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Public Consultation Regulations on Land Acquisition for Toll Roads for Public Interests in the Perspective of Law Number 2 of 2012

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Abstract: Public Consultation serves as a mechanism to gather the thoughts, ambitions, and concerns of the community pertaining to land acquisition projects. In the realm of land purchase for public interest, Public Consultation is not merely a formality; it is a crucial step for enhancing decision-making, fostering public engagement, and establishing a robust foundation for sustainable development. The concept of public interest in land acquisition for toll roads, as delineated in Law No. 2 of 2012 regarding Land Acquisition for Development in the Public Interest, indicates that such acquisition is categorized under Article 10, letter b, which classifies toll roads as a form of land acquisition serving the public interest. This is substantiated by the Constitutional Court Decision; furthermore, property acquisition for toll highways satisfies the criteria for the concept of interest outlined in Article 6, specifically for the interests of the nation, state, and society, regardless of whether it is publicly communicated to the community.

Keyword: Public Consultation, Toll Road, Public Interest.

INTRODUCTION

Indonesia is a state of law which is explicitly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads "The State of Indonesia is a state of law", this concept is based on the existence of a sovereign society and government and with the actions of the government and society based on law as a basis so that there are no arbitrary actions from the government against society or vice versa. By adopting the concept of a state of law, there are components that are the objectives of a state of law, in Indonesia itself which adopts a civil law legal system which in grand theory the civil law legal system adopted by Indonesia is part of Western (modern) legal theory where in this theory has a legal objective, namely for justice (gerechtigh), benefit (wechmatigheid), and legal certainty (rechtmatigheid) (Permana et al., 2023). To realize the objectives of the law, it is necessary to have good governance in accordance with the principles of the General Principles of Good Governance (AAUPB), where the Government as an institution that has the authority given by the people through laws and regulations, the Government is responsible for running the Government in

order to achieve the goals that have been set. The Government's obligation to achieve legal objectives is very essential in order to ensure the achievement of legal objectives in the concept of a state of law, namely justice, benefit and legal certainty.

In addition to realizing the objectives of the rule of law itself, Indonesia has a main objective stated in the Preamble to the 1945 Constitution, namely to realize a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This objective can be implemented by the Government through development efforts to provide infrastructure to support all community needs and activities. One of the efforts that can be made in order to realize development is by implementing development for the public interest. Development for the public interest is something that must be implemented by the Government in order to carry out the mandate of the 1945 Constitution of the Republic of Indonesia. Therefore, development for the public interest can only be carried out by the Government, while development carried out by the private sector (legal entities) is not included in the category of development for the public interest, because the orientation of development by the private sector is more directed at business to gain personal or group profit. Thus, land acquisition for the public interest carried out by the Government is carried out with efforts to release rights by terminating the legal relationship between the rights holder and the land by providing a proper and fair compensation mechanism. Meanwhile, land acquisition by the private sector is carried out by terminating the relationship between the private party and the rights holder through legal acts of sale and purchase, exchange, lease and so on. (Wicaksono & Turisno, 2023) .

The development process for the public interest attempted by the Government certainly requires a location or area in this case land that will be the place where infrastructure for the public interest is built, the land can be obtained from land acquisition actions by considering the principles of land acquisition for the public interest, namely the principle of humanity, the principle of justice, the principle of benefit, the principle of certainty, the principle of openness, the principle of agreement, the principle of participation, the principle of welfare, the principle of sustainability, and the principle of harmony. Before the Government carries out land acquisition, of course there is a land acquisition plan based on the spatial plan and development priorities which will then determine the location of the land itself. At this stage, obstacles often occur because the location determined by the Government has attached ownership rights from the community, therefore, there are two opposing interests, namely the public interest on the one hand and the interests of individuals on the other hand, groups and groups on the other hand which can often hinder the land acquisition process for the public interest because the land acquisition process often causes problems, for example, the amount of compensation is not appropriate, the community is not involved in the negotiation process, and the community's rejection of the government's land acquisition actions.

