

# Cancellation of West Sumatra Governor's Decree No.: 625-256-2020 concerning Determination of Land Procurement Locations for the Padang – Pekanbaru Toll Road Section, Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang, STA 4+200 to STA 36+600 (Decision Study) No. : 8 /G/PU/2020/PTUN.PDG)

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**Abstract:** Development for public interest is carried out by the Government through the mechanism of Land Procurement for Development in the Public Interest. Land Procurement for public interest is one manifestation of the social function of land rights. Land Procurement is seen as the first step in implementing equitable development to improve the welfare of the people or the community itself, both to be used for public and private interests. In West Sumatra there is a Land Procurement for the Padang-Pekanbaru Toll Road which is included in the National Strategic Project (PSN) but in the Land Procurement stage there is a lawsuit filed by the community to the Padang Administrative Court with No.: 8/G/PU/2020/PTUN.PDG related to the Governor's Decree No.: 620-256-2020 dated March 26, 2020 regarding the Determination of Land Procurement Locations for the construction of the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32.4 km, STA 4+200 - STA 36 +600 with a land area of ± 281.05 ha in Padang Pariaman Regency, West Sumatra Province.

**Key Words:** Land Procurement, Verdict, Location Determination.

## 1. INTRODUCTION:

The need for land is included in the element of the board which is a place to live for humans and also a source of livelihood for human being such as in agriculture, plantations, animal husbandry and others. In Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia clearly said that the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. The land also has a social function as regulated in Article 6 of the Basic Agrarian Law (UUPA) that although humans and the land are immortal as land owners, it does not mean that the land owners can abuse their rights without paying attention to the interests of others, in this case to realize development for the public interest. If the property rights to the land have a social function, then the right of the land can be revoked.

The development for the public interest requires land whose procurement is carried out by prioritizing the principles contained in the 1945 Constitution, Human Rights and national land law [1] through the mechanism of Land Procurement for Development in the Public Interest. Based on Article 1 No. 2 of Law No. 2 of 2012 concerning Land Procurement for Development for the Public Interest (Land Procurement Law) explained that Land Procurement is an activity to provide land by providing appropriate and fair compensation to the entitled party. [2]

Land Procurement for public interest is one manifestation of the social function of land rights. Land Procurement is seen as the first step in implementing equitable development to improve the welfare of the people or the community itself, whether it will be used for public or private interests. Land procurement for development in the public interest is a demand that cannot be avoided by any government. As a consequence of living in a state and society, if personal interests are faced with public interests, the public interest must take precedence.[3] In this regard, Land Procurement always involves two dimensions that must be placed in a balanced way, namely the interests of the community and the interests of the government. On the one hand, the government or in this case as the ruler, must carry out development to improve the welfare of the community or in the interests of the state and its people as a form of equitable development. The community is the provider of the facilities to carry out the development because the people or the community, have the land needed as a form of implementation of development. Communities in this case also need land or land as a source of livelihood. [4]

## 2. CONCEPTUAL FRAMEWORK:

- a. Land Procurement

Article 1 No. 2 of Law No. 2 of 2012 said that Land Procurement is an activity to provide land by providing appropriate and fair compensation to the entitled party.

b. Toll Road

Toll road is a public road that is part of the road network system and as a national road whose users are required to pay.

c. Public Interest

Article 1 No. 6 of the Land Procurement Law, said 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."

### 3. THEORITICAL FRAMEWORK:

a. theory of legal certainty

Legal certainty is needed in society for the sake of upholding provisions and justice, legal uncertainty will cause chaos in social life. Existence like this makes life in an atmosphere of social chaos. [5] According to Utrecht, legal certainty means security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the state may charge or do to individuals. [6]

b. theory of legal enforcement

Law Enforcement Theory is a process to realize the desire of law-making bodies into the formulation of legislation into reality. Concrete law enforcement is the application of positive law in practice as it should be obeyed. Soerjono Soekanto said that law enforcement as a process is essentially the application of discretion that involves making decisions that are not strictly regulated by legal rules, but have an element of personal judgment.

c. Theory of Justice theory of justice

According to Suteki and Galang Taufani, to realize social justice, it must be returned to its original structure, sheep as sheep, shepherds as shepherds. It is the duty of the state to stop change. Thus justice is not about the relationship between the individual and the state. How individuals serve the country. [7]

