

LEGAL AEGIS FOR COMMUNITIES AFFECTED BY SOLO-JOGJA TOLL ROAD CONSTRUCTION

Muhammad Faza Abyan Naufal
Isharyanto
Jadmiko Anom Husodo

ABSTRACT

This study aims to investigate, identify and explain a legal study related to the legal aegis of the community whose residence or land got eviction due to the construction of the Solo-Jogja toll road in Klaten regency. During the process of the toll road construction, many obstacles and problems occurred between the community and the government. Those were because the government still did not provide clarity regarding the compensation for the land used, and also the land area will be used, and utilized. There were different opinions and urges between the surrounding community and the government, as well as different interests. The government maintains a low price for the land but many people feel that the area is strategic and a lot of livelihoods have been lost as a result of it. The community feels that they get a loss if the land is bought at a cheap price, even though they had several times participated in the parley.

Keywords: Aegis, Compensation, Toll Road.

INTRODUCTION

The implementation of public sector development in Indonesia continues to increase, especially in the development of infrastructure such as toll roads. The projection of toll road construction continues to increase from year to year, especially in Java, Sumatra, Bali, and several other areas. The built-up of the toll road is to balance the growth of economic and equitable development. There are several reasons for focusing on infrastructure development, first, it is an effort to build public facilities for the distribution of needs. Second, balancing the national economy, such as the similarity of prices from one region to another, it is necessary to have an equal distribution of logistics goods. One of the ways to achieve it is through toll roads construction and its supporting infrastructure.

In applying the toll road infrastructure project, the government used the PPP (public-private partnership) mechanism. In Indonesia, the PPP concept was actually chosen by the government as an alternative since infrastructure development stagnated due to the monetary crisis in 1998. At that time, when Indonesia's condition worsened due to the crisis, President Suharto issued Presidential Decree No. 7/1998 about Cooperation between the Government and Private Business Entities in Infrastructure Development and/or Management. However, these efforts were effectless. Moreover, at that time also the domestic monetary conditions were not stable, so it made a large capital flight.

Up to 2005, the Government began to implement the PPP concept seriously. It was started with the holding of the Indonesia Infrastructure Summit I in the mid of January 2005. At that time, the government offered the private investors that there were 91 projects to become public-private partnership projects. Meanwhile, at the Indonesia Infrastructure Summit II (Indonesia Infrastructure Conference and Exhibition 2006) the government offered 111 projects (including 10 project models favored). In fact, to "control" these projects to be worth cooperating with required super hard work from the government. Many things needed to be improved or formed. In essence, there are three things that the government must resolve immediately. First, establish a new department that supports the implementation of PPP; second, carry out harmonization, reformation, and revision toward various regulations that contradict and obstruct the investment trust; and third, upgrade the quality of the human resources.

Development needs to be done to achieve a higher quality of life for people. Furthermore, the preamble of the Republic of Indonesia's Constitution implies Indonesia's national target which is contained in Article 4 of 1945 which the Indonesian nation has a goal to be achieved through state development. Indonesia's national ideals imply in the opening of the Republic of Indonesia's Constitution in the fourth paragraph in 1945 which states: "Protect the entire country and the whole Bloodshed in Indonesia, increase public prosperity, the education of National Life and Participate in the implementation of a world order based on Independence, peacefulness, and social justice". The way to achieve the national goal is for the government and the people must be able to work together and realize that through sustainable national development it can be achieved (Salim & Negara, 2018).

One of the infrastructure development that requires a wide land area is the construction of toll roads because it is specifically designed as an alternative route on the land which is free of jammed. The regulation of toll roads construction is set out in Government Regulation No. 15 in 2005 concerning toll roads in Article 1 Paragraph (2) explains that toll roads are public roads that are part of the road network system and as a national method and who drive on it, they are required to pay tolls. This toll road construction aims to improve the accessibility and capacity of the road network in serving traffic. The construction of toll roads cannot be separated from the physical and non-physical aspects of the community. The physical aspect is related to the environment, while the non-physical aspect is a matter of social society. Both aspects are certainly felt directly by the communities affected by the toll road construction. The construction of the toll road connects 2 (two) provinces, namely East Java and Central Java which is also referred to as a megaproject.

