LAND ACQUISITION FOR PUBLIC INTERESTS DEVELOPMENT: A HUMAN RIGHTS REVIEW

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ABSTRACT
Law Number 2 of 2012 states that the acquisition of land for public interests must be accompanied by adequate and fair compensation, as well as the protection and respect of human rights. However, the construction of the Tebing-Tinggi - Kuala Tanjung Toll Road in Sipare-pare and Pasar Lapan Villages, Air Putih Subdistrict, Batu Bara Regency, Indonesia, exemplifies how compensation is frequently unfair. This study seeks to determine the suitability of implementing land acquisition using current laws and regulations. The primary data is gathered through interviews with landowners and the Regional Office of the National Land Agency of the Province of North Sumatra. While secondary data are gathered via literature and legal research. The results revealed that the provided compensation did not meet the requirements of Law No. 2/2012, prompting the public to file an objection with the Kisaran District Court.

Keywords: Human Rights; Land Acquisition; Public interest.

Introduction

Infrastructure development is the process of fostering economic and national growth in a region. This infrastructure encourages the satisfaction of people's needs by facilitating the mobility of goods and services from various locations. It also plays a significant role in enhancing the worth of labor productivity and goods, access to employment opportunities, etc (Haris, 2009). Therefore, infrastructure development should be distributed evenly throughout all of Indonesia's regions.

North Sumatra is currently the focus of infrastructure development in Indonesia due to its strategic location (near the Strait of Malacca and the State of...
Malaysia) and abundance of potential natural resources and tourist attractions. In addition, the existence of the Sei Mangkei Special Economic Zone (KEK), as well as the Kuala Tanjung International and Belawan Ports, increases North Sumatra's potential to become an economic barometer for Indonesia. This has resulted in enormous infrastructure developments, including ports, toll roads, trains, and more.

From Nanggroe Aceh Darussalam to Lampung, the Trans Sumatra Toll Road (later called as JTTS) is one of the infrastructures reportedly being constructed to connect all provinces on the island of Sumatra. It is anticipated that this construction will make the distribution of goods and services to all regions of the island more effective and efficient in terms of cost and time.

It should be noted, however, that the construction of JTTS necessitates the use of land for infrastructure development (Yusrizal, 2017). The government reportedly organized the activities of Land Acquisition for Public Interest (PTKU) by issuing Law and Presidential Regulation Numbers 2 and 71 of 2012 pertaining to Land Acquisition for Public Interest and its developmental implementation, respectively. These regulations stipulate that PTKU activities must be conducted in a humane manner by prioritizing guaranteed fair and adequate compensations for affected landowners. The provision of adequate and fair compensation is recognized as a form of protection and respect for human rights, dignity, and a portion of each Indonesian citizen and population. This is regarded as an application of the humane principles enshrined in Law Number 2 of 2012.

This study investigates the guarantee and protection of human rights in relation to the provision of compensation for PTKU activities in the construction of the Tebing Tinggi - Kuala Tanjung toll road, as part of the JTTS in Sipare-Pare and Pasar Lapan Villages, Air Putih Subdistrict, and Batu Bara Regency. This is intriguing because numerous landowners affected by PTKU activities have objected to the district court in regards to the Land Acquisition Committee's compensation amount.
Research Methods

This is an empirical study because direct interviews are conducted with the North Sumatra Provincial Land Agency (Kanwil BPN Propinsi Sumatera Utara) and PTKU-affected communities. The literature review is also conducted by analyzing the decisions of the Kisaran District Court, which ruled on the landowners' objections. In addition, qualitative analysis is performed on the interview and literature data in order to obtain descriptive-analytic results. Therefore, the landowners' reasons for rejecting the compensation value established by the land acquisition committee are determined.

