

Synchronization of Time Period for Settlement of Dispute Payment of Compensation for the Procurement of the Pandaan Malang Toll Road

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ABSTRACT

Justice in the field of land as a constitutional mandate is a foundation that must be regulated as contained in the provisions of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states, "Earth and air and the natural resources contained therein are controlled by the state and be used for the greatest prosperity of the people."¹ In order to achieve justice according to the mandate of the constitution, at least it can be realized through infrastructure development efforts in the national strategic project plan. This is in accordance with one of the priorities on President Joko Widodo's agenda to accelerate and continue infrastructure development. One of the many infrastructures that has become the object of a national strategic project is a network of toll roads or usually called toll roads.

INTRODUCTION

The construction of the Toll Road Network itself involves a series of stages and preparations so that the implementation can be carried out at the right time, right, right, safe, and provides benefits to all parties without causing problems. One of the stages of the toll road development activity itself is land acquisition for implementation in the public interest. Procurement of land for the implementation of public interest is a manifestation of the principle of the social function of land rights as stated in Article 6 of the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as "UUPA") stating "all rights to land have social function." According to his explanation, 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 this causes harm to the community. The use of land must be adapted to its circumstances and the nature of its rights, so that it benefits both the welfare and happiness of those who own it and benefits the community and the State.

Based on the provisions above, it can be interpreted that the social function of land rights does not justify a field of land rights only being used for personal gain, let alone causing public harm. Thus, in a condition that requires the fulfillment of the public interest, it is necessary to take necessary action on a right to land or other rights that were originally owned or controlled by private individuals to become owned or controlled by the state as a representation of people's power for the implementation of public interests.

THEORETICAL REVIEW

As an analysis knife, legal theory is used as a reference in answering existing legal problems. Based on the formulation of the problems that have been formulated, the authors choose relevant theories to be used in answering and resolving legal issues in this study, namely:

Legal Certainty Theory

According to C.S.T Kansil, law enforcement that can be said to give rise to legal certainty is a law that is clear, permanent, consistent and consistent, and its implementation cannot be influenced by subjective circumstances.

Before explaining the basic assumptions regarding legal certainty, it should be noted that legal certainty itself is a principle in the implementation of land acquisition. What is meant by the principle of certainty is to provide legal certainty regarding the availability of land in the process of land acquisition for development and to provide guarantees to the entitled party to receive proper compensation.

Certainty is very closely related to law, law without certainty value will lose its meaning because it can no longer be used as a guideline for behavior for everyone as *Ubi jus incertum, ibi jus nullum* (where there is no legal certainty, there is no law) expressed. 31 Legal certainty is a feature of law. Which cannot be separated from law, especially for written legal norms.

If one traces the history of its emergence, the theory of legal certainty is inseparable from one of the streams in legal philosophy, namely the flow of

legal positivism. Positivism is a philosophical system that only recognizes positive facts and phenomena that can be observed empirically. In the context of legal science, legal positivism can be understood as:

“Legal positivism assumes that only positive law is something real, certain, and clear. Legal positivism is a transformative process from 'law in its metaphysical/metajuridical form as an idea' to 'law in a more concrete form and perceptible "exists" sensoryly'. Through this process, the law as a norm of justice will be transformed into positive law, namely the law that is formed (*ius constitutum*) which can be proven by the senses (written).

In this understanding, legal positivism guarantees legal certainty so that people can easily find out what is prohibited and what is not. In the field of state administration, the state or government can act strictly in accordance with what has been stipulated by the Laws of the Republic of Indonesia, so that the task of administering the state is also relatively easier, because there are rules and guidelines for its implementation.

Theory of Regulation Legislation

Laws and regulations according to Attamimi are state regulations, at the Central level and at the Regional level, which are formed based on the authority of laws and regulations, both attribution and delegation. ³⁹ This concept is used by the author to identify whether the regulations that researchers write include regulations legislation. In the Indonesian legal system, the types and hierarchy of laws and regulations are regulated in the provisions of Article 7 and Article 8 of the Law of the Republic of Indonesia of the Republic of Indonesia Number 12 of 2011 concerning Formation of Laws and Regulations.

With regard to the institution itself, it is a sign that the regions also in making a legal product must be in harmony with the central government to avoid offenses. This theoretical study is used by the author to answer the first problem formulation in order to follow up on the existence of a conflict of norms that occurs in an effort to synchronize regulations. So that these legal issues can be followed up with the theories, principles, and legal norms that apply.

