

## **Analysis of Land Disputes After the Construction Period is Completed and the National Strategic Project Program (PSN) is Revoked by the Government (Object of Study of the Toll Road Business Entity, PT Pemalang Batang Tol Road)**

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**Abstract.** *The process of land acquisition for public interest often raises problems, especially those related to the amount of compensation which is considered not to pay attention to the aspect of justice for land owners. This study aims to determine the concept of compensation in land acquisition and its resolution mechanism from the perspective of siyasah syar'iyah. The type of research used is a literature study with a normative juridical approach. The results of this study indicate that regulatory, the mechanism of land acquisition for public interest must be carried out through deliberation between the two parties to determine the amount of compensation costs. The agreement between the land owner and the government is the basis for the transfer of ownership rights. The resolution mechanism if a problem occurs is attempted through deliberation, although litigation efforts are available. In the perspective of siyasah syar'iyah, land acquisition for public interest can be carried out using the masalah mursalah method and the government is not justified in acting arbitrarily in taking over ownership of the land but must provide fair and equitable compensation.*

**Keywords:** *Acquisition; Compensation; Land; Interest; Public.*

### **1. Introduction**

Land is a natural resource controlled by the state and used for the greatest prosperity of the people, this is stated in Article 33 paragraph (3) of the 1945 Constitution, which is reaffirmed in Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles, which states: on the basis of the provisions in Article 33 paragraph 3 of the Constitution and matters which state that: "The earth, water and airspace, including the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."<sup>1</sup>

Interpreting the formulation of the article gives the state the authority to

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<sup>1</sup>Mudjiono, 1992, Agrarian Law, Liberty, P. 2

regulate the use of land rights in the territory of Indonesia. This means that the state has the authority to regulate, plan and control the control and ownership of land rights. The state's authority to control land is obtained because land problems cannot be resolved by the community itself, so that the state's power over land is a complement to the land rights controlled by the community. This is as emphasized by Frans Magnis Soeseno in Ida Nurlinda that<sup>2</sup>.

The function of the State in organizing some of the interests of society is only complementary. In the case where society can resolve its own interests/problems, and as long as it does not conflict with the interests/rights of other parties. Then state intervention is not necessary.<sup>3</sup>.

Land disputes are disputes that arise due to conflicts of interest over land. Land disputes cannot be avoided in today's era. This requires improvements in the field of land management and use for the welfare of the community and especially legal certainty in it. Various efforts have been made by the government to resolve land disputes quickly in order to avoid the accumulation of land disputes, which can be detrimental to the community because the land cannot be used because the land is in dispute. Basically, the choice of dispute resolution can be done through 2 (two) processes. Settlement of the process through litigation in court, and the dispute resolution process through cooperation (cooperative) outside the court. The litigation process usually produces an agreement that is adversarial in nature that has not been able to embrace common interests, tends to add new problems, is slow in its resolution. On the other hand, through the process outside the court, it produces an agreement that is mutually beneficial between the parties and resolves comprehensively in togetherness and maintains good relations. Economically, the dispute has forced the parties involved to spend money. The longer the dispute resolution process, the greater the costs that must be incurred and often the costs incurred are not comparable to the price of the disputed land object. However, by some people or certain groups, land is a self-esteem that must be held firmly and will be defended until death.

Mediation as one form of alternative dispute resolution for land dispute cases based on Law No. 30 of 1999, aims to resolve disputes between parties by involving a neutral and impartial third party. In this case, mediation can lead the parties to the realization of a permanent and sustainable peace agreement, considering that dispute resolution through mediation places both parties in the same position, no party wins or loses. In mediation, the disputing parties are proactive and have full authority in decision making. The mediator has no authority in decision making, but he only helps the parties in maintaining the mediation process in order to realize a peace agreement. In Indonesia, the

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<sup>2</sup>. Drans Magnis Soeseno in Ida Nurlinda, 2009, Principles of Agrarian Reform from a Legal Perspective, Rajawali Press, Jakarta, P. 61

<sup>3</sup>ibid

concrete definition of mediation is found in Supreme Court Regulation Number 02 of 2003 concerning Mediation Procedures in court. It is stated that mediation is the resolution of disputes through a negotiation process between parties assisted by a mediator (Article 1 point 6). The mediator is a neutral and impartial party, whose function is to help the parties in seeking various possibilities for dispute resolution. (Article 1 point 5) mediation is a peaceful dispute resolution method that is appropriate, effective, and opens wider access for the parties to obtain a satisfactory and just resolution, as evidenced by the considerations of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 which regulates mediation procedures in the current courts.