### 4. LITERATURE REVIEW:

The right on land is the right to authorize those who have the right to use or benefit from the land they are entitled to. [8] According to Sudikno Mertokusumo, the right to a certain portion of the earth's surface, which is limited, two-dimensional with a length and width. The authority of the rights holder of the land is determined in Article 4 paragraph (2) of the Law. Authority possessed by the holder of land rights to his land. Based on Article 19 paragraph (1) of the UUPA states that the Government is the organizer of land registration in the Republic of Indonesia which aims to guarantee legal certainty and protect land in the territory of the Unitary State of the Republic of Indonesia. Land registration is an administrative process which is the authority of the Land Agency Office to produce a certificate as proof of ownership rights over a plot of land. Land registration aims to provide legal certainty, known as rechts cadaster/ legal cadaster. The guarantee of legal certainty to be realized in this land registration includes the certainty of the status of the rights registered, the certainty of the subject of the right, and the certainty of the object of the right.

There are two types of Land Procurement proposed by Oloan Siturus, the first is Land Procurement by the government for the public interest, while the second is Land Procurement for private interests which includes commercial and non-commercial or non-social interests. [9] Land Procurement is carried out by providing compensation to those entitled to the affected land in the object of Land Procurement for the public interest and in no other way. Based on Article 1 paragraph 7, Law on Roads, [10] Toll roads are: public roads that are part of the road network system and as a national road whose users are required to pay tolls. Meanwhile, tolls are a certain amount of money paid for the use of toll roads. The toll road is included in the freeway category, what is meant by the freeway is a public road for continuous traffic with full control of the entrance and no intersection of plots and is equipped with a fence belonging to the road.

### 5. METHOD:

The method used in this research is normative, that is, examining legal principles, legal systematic, legal history of legal synchronization level, and comparative law.

### 6. DISCUSSION:

One of the efforts in implementing development as stipulated in the national development framework organized by the Government is development for the public interest. The development for the public interest requires land whose procurement is carried out by prioritizing the principles contained in the 1945 Constitution of the Republic of Indonesia, Human Rights and national land law. [11] Procurement of land for public interest is carried

out in accordance with a. Spatial plans; b. National/Regional Development Plans; c. The strategic plan; d. Work plan for each agency that requires land.[12] In this regard, Land Procurement always involves two dimensions that must be placed in a balanced way, namely the interests of the community and the interests of the government. On the one hand, the government or in this case as the ruler, must carry out development to improve the welfare of the community or in the interests of the state and its people as a form of equitable development.

During the Reign of President Joko Widodo, massive development was carried out in the infrastructure sector, one of which was the construction of toll roads on the island of Sumatra in accordance with Presidential Regulation No. 100 of 2014 concerning Acceleration of Toll Road Development in Sumatra and Presidential Regulation No. 117 of 2015 concerning Amendments to Presidential Regulation No. 100 of 2014 concerning the Acceleration of Toll Road Development in Sumatra. Then the Decree of the Governor of West Sumatra dated March 26, 2020 was sued to the State Administrative Court by the community whose land was affected by the location of the Land Procurement for the Development of the Padang – Pekanbaru Toll Road, with case register No.: 8/G/PU/2020/PTUN.PDG.

Then the Decree of the Governor of West Sumatra dated March 26, 2020 was sued to the State Administrative Court by the community whose land was affected by the location of the Land Procurement for the Development of the Padang – Pekanbaru Toll Road, with case register No.: 8/G/PU/2020/PTUN.PDG. One of the reasons for the lawsuit is that they have never been involved, and/or informed and/or received socialization of the plan for Land Procurement for the construction of the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32.4 Km, STA 4+200 - STA 36+600 with a land area of ± 281.05 ha in Padang Pariaman Regency, West Sumatra Province and that the plaintiff has submitted an objection and review of the Decree of the Governor of West Sumatra concerning the Determination of Land Pawn Locations for the Padang - Pekanbaru Toll Road Construction dated March 26, 2020 the defendant did not respond.

The judge's decision of the Padang State Administrative Court in this lawsuit is that the Panel of Judges granted the Plaintiffs' claim in part, declaring the cancellation of the West Sumatra Governor's Decree regarding the Determination of Land Pawn Locations for the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32,4 Km, STA 4+200 - STA 36+600 with a land area of ± 281.05 ha in Padang Pariaman Regency, West Sumatra Province on March 26, 2020 limited to the names of the Plaintiffs, namely Buyung Cs and the Panel of Judges refused to postpone the implementation of Pawnshops Land for Construction of the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32.4 Km, STA 4+200 - STA 36+600.