Due to the problems arising from the land acquisition process for public interest, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest was issued, this regulation is a mandate from the provisions of Article 18 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). The concept of land rights should be clearly regulated in national agrarian law which is then divided into two forms of land rights, namely: (1) Primary land rights; and (2) Secondary land rights. In this case, primary land rights, one of which is ownership rights, have a strong position so that the owner of the rights can maintain full ownership against anyone, however, this does not mean that the strongest nature inherent in ownership rights makes this right an absolute, unlimited, and inviolable right, because in certain situations and conditions this ownership right can also be limited. The most obvious limitations regulated in the provisions of the UUPA include the following Articles : (1) Article 6: All land rights have a social function. (2) Article 7: In order not to harm the public interest, ownership and control of land that exceeds the limit is not permitted. (3) Article 17:

Considering the provisions in Article 7, in order to achieve the objectives referred to in Article 2 paragraph (3), the maximum and/or minimum area of land that may be owned with a right referred to in Article 16 by one family or legal entity is regulated. (4) Article 18: For the public interest, including the interests of the nation and state and the common interests of the people, land rights may be revoked, by providing appropriate compensation and in a manner regulated by law. (5) Article 21 paragraph (1): Only Indonesian citizens can have ownership rights (Khofiyah & Angreni, 2020) .

These articles contain the principle of social function of land, namely the principle that states that the use of land rights must not conflict with the rights of others and the public interest. So it is not permissible if land is used for personal interests that cause losses to the community. UUPA as a law derived from the provisions of Article 33 paragraph (3) of the 1945 Constitution regulates the authority of the State over land as explained in Article 2 paragraph (2) of the UUPA which reads: The right to control from the State is included in paragraph (1) This article gives the authority to: (a) regulate and organize the allocation, use, supply and maintenance of the earth, water and space; (b) determine and regulate legal relationships between people and the earth, water and space, (c) determine and regulate legal relationships between people and legal acts concerning the earth, water and space (Suraji et al., 2022) .

Along with the development of the times, the Government has also issued implementing regulations related to the mechanism of land acquisition for public interest, namely through the Government of the Republic of Indonesia Number 39 of 2023 Amendment to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for Public Interest which regulates in detail the process of land acquisition for public interest starting from the basic planning to the development process. Although the regulation of the mechanism related to the process of implementing land acquisition for development for interests has been regulated in such a way by the Government in order to minimize conflicts between the Government and the community holding rights, in practice land acquisition conflicts for public interests continue to occur. conflicts between the Government and the community in terms of land acquisition are caused by unilateral actions by the Government, the failure to achieve the negotiation process in this case Public Consultation, and the community's lack of understanding of the purpose of land acquisition by the Government itself because the Government often ignores the Public Consultation process with the community who in this case are the holders of land rights.

After the enactment of the Government of the Republic of Indonesia Number 39 of 2023 Amendment to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest which regulates in detail the Public Consultation process with the aim of avoiding and minimizing conflicts between various parties, however, even though there is a Public Consultation mechanism, problems still occur. Public Consultation is a process that involves various parties, from the Government to the rights-holding community. Public Consultation is a means to listen to the opinions, aspirations, and concerns of the community regarding land acquisition projects. In the context of land acquisition for the public interest, Public Consultation is not just a formality, but an essential step to create better decisions, support community participation, and build a strong foundation for sustainable development. However, the Public Consultation mechanism that has been regulated has caused controversy and is considered to slow down the implementation of land acquisition for public interest, where in this Government Regulation the implementation of Public Consultation takes quite a long time, which can then be re-implemented if there is no agreement between the parties, in this case the community holding rights and the Government, and there are no sanctions for rights holders when they reject land acquisition by the Government which can then hinder the national development process by the Government, because the Government of the Republic of Indonesia Number 39 of 2023 Amendment to

Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest is not *Lex Perfecta* or does not use criminal elements because the form of this regulation is packaged in a Government Regulation which by regulation must not contain criminal elements, this is in accordance with the provisions of Article 15 paragraph (1) of Law Number 13 of 2022 concerning the Formation of Legislation, but seeks deliberation to reach consensus in this case through the implementation of Public Consultation (Pokhrel, 2024) .

Thus, this mechanism will take a long time because in addition to the Government having to wait for the Public Consultation period as stipulated in Government Regulation of the Republic of Indonesia Number 39 of 2023 Amendment to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest , the Government will also go through various mechanisms due to disagreements from land rights holders which of course will take even more time, so that this is contrary to the purpose of land acquisition for development, namely for the public interest which should be able to put aside personal interests because the public interest should be carried out for the interests of the nation and the State which must be realized by the Government and used as much as possible for the prosperity of the people.

Thus, the legal issue in writing this article is how land acquisition for toll roads can be said to be in the public interest if viewed from the meaning of public interest in the perspective of Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest?.

METHOD

The technique of writing this article uses a legal research method with a Normative research type, using a statute approach and conceptual approach (Hendrik Mezak, 2006) . The secondary data sources are using primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are opinions or legal theories that are relevant to legal issues in this writing. The data collection technique used is using a documentation guide from secondary data sources, this writing uses a descriptive analysis technique with a deductive thinking method.