The National Strategic Project (PSN) of the Solo-Jogja toll road, which is a priority project of President Joko Widodo was implemented during his second reign. The project cost up to IDR 26.6 trillion for land acquisition and physical development. Until the end of 2020, clear land acquisition has reached 1,614 plots of land. However, during the process of land acquisition in 2020, it also caused various problems for the affected community, especially related to the compensation value which is considered too low, mala-administration, and potentially human rights violations. The problems of low compensation for the Solo-Jogja toll road

project were caused by several things. First, the appraiser was unable to absorb the residents' difficulties in finding replacement land. In some villages, the appraiser did not meet with the residents, so there were many disagreements between the calculation of compensation for the real land price and the appraisal result because the appraiser only took a comparison of market prices to be used as the basis for replacement (Winarda, 2021).

There were some issues said that the people got a lot of pressure from public officials (Official Commitment Makers) during the land acquisition process for the Solo-Jogja toll road project. The official promised that the land price would be above the market and advised the people to accept any amount of compensation given. If they rejected it, they were allowed to sue in court. Second, it relates to the procedures regulated in constitutions and presidential regulations and now there has been regulation, particularly in Law Number 2 of 2012 and Government Regulation Number 19 of 2021. Both regulations set about land acquisition for the public interest. Article 37 of Law Number 2 of 2012 concerns the implementation of deliberation on the provision of compensation has regulated the form and the value of compensation, but in fact, there was no consultation or deliberation with the villagers after their compensation payments have been completed.

Then, the next problem is related to administrative faults. There were administrative faults during land acquisition for the national strategic project of the Solo-Jogja toll road. The land acquisition committee hid the value of the non-physical compensation component given to the community. Based on the fact in field, during the process of compensation consultations, the residents were only given information about the value of compensation which covered physical losses 10 / 46 which became an indication of the market value of the land, buildings, plants, expenses, and interest for the waiting period.

In the deliberation, the practice of providing compensation which had done, the affected residents were not given any explanation about the non-physical compensation component. Because of the non-transparent information, it often had an impact on an incomprehensible error by people or residents. Based on the description above, the writer is interested in writing about "**Legal Aegis for Communities Affected by Solo-Jogja Toll Road Construction**". With this paper, it is hoped that various irregularities both in terms of information and compensation that harm the community in the construction of the Solo-Jogja toll road can be revealed more clearly. So that later it can become the basis for the community through their representatives to demand justice and legal protection. This paper is also expected to be able to provide views for the stakeholders of the Solo-Jogja toll road construction to provide legal protection to the public consciously.

Based on the background presented above, the formulation of the main problem that will be analyzed is "How is the legal aegis for the communities whose land and place affected by eviction due to the construction of the Solo-Jogja toll road in Klaten Regency?"

RESEARCH METHOD

This writing used is library research or literature method, so it is called normative legal writing. This writing has an emphasis on aspects of analysis and review of secondary data from various scientific studies and theories of experts so that the formulation of hypotheses is not needed in this writing (Adi, 2021). Meanwhile, if it is viewed from its nature, this legal writing is categorized as prescriptive, because this writing analyzes problems of legal norms. The design of this writing is descriptive writing which aims to explain effective and efficient solutions for the problems discussed in this writing. Then, the approach used in this writing is the statutory approach (Sugiono, 2017). Furthermore, the literature method itself is a method for writing a description (literature review) of theories, findings, and other research materials obtained from reference materials to be used as the basis for research activities. The literature review contains the author's reviews, summaries, and thoughts on several library sources (articles, books, slides, information from the internet, etc.) on the topics discussed. A good literature review must be relevant, up-to-date, and adequate. Theoretical foundation, theoretical review, and literature review are several ways to conduct a literature review. The search method used is article searching in research journal databases and searching through the internet. The database search used is Google Scholar from 2017 to 2022.

DISCUSSION

According to Asshiddiqie About Rights, includes the category of economic and social rights, the right to work, the right to get equal pay, and the right to food. Meanwhile, the second thesis explains that the current infrastructure development tends to be neoliberalism because it is very market-oriented and determined by private actors. This second thesis departs from historical studies after the reformation as a moment to re-emerge the discourse of neoliberalism and the government tends to seek support from this sector.

The involvement of the private sector is considered a reasonable thing considering the government's budget is very limited so it needs deregulation or legal instruments that allow the government to have a partnership with the private sector through the Public-Private Partnership (PPP) scheme. The main point that distinguishes between the proponents of the "New-Developmentalism" thesis and the Developmental Neoliberalism of Development is the placing of the relationship between government and the private sector in a development context. In the neoliberalism thesis, the government's partnership with the private sector is considered unbalanced in some cases, for example in terms of funding the private sector contributes more than the government, so the implication is the private sector often has the privilege of directing the development and leading in the privatization of infrastructure which must be public goods (Mubarok, 2020).

