

## LAND OWNERSHIP DISPUTES IN THE IMPLEMENTATION OF LAND PROCUREMENT FOR PUBLIC INTERESTS FOR TOLL ROAD CONSTRUCTION IN LAMPUNG SELATAN DISTRICT (Study Of Decision No 13/Pdt.G/20/2018/PN Kla)

Nurlis Effendi<sup>1</sup>, Muhammad Galank Novriwan Hakim<sup>2</sup>

<sup>12</sup> Fakultas Hukum, Universitas Malahayati, Bandar Lampung, Indonesia  
<sup>1</sup>nurlismeuko@gmail.com



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**Abstract:** The process of land acquisition for the public interest based on Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest Article 13 is carried out in stages: Planning, Preparation, Implementation, and Submission of results and assisted by the land acquisition committee. Land acquisition must be carried out through a process that ensures that there is no coercion of the will of one party against another. In addition, considering that the community must give up their land for a development activity, it must be guaranteed that their socio-economic welfare will not be worse than the original state, at least it must be equal to the situation before the land was used by the agency requiring the land. The problems are how to implement land acquisition procedures for the public interest against land objects in dispute, how to resolve disputes over ownership of land rights in land acquisition for public interests, and what are the basis for judges' considerations in deciding cases of disputes over land ownership rights in land acquisition for the public interest. This type of research is Normative Empirical, which uses a normative-empirical juridical research approach, namely an approach through literature study by reading, quoting, analyzing legal theories and legislation related to research problems. The data source used is primary data and secondary data which are then analyzed qualitatively.

The results of this study indicate the procedures for implementing land acquisition for the public interest which are not in accordance with statutory regulations because in their implementation there are many mistakes made by the government as the party requiring land that ignores one's personal interests as the owner of the land so that this study raises disputes. ownership of land rights.

**Keyword:** Implementation, Land, Public Interest

## I. INTRODUCTION

The Bakauheni - Bandar Lampung - Terbanggi Besar Toll Road is one of the 83 national strategic infrastructure development tool road projects listed on the Committee for the Acceleration of Priority Infrastructure Provision as mandated by Presidential Regulation Number 75 of 2014 concerning the Acceleration of Priority Infrastructure Provision. The construction process of the Bakauheni -Terbanggi Besar Toll Road is part of the Master Plan for the Acceleration of Expansion and Economic Development in Indonesia (MP3EI).

Based on Presidential Regulation Number 56 of 2018 concerning the Second Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects, it is stated that the construction of a 140.41 km toll road with a road area of up to 120 meters requires an area of 2,100 hectares of land owned by residents. The construction of the Sumatra Highway crosses three regencies, 18 sub-districts and 70 villages, namely: South Lampung Regency: 13 sub-districts and 30 villages, Pesawaran Regency: 1 sub-district and 3 villages, Central Lampung Regency: 4 Sub-districts and 14 Villages (Wikipedia Bakauheni Toll Road) -Fly).

Based on Presidential Regulation Number 100 of 2014 concerning the Acceleration of Toll Road Development in Sumatra dated September 17 2014. In this Presidential Decree it is stated that as the first step the construction of toll roads in Sumatra will be carried out on four toll road sections including the Medan-Binjai Toll Road section, the Toll Road section The Palembang-Indralaya Toll Road, the Pekanbaru-Dumai Toll Road, and the Bakauheni-Terbanggi Besar Toll Road.

The process of land acquisition for the public interest in this study is land acquisition for the construction of the Trans Sumatra Toll Road (JTTS) Bakauheni-Terbanggi Besar package II. PPK) assisted by the Land Acquisition Committee (hereinafter referred to as P2T) which is led directly by the Regional Head of the National Land Agency (hereinafter referred to as Kantah BPN) namely the National Land Agency for South Lampung Regency and the National Land Agency for Lampung Province which are divided based on work areas and PT. Utama Karya as the Toll Road Business Entity (hereinafter referred to as BUJT) JTTS and PT. Waskita Karya which carried out the construction of JTTS Package II section Bakauheni-Terbanggi Besar (hereinafter referred to as the implementing contractor).

Land acquisition activities for JTTS development, especially for the Bakauheni-Terbanggi Besar package II land acquisition committee, are currently leaving problems that arise, namely the ownership of land rights that are still unclear who owns them, until land conversion occurs from the remaining lands affected by development the. This still leaves problems that have not been resolved until now.