As another example, land disputes that often occur on the Pemalang-Batang Toll Road Section are land disputes that occur due to negligence on the part of the landowner himself, such as not maintaining or taking care of wild grass that may cover the boundary pole markers, there are also land disputes that occur due to the existence of double certificates for land ownership certificates (SKT) which may occur due to the negligence of the landowner who does not maintain his land so that there are individuals who take advantage of this situation to make a profit, there are also errors from the land party in measuring the land in question, such as excess in measuring the length and width of the land. Based on the background that has been described by the author, there is uncertainty over the provisions regarding the problem raised in this case the author will take the formulation of the problem with the title "Analysis of Land Disputes After the Construction Period is Complete and the State Strategic Project Program (PNS) is Revoked by the Government of the Object of the Toll Road Business Entity Study based on the results of the Determination of the Peace Deed Number: 16 / Pdt.G / 2023 / PN / Btg dated August 21, 2023 between Tonari as the plaintiff against the Ministry of Agrarian Affairs and Spatial Planning / BPN, Commitment Making Officer, and PT Pemalang Batang Tol Road". This last condition is often determined and identified as a hidden legal relationship (hidden flaw between the Government represented by the Ministry of Agrarian Affairs and Spatial Planning/BPN, Commitment Making Officer, and PT Pemalang Batang Tol Road with the Land Owner.

## **2. Research Methods**

Before describing the methods used in the research, this writing will first provide the meaning of research methodology. Research methodology is a research that presents how or procedures or steps that must be taken in a research systematically and logically so that its truth can be accounted for.<sup>4</sup>

The method used to conduct the research that the author uses will be described below, namely:

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<sup>4</sup>Sutrisno Hadi, National Research Methodology, Magelang: Akmil, 1987, p. 8

## 1. Approach Method

The approach method used in this study uses the Juridical Sociological method. The Juridical Sociological approach emphasizes research that aims to obtain empirical legal knowledge by going directly to the object. Juridical Sociological Research is legal research using secondary data as its initial data, which is then continued with primary data in the field or on the community, examining the effectiveness of a Ministerial Regulation and research that wants to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews (questionnaires).<sup>5</sup>

## 2. Research Specifications

The nature of the research used in writing this research is analytical descriptive research, namely analyzing and presenting facts systematically so that they are easier to understand and conclude.<sup>6</sup> So that objective data can be taken which can describe complex facts or realities.

## 3. Data Types and Sources

- a. Primary data is original data obtained first hand, from the original source that has not been processed and described by others. Included as primary data are books or documents obtained by researchers in the field, although their nature is secondary data.<sup>7</sup>
- b. Secondary data is a source of research data obtained through intermediary media or indirectly in the form of books, notes, existing evidence, or archives, both published and unpublished in general.<sup>8</sup>
- c. Secondary data is divided into three, namely:

- 1) Primary legal materials

Primary legal materials are authoritative legal materials in the form of laws and regulations. The laws used are related to research. The laws and regulations used are:

- a. 1945 Constitution
- b. Civil Code (Civil Code)
- c. Law Number 5 of 1960; State Gazette of 1960 Number 104

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<sup>5</sup>Amiruddin, Introduction to Legal Research Methods, Jakarta: PT. Raja Grafindo Persada, 2012, p. 34

<sup>6</sup>Irwan Soehartono, 1999, Social Research Methods: A Research Technique in the Field of Social Welfare, Remaja Rosda Karya, Bandung, p. 63

<sup>7</sup>Hilman Hadikusuma, 1995, Research Methods for Legal Science Working Papers and Theses, Bandung: Mandar Maju, p. 65

<sup>8</sup>Information Channel. Understanding Primary data and secondary data. <https://www.kanalinfo.web.id/pengertian-data-primer-dan-data-sekunder>, accessed on Wednesday, November 10, 2021