Law Synchronization Theory

Continuing with the inconsistency of laws and regulations that the author is trying to examine, the author focuses on several theories regarding legal synchronization. According to Endang Sumiarni, what is meant by synchronization is seeing the suitability or alignment of laws and regulations vertically based on positive law systematization, namely between higher laws and regulations and lower laws and regulations. The synchronization of laws and regulations often creates conflict regarding which laws and regulations are more appropriate to use for certain cases. Therefore, law enforcers need to pay attention to the principles of enactment of laws and regulations

According to Peter Mahmud Marzuki, regarding the synchronization of laws and regulations, there is the principle of *lex superiori derogat legi inferiori* which explains that if there is a conflict between laws and regulations that are

hierarchically lower and higher, then the laws and regulations that are hierarchically higher low it must be set aside.

METHODOLOGY

Types of Research

Based on the problem to be studied, the approach used in this study is normative juridical, namely legal research conducted by examining literature or secondary data as the basis for research by conducting a search of the regulations related to the problem being discussed. 22 Research normative juridical law, law is often conceptualized as what is written in statutory regulations (law in the books) or law is conceptualized as rules or norms which are standards for human behavior that are considered appropriate.

This research was conducted by studying secondary legal materials or library materials, opinions of legal scholars and legal theory. This research is included in the type of normative juridical research because the legal issues in this research are resolved based on a study of laws and regulations.

Research Approach

In legal research there are several approaches, with this approach the researcher will get information from various aspects regarding the issue being tried to find an answer. In this study the approach method used by the author is the statutory approach, the case approach, and the conceptual approach. 24 The statutory approach is used to analyze primary legal material so that it can be identified. the concept of a series of land acquisition processes, especially in the procedure for submitting objections to the results of the inventory and identification of land parcels which are objects of land acquisition by parties who feel entitled.

Then the conceptual approach is used as a way to understand and analyze the concept of claims for civil rights, the concept of expiration, the principles of material rights. Finally, the case approach was used to analyze how the panel of judges carried out the examination of compensation cases for land acquisition for the public interest of the Pandaan-Malang toll road.

Types and Sources of Legal Materials

a. Primary Legal Materials

Primary legal material is legal material which is authoritative which means it has authority. Primary legal materials consist of laws and regulations, official records, or treatises on the making of laws and regulations and judges' decisions. Primary legal materials in this study were obtained from laws and regulations related to:

1. The 1945 Constitution of the Republic of Indonesia;
2. Civil Code (Burgerlijk Wetboek voor Indonesie);
3. The updated Indonesian Civil Procedure Code (Herzien Inlandsch Regulation & Regulation);
4. Law of the Republic of Indonesia of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations;

5. Law of the Republic of Indonesia Number 14 of 1985 concerning the Supreme Court;
6. Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest;
7. Government Regulation Number 24 of 1997 concerning Land Registration;
8. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration.
9. Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning Implementation of Land Acquisition for Development in the Public Interest;
10. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Courts;
11. Supreme Court Regulation Number of the Republic of Indonesia Number 3 of 2016 concerning Procedures for Submitting Objections and Custody of Compensation to the District Court;
12. Regulation of the Minister of ATRK/BPN Number 19 of 2021 concerning Provisions for the implementation of Government Regulation Number 19 of 2021 concerning Implementation of Land Acquisition for Development for Public Interests;
13. Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration;
14. Decision of the Kepanjen District Court Number 179/Pdt.G/2020/Pn.Kpn;
15. Martapura District Court Decision Number 4/Pdt.G/2019/Pn.Mtp;
16. Decision of the Kepanjen District Court Number 86/Pdt.G./2016/PN.Mlg;
17. Decision of the Blitung District Court Number 155/Pdt.G/2019/PN.Blt;
18. Decision of the Bitung District Court Number 119/Pdt.G/2021/PN Bit;
19. Circular of the Supreme Court Number 7 of 2001 concerning Local Examinations;
20. Circular Letter Number 2 of 2014 concerning Settlement of Cases in Courts of First Instance and Appellate Level in 4 (four) Judiciary Environments.

b. Secondary Legal Materials

The secondary legal materials are in the form of all legal publications which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions.²⁵

c. Tertiary Legal Materials

The tertiary legal materials used are in the form of several dictionaries such as the Big Indonesian Dictionary (KBBI), Legal Dictionary, Black's Law Dictionary and others.

d. Other Legal Materials

To complete the primary, secondary and tertiary legal materials, the researcher also completed the legal materials through discussions and interviews between several parties who had a role in land acquisition for the Pandaan-Malang Toll Road. The results of the interviews are in the form of information put forward by stakeholders. Interviews will be conducted with officials and employees at the Malang Regency Land Office and Office of Officials Making Land Acquisition Commitments for the Pandaan-Malang Toll Road, Ministry of Public Works and Public Housing. In addition, interviews were also conducted with officials within the Kepanjen District Court.