The position of the remaining land in this study which is located in Batuliman Village, Candipuro District, South Lampung Regency, Lampung Province, is on the edge of the Right of Way alignment (hereinafter referred to as ROW) or the technical term is Road Owned Area (hereinafter referred to as DMJ) so that there are around 300 plots of land consisting of the planting land grows and the residents' settlements lose their social function. There is no road access to the remaining land because the old access road was cut off by ROW and even more detrimental, the remaining land will experience a decline and even lose its economic value.

Land acquisition for public interest is one of the activities carried out by the government related to its duties and responsibilities to promote public welfare. Such a state task causes Indonesia to be classified as a welfare state, and within this framework the state is given the authority to control land. Formally, the government's authority to regulate the land sector grows and is rooted in article 33 paragraph (3) of the 1945 Constitution which reads that: "the land, water and natural resources contained therein are controlled by the State to be used for the greatest possible prosperity of the people." , then firmly resolved in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

UUPA is a rule implementing Article 33 paragraph (3) of the 1945 Constitution, especially Article 2 which explains the meaning of the right to control natural resources by the

State. For a just and prosperous society, the state (government) makes a general plan regarding the supply, allocation and use of agrarian resources for development purposes in order to achieve the greatest possible prosperity for the people. bring maximum benefits to the country and people.

Based on article 2 of the UUPA and its explanation, according to the concept of the UUPA, the meaning of "controlled" by the State does not mean "owned", but rather a right that gives authority to the State to control the matters referred to in that article. The concept of the State's right to control in the legal considerations of Constitutional court decisions on the Oil and Gas Law, the Electricity Law, and the Natural Resources Law stated that "State control rights/HMN" is not in the sense that the State owns, but in the sense that the State has the right to formulate policies (bleid), make arrangements (bestuurdaad), carry out management (beheerdaad), and carry out supervision (toezichthoudendaad).

In the agrarian scope, land is part of the earth, which is called the surface of the earth. The land referred to here does not regulate land in all its aspects, but only regulates one of its aspects, namely land in a juridical sense which is called rights. Land as part of the earth is stated in Article 4 paragraph (1) of the UUPA, namely "On the basis of the right to control from the state as referred to in Article 2 it is determined that there are various kinds of rights over the surface of the earth, called land, which can be given to and owned by other people. - people, both alone and together with other people and legal entities ", what is meant by land rights is a right that gives authority to the holder of the right to use and/or take advantage of the land that is claimed. On the basis of the provisions of Article 4 paragraph (2) of the UUPA, land rights holders are given the authority to use the land in question, as well as bodies of earth and water and those that are only needed on it for direct interests related to the use of said land within the limits according to UUPA and other higher legal regulations (Maria S, 2008).

UUPA lays the foundation or principle in the provisions of Article 6 which states that: "all land rights have a social function", meaning that all rights to any land in a person may not be solely used for his personal interests, but their use must also provide benefits for the interests of others. himself, society and the state, but this does not mean that individual interests will be pushed aside by the public interest (society).

Community interests and individual interests must balance each other, so that order and prosperity for all people can be achieved. It is also explained in Article 18 which states that "for the public interest, including the interests of the nation and state and the common interests of the people, land rights are revoked by providing appropriate compensation and in a manner regulated by law" (Gautama, Sudargo, 1994).

The land acquisition process for public interest based on Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest Article 13 is carried out through the stages of: Planning, Preparation, Implementation, and Delivery of results and is assisted by the land acquisition committee. The agency that requires land makes a Land Acquisition plan for Public Interest according to the provisions of laws and regulations. Agencies are State institutions, Ministries, Provincial Governments, Regency/City Governments, and State-Owned Legal Entities/State-Owned Enterprises that receive special assignments from the Government. The legal subject in land acquisition for the construction of this toll road is the Ministry of Public Works and Housing (Ministry of Public Works). residential area development, housing finance, building arrangement, drinking water supply system, waste water management system and environmental drainage as well as solid waste management, and construction service development.