- d. Agrarian law
- e. PP Number 39 of 2023 concerning Amendments to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest
- f. Regulation of the Minister of Home Affairs Number 15 of 1975 (hereinafter referred to as "Regulation of the Minister of Home Affairs Number 15 of 1975") concerning Provisions Concerning Procedures for Land Acquisition.
- g. Presidential Decree Number 55 of 1993 (hereinafter referred to as "Presidential Decree Number 55 of 1993"), concerning Land Acquisition for the Implementation of Development in the Public Interest.
- h. Presidential Regulation Number 36 of 2005 (hereinafter referred to as "Presidential Regulation Number 36 of 2005") was subsequently amended by Presidential Regulation Number 65 of 2006 (hereinafter referred to as Presidential Regulation Number 65 of 2006, and
- i. Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest (hereinafter referred to as "Presidential Regulation Number 71 of 2012").

## 2) Secondary legal materials

Secondary legal materials usually consist of legal opinions or theories obtained from legal literature, research results, scientific articles, or websites related to the research.

## 3) Tertiary legal materials

Tertiary legal materials are legal materials that provide explanations and guidance on primary legal materials and secondary legal materials. Usually obtained from dictionaries and so on.

## 4. Method of collecting data

In searching for and collecting data used to obtain information as research material, the author uses several data collection methods, namely:

- a. Primary data
  - Interview

Interview is an interaction between researcher and subject by giving questions that are appropriate to the research context. Interview is conducted not only once but repeatedly to obtain accurate data.

Researchers collected data using questionnaires and surveys.

1. Judge of Batang District Court;
2. National Land Agency;
3. Commitment Making Officer (PPK) of the Ministry of PUPR;

4. PT Pemalang Batang Toll Road.

b. Secondary data

1. Literature review

It is a method of collecting data by collecting reading materials such as books and journals, laws and regulations, and documents that are related to the problems discussed by the researcher.

2. Data Analysis Methods

Data analysis method is a method in processing data into information. When conducting a research, we need to analyze the data so that the data is easy to understand. Data analysis is also needed so that we get solutions to the research problems being carried out.

The data analysis method used is Qualitative Data, namely by systematically searching for and compiling data obtained from interview results, field notes, and documentation, by organizing data into categories, describing them into units, synthesizing them, compiling them into patterns, choosing what is important and what will be studied, and making conclusions so that they are easy to understand.

The process of data analysis and interpretation begins by reviewing all available data from various sources, namely from interviews, observations that have been written in field notes, personal documents, official documents, images, photographs, and so on.

### **3. Results And Discussion**

#### **3.1 Overview of the Process of the National Land Agency (“BPN”), Commitment Making Officer (“PPK”) and Toll Road Business Entity (“BUJT”) PT Pemalang Batang Tol Road**

##### **1. Overview of Batang Regency Land Office**

Batang Regency Land Office is a Land Agency that is located under and directly responsible to the Head of the Regional Office of the National Land Agency of Central Java Province. Batang Regency Land Office, one of which is to serve the community directly in the field of land.

Batang Regency Land Office is a vertical agency of the National Land Agency of the Republic of Indonesia which is under and directly responsible to the Head of the Regional Office of the National Land Agency of Central Java Province. The Batang Regency Land Office has the task of carrying out part of the duties and functions of the National Land Agency of the Republic of Indonesia within the Batang Regency Environment,

##### **2. General Description of the Commitment Making Officer (“PPK”) of the Ministry of PUPR**

A Glance at the Commitment Making Officer (“PPK”) of the PUPR Ministry based

on Article 3 of the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia Number: 03/PRT/M/2017 Concerning Amendments to the Regulation of the Minister of Public Works and Public Housing Number 18/PRT/M/2016 concerning the Determination and Procedures for the Use of Business Entity Advance Funds for Toll Road Land Acquisition, the Commitment Making Officer (“PPK”) is an extension of the PUPR Ministry

### **3. General Description of the Toll Road Business Entity (“BUJT”) PT Pemalang Batang Tol Road.**

Trans Java Toll Road is a toll road network that connects cities on Java Island, Indonesia. Trans Java Toll Road stretches between Merak Port, Cilegon, Banten Province to Ketapang Port, Banyuwangi, East Java Province. This toll road network connects the two largest cities in Indonesia, Jakarta and Surabaya. It stretches for ± 1,167 km.

