

## ROAD LAND PROCUREMENT'S DISPUTE RESOLUTION IN INDONESIA

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### ABSTRACT

*Land is a natural resource that has a very important function for all humanity's survival on earth. This is because the land is an aspect that has a value is high for humans. This research seeks to examine how true law should be a tool of social engineering (law as a tool of engineering) in order to be able to provide justice for the people in the field of land which is often a dispute in the community. This research begins with that the state has the right of ownership of public land in order to fulfill the public interest. This is regulated in Law No. 2 of 2012 on Land Procurement. It is undeniable that the liberation, disposal or procurement of land rights creates excesses that have a major impact on the social condition of the people because they have to relinquish property rights to their land and have a major impact on the stability of the people. Through a comprehensive search, this activity seeks to find existing social constructions so that a model can be found that explains the meaning of society to land procurement. This study examines the implementation of toll road procurement. The ultimate goal is, through this model can be used as a basis for dispute resolution mechanisms that occur in an area. The research method is done by stages: First, the method used is indepth interview, ie dialogue with informants through semi-structured questions trying to dig up the details. Second, using discourse analysis method, ie study by studying documents, texts, and set of media information related to the subject.*

**Keyword: Road Procurement, Dispute resolution, Indonesia**

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### 1. Background

Land is a very useful natural resource for the entire human population on this earth. Human life is largely dependent on state-owned, social, economic, and cultural land that is essential to society. Thus, it can be said that the land is a necessity and a part that can not be ruled out.

In the aspect of development, society and development have a very close freedom. Everything related to absolute displacement uses the land. Like two currencies, land without development, then the land has no use. Therefore, the land can not be configured, or regulate something that is one very important aspect.

The most important land arrangement to undertake is to develop development that correlates with the public interest. This can not be denied because the land is part of a very important and attached society. Thus, the law must be a very strategic part in order to create awareness for the community.

Public government procurement has evolved along with the unification of the Agrarian Basic Law. 5 of 1960. The first institution to offer Law No.20 of 1961 was the revocation of land rights and objects on it, but in practice the provisions of this law were not effective. To disseminate such matters, the government issued provisions on the release of land rights, in these practices also did not go smoothly. Furthermore, members of the government use Presidential Regulation no. 36 of 2005 jo Presidential Regulation no. 65 of 2006, but regulations remain ineffective in practice. Instead, the government issued Law No. 2 of 2012 on Land Procurement.

In its application, revocation, exemption, release and control of land rights that have a major impact on the stability of the community. The various tensions that arise in society, this is basically due to the ineffectiveness between the owner of the land rights to the land, which is used for it, which allows for use, which can be used to maintain privacy. absolute.

In addition, the positive law that melandasai land rights that have not been running in accordance with Pancasila as the basis of law and the view of life of the Indonesian nation. But on the one hand there arose injustice felt by a group of citizens in Indonesia.

Consignment as a trait which in order to in Indonesia, is of concern. Consignment is a model of compensation in land procurement that allows payments to be made at a cost in the District Court of land pollution.<sup>1</sup>

Therefore, through a comprehensive search, it is important to conduct activities that seek to discover the constructs within them through patterns, characters, and typology analyzes. A model that explains the meaning of society to the procurement of land. This study examines the implementation of toll land procurement conducted in Central Java. The goal is, through this model can use the basics that may occur in these areas.

## 2. Research and Methodology

### 2.1. Research's urgency

In practice the implementation of land acquisition, especially concerning the procurement of land for the interests of development for the public interest always cause disputes, causing a riot and problems. The current land acquisition mechanism has not been able to provide justice for the people who are part of the land acquisition.

