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LAND CONFLICT AND IMPACT ON TOLL ROAD DEVELOPMENT FOR PUBLIC BENEFIT IN SOUTH LAMPUNG REGENCY

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Abstract

The development of the Trans Sumatera toll road for the Bakauheni Terbanggi Besar Section II package currently causes uncertainty in the calculation of compensation for residual lands, so that there is a change in the function of the land from the remaining land affected by the development. The remaining land referred to in this study is the rest of the land that has been compensated by agencies that need land, in this case the Ministry of Public Works and Public Housing but still leaves problems that have not been resolved. The problem in this study relates to the basis and process of settlement of compensation for the residual land that has lost its social function and economic value in the construction of the JTTS Bakauheni-Terbanggi Besar Section, efforts that must be undertaken by the community for the remaining land that loses social function and economic value in the JTTS development Large Bakauheni-Terbanggi Section. This research is a normative and empirical juridical research. This research was conducted in Serdang Village, Tanjung Bintang District, South Lampung Regency.

Keywords: Land Remaining, Trans Sumatra Toll Road.

I. INTRODUCTION

The development of Trans Sumatra toll road infrastructure (hereinafter referred to as JTTS) is very important in supporting the regional economy. The availability of infrastructure is able to provide a multiplier effect for the national economy. Land procurement is currently an obstacle in infrastructure development. Land acquisition activities are a very important activity when the State needs land for the construction of public facilities. Land acquisition is the government's act to acquire land for various development activities, especially for the public interest. In principle, land procurement is carried out by means of deliberation between parties who need land and land rights holders required for development activities.¹ While indemnity is a proper and fair replacement to the rightful parties in the land procurement process. The proper compensation aspects must in

¹ Maria S. W. Sumardjono, Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya, Jakarta : Kompas, (2008), hlm. 280.

principle meet three aspects, namely economic aspects, sociological aspects, and philosophical aspects.

In the process of land procurement for the public interest in this research is the procurement of land development JTTS bakauheni flygi large package II agencies that need land that is the Ministry of Pupr through the Office of Commitment Making (hereinafter called PPK land) is helped by the Land Procurement Committee (hereinafter called P2T) which is led directly by the Head of the Office of the National Land Agency (hereinafter called Kantah BPN) Region namely the National Land Agency of South Lampung Regency and the National Land Agency of Lampung Province which is divided by work area and PT. Hutama Karya as Toll Road Company (hereinafter referred to as BUJT) JTTS and PT. Waskita Karya who carried out the construction of JTTS Package II Bakauheni-Terbanggi Besar section (hereinafter referred to as the implementing contractor).

With the existence of land procurement activities for the development of JTTS, especially in the land procurement committee Bakauheni-Terbanggi Besar package II currently leaves the problem that arises, namely the unclear settlement of compensation to the remaining lands, until it occurs² diversion of land from the remaining land affected by the development. The remaining land referred to in this study is the remaining land that has been reimbursed by the Ministry of Public Works and Public Housing (hereinafter referred to as the Ministry of Pupr) but still leaves the problem that until now has not been resolved.

The position of the remaining land in this study located in the Village Serdang District Tanjung Bintang Regency Lampung Selatan Lampung Province is on the side of trase Right of Way (hereinafter called ROW) or technical term Area Owned Road (hereinafter called DMJ) so that there are about 26 areas of land remaining lost its social function 2 fields can not be planted and 3 areas of irregular soil form all of them no longer have access to the remaining land because of the long road access disconnected by ROW and even more detrimental to the remaining lands will experience a decline or even loss of economic value.

Based on the explanation above, the discussion focused on the basis and process of resolving compensation for the remaining land that lost its social function and economic value in the construction of JTTS Bakauheni-Terbanggi Besar Section, Efforts that must be made by the community towards the remaining land that loses

² Bernhad Limbong, *Pengadaan Tanah Untuk Pembangunan*. Margaretha, Jakarta: Pustaka, (2011), hlm. 369

its social function and economic value in the development of JTTS Bakauheni-Terbanggi Besar Section.