Based on Law Number 2 of 2012 Concerning Land Acquisition for Development for Public Interests Article 10 letter b it is said that land for public purposes as referred to in Article 4 paragraph (1) is used for the construction of public roads, toll roads, tunnels, railway lines, stations railroads, and railroad facilities. It is clear that toll roads are one of the objects of relinquishment of land rights in the public interest. Land in human life has a very important meaning because most of their lives depend on land, in the current development environment the

need for land is increasing. Land basically has 2 very important meanings in human life, namely as social assets and capital assets.

Land as a social asset is a means of binding unity among the social environment for life and existence, while land as a capital asset is as capital in development and has grown as a very important economic object as well as a commercial material and an object of speculation. Development activities, especially development in the material sector, both in cities and in villages, require land as a shelter for development activities. Among other things: the construction of roads, reservoirs, hospitals, ports, airports, train stations, places of worship, education or schools and so on (Rubaie, Ahmad, 2007).

Land problems continue to emerge in the dynamics of our nation's life. Various regions in the archipelago certainly have different characteristics of land problems from one region to another. This situation is increasingly evident as a consequence of the basic understanding and views of Indonesians regarding land as a means of residence and providing livelihood so that land has a very important function (Abdurahman, 1991).

According to Van Vollenhoven land has a very important position in customary law in particular, namely:

a. Because the nature of the land is the only wealth object that is permanent in its state as a real object.

b. Due to the fact that land is a place to live and provide a livelihood for indigenous peoples, the burial place of their ancestors, as well as the place for the spirits of all these indigenous peoples.

This social function requires a balance between individual interests and public interests. With a balance between the two interests, it is hoped that justice and prosperity for all people will be achieved. Thus, when the state requires land in the name of the public interest, the people are encouraged to voluntarily relinquish their land ownership rights for the public interest. This is a concrete form of balance between private rights and public rights adhered to by national land law (Gunagera, 2008). Basically, development in Indonesia emphasizes improving the standard of living of the people through the State Budget (APBN) funds and cooperation with the private sector. The development aims to make equity so that the government continues to strive to fulfill the basic rights of the community. Through its programs, there are many government programs, one of which is the development of road infrastructure (including the construction of toll roads which is one of the government's main priorities).

Toll roads are often also referred to as freeways, which are roads that are specifically for more than two-wheeled vehicles (cars, buses, trucks) and aim to shorten the distance and travel time from one place to another. To enjoy it, toll road users must pay according to the applicable rates. Tariffs are determined based on the class of vehicle.

Land acquisition must be carried out through a process that ensures there is no coercion of the will of one party against another. In addition, considering that the community must give up their land for a development activity, it must be guaranteed that their socio-economic welfare will not get worse than the original state, at least it must be equivalent to the situation before the land was used by agencies that needed land (Maria S, 2008).

Plots of land belonging to the community as the plaintiff in this study are plots of land that have been cultivated and controlled since 1976 and historically have been cultivating and controlling land for generations until now and in general can be traded. Most of the land plots belonging to the community as the plaintiff have been certified in the form of a Certificate of Property Rights issued by the National Land Agency, certificates of Property Rights on behalf of the community as the plaintiff are hereditary rights, the strongest and most complete that a person can have over land, and Property Rights can be transferred and transferred to other parties, thereby fulfilling the provisions of Article 20 of Law Number 5 of 1960 concerning Basic Agrarian Regulations. The lands that are claimed to belong to the community as plaintiffs are also claimed by the forestry department, in this case the Ministry of Environment and Forestry of the Republic of Indonesia, that the land is included in the Gedong Wani Register 40 forest area, causing disputes over land rights.

The plots of land belonging to the community as the plaintiffs are affected by the Bakauheni –Terbanggi Besar toll road construction project, either in part or in whole, but until now no compensation has been given, and according to the Land Acquisition Implementation Committee (P2T) Bakauheni –Terbanggi Toll Road It is major that the plaintiffs were not given compensation, because the land parcels belonging to the plaintiffs were forestry land, by providing a photocopy of the Normative List (Announcement-stipulated based on the forestry boundary monument in Batu Liman Indah Village) Land acquisition (P2T) Announcement of STA Toll road. 38,000 KM to STA 64,000KM Batu Liman Indah Village, Candipuro District) No. 526/18.300/P2T/VII?2017 dated 26 July 2017 issued by Defendant II Task Force A and Task Force B.

## **II. RESEARCH METHODS**

The type of research used in this study is Empirical Normative (Applied). Research that examines the correlation between legal principles in the form of statutory provisions and their relation to legal events that occur in society, namely regarding the legal aspects of land acquisition for the public interest.