## **7. ANALYSIS:**

### **A. Procedure for Determining the Location of Land Procurement for the Padang – Pekanbaru Toll Road**

The Decree of West Sumatra Governor No: 625-256-2020 concerning the Determination of Land Procurement Locations for the Padang – Pekanbaru Toll Road Section, the Hilalang - Sicincin - Lubuk Alung - Padang Toll Road Section, STA 4+200 S/D STA 36+600 is the output of this phase. preparation for the Land Procurement process as regulated in Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest.

During the Land Procurement stage for the construction of toll roads, the implementation was sued to the State Administrative Court. Decree of the Governor of West Sumatra No. 620-256-2020 dated March 26, 2020 regarding the Determination of Land Procurement Location for the Padang - Pekanbaru Toll Road by Buyung CS with case register No.: 8/G/PU/2020/PTUN.PDG dated 15 May 2020. The Plaintiff declares that they had made administrative efforts in the form of objections and reconsideration to the defendant for the issuance of the object of dispute, based on this the Panel of Judges stated that the objections submitted by the Plaintiffs were still within a grace period of 21 working days. The plaintiff is a community at the toll road construction site, based on the evidence from the plaintiff and the defendant in the form of a Governor's Decree regarding the Determination of Toll Road Locations which is the object of the dispute which states the location of toll road Land Procurement based on the sub-district and nagari areas and is strengthened by witness statements from the plaintiff who say that the land of the plaintiffs Yusep Nurdiansyah and Ricki Herimon was determined for Land Procurement for the construction of toll roads, the Panel of Judges stated that it was appropriate to judge that the plaintiff was the entitled party, therefore the plaintiff had legal standing.

### **B. The deliberation of the judges and legal consequences**

The Panel of Judges considered that the object of the dispute was proven to be contrary to the prevailing laws and regulations and the AAUPB, the Panel of Judges granted the claim of the plaintiffs stating the cancellation of the Decree of the Governor of West Sumatra regarding the Determination of Land Procurement Locations for the Construction of the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang is

32.4 Km long, STA 4+200 - STA 36+600 with a land area of  $\pm$  281.05 ha in Padang Pariaman Regency, West Sumatra Province on March 26, 2020. After the issuance of Decision No.: 8/G/PU/2020/PTUN.PDG which stated that partially granted the claim of the plaintiffs and declared the cancellation of the Decree of the Governor of West Sumatra regarding the Determination of Land Procurement Locations for the Construction of the Padang - Pekanbaru Toll Road, West Sumatra Province on March 26, 2020, limited to what was stipulated on the land of the plaintiffs, namely Buyung CS and requires the defendant to revoke the Decree of the Governor of West Sumatra regarding the Determination of Land Procurement Locations for the construction of the Padang - Pekanbaru Toll Road, West Sumatra Province on March 26, 2020 limited to the land of the plaintiffs (Buyung CS), the defendant filed an Cassation to Court A gun with No.: 468 K/TUN/2020.

The consideration of the Supreme Court is the assessment of the results of evidence that is appreciative of a fact. In other words, the Land Procurement Stages for the location of the plaintiff's land will be held again in accordance with Article 13 of Law No. 2 of 2012 concerning Land Procurement . In the theory of legal certainty that the defendant carried out the judge's decision after the issuance of the Cassation Decision by the Supreme Court which affirmed the Padang Administrative Court Decision which had permanent legal force inkraacht by canceling the Decree of the Governor of West Sumatra regarding the Determination of Land Procurement Locations for West Sumatra Province Toll Road Construction dated March 26, 2020 by issuing the Decree of the Governor of West Sumatra No.: 620-797-2020 dated December 30, 2020 regarding the revocation of the Governor's Decree No. 620-256-2020 concerning the Determination of Land Procurement Locations for Toll Road Construction to the extent stipulated on the Certificate of Ownership No. 2465/Sisa, Nagari Sungai Buluh Dated August 11 2015 SU No. 00377/2015 Dated 08-07-2015 Area 15,000 M2 On behalf of Rights holders Hartono Widjaja, Buyung, John, Hata. In addition, the defendant also repeated the process of Land Procurement stages limited to the land object of the dispute so that there was legal certainty in carrying out the Supreme Court's Cassation Decision.