Discussion

1. An Overview of the Implementation of PTKU in Indonesia Based on Law Number 2 of 2012 and Presidential Decree Number 71 of 2012

Presidential Regulation Number 71 of 2012 states that PTKU activities are carried out in several stages, including (Hakim, 2019):

a. Land acquisition planning for the advancement of public interests is carried out by agencies in response to the need for sites. These agencies drew up land acquisition plans in accordance with RTRW (Regional Spatial Plans) and development priorities outlined in medium-term development, strategic, and government cooperation plans.

b. Implementation of land acquisition carried out by the Head of the Regional Office of the National Land Agency (BPN) as the chief executor of land acquisition. The membership composition of the land acquisition implementation committee consists of: (i) Officials in charge of land acquisition affairs within the BPN Regional Office; (ii) The head of the local land office at the land acquisition location; (iii) Provincial regional work unit officials in charge of land affairs; (iv) The district head at the location of the land acquisition; and (v) Sub-district head or other names at the location of land acquisition.
c. Upon receiving the land acquisition planning document, the governor assembled a team consisting of the regent/mayor, related provincial work units, land requirement agencies, and others. Also, there are a number of tasks to be completed during this stage of preparation, including (i) community notification of development plans; (ii) preliminary data collection on the location of the development plan; (iii) public consultations on development plans; (iv) preparation of a determination of the construction location; (v) public announcement of the determination of the construction location; and (vi) completion of other tasks. (Santoso, 2016)

Due to efficiency, effectiveness, geographical conditions, and human resources, it is important to note that the Head of the Regional Office of the National Land Agency can appoint the head of the land office as the chief land acquisition executor. If the head of the land office becomes the chief executor of land acquisition, then those individual forms a land acquisition executor with the same membership as described previously. In addition, during this phase of implementation, a number of activities are carried out, such as:

1) Implementation preparations at this point, the agency requiring land may submit a written request for land acquisition to the head of land acquisition executor with the following attachments: (i) the location determination decision; (ii) land acquisition planning documents; and (iii) initial data of entitled parties and land acquisition objects.

2) Identification and inventory control at this stage, the task force tasked with acquiring land prepare its implementation which includes (i) Planning a schedule of activities; (ii) Preparation of materials; (iii) Preparation of technical equipment; (iv) Coordination with sub-district officials and the sub-district head or by other names; (v) Preparation of land areas; (vi) Notification to entitled parties via the sub-district head or by other names; and (vii) Notification of the plan and schedule for
the implementation of data collection on entitled parties and land acquisition.

While the task force responsible for inventory and data identification of entitled parties and land acquisition objects collects data related to (i) Name, occupation, and address of entitled parties; (ii) Residence identification number or other identities of the entitled party; (iii) Proof of control and/or ownership of land, buildings, plants, and/or objects related to land; (iv) The location of the land, the area of the land, and the identification number of the land. The above inventory and identification tasks must be completed by the task force within thirty (30) working days, after which the results of the inventory and identification are submitted to the chief executor of land acquisition along with an official report.

For informational purposes, entitled parties may submit objections to the chief executor of land acquisition regarding the inventory and identification results within fourteen (14) working days of the announcement of the inventory results. If the results of the inventory and identification are accepted, the chief executor of land acquisition is required to verify and improve the map of land areas and/or the nominative list within fourteen (14) working days of receiving objections to the inventory results. If the objections to the results of the inventory and identification are rejected, however, the chief land acquisition executor will issue an official report on the rejection.

c. Establishment of the value of compensation. Based on the results of the evaluation conducted by the appointed Public Appraisal Service Consultant, the Head of the Land Procurement Implementation Committee conducts this activity (later called as KJPP). This evaluation is completed within a maximum of thirty (thirty) working days. It is essential to understand that the value of compensation assessed by KJPP is based on the value at the time of the announcement of the
d. Deliberation regarding the compensation structure. At this stage, the Land Acquisition Implementer and the agency requiring land shall engage in direct discussions with the Entitled Party within 30 (thirty) working days of the Head of Land Acquisition Executive receiving the results of the appraisal’s evaluation. In the implementation of this discussion, the executor of land acquisition communicated the amount of compensation determined by the agreed-upon compensation assessment. If the value of the compensation is agreed upon, then the minutes of the agreement will serve as the basis for the provision of compensation to the entitled party. In the interim, if there is no agreement regarding the form and/or amount of compensation, the entitled party has 14 (fourteen) working days to file an objection with the local District Court.

e. Providing compensation, where compensation can be given in the form of money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties, as long as the value is equivalent to the determined compensation value.