The Pemalang – Batang toll road is the main road that crosses the Pemalang to Batang area and connects to the city/district area which can be accessed via the toll exit:

- Exit*Pemalang : Comal – Pemalang (North Coast National Road/Pantura)
- Exit*Pekalongan : Bojong – Sragi – Wiradesa – Kajen (Central Java Provincial Road)
- Exit*Batang-Pekalongan : Warungasem – Batang (Central Java Provincial Road)

Batang – Setono Toll Road Access (North Coast National Road/Pantura)

### **3.2 Process for Handling Land Disputes After the Construction Period is Completed and the National Strategic Project Program (“PSN”) is Revoked by the Government**

Land cases are one of the most important and fundamental issues to be resolved immediately. This is because of the many land cases in Indonesia, both in the form of conflict disputes and land cases.

Based on data received by the author and interviews with the Legal Team of the Toll Road Business Entity (“BUJT”) PT Pemalang Batang Tol Road as the Implementer in the Land Acquisition process, especially for the State Strategic Project (“PSN”), it was identified that there was overlapping land ownership due to the toll road construction acceleration project with the following background:

1. Letter Number 017/MC.A/VIII/2021 Dated August 3, 2021 Regarding the Application for Compensation Payment for Land Plot Letter C Number: 569, Plot 8 SI, Area Approximately ±7040 M2, in the name of Djamsari @Rasmadi,

- located in Candi Areng Village, Warungasem District, Batang Regency at the request of the Land Owner through Attorney Maizun Chonin
2. Letter from the Land Acquisition Implementer for the Pemalang – Batang Toll Road Section Number: AT.02/1389.I-33.25/XI/2021 dated November 10, 2021, Regarding the Main Subject of the Compensation Payment Letter;
  3. Letter Number 021/MC.P/VIII/2022 dated August 18, 2022 Regarding Application for Measurement of Land Plot Letter C Number: 569, Plot 8 Sl, Area Approximately  $\pm 7040$  M<sup>2</sup>, in the name of Djamsari @Rasmadi, located in Candi Areng Village, Warungasem District, Batang Regency
  4. Letter Number 002/MC.A/II/2023 dated February 8, 2023 regarding clarification of land area Letter C Number: 569, Plot 8 Sl, Area Approximately  $\pm 7040$  M<sup>2</sup>, in the name of Djamsari @Rasmadi, located in Candi Areng Village, Warungasem District, Batang Regency and settlement of compensation
  5. The results of the fair replacement assessment by KJPP Salam & Rekan are in accordance with the assessment report No. Report: 00307/2.0159-00/PI/1/0367/0/VII/2023 dated July 21, 2023

In the process of resolving the overlapping ownership dispute, the parties resolved it through mediation at the Batang District Court. The author identified the following:

- 1 The land owned by Mrs. Tonari is based on Letter C in :  $\pm 7,040$  M<sup>2</sup>  
the name of Djamsari @Rasmadi  
  
Land acquisition carried out :  $\pm 1,243$  M<sup>2</sup>  
  
Remaining Land :  $\pm 5,797$  M<sup>2</sup>
- 2 Based on a copy of the Letter from the Land Acquisition Implementer for the Pemalang – Batang Toll Road Section Number: AT.02/1389.I-33.25/XI/2021 dated November 10, 2021 regarding Compensation Payment from the BPN of Batang Regency, Central Java Province addressed to Mr. Maizun Chozin as Mrs. Tonari's Legal Counsel, the BPN explained as follows:
  - b. That the basis for payment for land acquisition for the Pemalang – Batang toll road section is a land map issued by the PUPR Ministry's Land Office.
  - c. The basis for the Measurement Application from the PUPR Ministry and the Commitment Making Officer (“PPK”) is the DED and location determination where ROW markers have been installed in the field.
  - d. If there are any losses due to the impact of construction, please submit an application to PT Pemalang Batang Tol Road for



resolution.

