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Legal Protection of Land Rights Holder in Land Procurement for Public Interest (Case study of Tower development SUTT 150KV in North Lombok Regency)

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Abstract

One of the principles of land procurement is the principle of participation, the involvement of rights holders clearly stipulated in article 7 paragraph (3) of Law number 2 of 2012 but in the implementation of the right-holder involvement is unclear and does not get legal protection. The problem is how the land rights holder involvement since the planning, preparation, implementation to the delivery of land procurement results for the construction of SUTT 150KV Tower in North Lombok Regency and how the effectiveness of land procurement implementation for the construction of SUTT 150KV Tower in North Lombok regency. This research aims to understand and analyze the protection of the law in the involvement of rights holders, and effectiveness in the implementation of land procurement for the construction of the tower SUTT 150KV in North Lombok regency. This method of study uses the normative-empirical legal research method, as it examines the provisions of the legislation governing land procurement for development for public interest and its implementation. The approach used is the legislation approach, conceptual approach, and the sociology of legal approach. The result of this research is the involvement of rights holders since the planning, preparation, implementation, and delivery of the results can be said to go well, but the lack of community participation. Both factors of effectiveness of land procurement implementation for building 150KV Tower in North Lombok regency is the implementing factors, factors of facilities and infrastructure, and community factors.

Keywords: Land Procurement; Public Interest; Legal Protection

Introduction

Land is a very basic human need and increase continuously. In line with human development, the human need for land continues to increase which triggers the problem or conflict between humans and others, whether the conflict occurs between one individual and the other individual, or an individual with a legal entity or government.

The land conflict becomes a national issue, because of its high number and many obstacles in its completion. Complicated land conflicts and not subsided today is due to the weakness of regulation and

the error of implementation of land law so that in the implementation of the interest of rights holders of land is not protected with certainty.¹

In the context of land procurement that is part of the National Agrarian Law. Land procurement regulations should refer to the principle of equilibrium between the interests of development and the interests of the society. In the framework of the development effort, the state in master is given some authority. In accordance with the mandate of the Constitution article 33 paragraph (3), namely:

“The Earth and water and the natural riches contained therein are controlled by the state and used in maximum for the prosperity of the people.”

All rights to land have social functions, as Article 6 of The Agrarian Code of Law formulates that all rights to the land have social functions.² Therefore, the land is not only for the personal use of rights owners, but also noted for the public interest. To administer land provision in various public and state purposes, the Government can revoke the rights to the land by providing reasonable compensation in the manner governed by the law. Land procurement is a way of obtaining land for development for the public interest. Article 18 Chapter 1 The Agrarian Code of Law stated that:

“For the public benefit, including for the benefit of the nation and the common interest of the people, the right to land can be revoked, by giving appropriate damages and in the manner governed by the law.”

Agrarian law based on the above rules should aim at the principle of balance between personal interest and the public interest which then become the basis of reference of land procurement regulation and the basis of the emergence of Law number 2 of 2012 on land procurement for development in the public interest.

In the right to any land that is in a person is not justified, if the land will be used or not used solely for his personal interests, but also must consider the public interest.³ This provision does not mean that personal interests will be lost by the public interest, but rather personal interests and public interest shall offset each other to the creation of justice, prosperity and welfare for the entire populace.

Protection of the possession of land rights not only regulates the certainty of the land itself, but also governs the proper habitation and the good living environment. Article 2 TAP-MPR number IX of 2001 on Agrarian Update and Human Resources Management stated:

“Agrarian update includes a continuous process⁴ in regard to the rearrangement of mastery, possession, use and utilization of agrarian resources, implemented in the framework of the achievement of the certainty and protection of the law and justice and prosperity for all the Indonesian people.”

The land collection by anyone, including by the Government, shall not be arbitrarily, even for any reason, including reasons for public interest.⁵ If forced, the land of the people are taken for development for the public interest then the development must be based on the law and by giving a decent indemnity.

¹ Bernhard Limbong, *Pengadaan Tanah Untuk Pembangunan*, fourth print, Pustaka Margaretha, Jakarta, 2017, p. 6.