The research approach is the step before conducting research, the process of solving or solving problems through specified stages so as to achieve research objectives. The research approach used in this research is normative-empirical juridical, that is, an approach through library research by reading, quoting and analyzing legal theories and laws and regulations related to research problems and in analyzing the problems is done by integrating legal materials from secondary data with primary data obtained in the field (field research). In research, it is generally distinguished between data obtained directly from the public and data obtained from library materials. What is obtained directly from the community is called primary data (basic data), while what is obtained from library materials is usually called secondary data (Soekanto, Soerjono, 2018).

## **III. RESULTS AND DISCUSSION**

### **Settlement Of Land Ownership Disputes in Land Procurement for Public Interests**

As discussed by the author in the previous discussion, this dispute began when there was an acknowledgment of another party who in this case was the plaintiff, namely plaintiff I to plaintiff IX who acknowledged that they were entitled to the land that was used as the object of toll road construction. The basis of these plaintiffs is as follows:

The plots of land owned by the plaintiffs were originally converted Production Forest Land Areas (HPK), and based on:

1. Decree of the Minister of Forestry and Plantations Number 256/Kpts-II/2000 dated August 23, 2000, regarding the designation of forest and water areas in the Lampung province.
2. Regional Regulation of Lampung Province Number 6 of 2001 concerning the conversion of land use from a former convertible production forest area (HPK) covering an area of ± 145,125 (one hundred forty five thousand one hundred twenty five) hectares to become a non-HPK area in the context of Granting Land Rights .
3. Governor's Decree Number 70 of 2001 regarding instructions for implementing Regional Regulation of Lampung Province Number 6 of 2001 concerning the conversion of land from the Convertible Production Forest Area (HPK) to an area of ± 145,125 (one hundred forty five thousand one hundred twenty five) Hectare to non-HPK areas in the context of granting land rights.
4. Regulation of the Governor of Lampung Number 14 of 2007 concerning the implementation of land conversion from Convertible Former Production Forest Areas in Lampung Province.

Being not a Convertible Production Forest (HPK) area and being the full claimants, and because it is no longer a Convertible Production Forest area, the Batu Liman community (now Batu Liman Indah) began to take care of making certificates, and the Regional Office of the

National Defense Agency Lampung Province once formed an Adjudication Committee for land registration, and Batu Liman Village also has a committee as stated in the Decree of the Head of the Regional Office of the National Defense Agency for Lampung Province Number: 600-18 concerning Formation of an Adjudication Committee for Systematic Land Registration with Self-help Adjudication Patterns for Ex-Area Land HPK Area in Lampung Province.

The plots of land belonging to the plaintiffs were affected by the Bakauheni –Terbanggi Besar toll road construction project, either in part or in whole, but until now no compensation has been given, and according to the Land Acquisition Executing Committee (P2T) for the Bakauheni-Terbanggi Besar toll road that the plaintiffs were not given compensation, because the land parcels owned by the plaintiffs were forestry land, by providing a photocopy of the Normative List (announcement determined based on the existing forestry boundary monument in Batu Liman Indah Village) Land Acquisition (P2T) Road Announcement STA toll. 38,000 KM to STA 64,000KM Batu Liman Indah Village, Candipuro District) No. 526/18.300/P2T/VII?2017 dated 26 July 2017 issued by Defendant II Task Force A and Task Force B.

The implementation of land acquisition for public interest which is in dispute has entered the court, where based on decision No. 13/Pdt.G/2018/PN Kla, explains the contents of the case as follows:

Where as the plaintiffs with the lawsuit letter dated January 25 2018 which was received and registered at the Kalianda District Court Registrar on January 26 2018 in register number 13/Pdt.G/2018/PN Kla, have filed a lawsuit over land in the public interest as follows:

1. Plaintiff I Uswatun Hasanah, owns a plot of land covering an area of 650 (six hundred and fifty) square meters, with proof of land ownership in the form of sporadic statements, and minutes of land inspection and statements of village elders, both issued on November 9, 2015, on the name Uswatun Hasanah, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 209 (two hundred and nine) is affected by the Bakauheni – Terbanggi Besar Toll Road Project.
2. Plaintiff II Latifah Erni, owns a plot of land covering an area of 600 (six hundred) square meters, with proof of land ownership, a grant statement dated November 9, 2015, from part of the land, certificate of ownership right no. 0839, Measurement Letter No. 155/Batu Liman Indah/2012 dated 18 September 2012, registered in the name of Warsun, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 173 (one hundred and seventy three) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.
3. Whereas plaintiff III Warsun owns a plot of land measuring 708 (seven hundred and eight) square meters, measurement letter No. 155/Batu Liman Indah/2012 dated 18 September 2012, certificate of ownership no. 839, issued on September 18, 2012, registered in the name of Warsun, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 281 (two hundred and eighty one) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.
4. Whereas plaintiff IV Mulyono, has a plot of land covering an area of 474 (four hundred seventy four) square meters, measurement letter No. 30/Batu Liman Indah/2012 dated 18 September 2012, Certificate of ownership No. 0714, issued on 18 September 2012, registered in the name of Mulyono, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 474 (four hundred seventy four) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.
5. Whereas plaintiff V Imam Achmad, has a plot of land with an area of 1,659 (one thousand six hundred and fifty nine) square meters, measurement letter No. 336/Batu Liman Indah/2012 certificate of ownership no. 102, issued on 18 September 2012, registered under the name of Imam Ahmad, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 190 (one hundred and ninety) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

6. That plaintiff VI Sumarni owns a plot of land with an area of 2,014 (two thousand and fourteen) square meters, with proof of ownership in the form of certificate of ownership no. 923, issued on September 18, 2012, registered in the name of Sumarni, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 115 (one hundred and fifteen) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

7. Whereas plaintiff VII Sutarno has a plot of land measuring 5,903 (five thousand nine hundred and three) square meters, measurement letter No. 249/Batu Liman Indah/2003 certificate of ownership no. 249, issued December 19, 2003, registered in the name of Sutarno, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 296 (two hundred ninety six) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

8. Whereas plaintiff VIII Wakimin, owns a plot of land measuring  $\pm$  2,500 (two thousand five hundred) square meters, with proof of ownership in the form of a Statement of Physical Mastery of Land Plots/Sporadic, and land certificate, No. 27.592.VI.12.17.I.2015, as well as the minutes of land inspection and statements of village elders, all dated January 7 2015, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 2,105 (two thousand one hundred and five) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

9. Whereas plaintiff IX Tukini Heir Suhartono, owns a plot of land with an area of 836 (eight hundred thirty six) square meters, measurement letter No. 98/Batu Liman Indah/2003 dated December 1, 2003, certificate of ownership no. 98, issued December 1, 2003, registered in the name of Suhartono, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 198 (one hundred and ninety eight) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

10. That plaintiff X Nasir owns a plot of land with an area of 5,210 (five thousand two hundred and ten) square meters, Measurement Letter No. 05/Batu liman Indah/2003, certificate of ownership no. 05, issued on October 22, 2003, registered in the name of Nasir, located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 308 (three hundred eight) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

11. Whereas plaintiff XI Karmo owns a plot of land covering an area of 871 (eight hundred and seventy one) square meters, with proof of land ownership in the form of certificate of ownership no. 06, issued on October 22, 2003, registered under the name of S. Karmo (Karmo), located in Lampung Province, South Lampung Regency, Candipuro District, Batu Liman Indah Village. And on this land, an area of 9 (nine) square meters is affected by the Bakauheni-Terbanggi Besar Toll Road Project.

Most of the plots of land belonging to the plaintiffs have been certified and affected by the Bakauheni-Terbanggi Besar toll road construction project, but the Government through Defendants II and Defendants III did not provide compensation for the land affected by the Toll Road Project, according to the Normative List, dated July 26, 2017 issued by Defendant II Task Force A and Task Force B, and because of that the Plaintiffs through the Village Head submitted their objections to Defendant II through the Head of the Regional Office of the Lampung Province National Defense Agency, but until now there has been no clear answer to these objections.