Research method used in this research is by normative juridical approach and empirical juridical approach. Normative juridical approach is carried out by studying, looking at and studying several theoretical matters concerning the principles of law, conception, views, legal doctrines, the rule of law and the legal system relating to the problems of this research. Empirical juridical approach is carried out to study the law in reality or based on facts obtained objectively in the field, whether in the form of opinions, attitudes and behaviors of law enforcement officers based on legal identification and legal effectiveness.³

This study uses normative legal problem approach (literature law research). Furthermore, the data that has been collected is analyzed in a qualitative descriptive way, namely explaining, describing, and analyzing existing data about the settlement and compensation of waste land as a result of jtts construction of large flying bakauheni sections.

In the implementation of compensation for the rightful parties, often aspects of justice are ruled out and the priority is certainty and benefit for development alone. For example, in the implementation of JTTS development there are entitled parties affected by the construction of toll roads where compensation is given only limited to land used for the construction of toll roads, while the rest of the land is ruled out resulting in social losses and even economic losses for the rightful parties affected by toll road construction.

Land acquisition must be done through a process that guarantees the absence of coercion of one party's will against the other party. In addition, given that the community must give up its land for a development activity, it must be guaranteed that its socioeconomic welfare will not be worse than the original state, at least it must be equivalent to the situation before the land is used by agencies that need land.

The type of research used in this research is Empirical Normative (Applied). Research that examines the correlation between legal methods in the form of statutory provisions in relation to legal events that occur in the community, namely on aspects of land procurement law for the public interest.⁴

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: Rineka Cipta, (1986), hlm. 5

⁴Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta: Rineka Cipta

II. DISCUSSION

Basic Settlement of Compensation Process Against Land Conflicts That Occur Due to Toll Road Construction for the Public Interest

In the past "residual land" was not taken by P2T, never calculated the value of losses, even though the loss of "residual land" can be quite large, because it can not be utilized again optimally.⁵ This article gives a new spirit to protect landowners from losses and shows the seriousness of the government to realize the principles of justice, humanity, and welfare. In the provision of Article 1 number 2 of Law/2/2012 stipulated in the Definition of Land Procurement namely.⁶ "The activity of providing land by means of members indemnity is feasible and fair to the rightful party."

The justices referred to as described in the general explanation of Article 2 letter b of Law/2/2012 are:

"Provide a guarantee of proper replacement to the rightful parties in the land procurement process so that they get the opportunity to be able to lead a better life."

Indicators of fairness in the procurement of land for the public interest are: "Provide a guarantee of proper replacement to the rightful parties in the land procurement process so that they get the opportunity to be able to lead a better life."

Indicators of fairness in the procurement of land for the public interest are: ⁷

- A. Can restore the socioeconomic condition of the Entitled Party to a minimum compensation equivalent to the circumstances prior to the revocation or waiver of their rights;
- B. Parties who need land can also acquire land according to their plans and designations and obtain legal protection; and
- C. Justice formulated by law in the form of rights and obligations must reflect the justice received and felt by the parties.

⁵M. Iskandar Syah, *Pembebasan tanah untuk pembangunan kepentingan umum: upaya hukum masyarakat yang terkena pembebasan dan pencabutan hak*, Jakarta: Jala Permata Aksara, (2015), hlm.47.

⁶Zahra Ats Tsaurah, Julius Sembiring, Rofiq Laksamana, *Penyelesaian Atas "Tanah Sisa" Pada Pengadaan Tanah di Provinsi Lampung*, Yogyakarta: Jurnal Tunas Agraria, (2018). 6 UU/2/2012, Op.Cit., Pasal 1 ayat (2).

⁷Hery Zarkasih, *Pelaksanaan Prinsip Keadilan dalam Pemberian Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum*, Mataram : Jurnal IUS, (2015).

To achieve the above, land procurement must be done in accordance with the following principles: ⁸

- A. The principle of the agreement, namely that all land procurement activities are carried out based on an agreement between the party that requires land and the land rights holder. Physical activities of new development can be carried out if there has been an agreement between the parties and compensation has been submitted.
- B. The principle of benefit, land procurement is expected to have a positive impact for those who need land, communities affected by the wider community. The benefits of the development activities must be felt by the community as a whole.
- C. The principle of justice, to the affected communities are given compensation that can restore their socioeconomic condition, at least equivalent to the original state by taking into account losses to physical and nonphysical factors.
- D. The principle of certainty, land procurement is carried out according to the procedures regulated by the legislation, so that the parties know their respective rights and obligations.
- E. The principle of openness, in the process of land acquisition, affected communities are entitled to information about the project and its impact, compensation policy, development schedule, resettlement plan and replacement location (if any) and the right of the community to submit its objections.
- F. The principle of participation/ participation, participation of all stakeholders in each stage of land procurement (planning, implementation, evaluation) is necessary in order to generate a sense of ownership and can minimize the rejection of the community to the activities concerned.
- G. The principle of equality, this principle is intended to place the position of parties who need land and affected parties in parallel in the land procurement process.
- H. Minimization of impacts and continuity of socioeconomic welfare. The negative impact of land procurement wherever possible is minimized, accompanied by efforts to improve the living standards of affected communities so that their socioeconomic activities do not suffer setbacks.