Legal Substance Tracing Technique

The techniques used in tracing legal materials are carried out by means of literature studies and documentation studies. The researcher conducted a search in the following way:

- a. Searches at the Malang City Library, Legal Documentation and Information Center (PDIH) of the Faculty of Law, University of Brawijaya and Central Library of Brawijaya University were carried out by searching books and references related to the formulation of the problem.
- b. Searching for legal materials via the Internet is carried out by tracing references using key words that are relevant to the subject matter or problem formulation.
- c. Face-to-face interviews and/or using video teleconferences to gather information and ideas through questions and answers to the Land Acquisition Committee for the Pandaan Malang Toll Road.

Legal Material Analysis Techniques

The analysis used in this study uses a qualitative analysis method, namely by interpreting (interpretation) of legal materials that have been processed. 26 The use of this method of interpretation (interpretation) aims to interpret the law, whether in the legal material, especially primary legal material, there is a void of legal norms, antinomy of legal norms and blurred legal norms. This research will later use grammatical interpretation, namely interpreting words from the Laws of the Republic of Indonesia according to the rules of language and grammatical law. 27 As well as systematic interpretation, namely basing provisions on a system of rules and interpreting a legal provision contained in this study, namely by examining existing legal texts, in accordance with primary legal materials.

RESULTS

From the research results that have been obtained, recommendations can be given in the form of relevant suggestions, including the following:

1. For the Supreme Court of the Republic of Indonesia

Prepare a Circular Letter of the Supreme Court concerning Provisions for Compensation of Compensation for Land Acquisition Disputes for Public Interest so that the trial has time management in accordance with the provisions

of Article 38 paragraph (2) of the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for the Interest General

2. For the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency

Draw up a memorandum of understanding which contains provisions regarding the Provisions for Compensating Land Acquisition Disputes for Public Interest with the Supreme Court, the Attorney General's Office, the Police, and other Law Enforcement Officials who have authority in accordance with statutory regulations. -invitation.

3. For the Community

Increase literacy regarding the implementation of land acquisition, especially regarding timeframe arrangements for development in the public interest in a systematic manner which can involve various parties ranging from the village/kelurahan government level to the central government as well as the various stakeholders involved.

DISCUSSION

Expiration of Settlement of Dispute Payment of Compensation for Land Acquisition for Development in the Public Interest

In carrying out the mechanism for resolving objections to compensation that requires trials in court, there are legal issues regarding the time period regarding the settlement of disputes over claims for compensation for toll road procurement. This is because there is a stipulation of a time limit between dispute resolution and the implementation of mediation mutually limiting one another, especially in the case of a lawsuit between Hartatik and the Land Acquisition Committee for the Malang-Pandaan Toll Road with case number 179/Pdt.G/2020/PN.Kpn which the author will try to analyze as follows:

1. Analysis of Land Acquisition Implementation for the Pandaan-Malang Toll Road

The litigation problem that occurred in the process of building the Pandaan-Malang toll road is an example of a problem in land acquisition activities for development in the public interest. With the lawsuit filed by Hartatik as the holder of land rights, the author feels the need to identify whether the legal event that occurred can be classified as a land acquisition compensation dispute as stipulated in the legal provisions for land acquisition. So that it is expected to be the basis for the author to answer how the legal conflict that occurs between land acquisition law and judicial procedural law.

There are three elements that must be met in order for the settlement of compensation disputes to be resolved within the specified timeframe, including:

1. The case is filed at the District Court
2. The case is filed regarding the form and/or amount of compensation
3. Timeframe for Completion of Cases



Figure 1. Overview of Land Acquisition Implementation Procedures

Based on the figure above, it can be described in general the flow of land acquisition implementation procedures Implementation of Inventory and Identification by the Land Procurement Committee.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the analysis of the problems in this legal research, it can be concluded as follows:

1. The legal conflict that occurs between the provisions of the Law on Land Acquisition for Development for Public Interest and the Republic of Indonesia Supreme Court Regulations Regarding Mediation Procedures in Courts lies in the provisions of Article 38 paragraph (2) of the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest with Article 24 paragraph (2) of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court because there is a legal certainty in the provisions of Article 38 paragraph (2) of the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest due to the non-implementation of the rule of law consistently by the competent authority, there are inconsistencies in the formulation of regulations, judges who are inconsistent in applying the law, differences in interpretation regarding claims for compensation for land claims and claims for compensation in general in general, people who do not understand the provisions regarding the timeframe for resolving disputes against compensation for compensation, and the implementation of court decisions which until the time this scientific paper was written had not been implemented even though it had been inkracht. In addition, the causes of legal conflicts are also caused by differences in the purpose of formulating regulations between the Land Acquisition Law and the Supreme Court Regulations concerning Mediation, differences in the effectiveness and effectiveness between the Land Acquisition Law and the Supreme Court Regulations regarding Mediation, and unclear formulation of provisions. Article 38 paragraph

- (2) Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest.
2. Settlement of conflicts in the provisions of the Law of the Republic of Indonesia Concerning

Land Procurement for Development for Public Interest with the Republic of Indonesia Supreme Court Regulation concerning Mediation Procedures is carried out by:

1. Applying the Theory of Legal Synchronization and the principles of *lex superior derogat legi inferiori*. This is based on the Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest which has a higher hierarchy of laws and regulations than the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures.
2. Amend the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures by adding a formulation regarding Disputes that are exempt from the obligation to resolve through Mediation explicitly against claims for compensation for land acquisition for development in the public interest.

FURTHER STUDY

Research Title The author in this study is the expiration date of the settlement of a dispute over the payment of compensation for the procurement of the Pandaan Malang toll road. In an effort to maintain and show the element of novelty in this thesis research with previous studies that have the same topic, the authors describe the differences in the following table.

No	Research Year	Research Title	Formulation of the problem
1	Febriadi Kenotariatan Universitas Brawijaya 2016	Price Determination in Granting Compensation for Land and or Building Rights in Land Procurement for Toll Road Development (Study in Madyopuro Village, Malang City)	<ol style="list-style-type: none"> 1. How is the determination of the price of compensation made by the land acquisition committee in land acquisition in the Madyopuro Village area, Kedungkandan District, Malang City? 2. Why is the compensation price determined unilaterally without prior deliberation with the residents who own the rights to the land affected by the land acquisition project for the construction of a toll road in the Madyopuro Village area, Kedungkandang District, Malang City?

2	Shelin Nabila Wibowo Kenotariat an Universitas Padjajaran 2021	Legal Certainty Compensation for Land Procurement for Road Construction Cisumdawu Highway	<ol style="list-style-type: none"> 1. How is the Legal Certainty for Compensation for Land Procurement for the Construction of the Cisumdawu Toll Road? 2. What is the solution to provide legal certainty? 3. What are the legal arrangements regarding deliberations on determining the form of compensation for land acquisition for the public interest? 4. How is the implementation of deliberations to determine the form of compensation for land acquisition for development in the public interest?
3	Erica Gita Mogi, Magister Hukum Universitas Sam Ratulangi 2022	Legal Study of the Implementation of Deliberations on the Determination of Forms of Compensation for Land Acquisition for Public interest	<ol style="list-style-type: none"> 1. What are the legal arrangements regarding deliberations on determining the form of compensation for land acquisition for the public interest? 2. How is the implementation of deliberations to determine the form of compensation for land acquisition for development in the public interest?

Table 1. Research Originality

Information:

1. The idea in the first research is Price Determination in Granting Compensation for Land and or Building Rights in Land Acquisition for Toll Road Development, the thesis research equation
This research with the first research is to discuss the similarity of the theme raised, namely the implementation of land acquisition for the construction of toll roads. In the first study resulted in the concept of determining the value of the compensation price carried out by the land acquisition committee in land acquisition. The thing that makes the difference, in this thesis research this thesis is on the research conducted by the author focusing on the expiration of the settlement of disputes over the payment of compensation for toll road procurement.
2. The idea in the second research is Legal Certainty for Compensation for Land Procurement for Toll Road Development, the similarity in this study is that there is a similarity in the theme raised, namely the implementation of land acquisition for toll road construction. The thing that makes the difference, in this thesis research the research conducted

by the author focuses on the expiration of the settlement of disputes over the payment of compensation for toll road procurement.

3. The idea in the third research is a Legal Study of the Implementation of Deliberations on Determining Forms of Compensation for Land Acquisition for Public Interest, the similarity in this study is that there is a similarity in the theme raised, namely the implementation of land acquisition for toll road construction. The thing that makes the difference, in this thesis research conducted by the author focuses on the expiration date of the settlement of disputes over the payment of compensation for toll road procurement.

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