Therefore, a fundamental study of the existing legal concepts and analysis of the current social environment is required. After the purpose of this research is well achieved, the contribution of this research is expected to present a study on the Model of Land Dispute Resolution Dispute Participatory: Social Construction Study Society as the Base of Settlement of Toll Road Land Procurement Dispute in Central Java Tujuan penulisan

### 2.2. Types of research

This research will use legal research with non-doctrinal approach. This method means that the law not only covers aspects of the rules (law in in the text), but also the institutionalized patterns of social behavior, exist as empirical social variables and the law is a manifestation of the symbolic meaning of social behavior as seen in their interactions.<sup>2</sup>

In this research will use socio-legal method, which is to find between abstract concept of law with social environment analysis<sup>3</sup>. Thus, the law is not an autonomous compound, but its branches are authopeisis with other fields-social, political, economic, cultural, and others.<sup>4</sup> The research approach undertaken in this case is basically to get a complete picture in society then it is necessary to see the law not merely the legislation that is in a sterile vacuum of non-legal aspects. The law also needs to take into account social perspectives, because the law is not just rule, but also behavior.<sup>5</sup>

The research will examine various aspects ranging from the implementation of the juridical principles set forth in the unification of the Agrarian Basic Law. 5 of 1960 and Presidential Regulation no. 36/2005

### 2.3. Collect dan Analyze Data

Data collection is based on field research method and library research. Library research, namely research conducted to obtain secondary data related to the author's research.

After the research data collected, will be analyzed by using hermeneutics. Hermeneutics is a method that places the text's specialty. Gadamer believes that in every language there is the discovery of the highest meanings of compression, resonance and power.<sup>6</sup> Gadamer also believes that only with the hermeneutic method can the truth be achieved, one of which is that this mechanism transcends the aesthetic dimension.<sup>7</sup> Hermeneutics in the legal world can be used to dissect texts of laws, doctrines,

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<sup>1</sup> Henny Handayani dan Sirait, *Dimensi Keadilan Dalam Mekanisme Konsinyasi Pengadaan Tanah*, *Jurna Fakultas Hukum Universitas Sumatra*, 4.

<sup>2</sup> Setiono. (2010). *Pemahaman Terhadap Metodologi Penelitian Hukum*, Pascasarjana Universitas Sebelas Maret: Surakarta.

<sup>3</sup> Suteki, *Strategi Pengentasan Kemiskinan Melalui Hukum Sebagai Sarana Rekayasa Sosial (Law As Tool of Social Engineering): Studi Kasus Pengentasan Kemiskinan Melalui Pengelolaan Badan Amal Zakat (BAZ) Kota Semarang, Jawa Tengah*, Universitas Diponegoro, Semarang

<sup>5</sup> Suteki. (2016). *Masa Depan Hukum Progresif*, Thafa Media Yogyakarta.

<sup>6</sup> Hans George Gadamer. (2007) *The Gadamer Reader: A Bouquet of the Later Writings*. Edited by Richard E Palmer. Illionis: Northwestern University Press.

<sup>7</sup> Hans George Gadamer. (2006). *Truth and Method*. Continuum Publishing Group. New York.

and legal literature. Hermeneutics maintains that every understanding of the text is ready to be interpreted, criticized and tested for truth.<sup>8</sup>

### 3. Discussion

#### 3.1. Land Procurement and Land Dispute Settlement Mechanism in Indonesia

Land acquisition as a legal act by the government to acquire land for a particular interest by giving compensation to the owner (either natural or legal entity) land according to certain nominal procedures and magnitude. The rationale is that almost all studies in the literature on the legal aspects of land acquisition, the government on behalf of the State require land but the limited availability of land for land procurement of land controlled by the State (Articles 2, 6 and 18 of Law No.5 of 1960 (BAL ) are not sufficiently broad, and therefore "forced" under Article 6 of the BAL on the social function of the land, the government takes the rights of land (land to which individual rights or legal / religious entities are entitled) by providing appropriate reimbursement (Article 27 letter a, 34, 40 unification of the Agrarian Basic Law. 5 of 1960 jo Presiden Regulation No. 40 of 1996, Government Regulation No.65 Year 2006).

Broadly speaking, there are 2 (two) types of land procurement, firstly, public procurement while the second is private land acquisition that blends commercial interests rather than commercial or non-social.