The arrangement of the remaining land is stipulated in Law No. 2 of 2012 on Land Acquisition for Development for the Public Interest (hereinafter referred to as Law/2/2012) regulated in Article 35 namely:

"In the case of certain land areas affected by land acquisition there are remnants that can no longer be functioned in accordance with their designation and use, the entitled Party may request a permanent replacement of the land area."

⁸Maria S.W. Sumardjono, Op.Cit., hlm. 280.

What is meant by "no longer functionable" is a land area that can no longer be used according to designation and re-use, for example residential houses that are partially divided again can no longer be used as residential houses. In connection with this, the party that controls / owns the land can ask for compensation for the entire land.⁹

Then the remaining land is regulated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 Year 2012 concerning Technical Guidelines for the Implementation of Land Procurement (hereinafter referred to as Perka BPN 5/2012) regulated in Article 11 namely: "In the event that there are remnants of certain land areas already registered that are affected by land acquisition and can no longer be functioned in accordance with their designation and use, the land is measured and mapped in full and given compensation on the basis of the request of the Entitled Party. Paragraph (2) On the basis of the request of the Entitled Party as referred to in paragraph (1), verification is carried out by the Executor of Land Procurement. Paragraph (3) In the case that the verification results show that the remaining land can no longer be functioned in accordance with its designation and use as referred to in paragraph (2), agencies that require land provide Compensation".

In Article 11 perka BPN 5/2012 above regulates the remaining land" which can be requested compensation only registered / certified land". The regulation on has been expressly regulated in article 35 of Law/2/2012 and Article 11 of bpn perka 5/2012 then re-contained in Presidential Regulation No. 71 of 2012 concerning The Implementation of Land Procurement For Development for the Public Interest (hereinafter referred to as Perpres 71 / 2012), regulated in article 67 namely: "In the case that there are remnants of certain land areas affected by land acquisition there are remnants that can no longer be functioned in accordance with their designation and use, the Right party can request a full replacement of the land area. Where the remaining land that can no longer be functioned is a land area that can no longer be used in accordance with the designation and re-use."

In perka BPN 5/2012 Article 11 as mentioned in the previous paragraph above regulates related to the remaining land " which can be requested compensation only the land listed". Then how for the remaining lands that have not been registered or not certified Property Rights whether in this case the National Land Agency can not carry out the data collection of the land to be measured and mapped in full and given compensation.

⁹ Undang-Undang Nomor 2 Tahun 2012 Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum

The above question about the remaining land that has not been registered / certified whether it can be awarded compensation or not, the answer can still be given compensation. It has been stipulated in Article 13 perka BPN 5/2012 which has been regulated as follows: "In the case that there are remnants of certain unregistered land areas affected by land acquisition and can no longer be functioned in accordance with their designation and use, the land area is measured and mapped in full and given compensation on the basis of the request of the Entitled Party".¹¹ Paragraph 2: "On the basis of the request of the Entitled Party as referred to in paragraph (1), verification is carried out by the Executor of Land Procurement".¹² Paragraph 3: "In the event that the verification results show that the remaining land can no longer be functioned in accordance with its designation and use as referred to in paragraph (2), the institution that requires the land to provide Compensation".

So both remaining land that has been registered / certified or not registered can still be asked for compensation by the party to the agency that needs the land. After the Ministry of ATR / BPN as P2T carried out the verification process on the remaining land whether it can still be functioned again or not.¹⁰

What Efforts Should Be Made by the Community towards The Remaining Land That Loses Its Social Function and Economic Value in the Development of JTTS Bakauheni-Terbanggi Besar Section

a. Application

Based on article 35 of Law 2 / 2012, Article 67 of Presidential Regulation 71 / 2012 and Article 11 and Article 13 perka BPN 5 Year 2012 as a positive law governing the remaining land. The rightful party must be active in the settlement of the remaining land because if there is no request from the rightful party, the executor of land procurement in this case P2T can not act this because in accordance with the mandate of the applicable laws and regulations P2T can move if there is a request from the party entitled to ownership of the remaining land.