RESULTS AND DISCUSSION

Land Acquisition according to Law Number 2 of 2012 is stated in Article 1 paragraph (2), which states that "land acquisition is an activity to provide land by providing fair and proper compensation to the entitled party". The meaning of public interest as regulated in Law Number 2 of 2012 is stated in Article 1 paragraph (6) which states that "Public interest is the interest of the nation, state, and society which must be realized by the government and used as much as possible for the prosperity of the people". Article 10 of this Law, in addition to defining public interest, also includes a list of activities included in the category of public interest, one of which includes toll roads. Land acquisition for public interest for the development activities mentioned above must be carried out by the government and the land is then owned by the Government or Regional Government. (Tetama et al., 2022) . If Land Acquisition is carried out by a State-Owned Enterprise, then the land becomes the property of the State-Owned Enterprise. In this Law, the implementation of development for the public interest of the Government can cooperate with State-Owned Enterprises, Regional-Owned Enterprises, or Private Enterprises. Development is not only the responsibility of the Government, but also the responsibility and active role of the private sector. For this reason, the government considers it necessary to have assistance facilities from the government in the form of services in the release of people's land in order to provide land for the development of projects that support the public interest or are included in the field of development of public facilities and social facilities and infrastructure, such as toll roads for example.

The construction of toll roads will be formulated into a policy, if the people are not involved in the discussion process, the approach used by the government is a technocratic approach, so without involving a deliberative policy political process, it is assumed that the people will not reject it because national roads are for the public interest, to overcome traffic congestion, and accelerate development and economic growth. With the construction of toll roads, it is hoped that it can overcome traffic congestion, shorten travel distances, speed up travel times and social mobility will increase. Toll roads in the policy argument seem identical to the interests of the community. In fact, the people do not actually have sufficient access to information about toll road construction. Toll roads are not categorized as public goods because only four-wheeled vehicle users and those who can pay can enjoy toll roads. The people also do not have access to obtain economic benefits along the toll road section. For example, those who can use land for rest areas, only a handful of people have access to the authorities. While another problem, toll road construction must be economically profitable and no longer subsidized by the state. In this perspective, the people, especially those who do not have access to toll roads, will again be disadvantaged. This is because the government subsidizes the upper middle class who have financial access to use toll roads.

The construction of toll roads, when viewed from the aspect of its benefits, will have a positive impact on accelerating economic development. Therefore, rationally, the people will provide support for the construction of toll roads, but in its implementation, the risk of failure in building toll roads is also very open. Due to the difficulty of land acquisition and the eligibility of the number of toll road users which is still below the eligibility standard. Failure of implementation will have a negative impact on the image of regional head leadership because it can be considered a failure in carrying out the orders of the Central Government. The risk of failure of the toll road construction policy is actually not at too high a risk (major risk) and still provides room to be minimized or managed properly. One way to anticipate the risk of policy failure is with a deliberative approach. The people must be invited to dialogue and not be disadvantaged in land acquisition. The meaning of dialogue is that the people are the main owners of the land and must be respected, talked to (deliberation not forcing), and their aspirations must be listened to. The aspirations of residents regarding compensation prices must be listened to and can be done through research involving experts and universities. Finally, the implementation of toll road construction is not only understood as a problem of implementation capacity that is full of budget support and technical issues, but also concerns socio-political issues. Behind the policy implementation process, implementors usually use their authority to seek economic benefits. (Rahmadani, 2022) . Methods such as suppressing land acquisition prices below the standards determined by the independent appraisal team, relocating land access, making decisions by force, or accommodating the interests of entrepreneurs are modes that are often used to close the door to access and the interests of the wider community.

However, the facts that emerge often contrast with predictions and expectations. Empirical data actually proves that toll road construction is the project that faces the most obstacles, especially land acquisition obstacles. Almost all toll road construction projects, such as the Dumai-Pekanbaru, Trans-Java, Cibitung-Cilincing, Balikpapan-Samarinda, Serpong-Balaraja, and Indralaya-Palembang Toll Roads, face land acquisition problems. The only toll road construction project that is not hampered by land acquisition is the Tanjung Priok access toll road Section E-1, Rorotan-Cilincing section, 3.4 kilometers long. Meanwhile, many other toll road construction projects have been abandoned due to land acquisition that has not been completed. For example, the 155-kilometer Bakauheni-Terbanggi Besar Toll Road, which has been tendered since 2006, but until now has not been realized because no investors dare to invest. Investment in toll road projects in Indonesia is considered by most investors as a high-risk investment that they tend to avoid.