In the PPP concept, the management and development of infrastructure are always carried out by the private sector. This collaboration is done to minimize the use of the government budget (APBN). The use of the budget by the private sector also aims to minimize corruption which often occurs due to the use of the budget for infrastructure. In PPP, although the private actors often have the main responsibility to do daily operational management, the public sector continues to play a role at corporate and daily management levels. In running this collaboration, the risks and potential benefits of providing services or facilities are separated/ shared between the government and the private sector (Mubarok, 2020).

Meanwhile, based on a study conducted by the Center for Strategic Studies of Transportation Services (PKSPJP) on the Study of the Acceleration of Transportation Infrastructure Development through government and private partnerships, at least there

are 5 (five) aspects or variables that can be used as successful benchmarks in implementing the PPP in the regions, namely: Policies, Resources, Characteristics of Actors, Communication, and the propensity of executor Agencies. So, based on the theories mentioned above, the research variables and sub-variables were determined to be used as instruments for measuring the potential level of PPP policy in developing the capital-intensive transportation infrastructure where the private sector provides the fund, builds, and manages the infrastructure and facilities, while the government as a partner who handles service regulation, in this case, the government remains the owner of the asset, and controller of the implementation of the cooperation.

The form of PPP relationship includes competing for public activities of the state with the private sector through collaboration between the public and the private sector for investment in infrastructure procurement, the easiest example is toll roads. The cooperation involves private companies for a certain purpose, while the risks are shared. In summary, the key feature of PPP can be characterized as a partnership between the public and private sector which usually involves the private sector investment in projects that have been implemented and owned by the public sector.

However, alternative opinions may emerge able to explain the current development pattern in Indonesia. For example, instead of seeing Developmentalism and neoliberalism as contradictory, according to Heo states that there is a conceptual proposition that regards them can run it together. In addition, this section is not intended to find out the most appropriate thesis, but rather to describe the debate in viewing the current development pattern in Indonesia (Ekayanta, 2019).

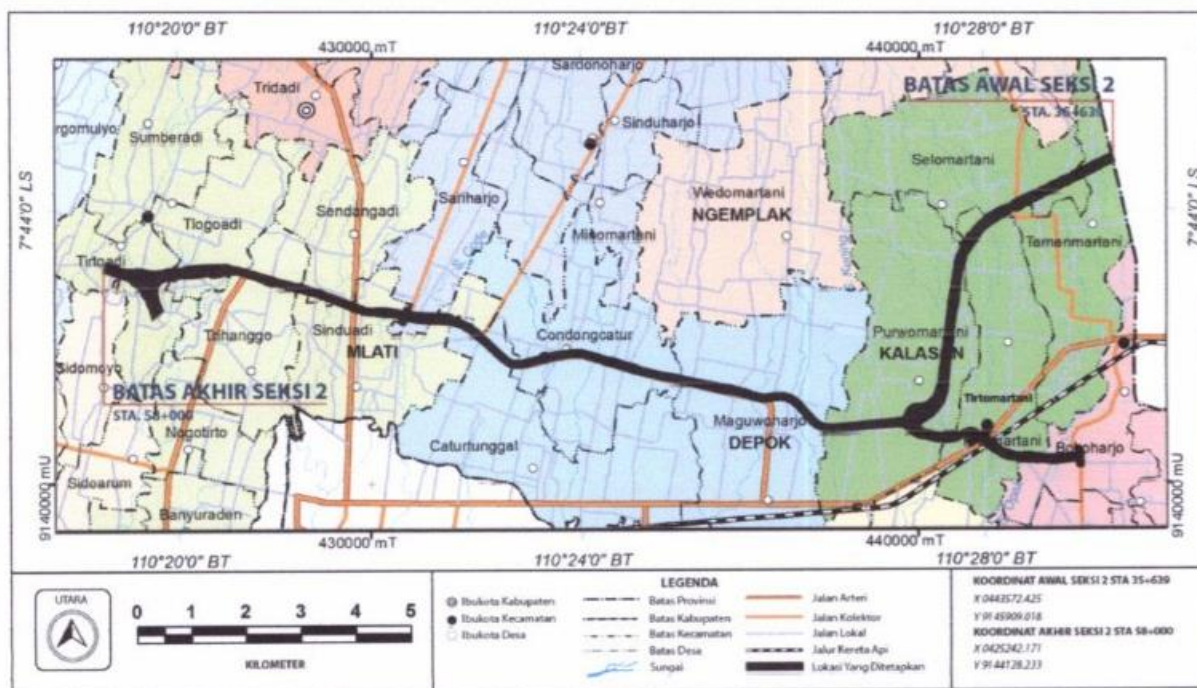
Instead of dragging on the debate about the progress of Indonesia's developments, other things are quite important to learn. Although the thesis of "New-Developmentalism" and Neoliberalism have some fundamental differences, at least these theses have a similar style, namely in the context of development, both of them almost all the things are carried out in a technocratic approach. "New Developmentalism" is very similar to Developmentalism in the New Order era which was considered very technocratic (Warbuton, 2018).

