

Legal Protection for Land Rights Holders Included in the Toll Road Development Project Plan Accompanied with Compensation

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Abstract : *One of the issues that currently arises is related to the fulfillment of community needs in the concept of social functions, namely land acquisition for development in the public interest. On the other hand, land rights holders whose land will be used for development in the public interest should not be disadvantaged and ruled out at all. To support this, the government provides a legal basis so that the release of land rights used for the public interest must also pay attention to the aspect of balanced compensation. The formulation of the problem in this study, How is the settlement of disputes over the construction of toll roads on the value of compensation to land rights holders and How is the Legal Protection of land rights holders related to compensation disputes in toll road construction projects, the theory used in this study is the Theory of Legal Protection, according to Philipus M. Hadjon and the theory of dispute resolution according to Yahya Harahap. The method used in the research, namely, normative juridical research, namely library legal research or secondary data with primary, secondary and tertiary legal sources. The approach in this research is, namely, the approach of legislation, conceptual approach and case approach and the technique of collecting legal materials is done by means of document studies or library materials, observation or observation and interviews or interviews. For legal material analysis techniques carried out by Grammatical, Systematic, and Legal Construction Interpretation. Research results show that the settlement of toll road construction disputes over the value of compensation to land rights holders can only be done through judicial institutions that have an independent nature. Settlement of land acquisition disputes for the public interest must have special material and formal law. Settlement of land acquisition disputes for the public interest cannot be carried out unilaterally only by the government which has equality with land rights holders and legal protection of land rights holders related to compensation disputes in toll road construction projects must be in accordance with applicable law. Land rights are considered as constitutionally protected private property rights. Land is considered as an object that has a closed nature based on laws and regulations.*

Keywords : *Dispute settlement, Legal Protection, Compensation, and Toll road construction*

Abstrak : Salah satu persoalan yang saat ini muncul terkait dengan pemenuhan kebutuhan masyarakat dalam konsep fungsi sosial yakni pengadaan tanah bagi pembangunan untuk kepentingan umum. Di sisi lain, pemegang hak atas tanah yang tanahnya akan digunakan untuk pembangunan demi kepentingan umum tersebut juga tidak boleh dirugikan, untuk itu pemerintah memberikan landasan hukum agar pelepasan hak atas tanah yang digunakan untuk kepentingan umum juga harus



memperhatikan aspek ganti kerugian yang seimbang, sehingga didapat 2(dua) permasalahan dalam penelitian ini yaitu bagaimana Penyelesaian sengketa terhadap pembangunan jalan tol terhadap nilai ganti rugi kepada pemegang hak atas tanah dan bagaimana Perlindungan Hukum terhadap pemegang hak atas tanah terkait sengketa ganti rugi dalam proyek pembangunan jalan tol, adapun teori yang digunakan dalam penelitian ini yaitu Teori Perlindungan Hukum dan teori penyelesaian sengketa. Metode yang digunakan dalam penelitian adalah penelitian yuridis normatif, penelitian ini dilakukan dengan menelaah peraturan perundang-undangan, teori-teori, dan konsep-konsep yang berkaitan dengan permasalahan yang akan diteliti. Adapun pendekatan dalam penelitian ini yaitu menggunakan pendekatan perundang-undangan, pendekatan konseptual dan pendekatan kasus. Hasil Penelitian penunjukkan Penyelesaian sengketa pembangunan jalan tol terhadap nilai ganti rugi kepada pemegang hak atas tanah hanya dapat dilakukan melalui lembaga peradilan yang memiliki sifat independen. Penyelesaian sengketa pengadaan tanah untuk kepentingan umum harus memiliki hukum material dan formal yang khusus. Penyelesaian sengketa pengadaan tanah untuk kepentingan umum tidak dapat dilakukan secara sepihak hanya oleh pemerintah yang memiliki kesetaraan dengan pemegang hak tanah dan Perlindungan hukum terhadap pemegang hak atas tanah terkait sengketa ganti rugi dalam proyek pembangunan jalan tol harus sesuai dengan hukum yang berlaku

Kata kunci : Penyelesaian sengketa, Perlindungan Hukum, Ganti Rugi, dan Pembangunan jalan tol

I. INTRODUCTION

Land is a fundamental thing in human life. The relationship between humans and land is not just a place to live, more than that, land provides invaluable resources as a source of livelihood for mankind. The existence of land not only has economic value and welfare for its owners alone, but also concerns social, political, and cultural issues which are of course closely related to the interests of others.¹