According to the head of article 1 number 3 of Presidential Regulation no. 36/2005 which is meant by Land Procurement is:

*"Any activity for obtaining access by means of indemnification to those who relinquish or surrender land, buildings, land and land-related items or with the revocation of land rights."*

Thus it can be concluded that the procurement of land according to Presidential Regulation No.36 / 2005 can be done other than by providing compensation is also possible to be done by revocation of rights to land. This means that there is an element of coercion of will for the revocation of land rights for land needed for the implementation of development for the public interest.

#### 3.2. Model of Road Dispute Resolution in Land Acquisition in Equitable Indonesia

The mechanism of dispute settlement in land acquisition in Indonesia is a problem that is not easy to do in this case. Post-birth Act No. 2 of 2012 on Land Procurement does not provide a significant impact in the settlement of land disputes due to procurement of land for the construction of toll roads. Therefore, a thorough analysis and study is needed to analyze this issue so that a clear opinion emerges so as to create a just land procurement.

Once it is known that the problems arising from the toll road procurement policy, the approach to this solution is to construct social construction or existing social interaction so that it can be a study capable of creating a fair toll road procurement. Law No. 2 of 2012 on Land Procurement does not have a significant impact in the settlement of land disputes due to land acquisition due to its rigid nature. This nature tends not to be open and democratic.

Thus, the settlement of disputes in this regard should apply some approach to the principles and values contained within the community. One example that is worth examining is the result of the culture of people living in the community. Far back centuries before recognizing the royal system originating from Indian civilization, the people of the archipelago and Southeast Asia in general have settled in a diverse unit, such as the Village. It is in Java. The village has an autonomous and independent character is the main characteristic of villages that develop in the archipelago.

Each village in the archipelago has its own organizational structure that is different from each other. Thus with their socio-cultural values and traditions that differ from village to village. Village terminology becomes a quite interesting study seen from various perspectives. Given that there are elements that can also be understood by various approaches. Therefore, understanding the Village can not be understood as something partial, but must be viewed as a comprehensive part with multiperspektif attached to it.

In general, the definition of the village legally does not have much difference that the true village has a community structure within a certain region. However, what makes it different is that in this case it is explained that the village has a special strategic role in governing and managing the village administration.

The special characteristic of the village is that the village people's lives are tied to genuine heritage values that have been inherited in a down-and-down manner and through a very long process of adaptation of intensive interactions with changes in the biophysical environment of the community. Local wisdom is one aspect of the characteristics of society, which is formed through a process of adaptation that is conducive to community life

<sup>8</sup> Gregory Leyh (1992). *Legal Hermeneutics : History, Theory, and Practice*. California: University of California Press.

It would be strategic if the implementation of land acquisition on the toll road takes into account the existing culture within the community if able to observe this aspect. Because the settlement is not able to be solved but through social construction that exist in the community, especially in Java.

The term construction of social reality (social construction of reality) became famous since it was introduced by Peter L. Berger and Thomas Luckman through his book *The Social Construction of Reality: A Treatise in the Sociological of Knowledge* (1966). It describes the social process through its actions and interactions, in which the individual creates a continuously shared reality and shared subjectively.

The explanation of social reality is a social construction created by individuals. Individuals are free human beings who make connections between people with each other. Individuals become decisive in the social world constructed according to their will. Individuals are not victims of social facts, but as creative media as well as creative reproduction in constructing their social world.

If seen in this case is that in society has its own pattern. Including in Central Java, Indonesia. So, using this village democracy approach will undoubtedly have a positive impact on the implementation of jalan toll road procurement.

#### 4. Conclusion

Based on the result of research and discussion outlined above, it can be conclude as follows:

1. The mekanisme land procurement can be concluded that according to Presidential Regulation No.36 / 2005 can be done other than by providing compensation is also possible to be done by revocation of rights to land. This means that there is an element of coercion of will for the revocation of land rights for land needed for the implementation of development for the public interest.
2. Disputes settlement in this regard should apply some approach to the principles and values contained within the community

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