Then, in Neoliberalism, it is a neoliberal understanding that has the goal of depoliticizing social and political domains through the economy (Cahill & Konings, 2017) which, if realized in development, is likely to be a very technocratic approach. The technocratic approach or problem technicalization is an effort to explain various realities and social policies as the whole technical implementation and not politically charged, neutral, and objective. Therefore, in the patterned technocratic development discourse, the term often arises also looks very technical in every analysis. For example, in road construction, the term that frequently appears in various planning documents are about aspects of "space", "road", "contour", "length", "cost" and various other technical terms. The plan of road construction must also consider that the road is "used by the people" so we need to think about sociological, political economy, historical, or cultural aspects (Warbuton, 2018).

Indeed, some of these analyses are also trapped in planning documents or policy analysis, but those analyses are very seldom, lack depth analysis, and are instrumentistic. Based on the exploration of the three implementation analysis models above, it can be concluded that four main factors influence the success of a policy, namely policy content, policy implementation process, policy context, and goal achievement. The policy content factor considers the conformity of expectations with the real policy in the social field. Meanwhile, the process of policy implementation considers the condition of the surrounding community.

Several additional aspects, such as the availability of derivative policies, the bureaucratic structure handles and communicates the interstation. Then, the policy context contains several aspects that are capable of influencing the implementation of policies, such as the influence of power and the interests of the actors involved. Finally, the goal achievement component is carried out to identify the achievements that have been obtained from the policy set by paying attention to the perceived impact and the level of change achieved. This identification will be compared with the previously defined policy objectives.

Figure 1: Map of Solo-Jogja Toll Road Construction's Plan



The picture above is a map of the Solo-Jogja Toll Road Construction's Plan. The determination of the location map for the construction of the Solo-Yogyakarta Toll Road was signed by the Governor of the DI Yogyakarta Province, Sri Sultan Hamengkubuwono X on July 10, 2020. The location covers an area of 1,774,352 square meters spread over 14 villages, namely Bokoharjo Village, Prambanan District, Selomartani Village, Village Tamanmartani, Tirtomartani Village, and Purwomartani Village, Kalasan District. Then Maguwoharjo Village, Condongcatur Village, and Caturtunggal Village, Depok District, Sariharjo Village, Ngaglik District, Trihanggo Village, Gamping District, Sinduadi Village, Sendangadi Village, Tlogoadi Village, and Tirtoadi Village, Mlati District.

The impact of the Solo-Jogja Toll Road Construction on the economic rights of the local community are as follows, first is the right to work, it is given to all humans to get a job according to their abilities or skills. The development process of the Solo-Jogja toll road construction must involve the local communities whose land is affected by land acquisition. This way can be used as a way to replace the farmers' income whose land is affected by the project.

However, the construction of the Solo-Jogja toll road did not involve the local community, especially the local members. The toll road construction's labors were the government's responsibility, the role of the Village Government in the toll road construction was only as a communicator during the socialization of toll road construction discussion, and unauthorized in recruiting the laborers. The local communities' rights related to the right to work as the laborers of the toll road construction were not guaranteed, such farmers whose land was affected by land acquisition and other farmers also could not work on the project construction. Meanwhile, many of the local people were unemployed. So the construction of the Solo-Jogja toll road cannot give beneficial in reducing unemployment in the local community. In which, this construction project has reduced the farming land, but it cannot provide employment for the local community.