² In the explanation of the Basic Law of agrarian is said, that a person should not use for his personal use or not be imposed land that causes harm to society. A.P Parlindungan, the comment of Main Agrarian Law, Mandar Maju, Bandung, 1998, p. 65.

³ Aminuddin Salle, *Hukum Pengadaan Tanah untuk Kepentingan Umum*, Kreasi Total Media, Yogyakarta, 2007, p. 1.

⁴ The most important element in article 2 Tap MPR No. IX 2001 is (1) a continuous process, which is a policy that has been taken consistently and continuously implemented. Policy changes that are too frequent will lead to legal uncertainty. (2) The process is reordering the mastery, possession, use and utilization of agrarian resources. The word rearrangement generally meant as a change of the structure of the relationship between humans and natural resources and the relationship between humans and human beings with regard to natural resources. (3) The exact value is the certainty and protection of law, justice and prosperity for all Indonesian people (Achmad Sodiki, *Politik Hukum Agraria*, first print, Konstitusi Press, Jakarta, 2003, p. 10-11).

Land procurement for construction of SUTT 150KV Tower in North Lombok District is the procurement of land that intent and purpose for the public interest, so that the rights holders on the land that were on the path of development should be in use by agencies or government agencies in need. However, the revocation of such proprietary rights shall be with indemnification and shall be under applicable law. Land procurement for the construction of SUTT 150KV Tower which is realized by state-owned enterprises PT. PLN (Persero) is representing the government in North Lombok Regency has a purpose to fulfill the needs of electricity, so that the development is very necessary to be done so that the electricity supply in North Lombok district can be fulfilled.

³ In the procurement of land for development for the public interest not only the involvement of existing government, but there is public involvement³ or rights holders in support through the participation of the Community either directly or indirectly for the procurement of land for such development. So that the interests and legal protection of rights to the land of society can be assured in accordance with the prevailing norms. Gaining justice in community involvement and rights holders to create prosperity and to obtain legal protection for the rightsholders who are harmed to gain certainty, fairness and the benefit of the law itself.

Methodology

¹⁶ ¹¹ The research method which is used in this legal study is normative and empirical. The approach used in ⁸ is research is the Statue approach, conceptual approach, and sociology approach to law. The type of data used in this research is primary Data, which is data from social facts related to the work of real law encountered by researchers. Secondary Data, i.e. departing from social facts referenced from books, research results and scientific journals. Used as a result data that supports primary data in the discussion and analysis process.⁶ The legal materials used in ⁹ is research are primary legal materials are binding legal materials, and consist of statutory regulations. Secondary legal material is a legal material that provides explanations about the primary legal material¹⁹, such as the draft law, research results, works from the law, and so on.⁷ Tertiary legal materials are materials that provide instruction as well as explanations of primary and secondary legal materials; Examples are the legal dictionary, the Encyclopedia, the cumulative index, and so on.

¹⁴ The techniques are used in collecting the data and the legal materials are as follows:

- ²⁵ normative legal studies, data collection techniques are conducted with the study of libraries on primary legal materials, secondary legal materials, as well as tertiary legal materials and/or non-legal materials. The search for the legal materials can be done by reading, viewing, listening, or now many of the transmission of legal materials through the Internet.⁸
- In empirical research law, data collection techniques can be done with field studies, there are three techniques of field study either used jointly or individually. The three techniques are interviews, polls or questionnaire, and observations.⁹ Field studies in this study are obtained by in-depth interview techniques with respondents and informant. The interview, which is by doing the question and answer directly to the respondent on the issue studied. Meanwhile, the instrument is used to conduct the interview is a guide interview that has been prepared by the researcher. While the tool used for it is a tape recorder.

⁵ Hard Limbong, *Op.Cit* p. 334.

⁶ Mukti Fajar ND dan Yulianti Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2015, p. 59.

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 2006, p. 52.

⁸ Mukti Fajar ND dan Yulianti Achmad, *Op. Cit.*, p. 160.