## **8. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- The process of making the Decree of the Governor of West Sumatra No.: 625-256-2020 concerning the Determination of Land Procurement Locations for the Padang – Pekanbaru Toll Road is the output of the preparatory stage in the Land Procurement process in accordance with the Land Procurement Law. The stages of Land Procurement Planning are carried out by issuing Land Procurement Planning Documents which are then used as the basis for the Land Procurement Preparation Team formed by the West Sumatra Provincial Government according to the Decree of the Governor of West Sumatra. At the Preparation Stage. Subsequently, a Public Consultation and Re-Public Consultation were carried out by the Land Procurement Preparation Team which was approved by the community whose land was affected by the Toll Road Construction Land Procurement.
- The Padang State Administrative Court Panel of Judges decided on Lawsuit No.: 8/G/PU/2020/PTUN.PDG by partially granting the plaintiff's claim and declaring the object of the dispute null and void in the form of a West Sumatra Governor's Decree concerning the Determination of Land Procurement Locations for the Padang - Pekanbaru Toll Road Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32.4 Km, STA 4+200 - STA 36+600 with a land area of  $\pm$  281.05 Ha in Padang Pariaman Regency, West Sumatra Province on March 26, 2020 limited to the land object of dispute with the consideration that the defendant did not respond to the administrative efforts submitted by the plaintiff so that the plaintiff filed a lawsuit to the Administrative Court and the defendant could not prove inviting the plaintiff during the Public Consultation and re-public consultation which was carried out at the preparation stage for Land Procurement so that it became the basis for the plaintiff to sue the defendant to PTUN. The judge partially granted the claim filed by the plaintiff by deciding the cancellation of the Location Determination Decision Letter limited to the location of the plaintiff's land object and instructing the defendant to revoke the location determination decision letter limited to the location of the plaintiff's land object.
- After the issuance of the Padang Administrative Court Decision No.: 8/G/PU/2020/PTUN.PDG which declared the object of the dispute null and void, the defendant submitted a Cassation Application to the Supreme Court, the Supreme Court's Cassation Decision affirmed the Padang Administrative Court Decision so that the object of the dispute was still canceled to the extent of the plaintiffs' land and the judge's decision becomes legally binding. In other words, the defendant is obliged to implement the Supreme Court's Cassation Decision by revoking the object of the dispute and has been followed up by the defendant by issuing a Decree of the Governor of West Sumatra No.: 620-797-2020 dated December 30, 2020 concerning Revocation of Governor's Decree No. 620-256-2020 concerning Location Determination. Land Procurement for the construction of the Padang – Pekanbaru Toll Road Section, Section of Kapalo Hilalang - Sicincin - Lubuk Alung - Padang along 32.4 Km, STA 4+200 - STA 36+600 with a land area of

± 281.05 ha in Padang Pariaman Regency, Sumatra Province West, to the extent stipulated above Certificate of Ownership No. 2465/Sisa, Nagari Sungai Buluh Dated 11 August 2015 SU No. 00377/2015 Dated 08-07-2015 Area of 15,000 M2 On behalf of Rights holders Hartono Widjaja, Buyung, John, Hata and repeat back from the beginning of the process of Land Procurement stages in accordance with Article 13 of the Land Procurement Law on the plaintiff's land which is included in the Land Procurement route h Construction of the Padang – Pekanbaru Toll Road.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- Agencies that need land and the Provincial Government of West Sumatra can synergize and work together from the beginning of the planning stage to the stage of preparation for Land Procurement for the construction of the Padang – Pekanbaru Toll Road so that the planning and preparation stages can be carried out properly and maximally so that for the determination of the location of Land Procurement for Toll Road Development The next Padang – Pekanbaru went smoothly and without a hitch;
- In the preparatory stage for Land Procurement carried out by the provincial government together with agencies that require land, they must ensure that at every activity in the preparation stage, both in the notification of development plans, initial data collection on the location of the development plan and public consultation in accordance with Article 16 of the Land Procurement Law, it is known by all entitled parties who will be affected by the object of Land Procurement so that after the issuance of the location determination by the Governor there is no lawsuit by the community or the entitled party related to the preparation stage for Land Procurement .
- The provincial government and agencies that require land register the entitled parties in the planning and preparation stages of Land Procurement in a concrete manner so that it is appropriate between the subject/entitled party and the land object affected by the Toll Road Development Land Procurement for the determination of the next location so as to avoid the possibility of a lawsuit by the community because it is not involved in the Planning Stage and Land Procurement Preparation Stage.

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