The plaintiffs are also entitled to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law, as referred to and required in the provisions of Article 28D Paragraph (1) of the 1945 Constitution; However, the Defendants have treated the Plaintiffs unfairly and have not provided protection to the Plaintiffs, who until now have not provided Compensation Money. The provisions of Article 19 paragraph (10) of Law No. 5 of 1960 concerning Basic Agrarian Regulations, states: "To ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to

the provisions regulated by Government Regulations", will but the defendants who did not pay compensation for the land belonging to the plaintiffs did not guarantee legal certainty, and therefore it was an act against the law; that the land belonging to the plaintiffs had mostly been registered by the Government, in this case Defendant II, namely certificates of agreement - certificate, but the government represented by the defendants did not provide compensation money for the land belonging to the plaintiffs, and this is an act that does not guarantee legal certainty, and therefore is an unlawful act. compensation for the land belonging to the affected plaintiffs In the Bakauheni Terbanggi Besar toll road construction project, therefore Defendant I has committed an unlawful act. The Government/Defendant IV, which issued the Lampung Province Regional Regulation number 6 of 2001 concerning the conversion of land use from the Convertible Production Forest Area, should have issued the Regulation and the decision letter to help the plaintiffs to explain to Defendant I, Defendant II and Defendant III that the plaintiffs are entitled to payment of compensation money for the land belonging to the plaintiffs affected by the Bakauheni Terbanggi Besar Toll Road Development Project, but this was not done by Defendant IV, therefore Defendant IV has committed an unlawful act.

Furthermore, the government has issued Government Regulation no. 24 of 1997 concerning Land Registration, in Article 3 letter a stipulates that land registration aims to provide legal certainty and legal protection to holders of land rights over a parcel of land, an apartment and other registered rights so that they can easily prove themselves as holders of land rights. the rights concerned.

### **Basis For Judges Considerations Of Property Rights Disputes In Decision No 13/Pdt.G/2018/Pn/KLA.**

Based on this case, it went through a long series of examination processes starting from the registration of the lawsuit until the examination finally became a decision, as is known and has been discussed in the previous discussion which became the basis for the judge's considerations in decision No.13/Pdt.G/2018/Pn KLa this is as follows following:

Considering, that based on the evidence from the plaintiff's letter and the legal facts previously described, it is known that most of the plaintiffs' land, namely plaintiffs I to plaintiff XI, had certificates of their respective ownership rights issued in their names by the Defense office South Lampung Regency. Because the certificate of land rights is strong proof of ownership of the land and it turns out that during the trial there is no evidence stating that the certificate that has been issued is cancelled, the plaintiffs according to the elucidation of Article 40 of Law Number 2 of 2012 concerning Land Acquisition for Development in the public interest are included in the qualifications as holders of land rights, and therefore are entitled to receive compensation for their land. The provision of compensation for the land is also in line with the obligation to settle the land rights of the plaintiffs which are the rights of third parties in forest areas, so that it is the duty of the government agency in charge of forestry to resolve them. The provision of compensation is also to provide legal certainty for the plaintiffs as landowners affected by the Bakauheni-Terbanggui Besar toll road development project, and in accordance with several principles in Article 2 of Law number 2 of 2012 concerning land acquisition for development in the public interest. , among others :

1. The principle of humanity
2. The principle of justice
3. The principle of welfare
4. The principle of harmony

Considering, that in relation to the amount of compensation for the land belonging to the plaintiffs affected by the Bakauheni-Terbanggi Besar Toll Road construction project, then in accordance with Article 34 juncto Article 37 Law Number 2 of 2012 concerning land acquisition for development in the public interest, the amount is based on the results of the deliberations to determine the form and/or amount of compensation, one of the basics of which is the assessment of the assessment team. Considering, that from the letter evidence submitted by plaintiffs I to XI



regarding the amount of compensation, it turns out that each of the plaintiffs has offered to pay compensation for their land affected by the toll road construction project from the Ministry of Public Affairs and Housing People.

Considering, that from the information contained in the documentary evidence, in the form of minutes of the Offer for Payment of Compensation Money Number 2/Pdt.P.Kons/2018/PN Kla dated 12 January 2018 as described, it is stated that the plaintiffs accepted the offer of compensation submitted by the Ministry of Public Works and Public Housing through the Bailiff of the Kalianda District Court. Considering, that according to Supreme Court Regulation Number 3 of 2016 concerning the method of submitting objections and depositing compensation to the District Court in land acquisition for development in the public interest, the activity of offering payment of compensation money is part of the process of depositing compensation carried out by agencies that require land, which in the aquo case is the Ministry of Public Works and Public Housing (defendant III).

