

Strengthening the Concept of Private Ownership Rights in Implementating the Social Function of Rights on Land: Case Study of Land Procurement on Toll Road Construction Medan-Tanjung Morawa- Tebing Tinggi

Zaidar, Muhammad Yamin

Administrative Law Department, Universitas Sumatera Utara, Medan, Indonesia

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Abstract: This research focuses on the implementation of social functions through the land procurement policy in the development of toll roads for the public interest. As a result of land scarcity, the government makes a land procurement policy which takes over owned land and in return the land owners are given compensation. The problem is whether land procurement for the construction of toll road does not weaken the position of ownership rights. The method used in this study is juridical empirical research method. The study location of Medan - Tanjung Morawa-Tebing Tinggi. From the study result, it is concluded that the land procurement for the construction of Medan - Tanjung Morawa-Tebing Tinggi Toll Road has been done in accordance with provisions of Article 6 of Act No. 5 of 1960 and Act No. 2 of 2012 that there are no issues regarding the compensation given with few hitches are concluded through discussion. The most respondents (74.3%) claim that they are satisfied with the compensation they received. The results of this study indicate that the issue concerning the weakening of private ownership rights can be solved, namely by implementing the Principles of Social Function, thus the rights of citizens will remain protected.

1 INTRODUCTION

Land is a basic necessity for everyone so it needs to get government protection. In the case of utilization and usage of land for development purposes undertaken by the state (government), it should be guided by the existing norms or rules of law. So that, a person's rights on land is not made a victim, moreover when the government would use it for the public interest. On behalf of "All Rights on Land have a social function on the consequence is that the government must provide the necessary land for investment as well as for other development interests by land procurement, in which the land is taken from the people because public land is considered hard to encounter (Maria Sumardjono, 2009).

The Implementation of the social function of rights on land through land procurement policy often causes problems in the community, it is even suspected that various deviations have occurred concerning the implementation and actualization of the principle of social functions of rights on land contributing to the economic development (global

economic) or the impact on the increasing need for land in considerable quantity, for example for housing, plantation, industrial factories and other infrastructure purposes. (this study examines land use in land procurement focusing on the construction of the Medan - Tanjung Morawa - Tebing Toll road project).

The social function of rights on land is a characteristic of the Indonesia Agrarian Law, which is based on the view of how to develop the land in building unanimity of the nation without having the people sacrificed as the perfect owner. And the State in exploiting the land for the national interest can proceed as well as possible.

The embodiment of social functions can be seen in the implementation of development for the public interest, where the holder of the rights on land is required or even forced to give up his right for the interests of development as the designation of the nation and the State previously stated. However, it seems that the definition of public interest on the procurement of private land here has shifted from social function in the meaning of the greatest

prosperity of the people, becomes of the great prosperity of the businessman, because in prosecuting the land liberation by the government for development purposes, it turns out to contain business elements. This is a contrary to the philosophical principle of social function, that is, the public interests and does not contain business elements.

This condition can cause the weakening of the social function that is automatically protected by private property rights because of the absence of legal certainty over the private rights.

In line with the research which conducted by Damrizal (Damrizal, 2012) shows that in the application of social function on land of right has irregularities and contradiction in applying social functions on the land wich have not been optimally accrued by the principle of social functions referre to. This is contrary to the principle of philosophical social function, namely the public interest and does not contain business element.

In the same discussion quoted from the results of research conducted by Triana Rejekiningsih (Triana Rejekiningsih, 2016), concluded that the use of land in the implementation of the principle of social functions of land rights has not provided benefits for the prosperity of the people, because the use of land is not in accordance with its potential land as agrarian land. The neglect of people's welfare as a result of a lot of land and agricultural land abandonments has narrowed, and there has been a lot of conversion of non-agricultural sector agricultural land under the pretext of development interests.

The application of social functions of rights on land through land procurement policies often creates problems in the general public, and it is suspected that there have been various deviations from the principles of the social function of rights on land which are driven by the economic development, resulting in the negligence of private rights on land. (in this study the procurement of land is focused on the construction of the Medan - Tanjung Morawa – Tebing Toll road project).

The issue in this research is whether the land procurement in the construction of Medan – Tanjung Morawa – Tebing Toll road does not weaken the private ownership rights.

2 RESEARCH METHODOLOGY

The research method used in this study is judicial empirical method by relying on primary data and field data. The respondents in this study are the community whose land is affected by the land procurement

project. The respondents are determined by purposive sampling technique, by distributing questionnaires to the community. As supporting data, interviews were conducted with several related agencies. The location of this study is Tanjung Morawa and Lubuk Pakam sub-districts.