f. The release of land acquisition objects, where this activity is carried out by the Party entitled to the state in front of the Head of the local Land Office, which is then noted in the official report on the relinquishment of the Land Acquisition Object’s rights.

g. Dissolution of Legal Relations between the Entitlement Party and the Acquired Land. At this point, compensation has been paid, compensation has been deposited with the district court, or the land acquisition object has been released, at which point the legal
relationship between the entitled party and the land has terminated. Due to his position, the Head of the Land Office records the abolition of rights in the land book and other general lists of land registrations before notifying the affected parties. If the Land Acquisition Object has not been registered, the Head of the Land Acquisition Executive shall notify the sub-district head or other names, sub-district heads, and authorized officials who issue letters to be recorded and crossed out in the administrative book of the sub-district / village office or district. In the interim, if the subject of the land acquisition is the subject of a court case and compensation has been deposited with the district court, the head of the land acquisition executive will notify the head of the court and the parties in litigation about the termination of rights, the invalidity of possession/ownership evidence, and legal relations. Between the Entitled Party and the land, where evidence of possession or ownership is admissible in court until a court's decision acquires permanent legal effect.

d. Subsequently, the Land Acquisition Results report is submitted. During this phase, the chief executive submitted these results along with additional data in the form of land area and acquisition documents to the Land Requirement Agency. This submission is also made within 7 (seven) office working days following the release of rights to the Land Acquisition Object (Zarkasih, 2015).

2. Problems in PTKU'S Activities in Indonesia

The Kisaran–Tebing Tinggi toll road is part of the JTTS, which is intended to connect the provinces of Nanggroe Aceh Darussalam and Lampung on the island of Sumatra. This toll road required an investment of IDR 13.45 trillion, with State-Owned Enterprises responsible for funding (later called as BUMN). This project's BUMN is Hutama Karya Company, which is discovered to be in the construction services industry. The Kisaran–Tebing Tinggi Toll Road section is situated in the
province of North Sumatra and traversed several areas, including the Pasar Lapan and Sipare-Pare Villages, the Air Putih Subdistrict, and the Batu Bara Regency. In addition, it is anticipated that this infrastructure would facilitate connectivity between regions in North Sumatra and encourage the transportation and distribution of goods at a lower cost and in less time. In addition, this toll road connected to Kuala Tanjung Port, one of Indonesia's international ports. In North Sumatra Province, it is anticipated that this project would support tourism promotion and encourage an increase in local revenue from the sector. Accordingly, the Government has reportedly designated the construction of the 68.9 km Kisaran–Tebing Tinggi toll road as a National Strategic Project.

In addition, locals believed that the implementation of PTKU in the Kisaran–Tebing Tinggi Toll Road construction does not comply with the procedures outlined in Presidential Regulation Number 71 of 2012. This resulted from a mismatch between the implementation of deliberations and Article 1 Number 4 of Supreme Court Regulations 3/2016. Article 68 paragraph (1) of Presidential Regulation Number 71 of 2012, which required the participation of land requirement agencies, is also violated due to their absence from the discussions. When the community is summoned to appear before the team, the residents also asserted that the Land Acquisition Committee failed to provide a public appraiser to determine the land's replacement value. Due to its renegotiation during the negotiation process, this is deemed not a good deliberation. This circumstance also disregarded the rights of landowners to express their desires, which is connected to PTKU activities (Syafar et all, 2013).

Meanwhile, the committee only provided residents with envelopes containing information about the Fair Replacement Value per Lot. The contents of these envelopes are to be signed and returned to the committee by the 17th of August 2019, with the organizing committee stating that district court objections may be filed in the event of disagreement. As a result, the majority of residents refused and returned the envelope and its contents to the committee, as the process is viewed as an act of coercion against landowners. This demonstrates that the
entitled party is not given the opportunity to determine the form of compensation and the value of the loss during the deliberation process, which violates the land acquisition principles outlined in Article 2 of Law Number 2 of 2012.