If we stick to the existing legal basis with the National Land Agency that only acts when there is a request from the Party entitled to ownership of the remaining lands only, according to the author's savings it is less effective because although currently it has entered the era of digitization that information is easily obtained but there are still people who can not access information easily, especially the majority of which passed by jtts development is a disadvantaged area that is far from the access crowd / central government both districts and municipal districts. Therefore, the need for socialization to the community related to the mechanism

¹⁰*bid.*, Pasal 13 ayat 3.

and process of settlement of the remaining land from the development of JTTS land. So that the community can understand and know how its role in the settlement of the remaining land owned by the rightful party. The socialization can be conveyed in conjunction with public consultation deliberations that enter the stage of the land compensation process used as the main trase of JTTS development.

This is to save time and not burden the budget. The need for socialization can be felt when the author conducts an interview with pokmas desa serdang (bpk. Suryadi) related to the fate of the remaining land that exists today why there has not been completion of compensation, timpal him where at the time of deliberation was mentioned related to the fate of the remaining land and access roads are truncated trase and then the answer from the BPN there will be a separate space as long as there is a request from the landowner because this accelerated project so that the focused is still on indemnity to the affected areas of the main trase only.

The P2T should in this case be able to explain in detail the consequences resulting from land acquisition including regarding the remaining land related to procedures, criteria and other matters related to the remaining land, rather than giving answers that are difficult to accept by the community, from the explanation given by the community P2T is that there will be special compensation regarding the remaining land and when the time that makes the community until now still confused.

The application in writing concerning the remaining land to be measured and mapped and given compensation as stated in article 35 of Law 2 / 2012, Article 67 of Presidential Regulation 71 / 2012 and Article 11 and Article 13 perka BPN 5 Year 2012. Then after the application / request is shown to the local National Land Agency will follow up in accordance with the prevailing laws and regulation procedures as stated in chart 1, 2 and 3 above.

From the process described above the author still finds an unsolved problem that is how the fate of the parties entitled to the remaining lands that will not pass verification by the executor of land procurement. If there is no solution process if it is like that, the form of justice efforts provided by the government towards the community has not been realized.

According to the author of saving the settlement of the remaining jtts lands as described in the previous paragraph above must be resolved comprehensively where the search for solutions to the remaining land JTTS should not be harmed

either the community as the right party or the Government, the solution based on the type of losses experienced by the rightful party according to the author's savings as a good solution to solve the remaining land problems JTTS. If potentially experiencing economic losses such as land that can not be planted with irregular forms as in this study the remaining land owned by Mrs. Jupi Haritini, Mr. Isjudi and Mr. Didik Suwandi then P2T verification results can ask for compensation to agencies that need land while potentially experiencing social losses with a large area of land and can still be planted P2T verification results can recommend to relevant stakeholders in the development of JTTS both intansi that require land Ministry of Public Works and Public Housing, BUJT (Toll Road Business Entity) and Implementing Contractors to provide Road access to the remaining lands so that the remaining lands access the way of life and automatically the economic value will not fall so that the entitled parties who suffer social losses will not also suffer economic losses.

As is done by the party entitled to the remaining land represented by the village head in the village serdang tanjung bintang district ranging from km 68.00-69.700 submit an application to BUJT PT. Hutama Karya to be made road access to the remaining land of liberation located on the edge of the main trase. As the contents of the letter explain the conditions in the field of the need for road access to the remaining land. The letter is attached to the event news and signed by the surrounding community who need road access and described the access road requested along with a grant letter from the landowner if the land to be built road access is not enough standard access road to be made.

b. State Court Action

Secondly through a lawsuit to the local district court, namely conducting a civil lawsuit ordinary or can be done jointly or better known as a class action, namely as stipulated in The Supreme Court Regulation No. 1 Year 2002 on the Event of class representative lawsuit in Article 1 letter a namely: "a procedure for the promotion of a lawsuit, in which one or more people representing the group file a lawsuit for themselves or themselves and at the same time represent a large group of people, who have similar facts or legal basis between the representative of the group and the member of the group in question. Also stipulated in Article 2 letter b There are similar facts or events and legal basis similarities used that are substantial, and there are similar types of demands between the representative of the group and members of the group."