3 RESULT AND DISCUSSION

3.1 The Implementation of Land Procurement on the Construction of Medan–Tanjung Morawa–Tebing Tinggi Toll Road

The toll road of Medan – Tanjung Morawa – Lubuk Pakam- Tebing is a toll road connecting Medan, Tebing Tinggi as well as Kuala Namu International Airport. This 61.80 km toll road with investment value of 6,250 billion Rupiahs is a part of the Trans-Sumatera Toll road that is divided into 2 (two) sections, namely Section I (Medan - Parbarakan - Kuala Namu) with the distance of 17.80 km), and Section II (Parbarakan - Tebing Tinggi) with the distance of 44 km.

The implementation of land procurement for the construction of the Medan - Tanjung Morawa - Tebing Tinggi Toll road was conducted on an area of 441.53 ha, which is inhabited by the surrounding community starting in 2009.

The funding of the construction of the Medan-Kuala Namu toll road (Tanjung Morawa) consisted of 90% loan from China and 10 % rupiah with the total investment of 1, 4 trillion Rupiahs which aimed to improve the financial viability of Toll road segment (Edy Rabuddin, 2018).

But if the APBN funding source is not sufficient, the government can look for other alternatives, namely funding part of BUMN or private or often referred to as public private partnership, which is a manifestation of cooperation between the governments, the private sector based on mutually beneficial agreements (Heryanto, 2018).

The construction of Tanjung Morawa – Parbarakan – Kuala Namu with the distance of 17.80 Km was done by the Government and the rest, with the distance of 43.90 Km was constructed by Jasa Marga Tebing Tinggi company using the fund from APBN and investment from Badan Milik Usaha Jalan Tol (BMUJT) Jasa Marga Kuala Namu Company, with the APBN fund of 1, 4 trillion Rupiahs.

In interpreting the social function of rights on land over private land ownership, then the government

shall not be allowed to act arbitrarily against the rights of the community. If those rights are faced with public interest or general interest, then those rights shall not be ignored, they must be compensated. However, consignment can only be done in terms of, 1). Development activities cannot be moved to another location, 2) deliberation does not run for 120 days, 3) ownership disputes occur after the determination of compensation, 4) ownership is not in place

3.2 Land Procurement on Medan-Tanjung Morawa-Tebing Tinggi Toll Road Construction Does Not Weaken the Private Ownership Rights

In the third Amendment of 1945 Constitution, Chapter XA on Human Rights Article 28 H paragraph (4), the 1945 Constitution implicitly recognizes the existence of the right of ownership as a fundamental right. That is, the right that exists for a person to live as a natural individual as well as a member of society, in harmony with his dignity as a respectable person. This fundamental right is a right which everyone has, which is essentially inviolable by any person for any reason, provided that such person does not abuse his rights or do any harm or loss to others.

In other words, if the legally controlled land is necessary for development, then the people must come first (Principle of Social Function of Rights on Land). If the discussions do not reach an agreement, then the project should not be forced to be constructed in that location. However if more people agree on the amount of compensation then the land procurement project will continue to be implemented, and for those who object to the amount of the compensation, then the land will still be taken by the government with the compensation money deposited in the court (Consignment).

As a comparison, special land acquisition carried out in the Special Region of Yogyakarta is different from other areas, where in the Yogyakarta area the status of the land is divided into 3 categories, namely: 1), Sultan Ground, 2) Village Treasury land, 3) Community land. Here the principle of deliberation and consensus is actually applied in accordance with the status of the land in question, so that in the provision of compensation there are no obstacles and run smoothly (Reni Anggreini, 2017).

Maria Sumardjono said that the change of understanding of loss is a proper and fair replacement for those who are entitled to the non-physical process of land acquisition, including loss of work, business,

income sources and other sources of income which have an impact on a person's level of welfare (Maria SW Sumardjono, 2009).

Presidential Regulation no. 71 of 2012 jo. Presidential Regulation no.148 of 2015 determines that land procurement is conducted based on the principle of honoring the rights on land. The principle of honor is done by providing arrangements on the form and amount of compensation as well as procedures or discussions in determining the form and the value of the compensation concerned.

Compensation referred in Act No.2 of 2012 is: an adequate and fair compensation for the entitled parties in land procurement. Such compensation shall be provided in accordance with the provisions of Article 33 of Act No.2 of 2012. The Appraisal of compensation value by the Appraiser as mentioned in Article 32 paragraph (1) is conducted per land area, including land, space above and underground, building, plants, objects related to land and/or other losses that can be assessed.