As a means of comparison, an interview is conducted with Mr. Abdul Rahim Lubis (LL. B & ML.) in his capacity as Head of the Land Acquisition Section at the North Sumatra Regional Office of the National Land Agency. It is found that the majority of residents had initially consented to the land acquisition activities for the construction of the road, as well as the compensation amounts offered. However, a number of factors contributed to the residential objections, including:

a. Based on the KJPP’s assessment to the District Court, it is determined that certain parties enticed residents with the promise of legal assistance in order to file an objection to the offered compensation value. In the meantime, the assessment conducted by KJPP is based on the Indonesian Assessment Standard 204 (SPI 204) and Guidelines 04 (PPI 04), as both regulations are concerned with Land Acquisition Assessment for Public Interest Development. During the trial at the Kisaran District Court, when residents are unable to prove the basis of their arguments, this is confirmed. This is stipulated in Court Decision Number 45 Pdt. G/2019/PN. Kis.

In addition, a number of the objections raised by residents, particularly those from Sipare-Pare Village, did not meet the formal requirements. In accordance with Article 73, paragraph 1 of Presidential Decree Number 71 of 2012, the deadline for submitting objections is 14 (fourteen) office working days. This is also indicated in the court decisions Numbers 50 and 51 /Pdt.G/2019/PN Kis, in which the panel of judges ruled that the residents' objections are inadmissible for exceeding the 14-day period. In fact, if you refer to Article 39 of Law Number 2 of 2012, it clearly states that if the time limit for submitting an objection by the party entitled to refuse the form/amount of compensation expires, the party entitled to be deemed to have accepted the form and amount of compensation based on the results of the compensation assessment that has been determined. This is a very
important provision. This information should be known and shared with the appropriate parties. In reality, however, the party with the legal right is unaware of this and continues to file an objection through his attorney. This raised questions regarding the continued submission of objection requests to the District Court, despite the fact that the community attorneys are aware the deadline had passed. This resulted in the submissions being rejected by the District Court, as they did not meet the formal requirements for submitting an objection.

In addition, all decisions of the Kisaran District Court had been appealed to the Supreme Court, with both courts confirming and reinforcing the outcomes.

b. Residents believed that the compensation provided for the construction of the Kisaran-Tebing Tinggi Toll Road is less than the amount received for land acquired by KAI and Pelindo I Companies. This is due to the residents' perspective, as they considered all land to be identical, regardless of location, physical characteristics, and other factors. Low levels of comprehension are the primary reason these individuals’ filed objections with the district court.

c. Residents believed that some groups are affiliated with the government, which prompted the majority of constituents to demand special treatment. In addition, assumptions are made that they required special treatment in land acquisition activities, which is a program of the government they supported in the 2019 election. However, this could not be justified because such a paradigm contradicted the principles outlined in Law Number 2 of 2012.

3. Human Rights Protection in PTKU Activities

Human rights are inalienable as they are viewed as divine gifts that must be respected, upheld, and safeguarded by the state. The enactment of Law Number 39
of 1999 and Presidential Decree Number 50 of 1993 in Indonesia, which are both concerned with Human Rights and the establishment of its National Commission, provided one form of protection (also known as KOMNAS HAM). In numerous facets of human existence, including PTKU activities, it is necessary to uphold human rights. In order for affected communities, particularly landowners, to receive fair and adequate compensation, PTKU's activities should also be grounded in human rights principles (Mujibarohan and Kusmiantoro, 2014). In addition, a number of laws and regulations guarantee the protection of human rights in the activities of PTKU, including:

a. The 1945 Constitution
b. Law Number 39 of 1999
c. Law Number 2 of 2012.

In addition, paragraph one of Article 28 G of the Constitution of 1945 governed the right to the protection of one's self, family, honor, dignity, and property. According to the provision and interpretation of this article, every landowner whose property is affected by PTKU activity is entitled to fair compensation. This aspect of fairness indicated that the compensation provided is commensurate with the landowner's loss. Regardless of the Tax Object Selling Value (NJOP) of the land, the assessment team and PTKU activity committee should not evaluate prices from a single perspective. However, other factors, such as economic and social considerations, must also be taken into account. (Faturrohim, 2015). For instance, when the land affected by PTKU activities is used for agricultural purposes, the farmer's standard of living tends to decrease or disappear entirely. Therefore, compensation should also take into account the livelihood and well-being of landowners following the acquisition of their source of income (land) for infrastructure development.