Considering, that according to Article 24 of Supreme Court Regulation Number 3 of 2016 regarding how to submit objections and Deposit Compensation to the District Court in Land Procurement for development in the public interest, compensation is deposited with the district court in the event that:

- a. The party entitled to refuse the form and/or amount of compensation based on the results of deliberations on the determination of compensation but does not submit an objection to the court.
- b. A party entitled to refuse the form and/or amount of compensation based on a court decision that has permanent legal force.
- c. The party entitled to its whereabouts is unknown
- d. The object of land acquisition that will be given compensation
  - 1) Being the object of a case in court
  - 2) The ownership is still disputed
  - 3) The confiscation is placed by an authorized official
  - 4) Become a guarantee at the bank

Considering, that in relation to the follow-up of the deposit of compensation carried out by the Ministry of Public Works and Public Housing (Defendant III), then based on the evidence of the letters submitted by the plaintiffs it is connected with the documents for depositing compensation money for land acquisition for the construction of the Bakauheni-Terbanggi Besar Toll Road which is in the Registrar's Office of the Kalianda District Court.

The Chairperson of the Kalianda District Court has issued Decree Number 2/Pdt.P.Kons/2018/PN Kla dated 18 January 2018 which principally stated that it was valid and accepted the safekeeping of compensation money from the Ministry of Public Works and Public Housing (Defendant III) to 35 (thirty five) people, including 11 (eleven) Plaintiffs, namely Plaintiff I to Plaintiff XI, with a total amount of Rp. 852,565,492.00 (eight hundred fifty two million five hundred sixty five thousand four hundred ninety two rupiah) );

Considering, that in the Decree of the Chairman of the Kalianda District Court Number 2/Pdt.P.Kons/2018/PNKla dated 18 January 2018, it was stated that the reason for entrusting the payment of compensation money was because the land acquisition object was still in dispute over ownership of the land with the Ministry of Environment and Forestry, which in the aquo case was Defendant I; Considering, furthermore in Article 32 of the Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Safekeeping of Compensation to the District Court in Land Acquisition for Development for Public Interests it states that in the event that the object of land acquisition is being the object of a case in court or is still being disputed, compensation is taken by the party who are entitled to the Registrar's Office at the District Court after a decision has been made that has permanent legal force or a deed of reconciliation, accompanied by a letter of introduction from the Chief Executive for Land Procurement; 2/Pdt.P.Kons/2018/PN Kla dated January 18 2018, the main contents of which are stating that it is valid and accepting safekeeping of compensation money, then Ma jelly the Judge determines that the amount of compensation that must be given to the Plaintiffs for their land

affected by the Bakauheni-Terbangi Toll Road Development project is based on the two stipulations mentioned above;

Considering, that the existence of receiving safekeeping of compensation money is connected with the previous considerations of the Panel of Judges which stated:

1. Whereas the status of ownership or control of the land of the Plaintiffs which it turns out is that most of the ownership evidence is in the form of certificates of ownership and some are not yet certified but have been physically controlled for more than 20 (twenty) years continuously without any disputes with other parties who then enter the permanent production forest area is also still valid and must be protected;

2. Whereas the Plaintiffs namely Plaintiff II, Plaintiff III, Plaintiff IV, Plaintiff V, Plaintiff VI, Plaintiff VII, Plaintiff IX, Plaintiff X and Plaintiff XI are the holders of land rights, and are therefore entitled to compensation for their land affected by the development project Bakauheni-Terbangi Besar Toll Road;

3. Whereas the Plaintiffs, namely Plaintiff I and Plaintiff VIII, are the basic holders of land tenure, and therefore also have the right to receive compensation for their land affected by the Bakauheni-Terbangi Besar Toll Road construction project, the Panel of Judges determined that the Plaintiffs are persons entitled to collect compensation money that has been deposited based on the Decree of the Chairperson of the Kalianda District Court Number 2/Pdt.P.Kons/2018/PN Kla dated 18 January 2018;

Considering, that based on all of the matters considered above, the Panel of Judges ultimately concluded that the Plaintiffs had succeeded in proving the arguments for their lawsuit, so that the Panel of Judges was able to grant the Plaintiffs' claim;

Considering, whereas the Plaintiffs in the letter of suit submitted a petitum consisting of a primary petitum which contains details one by one of what they are demanding, and the subsidiary petitum only requests that the Panel of Judges render a fair and just decision (*ex-aequoetbono*); :