Class action is more appropriate and efficiently carried out by the rightful party because the parties entitled to the remaining lands have the same facts and events with the same objective of settlement of the compensation of the remaining land

acquisition for the development of JTTS. To make it easier to distinguish between ordinary civil lawsuits and class action can be seen in the table below:

Table 1 Differences between Ordinary Civil Lawsuits and Representative Lawsuits

No.	Differentiating Items	Ordinary Civil Procedure Lawsuit	Representative's Lawsuit
1.	Filing Lawsuit	Submitted by one or more people to one person/more have a dispute with him because of the internal relationship between them.	Submitted by groups represented by representatives of groups where have similarities in factors or similarities legal basis for both suffering tangible losses.
2.	Reason proposed Lawsuit	Because of the onset of a dispute that there is a legal connection between them that can no longer be resolved through peaceful channels.	Due to the onset of a real loss between members of the groups and group representatives for the actions or actions of defendants.
3.	Power of Authority	Use a special power of attorney when the plaintiff is represented by a legal power of attorney.	For the benefit of member law group , representatives of Group is not required to obtain a special power of attorney from a member of the group.
4.	Goal proposed Lawsuit	Prosecuting defendants to meet the its obligations to the plaintiffs in the form of request for compensation or fulfillment of a particular position.	Basically just asking for a replace top loss losses that have been suffered by the plaintiff.

5.	Identity Plaintiff	Only listed the identity of the plaintiff and his or her attorneys.	Lists the full identities of the group's representatives as plaintiff or his or her attorney. Also Lists about the definition of groups and member description Group.
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6.	The contents of the accusation	Contains Right facts than Legal Grounds.	<ul style="list-style-type: none"> • Contains aspects similarity of class representative facts with members. • Legal facts • Nature of deeds against the law losses incurred
7.	Content demands / Petition	<ul style="list-style-type: none"> • The subject matter expected disconnected Judge. • Valid statement and its worth confiscate bail. • Request provision. About the request for An Immediate Verdict (UVB). • Application Dwangsom/money the coercion. • Parties charged with the cost of the case. 	<ul style="list-style-type: none"> • Indemnity must be clear and detailed. • Proposals on mechanism of pendistrib usian indemnity to members of the Group. • Proposed the formation of a panel team that help pendistrib usian replace Loss. Parties charged with Things.

8.	Process Examination	There is no need for an examination of the lawsuit criteria.	Gotta get authentication first in the past whether the lawsuit meets the criteria class action
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But this second solution to make a lawsuit to the district court stempat according to the author's savings is the most recent solution taken if the application process in writing does not get a good response from stakeholders tran sumatra toll road development then there is no other way that is to make a civil lawsuit to the local District Court to obtain legal certainty. This is because this way in addition to taking a long time is certainly requires a small fee.

III. CONCLUSION

From the research on the process of settlement of land waste land acquisition for the development of JTTS the author draws a conclusion, namely:

1. The process of completing the remaining land acquisition in order to JTTS development in settlement is divided into two based on the type of losses experienced by the rightful parties, namely economic losses and social losses.
2. In the process of indemnifying the remaining lands the goal is to avoid social and economic losses, therefore P2T must be able to map based on the creteria of the remaining soil type whether it can still be planted or not, if it can not be planted / used as before can be asked for compensation by intansi that requires soil in this case kemenPUPR through ppk cq land, must first through verification of P2T in this case BPN which is first done data collection, measurement and mapping which is then made Nominative List and then validated by kantah BPN.
3. For the remaining land that has a large area and can still be planted and used as before to avoid social losses due to loss of road access to the remaining land stake horder JTTS development be it intansi that requires land Kemen PUPR, BUJT (Toll Road Business Entity) and Implementing Contractor to provide road access to the land the remaining land so that the remaining lands access the way of life and automatically its economic value will not fall so that the entitled parties who suffer social losses will not also suffer economic losses.
4. Efforts that can be made by the Party entitled to the remaining land can be done in two ways, namely the application from the party entitled to the remaining land and through ordinary civil lawsuits or ordinary civil lawsuits or lawsuits of representatives / groups to the local District Court. Both efforts apply to the remaining soil that can still be planted or the remaining soil that can not be planted or used as in the beginning.

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