⁹ *Ibid.*

Discussion

Involvement of Rights Holders in the Land Procurement Since Planning, Preparation, Implementation Up to the Delivery of Results

1. Soil Procurement Phase

a. Planning

Planning is an early stage in land procurement. Through a plan should be known at least 5 things:¹⁰

- 1) for what purposes;
- 2) where it will be implemented;
- 3) How much land is needed;
- 4) Current land use; Dan
- 5) When the land activity will be implemented.

Planning stages involve all of the stakeholders. Rights holders should know the benefits and objectives of development, location, land area is required and the time of activities of the land will be implemented.

b. Preparation

After the planning stage then the preparation stage, namely:

- 1) Notification of development plan;
- 2) Initial data collection site development plan; and
- 3) Public consultation on development plan.

This stage plays an important role in setting the location of the development, rights holders can raise objections if not agree with the development site established by the Government, through deliberation in the counseling/sosialisasi existing.

c. Implementation

The implementation of land procurement is implemented if the planning and preparation stage is done and broadly, the implementation of land procurement stage activities, including:

- 1) Inventory and identification of the evaporation, possession, use and utilization of land;
- 2) Indemnity assessment;
- 3) Deliberation of indemnity;
- 4) Indemnification; and
- 5) release of agency land.

In this stage it is very important that the involvement of the rights holders in the determination of the value of damages that are later received in lieu of losses incurred, whether in the form of land, or communities affected by the procurement of land.

¹⁰ Maria S.W Sumardjono, *Loc.Cit* halaman 19.

d. Result Submission

Chairman of land procurement implementation hand over to agencies that need land in the form of land field with land procurement data and land procurement documents. This can occur when it has been done:

- 1) Indemnification to the right party and the waiver has been conducted; and/or
- 2) indemnity has been deposited in the District Court

2. Form of Rights Holder Involvement in Land Procurement

a. The Rights of Individuals and Communities

The rights of individuals and communities contained in law number 2 year 2012, namely:

- 1) The right to gain welfare improvement from the procurement and development results and the public interest.
- 2) The right to be involved in land procurement planning.
- 3) The right to obtain a notification of development plan.
- 4) The right to obtain information through public consultation and to agree on the location of the development of public interest facilities.
- 5) Rights of society that are entitled to land to object through the State Administrative court if objections to the decision of the rehosting of the public means of development.
- 6) The right of the public to obtain information that in the location will be constructed public facilities.
- 7) The right of the rights holder of the land to assign rights to the land to an institution that requires land and has made payment of damages.
- 8) The right of the rights of a land right to appeal to an institution if it does not receive inventory results.
- 9) Right of rights holders to obtain damages for the remaining land that can not be enabled anymore as appropriate.
- 10) The right to conduct deliberation with the land agency to determine the damages of its rights to the land after the judgment of the appraiser.
- 11) The right to be objected to the local district court in case of no agreement regarding the form and/or the amount of damages.
- 12) Right to receive direct indemnity.
- 13) Entitled to tax incentives.
- 14) The right to obtain the plan and information of land procurement implementation.
- 15) Right to be informed about the establishment of a public facilities development site.

b. The Role of Individual and Community

The role of the rights holder in the procurement of land for the construction of the tower SUTT 150KV in North Lombok district can be seen from the rights and obligations in the procurement of land in accordance with Law number 2 of 2012. In interviews with various respondents and informant that the participation that is according to Article 57 number 2 of 2012 is to provide input orally or in writing which relates to the land procurement and provide support in the implementation of land procurement. Such support can be achieved if the rights holder's involvement can be protected in any ground procurement stage.

Interview with Umaidi head of Hamlet Bentek West winner Village: “Is it in the socialization/counseling conducted by the community government all follow-up and what obstacles faced in informing the right society? Which is very difficult to take the community to participate in socialization conducted by the Government, there are still some people who does not able to attend even though it is already notified in the distant days. Then whether the socialization/extension is still running, and what about who does not attend the counseling? Socialization continues to run as it should, for they who does not come i do not know with certainty, once there is an extension, has been notified, but the community does not exist, and the people who do the counseling is forced to the homes of citizens to inform the benefits of purpose and data”.¹¹

The land procurement for the construction of SUTT 150KV Tower in North Lombok Regency has been implemented as appropriate with the law, but the involvement and participation of society rights and obligations of rights holders is still poorly cared for, so there is still turmoil rejection from the community, lack of understanding the public about the benefits and objectives of development, giving widest equal opportunities for rights holders or communities in getting involved either directly or indirectly.