1. Whereas according to the provisions in Article 189 Rbg, the Panel of Judges is basically not allowed to grant more than what is demanded in the lawsuit;

2. Whereas in judicial practice, if the petitum being proposed consists of a primary and subsidiary petitum which both specify one by one what is to be decided, but what is demanded is different between the primary petitum and the subsidiary petitum, then the Tribunal of Judges is only justified in choosing one of them, whether to grant petitum primary or subsidiary (Decision of the Supreme Court No. 882 K/Sip/1974 dated 24 March 1976, published by the Supreme Court of the Republic of Indonesia, Summary of the Jurisprudence of the Supreme Court of the Republic of Indonesia, Second Printing, 1993);

3. Whereas, however, if the primary petitum being submitted contains details one by one of what is being demanded, while the subsidiary petitum is only "asking for the fairest possible decision (*ex aequo et bono*)", if the Panel of Judges wants to grant the lawsuit based on its subsidiary petitum, then according to jurisprudence as the rule the law contained in the Supreme Court Decision No. 140 K/Sip/1971 dated 12 August 1971 that: "The judge's decision in favor of *ex aequo et bono* must still be related to the framework of the primary petitum." the related issues to be requested are decided in the primary petitum; Considering, that the 1st (first) petitum regarding the Plaintiffs' lawsuit was granted in its entirety, because the petitum relates to other petitums, it will be considered after considering the other petitums;

Considering, that on the 2nd (second) petitum regarding the request that the Defendants be declared to have committed an unlawful act.

#### **IV. CONCLUSION**

Based on the research that the authors completed, it can be concluded that;

1. Based on Presidential Regulation. Presidential Decree No. 117/2015 concerning "Amendments to Presidential Regulation Number 100 of 2014 concerning the Acceleration of Toll Road Development in Sumatra" which added assignments to PT Hutama Karya (Persero) so that a total

of 24 toll roads in Sumatra. Based on the land parcels affected by the project, the plaintiffs are also entitled to recognition, guarantee, protection and legal certainty as well as equal treatment before the law, as referred to and implied in the provisions of Article 28D Paragraph (1) of the 1945 Constitution; However, the Defendants have treated the Plaintiffs unfairly and have not provided protection to the Plaintiffs, who until now have not provided Compensation Money. The provisions of Article 19 paragraph (10) of Law No. 5 of 1960 concerning Basic Agrarian Regulations, states: "To ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations", will but the defendants who did not pay compensation for the land belonging to the plaintiffs did not guarantee legal certainty, and therefore it was an act against the law; that the land belonging to the plaintiffs had mostly been registered by the Government, in this case Defendant II, namely certificates of agreement -certificate, but the government represented by the defendants did not provide compensation for the land belonging to the plaintiffs, and this is an act that does not guarantee legal certainty, and therefore is an act against the law.

2. Whereas based on the evidence from the plaintiff's letter and the legal facts previously described, it is known that most of the plaintiffs' land, namely plaintiffs I to plaintiff XI, have been issued certificates of their respective ownership rights in their names by the Defense office South Lampung Regency. Because the certificate of land rights is strong proof of ownership of the land and it turns out that during the trial there is no evidence stating that the certificate that has been issued is cancelled, the plaintiffs according to the elucidation of Article 40 of Law Number 2 of 2012 concerning Land Acquisition for Development in the public interest are included in the qualifications as holders of land rights, and therefore are entitled to receive compensation for their land.

3. The basis for the judge's consideration of the property rights dispute in decision Number 13/Pdt.G/2018/PN Kla. In making a decision, the panel of judges based on Article 1365 of the Civil Code stated that any unlawful act which therefore causes harm to other people, obliges the person who because of his mistake caused the loss to compensate. Considering, that from the formulation of Article 1365 of the Civil Code, the elements of an unlawful act are:

- a. There is an illegal act
- b. There is a loss
- c. There is an error
- d. There is a causal relationship (cause and effect) between errors and losses.

4. Based on the Implementation of Land Acquisition for Public Interests that the stages starting from Planning, Preparation and Implementation have been passed but there are problems in implementation where the community as the plaintiff as the land owner does not get the rights to their land affected by the construction of the toll road, then the people who lost his land rights, filed a lawsuit in accordance with Perma Number 3 of 2016 until the settlement of the dispute in the Kalianda district court.

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