Articles 28 H and 37 paragraphs 4 and 1 of the Constitution of 1945, as well as Law Number 39 of 1999, guarantee that each individual has the right to privately owned property that cannot be acquired arbitrarily. In this context, arbitrariness is defined as a violation of the prevailing rules and regulations in the PTKU sector,
including Law Number 2 of 2012, Presidential Regulation Number 71 of 2012, and others.

In addition, Law Number 2 of 2012 ensures the protection of human rights in PTKU activities, which is internalized by the regulation's adherence to humanitarian principles. The humanitarian principle stipulated that PTKU activities must protect and respect the human rights, dignity, and self-respect of all Indonesian citizens, including affected landowners. By providing adequate and equitable compensations, protection and respect for human rights, dignity, and self-respect are also achieved. This indicated that the compensation provided to the landowners is reasonable and sufficient to cover all losses and improve their lives.

According to Law Number 2 of 2012, the land acquisition committee is required to ensure the protection of human rights in all PTKU-related activities. The guarantees included:

a. Conducting the PTKU process in a transparent and fair manner.

b. Providing adequate and fair compensation that is equivalent to an improvement in the landowner's standard of living from their previous condition.

c. Landowners who object to the stipulated compensation amount will file a variety of legal actions.

Therefore, it is necessary to establish a new paradigm for the implementation of PTKU activities in order to accommodate matters such as those described above, as follows:

a. Respect and protection of human rights, which are realized through equitable development, expansion of employment opportunities, and alleviation of poverty.

b. Sustainable community productivity, implementation, and development of good governance in an effort to empower the community (Sumardjono, 2008).
In addition, the United Nations has released the Basic Principles and Guidelines on Development-Based Evictions and Displacement. Annex 1 of the Basic Principles and Guidelines on Development-Based Evictions and Displacement (A/HRC/4/18) served as directives for all member states in order to protect the human rights of their citizens during development. When the provisions in articles 60-63 of the guidelines are linked to PTKU activities in Indonesia, the organizing parties are required to provide adequate and fair compensation to affected residents, taking the total value of all losses into account (economic, social, etc.). This compensation value should also be equal to or greater than the landowner's actual loss (UNHRC, 2007). In addition, the determination of the compensation value should take into account the impacts resulting from this activity, such as environmental damage. They are:

a. Partial or total loss of potential income from land use; b. temporary or permanent loss of means of subsistence.

b. Relocation impacts, such as the distance between the child's workplace, school, and more (Suntoro, 2019).

Pursuant to Article 28I Section 4 of the Constitution of 1945, the state is responsible for the protection, promotion, enforcement, and satisfaction of landowners' rights, as well as the provision of appropriate and fair compensation for PTKU activities. These conditions indicate that the land acquisition activities in the construction of the Tebing Tinggi - Kuala Tanjung Toll Road in Sipare-Pare and Pasar Lapan Village, Batu Bara Regency, may have violated the Republic Indonesia People's Consultative Assembly Decree No. XVII/MPR/1998 concerning Human Rights, particularly Chapter VIII concerning the Right to Welfare in Article 32. This will result in the rightful party being severely harmed for an extended period.
Conclusion

To sum up, the landowners are in an unequal position with the land acquisition committee, particularly in terms of their ability to prove the indicators used to determine the value of appropriate and fair compensation, as required by the Court Decision of Kisaran Number 45 Pdt.G/2019/PN Kis. In addition, landowners from the lower-middle class do not understand and are unaware of these indicators, as the majority of them had lost their jobs, particularly those who used their land for agricultural purposes. This condition caused landowners to lose their livelihoods because the amount of compensation is insufficient to purchase another parcel of land with comparable size and fertility. In order to make ends meet, they are forced to look for new employment opportunities. However, this condition is contrary to the goals of developmental implementations, which are intended to improve the social and economic conditions of the entire community. In addition to referencing the actual land valuation, future expectations for determining compensation values should consider the impact of PTKU activities on affected landowners.

References

Books


Journals


Zarkasih, H. “Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum (Studi Kasus Pelebaran Jalan Raya di Kota Praya Kabupaten Lombok Tengah)”.


**Internet Resources**


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