The right to equal pay is regulated in the law of the Republic of Indonesia Number 39 of 1999 in terms of human rights, in doing work both men and women are equal with human dignity have the right to a fair salary based on their achievements and can ensure the continuity of family life. The toll road construction did not involve the local communities in the development process, so it caused them to get more losses. They considered the differences and choices in the recruitment of labor for the Project of Solo-Jogja toll road construction.

The next is the right to get food. Every people has the right to get food and be free from hunger. Everyone has the right to get a job and a wage to survive. Safe rights depend on how the economy of community livelihood is available because economic rights are related to economic activities which aim to sustain life. The construction of the Solo-Jogja toll road caused the right to food to be unfulfilled. It was because this construction was built on productive farming lands which always produce foodstuffs every year. Economic rights are human rights in economic related to economic activity, employment, the right to work, wage gains, and the right to participate in labor unions.

The toll road construction had to be able to be carried out as a way to develop the surrounding environment. Road construction is a policy taken by the central government as a form of state infrastructure development that requires a very large area. The policymakers also need to pay attention to the community about their jobs, lost income due to the toll road construction. One of the examples of policies that can be implemented is through mentoring or training programs about entrepreneurship for the farmers and non-farmers so they still have their economic rights as Indonesian.

The government had issued Government Regulation (PP) Number 19 of 2021 concerning the application of land acquisition for public interest development. This regulation is a derivative of the *Cipta Kerja* regulation (UUCK) in which there are 7 chapters and 143 articles and explanations. The Indonesian Toll Road Association (ATI) considers the issuance of a new PP based on enthusiasm for solving operational problems. It is often found in the field with the improvement of the previous regulations and is expected to provide certainty in a better land acquisition process. For example, the development of toll road infrastructure requires land settlement to reduce investment risk. Kris said that this condition is still a problem to be implemented in the field of projects. Determination of Location (Interest) is also regulated in PP No. 19 of 2021. According to Nurhadi Putra, the selection of land acquisition in the form of small-scale land is determined by the Regent/Mayor and the implementation of land acquisition can be done by land acquisition stage or directly. The clutch fallout period is granted for three years and can be extended without starting the process from the beginning.

As we know, there are four stages in the land acquisition process, namely planning, preparation, handover of results, and implementation. Four cycles of land acquisition are regulated in PP Number 19 of 2021. In the preparation stage, PP Number 19 2021 emphasizes that there must be a location agreement in the form of rights and the use of goods. The location agreements are obtained through public consultation. At this stage, the role of the governor is important because he must give awareness that the specified location will be used for land acquisition for the public interest. By the function of location, the agreement is hoped that no one will resist it because it has been mutually agreed upon through public consultation.

Nurhadi Putra also stated that a decent compensation value and fair must be carried out in the implementation stage. He added that the objects which are compensated were land, land spaces and basements, buildings, plants, and objects related to land. In addition, to compensate for the physical losses, PP No. 19 2021 also appraises non-physical compensation. Non-physical losses include loss of job, business/profession, emotional loss (solatium), and the losses of land remnant and other physical. Then it is also known as the waiting period. In this case, there is a distance in the waiting period between the clutch and the compensation payment terms.

CONCLUSION

Based on the descriptions above, we can conclude that the compensation received by the community has not fully covered (still insufficient) the price of land and wealth they have provided for the construction of the toll road. Compensation is considered small because it does not take into account the impact on people's lives after the land is taken for the construction of toll roads/ Thus, it can be concluded further that land acquisition for public facilities must be followed by land acquisition, i.e. land that was originally owned by the community then becomes the property of the government to build public facilities. That way the community can get guarantees and protection for life under the law after the land and assets are handed over. Based on Law no. 2012 can be interpreted that in this case the government must provide compensation to the community in the form of replacement land, money or

settlements to live in, because the losses are not only for humans but also for the surrounding economy. The village head and village government have an important role in protecting and upholding the economic rights of the community because the economic rights of the community are the government's obligation to guarantee them.

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Muhammad Faza Abyan Naufal

Post Graduate od Notary Master
Sebelas Maret University, Surakarta, Central Java, Indonesia
Email: fazabyan20@student.uns.ac.id

Isharyanto

Law Faculty Lecturer
Sebelas Maret University, Surakarta, Central Java, Indonesia
Email: isharyanto_fh@staff.uns.ac.id

Jadmiko Anom Husodo

Law Faculty Lecturer
Sebelas Maret University, Surakarta, Central Java, Indonesia
Email: jadmikoanomh@gmail.com