The availability of land for development is important, although it sometimes causes conflict, along with the development carried out by the government. Land is the most important factor to support the success of the development of various public interest facilities, it is absolutely necessary to have sufficient land to support the implementation of the program. The problem that often arises is related to the availability of land which is very limited while the population needs land to increase.² The social function of land basically states that whatever land rights a person has, it cannot be justified that his land will be used or not used only for his personal interests, but must be adjusted to the circumstances and nature of his rights so that it is beneficial to the public interest, society and the state.³ In a government organization, the essence is to organize two main types of functions, namely the regulatory function and the service function. The function of government as a regulator is related to its essence as a modern state, namely

¹Wibowo, Shelin Nabila, Yani Pujiwati, and Betty Rubiati. "Kepastian hukum ganti kerugian pengadaan tanah bagi pembangunan jalan tol cisumdawu." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 4, No. 2 (2021): 191-209, hlm 192

²Muwahid, *Hukum Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum*, Depok: Duta media publishing, 2020, hlm. 98

³Penjelasan Atas Undang-Undang Pokok Agraria Nomor II poin (4) diakses dari <https://jdih.kemenkeu.go.id/fulltext/1960/5TAHUN~1960UUPENJEL.htm>

as a legal state, while the function as a service is related to the nature of the state as a welfare state. One form of improvement in public services or public services as a form of public policy is the issuance of regulations regarding public services.⁴

One of the issues that currently arises is related to the fulfillment of community needs in the concept of social function, namely land acquisition for development in the public interest. ⁵On the other hand, land rights holders whose land will be used for development in the public interest should also not be harmed and ignored at all. To support this, the government provides a legal basis so that the release of land rights used for the public interest must also pay attention to the aspect of balanced compensation.

This is regulated in Article 18 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, that for the public interest, including the interests of the nation and state and the common interests of the people, land rights can be revoked by providing adequate compensation to the land rights holders according to the procedures stipulated in the law. This provision ultimately became the basis for the elaboration of land acquisition regulations as outlined in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, of which several articles in the law have now been amended for the last time by Law Number 6 of 2023 concerning the stipulation of regulations in lieu of Law Number 2 of 2022 concerning job creation in order to accelerate development projects that are considered to have high urgency so that they can be realized immediately in a short time, the government through the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP) has made a list of strategic development projects that have high urgency to be given easy facilities to support the development process. The list is stated in Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects (hereinafter referred to as Presidential Regulation Number 3 of 2016) which was last amended by Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of national strategic projects. Case examples according to this writing include:

1. The case regarding the toll road construction project dispute never held a deliberation to determine compensation with the objection applicant as the party entitled to give rise to a lawsuit from Ekuan Peradi with the Head of the Prabumulih City Land Office and PT. Hutama Karya (Persero) as stated in the Prabumulih District Court Decision Number 9/Pdt.G/2020/PN Pbm,
2. The case of a dispute over a toll road construction project on land owned by the plaintiff without permission from the owner on a valid legal basis and no payment was made through the correct rights release process gave rise to a lawsuit from Rochim Hj. Muhinih and Kiyep Supenih with Defendants: Budi Purnomo, Head of Segara Makmur Village, Co-Defendants: Head of Pantai Makmur Village, PPAT Sub-district Head of Cilincing District, Head of Tarumajaya District, Head of the National Land Agency, PPK

⁴ Joko Sriwidodo , Dwi Andayani Budisetyowati , Palmawati Taher, Kebijakan Publik Yang Berbasis Hak Asasi Manusia, KRTHA BHAYANGKARA, Vol. 17, No. 2 (2023), hlm 257

⁵ Triana Rejekiingsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)", Yustisia Jurnal Hukum, Volume 5 No. 2, 2016, hlm. 300

Commitment Making Officer for the Procurement Work Unit. The case of the toll road construction project dispute, the plaintiffs were never involved, informed or received socialization of the planned determination of the location for land acquisition for the construction of the Padang section of the Padang-Pekanbaru section of the Kapalo Hilalang Sicincing Lubuk Alung-Padang toll road, gave rise to a lawsuit from Hartono Widjaja, Buyung, John, and Harta with the Governor of West Sumatra as stated in Decision Number 8/G/PU/2020/PTUN.PDG.

3. The case of the toll road construction project dispute, the plaintiff was not involved in the compensation deliberation, giving rise to a lawsuit from Drs. R. Krisnaidi with HR Rachmad, Ministry of Agrarian Affairs and Spatial Planning (Atr)/Head of the Republic of Indonesia National Land Agency, Cq Head of the Central Java National Land Agency Regional Office, Cq Head of the Demak Regency Land Office, Ministry of Public Works and Public Housing (Pupr), Cq Directorate General of Highways, Cq Diah Rahmawati (In Her Position as Commitment Making Officer (PPK) for Land Acquisition for the Semarangdemak and Semarang Harbor Toll Roads), and PT. PP (Persero), Tbk as stated in the District Court Decision Number 19/Pdt.G/2022/PN Dmk.