In deciding of the compensation given, the basis of the right is first assessed. The table below shows the status of land ownership which would be compensated.

Table 1: Basis of rights

| No | Basis of rights | Frequency | Percentage (%) |
|-------|---------------------------|-----------|----------------|
| 1 | Certificate | 28 | 39,4 |
| 2 | Deputy Statement Letter | 37 | 52,1 |
| 3 | Purchase Agreement Letter | 6 | 8,5 |
| Total | | 71 | 100 |

Based on the questionnaire data of 71 respondents, the basis of rights of 28 respondents is certificate with the percentage (39.4%), 37 respondents is Deputy Statement Letter with the percentage (52.1%) and 6 respondents in the form Purchase Agreement Letter with the percentage (8,5 %). In assessing the amount of indemnity, the assessment team will make a classification based on the rights base owned, compensation for certificate land is much greater than for non certificate land.

Table 2: Origin of Land Tenure

| No | Origin of Land Tenure | Frequency | Percentage (%) |
|----|-----------------------|-----------|----------------|
| 1 | Purchase Agreement | 42 | 59,2 |
| 2 | Inheritance | 29 | 40,8 |
| | Total | 71 | 100 |

Based on the questionnaire data of 71 respondents, the origin of land tenure of 42 respondents is purchase agreement with the percentage (59.2%) and 29 respondents is Inheritance with the percentage (40.8%).

Considering the fact that the compensation is always in the form of money, it is likely that in the discussion process it should be relayed to those affected by the land procurement project to be able to select and agree on various forms of compensation offered. If the choice of form of compensation falls on money, then the amount of the indemnity will be based on the assessment of Article 15 of Presidential Regulation No. 71 of 2012 which determines that the basis for calculating the amount of compensation is based on: Selling Value of Tax Object (NJOP) or real / actual value by observing the Value of Tax Object of the current year based on the evaluation of the Institution / Appraisal Team of Price appointed by the Committee, the sale value of buildings estimated by the regional apparatus responsible for building, The selling value of crops assessed by the regional apparatus responsible for agriculture, The amount of compensation also takes consideration of the basis of the rights.

Table 3: The Area of Owned Land

| No | The Area of Owned Land | Frequency | Percentage (%) |
|----|------------------------|-----------|----------------|
| 1 | 100m – 300m | 19 | 26,8 |
| 2 | 301m – 500m | 11 | 15,5 |
| 3 | 501m – 700m | 31 | 43,7 |
| 4. | >700m | 10 | 14,1 |
| | Total | 71 | 100 |

Based on the questionnaire data of 71 respondents, it is gathered that the area of the owned land altogether with the measurements of 100m-300m is owned by 19 respondents with the percentage of (26,8%), 301m-500m by 19 respondents with (15,5%) , 501m-700m by 31 respondents with (43,7%) and lastly >700m by 10 respondents with (14,1%).

In Act no. 2 of 2012 it is stated that the Land Price Appraisal Agency Team has an important position

because its authority is not limited to the appraising the land price alone, but also to objects or buildings on land, underground spaces, and losses deemed as a result of land procurement for development for the public interest. The land pricing apparatus is an independent institution and competent in its field.

Land Appraisal Institute is the Office of Public Appraisal Services (Kantor Jasa Penilai Publik) (KJPP). Office of Public Appraisal Services according to Act no. 2 of 2012 must obtain a license issued by the National Land Agency (Badan Pertanahan Nasional) (Adhi M. Daryono, 2017).

Land procurement must be carried out in accordance with existing law to ensure legal certainty from the land procurement process. Likewise, in the land procurement which takes over individual rights over land. In order to avoid any violation of individual rights (including the categories of human rights violations), the procurement of land in the interest of development, whether for private or public interest, is only possible if an agreement is reached on the form and amount of compensation between the owner and the parties who requires the land without intimidation in any form (Muhammad Bakri, 2007).

However, if there is a citizen who is unwilling to give up his land even though there has been repeated deliberation, but there is no agreement, then those who are entitled to compensation can file a lawsuit in court (Urip Santoso 2016). It also applies to paying out compensation, where it should be done as soon as possible. Regarding the timeframe of compensation pay out can be seen from the table below:

Table 4: Compensation Pay out Time Frame

| No | The Timeframe for Compensation pay out | Frequency | Percentage (%) |
|----|--|-----------|----------------|
| 1 | <1 year | 47 | 66,2 |
| 2 | >1 year | 24 | 33,8 |
| | Total | 71 | 100 |

Based on the questionnaire data of 71 respondents, 47 respondents with the percentage of 66,2% stated that they received the compensation pay out in less than 1 year whereas the rest, 24 respondents with 33.8% stated they waited for more than a year.