3. In accordance with point 2 based on the area map, the area of land letter c Number 569 Plot 8 SI, which consists of
  - Land area outside the fence:  $\pm 2954$  M2
  - Land area inside the toll fence:  $\pm 1,292$  M2
  - Total land area:  $\pm 4,246$  M2
4. After the re-measurement was carried out by the BPN, Mrs. Tonari followed up through her attorney with Letter Number 002/MC.A/II/2023 dated February 8, 2023 regarding clarification of the land area Letter C Number: 569, Plot 8 SI, Area  $\pm 7,040$  M2, in the name of Djamari @Rasmadi, located in Candi Areng Village, Warungasem District, Batang Regency and the settlement of compensation for submitting clarification to PBTR as follows
  - a. Joint deliberation application for land Letter C Number 569, Plot 8 SI with BPN re-measurement results, remaining area  $\pm 4,246$  M2
  - b. Request for joint deliberation regarding the remaining land area of  $\pm 4,246$  M2 which is located inside the toll fence of  $\pm 1,292$  M2 and outside the toll barrier of  $\pm 2,954$  M2
5. On March 1, 2023, a meeting was held between the Commitment Making Officer ("PPK"), the National Land Agency ("BPN") and the Kalibeluk Village & Candi Areng Village Governments at the PT Pemalang Batang Tol Road Operational Office. The results of the discussion in the settlement/mediation meeting for the land of Djamsari @rasmadi or Mrs. Tonari were concluded as follows:
  - a. That the boundary of the land owned by Djamsari is inside the fence of the toll road management in this case PT Pemalang Batang Tol Road and its truth has been validated by the PPK, BPN, and the Candi Areng Village Government.
  - b. The attorney requested certainty through an official letter made by the PPK and PBTR as evidence that the land was indeed not needed and was not used by PBTR as a toll road business entity for toll road purposes.
  - c. The legal counsel did not agree if PBTR only returned the land and changed the fence without any responsibility for the error.
  - d. There is a request by the land owner through a legal representative to provide material and immaterial accountability for negligence or errors in installing the fence on the land of Djamsar @rasmadi or Mrs. Tonari.

What is meant by land within the toll road management fence is an

area of ± 1,292 M2 as explained in point 3.

- 6 Based on the above process, Mrs. Tonari, through her attorney, registered a civil lawsuit No. 16/Pdt.G/2023/PN BTG dated May 30, 2023. In the initial trial process, the judge suggested a settlement through a mediation process led by the Batang District Court Judge.
- 7 That based on the mediation carried out at the Batang District Court with the Batang BPN, PPK, the Land Owner's Legal Counsel, and the Mediator Judge on July 3 & 10 2023, the parties agreed that peace would be implemented.
- 8 That the land owner's legal representative agrees to the implementation of the peace agreement.
- 9 That in order to implement peace, PT Pemalang Batang Tol Road appointed KJPP Salam & Rekan to assess non-physical losses to the land.
- 10 Based on the assessment results conducted by KJPP Salam & Rekan, the fair replacement value for non-physical losses is Rp. 72,687,000,-
- 11 Furthermore, PBTR will propose a peace value of Rp. 70,000,000,- which will be stated in a peace agreement that will be implemented at the Batang District Court in the form of a deed of van dading
- 12 Furthermore, after the deed of vandalism has been signed by the Parties, PBTR will carry out the dismantling and moving of the fence.
- 13 The costs incurred for the implementation of point 6 are the responsibility of PBTR.

#### **4. Conclusion**

Based on the description presented by the author above, the following conclusions can be drawn:

1. The obstacle to resolving land disputes is due to the lack of common ground between land owners, so they appoint legal counsel to assist in the process of managing land boundary adjustments and requests for compensation for the loss of the land for not being able to be utilized and used for 7 years.
2. Dispute in the District Court with Defendant by the National Land Agency ("BPN"), Commitment Making Officer ("PPK") and Toll Road Business Entity ("BUJT") as the implementer in the Land Acquisition Process, especially the State Strategic Project (PSN) which is indicated to have overlapping ownership due to the Acceleration project for toll road construction.
3. Toll Road Business Entity ("BUJT") PT Pemalang Batang Tol Road ("PBTR") in providing the amount of compensation based on the decision stated in the

Peace Deed or Vandading Deed Number: 16/Pdt.G/2023/PN Btg dated August 21, 2023 between Mrs. Tonari against the National Land Agency (“BPN”), Commitment Making Officer (“PPK”) and Toll Road Business Entity (“BUJT”) PT Pemalang Batang Tol Road (“PBTR”) amounting to IDR 70,000,000,- (Seventy Million Rupiah)

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