Land Procurement Effectiveness SUTT Tower Development for Public Interest

1. Factors Affecting the Effectiveness of Legal Implementation

Soekanto presented the factors that affect the law enforcement related to the era, because it is the essence of law enforcement, is also a benchmark of the effectiveness of law enforcement, among others¹²:

- a. Its own legal factor;
- b. Law enforcement factors, i.e. parties who form or apply the law;
- c. Factors of means or facilities that help enforce the law;
- d. Community factors, namely the environment where the law is applicable and applied; and
- e. Cultural factors, namely as a masterpiece, copyright and flavor based on the human Carsa in the Association of Life.

2. Effective Factor for the Implementation of Land Procurement for the Construction of SUTT 150KV Tower in North Lombok Regency

The legislation, both lower and higher level, aims to allow the public and the law enforcement apparatus to implement consistently and without distinguishing between the one and the other communities. Everyone is seen as being equality before the law. However, in reality the stipulated legislation is often violated, so that the rule does not apply effectively. Not effective legislation can be caused by law blurred or unclear, its inconsistent apparatus and/or its society does not support the implementation of the law. If the law is executed properly then the law can be referref to be effective. Effective because the law sound is clear and there is no need for interpretation, the apparatus uphold the law consistently and the communities affected by the rules support it.¹³

¹¹ Interview, Mr. Umaidi as a Chief of Village Bentek village, West Pemenang, Pemenang, Tuesday, 10 Maret 2020 10:30 WITA.

¹² Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, Jakarta, 2016, p. 8.

¹³ Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, PT. RajaGrafindo Persada, Jakarta, 2015, hlm. 301.

It is said to be effective or whether the implementation of land procurement for construction of SUTT 150KV Tower in North Lombok District is analyzed with legal effectiveness theory so that the factors are found that affect the effective or absence of the implementation of land procurement are:

1) Factors Implementing Apparatus

In the implementation of each phase of the procurement of implementing land such as land procurement team or institutions that require land with the government to run its authority is limited by Law number 2 of 2012 so the understanding of the implementing apparatus is very necessary and the ability to implement community counseling so that people understand the purpose and objectives of land procurement.

2) Factors of facilities and infrastructure

Factors of facilities and infrastructures in the implementation of land procurement from what the implementing apparatus in carrying out land procurement to the rights holders or communities affected by the procurement of land itself. Media which is used such as face-to-face, written or verbal notices from the Village Chief or local hamlet or using print media and electronic media capable of reaching every layer of community whose land is used for development and affected communities of land procurement for construction of SUTT 150KV Tower in North Lombok regency.

3) Community factors

Community factors are very important in the procurement of land, because in the procurement of land the involvement and the participation of the community or rights holders is very important for the implementation of land procurement so that there is no turmoil from the community that can inhibit the stage of implementation of land procurement.

Conclusion

The involvement of rights holders has a role and raises the rights and obligations of rights holders in each phase of land procurement for the public interest namely planning stage, preparation stage, implementation stage and the stage of submission of results. In the procurement of land for the development of Tower SUTT 150KV in North Lombok district involvement of the rights holders can be assured of legal protection if the government or agency that requires the land provide widest active role and protect the rights and obligations of rights holders in accordance with Law number 2 of 2012 and implementing regulations that apply to obtain justice and legal certainty and the welfare of the rights holder or community.

In the implementation of land procurement for public interest has factors that affect the effectiveness of land procurement implementation in each phase of land procurement. Constraints that occurred in the procurement of land for the construction of the tower SUTT 150KV in North Lombok district is influenced by the implementation of land procurement, facilities/infrastructures such as media that is used to assist the counseling in implementing the land procurement phases and the community's own factors such as public understanding of the benefits of land procurement objectives and awareness of the society in the role and follows each stage of land.

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