrence of the Sale and Purchase of Land Freely, 2) Occurrence Process inherite, 3) The ownership of the land of absentee/*guntai*, 4) Disagree With Price Offered and a solution to these obstacles is the existence of Active Role Land Acquisition Committee Deliberation In Doing Consensus.

3.2 Suggestion

- Awarding damages in the process of land acquisition for public interest government needs to pay attention to forms based on the value of damages. In order not to cause problems between the government and the public. So that it can realize a fair society,

prosperous and implementation of development for public interest.

- People are expected to participate actively in the land acquisition process from planning to implementation, so that there will be the right balance between the public and those who need land.

4. Bibliography

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