Respondents who waited for more than a year claimed that they even waited as long as 2 to 3 years, taken several factors into effect, some of which were: 1). They declined the pay out in the beginning, 2) There was a problem within the family (in cases of inheritance). 3) Those involved were not present.

The construction of the Medan-Tanjung Morawa-Tebing Toll road is conducted in accordance with the provisions of Act no. 12 of 2012 jo. Presidential Regulation No.71 of 2012, through the stages such as: The first, The planning of land procurement for public purposes is based on the Spatial Plan and the development priorities listed in the Medium Term Development Plan, Strategic Plan, Government Work Plan (Agency) that is inclusive of land procurement planning for the public interest. The second, Preparation stage of land procurement such as: notice of construction plans, initial data collection of construction plans, and public consultation of construction plans. The third, Procuring stage of land procurements are inventory and identification of the tenure, ownership and utilization of the land, assessment of compensation, discussion on compensation determination, the granting of compensation, and relinquishment of agency's land.

Table 5: The level of Satisfaction for the Received Compensation Pay Out

| No | The Level of Satisfaction | Frequency | Percentage (%) |
|----|--|-----------|----------------|
| 1 | Satisfied with the received compensation | 53 | 74.7 |
| 2 | Unsatisfied | 18 | 25.3 |
| | Total | 71 | 100 |

Based on the questionnaire data of 71 respondents, 53 of them with the percentage of 74,7% asserted satisfaction of the compensation given whereas 18 of them with 25,3% claimed the opposite.

The data obtain from the location from the questionnaires distributed to the people affected by the land procurement project, around 53 (74,7%) of the results concluded that there was no problem and were satisfied with the compensation, while the remaining 18 (25,3%) complained about the value of compensation, they believed that there has been discrimination in the provision of compensation.

From the observation in the location, it can be comprehended that the cause of the different compensation is because in the period of land procurement (2009-2017), there are 2 (two) applicable regulations where, in the first stage (2009-2012) the provision of compensation used the Presidential Regulation no. 36 of 2005 and Presidential Regulation 65 of 2006. Whereas the compensation in stage II (2013 until the completion of toll road construction, the compensation is provided in accordance with Act No. 2 of 2012 on

Land Procurement for Construction for Public Interest. There are significant differences in determining the compensation in both regulations, namely: 1) the provision of compensation in phase I is based on the Value of Sale of Tax Objects (NJOP), if the community objected to the amount of compensation (not receiving compensation that has been determined) the land would still be taken by the government and the compensation money determined by the Committee in accordance with NJOP will be deposited in court (consignment). 2) the provision of compensation in phase II was based not only on the NJOP, but also several variables, such as: 1). Location or site of the land, 2) Land status, 3) Land allotment; the suitability of land use with existing spatial or spatial or urban spatial planning plans, 4) Facilities and infrastructure available, 5) Other factors affecting land prices.

Based on the above variables, for the second stage of compensation, the amount of compensation is much greater when compared to the amount of compensation given in the first stage. On this basis they filed a lawsuit to the Court. But their lawsuit was rejected by the Court, due to fact that they already signed the agreement and received the compensation. In the table below can be seen if the amount of compensation was as what the respondents desired.

Table 6: The Community Request for the Compensation Given

| No | The Compensation Given | Frequency | Percentage (%) |
|----|--|-----------|----------------|
| 1 | In accordance with the community's request | 53 | 74.7 |
| 2 | Not in accordance with the community's request | 18 | 25.3 |
| | Total | 71 | 100 |

Based on the questionnaire data of 71 respondents, 53 respondents with the percentage of 74,7% affirmed that the compensation given was in accordance with their request while 18 respondents of 25,3% claimed otherwise.

4 CONCLUSIONS

The implementation of land procurement for the construction of Medan - Tanjung Morawa - Tebing

Tinggi Toll road was conducted on 441.53ha of land inhabited by the surrounding community and PTPN III Plantation.

The construction of Medan - Morawa - Tebing Toll road started in 2009 until today. Throughout the process, it enacted two (2) law and regulations that took place in two stages, where in the first stage (phase) I which lasted from 2009 to 2012 with Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006 on Land Procurement for Public Interest, while in the second stage, (2013 up to now) is applied with Act No. 2 of 2012 on Land Procurement for Development for Public Interest where there is a significant difference in the term of compensation, resulting in a small percentage of people objecting the amount of compensation. For those who do not want to accept the compensation given, they are welcome to file a lawsuit to the Court however with the land still take over by the government and the compensation money is deposited in the Court (Consignment).

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