Risk factors for investing in toll roads include fluctuations in the rupiah exchange rate related to the length of the investment period, cost escalation due to construction delays, and a low user market. Therefore, the growth of toll roads in Indonesia is much lower than in Malaysia and China. The most crucial factor that causes toll road investment to be risky is the delay in construction due to the unavailability of land. Land for toll roads is not available as a result of the incomplete land acquisition carried out by the assigned land procurement agency. Support for legal regulations from the regulatory aspect, land acquisition for toll road projects is actually very complete. There is already Law Number 2 of 2012 which regulates Land Acquisition for Development in the Public Interest. This regulation is then further regulated by Government Regulation of the Republic of Indonesia Number 39 of 2023 Amendment to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest . In terms of the substance of the regulation, in fact all aspects concerning land acquisition for toll road construction have been regulated by the series of legal regulations. However, the fact is, until now land acquisition for toll roads has become a serious issue that has not been resolved quickly and completely. One implication is that the Trans-Java Toll Road, Pemalang-Batang and Batang-Semarang sections, have not been able to be constructed (et al., 2021) .

Article 6 of the Basic Agrarian Law states that: "All land rights have a social function". This explains that whatever land rights a person has, it cannot be justified that his land will be used or not used solely for his personal interests, especially if it causes harm to the wider community. In the sense that land does not only function for the holder of land rights but also for the entire Indonesian nation, with the consequence that the use of rights to a piece of land must also take into account the interests of other communities/public interests. The use of land must be adjusted to the circumstances and nature of its rights so that it is beneficial for the welfare and happiness of its owner, as well as beneficial for the community and the State. However, this does not mean that a person's interests can be ignored by the interests of the community or the state, and between the two interests must be balanced.

For customary law communities, land has a very important position, because it is the only permanent asset in a more advantageous condition. In addition, land is a place to live, a place to earn a living, a place to bury, and according to their beliefs, it is even the place where the guardian maids of the community and the ancestors of the community live. The revocation of land for public interest is carried out based on the provisions of the law and with the payment of appropriate compensation. Article 33 of the 1945 Constitution stipulates that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. In order to achieve the goal of the greatest prosperity of the people, there must be state control. The contents of this article are not intended by the government as the owner, because as the owner, the subject is a person and that right is the strongest and most complete right to land. Although it is the strongest and most complete, it does not provide excessive authority at all. UUPA still gives social priority to land as stipulated in Article 6 which states that all rights to land have a social function (Manurung et al., 2019) . This is in line with the nature of customary law as the basis for the formation of UUPA. That is why, based on article 18 of UUPA, it states that: "for the public interest, including the interests of the nation and state and the common interests of the people, land rights can be revoked, by providing appropriate compensation and in a manner regulated by law." Public Interest according to Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects Thereon In Article 1 of Law Number 20 of 1961, it states that: "included in the public interest are the interests of the nation and state, as well as the common interests of the people and the interests of development Constitutional Court Decision Number 50/PUU-X/2012 on the judicial review of Law Number 2 of 2012 submitted by the applicants, including the Indonesian Human Rights Committee for Social Justice (IHCS), the Indonesian Farmers Union

(SPI), the Sadajiwa Village Development Foundation (Bina Desa), the Agrarian Reform Consortium (KPA), the People's Coalition for Fisheries Justice (KIARA), Indonesian Environmental Forum (WALHI), Indonesian Farmers Alliance (API), Sawit Watch, People's Coalition for the Right to Water (KruHA), Women's Solidarity Association, Pusaka Foundation, Institute for Community Studies and Advocacy (ELSAM), Indonesia for Global Justice, the Constitutional Court decided that the construction of toll roads was carried out for the sake of smooth transportation of people, goods, and services that are the livelihood of many people, so that even though as argued by the Petitioners it cannot be freely accessed by the poor, but with the existence of the toll road, both directly and indirectly its benefits will be felt to meet the needs of the entire community.

CONCLUSION

The meaning of public interest in land acquisition for Toll Roads in the perspective of Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest, then land acquisition for toll roads is an interest that emphasizes the category in which Article 10 letter b has stated that toll roads are included in one type of land acquisition for the public interest, this is reinforced by the Constitutional Court Decision, in addition to that, land acquisition for toll roads meets the criteria for the meaning of interest mentioned in Article 6, namely for the interests of the nation, state and society, even though it is not explained to the public at large or not.

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