For this reason, the problem can be formulated as follows: How to resolve disputes regarding toll road construction regarding compensation value to land rights holders and How is the legal protection for land rights holders related to compensation disputes in toll road construction projects

II. RESEARCH METHODS

This research is a juridical-normative legal research, which is a legal research conducted by examining library materials or secondary data, legal principles, legal systematics and legal synchronization.⁶ This study uses a legislative, conceptual, case and analytical approach, the technique of collecting legal materials using document studies or library materials, observation and interviews.⁷ The technique of analyzing legal materials uses grammatical interpretation, systematic interpretation, and analogous legal construction.

III. DISCUSSION

A. Settlement of Disputes Regarding Toll Road Construction Where the Compensation Value Has Not Been Agreed Upon by Land Rights Holders

The gap between the law that is aspired to and the law in reality has factually resulted in losses for landowners affected by the construction of toll roads. Landowners have suffered losses due to the release of land rights that were seemingly forced by the government based on the name of "public interest" and the implementation of "laws" that legitimize arbitrary government actions in determining the location of toll road construction and compensation values that are considered not in accordance with the economic (market) value that occurs in practice.

⁶ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, 2013, hlm 13.

⁷ Soerjono Soekanto. *Pengantar Penelitian Hukum*. UI-Press, Jakarta, 2010, hlm 21, 66 dan 201

Several aspects that can explain the causal relationship (cause and effect) of land disputes for toll road construction include the following:

1. Legal subjects as an aspect of consideration in resolving land disputes regarding compensation values.

The legal subject as an aspect of consideration in resolving land disputes caused by the construction of toll roads regarding the value of compensation to land rights holders means that, in the case of land disputes for the construction of toll roads, there are two (2) parties who, from a formal legal perspective, actually have the same position between the government and the land rights holders.

The construction of toll roads for public interest carried out by the government can only be carried out on condition that the land acquisition process carried out has fulfilled the elements regulated in each law and regulation that has expressly given rights and obligations to the parties in the land acquisition process. Agreement and equality must be realized in the land acquisition process in a balanced manner and without coercion, so that the construction of toll roads and each land acquisition process can minimize the negative impacts of the construction of toll roads and the land acquisition process, including maintaining socio-economic activities that have been built in the community previously.

The problem of the land acquisition process for the construction of toll roads that does not consider the principles of certainty, the principle of agreement and the principle of equality, the resolution of land disputes caused by the construction of toll roads against the value of compensation to land rights holders can be carried out through the authority of a third party to assess the application of each law and regulation (the principle of legal certainty) in the land acquisition process, in addition to bridging the process of agreement and equality between the parties which often experience a dead end (difficulties).

The third party that has the authority to assess the application of the principle of certainty, the principle of agreement and the principle of equality in the land acquisition process for the construction of toll roads can be a judicial institution, either a judicial institution in the jurisdiction of general competence (in this case the district court) or a judicial institution in the jurisdiction of administrative competence (in this case the state administrative court).

The judicial institution as a third party that has the authority to resolve land disputes caused by the construction of toll roads regarding the compensation value to land rights holders can be done in two (2) ways, namely:

a. Examination of the application of the principle of certainty, the principle of agreement and the principle of equality can be carried out by the judicial institution when the land acquisition process is carried out in the form of a determination, so that examination of the application of the principle of certainty, the principle of agreement and the principle of equality can be carried out before land acquisition problems occur.

b. Examination of the application of the principle of certainty, the principle of agreement and the principle of equality can be carried out by the judicial institution after the problem of the land acquisition process for the construction of toll roads occurs, so

that the nature of the settlement originating from the judicial institution is a form of decision that has sanctions or legal consequences for one of the parties involved in the land acquisition process.

2. Legal objects as an aspect in considering the settlement of land disputes regarding the value of compensation.

The legal object in the land acquisition process for toll road construction is closely related to the historical, sociological, geographical, cultural and economic values of each land rights holder, so that the problems and solutions needed in the land acquisition process for toll road construction are different. Some people or families as land rights holders may view a piece of land (soil) they own as having high or invaluable economic value, while some people or families as other land rights holders may only consider the land or land they own as not having high economic value, due to the absence of an emotional connection to historical, sociological, geographical, cultural and economic values.

The different perspectives on land values by each different land rights holder in the land acquisition process for toll road construction, then the legal objects in the land acquisition process for toll road construction can be further divided into several objects of problems and disputes, such as:

a. Land as a legal object.

Land as a legal object means that land as an immovable object has economic value based on the form of the object itself. Land according to the Great Dictionary of the Indonesian Language is defined as the surface of the earth or the layer of the earth that is above it; The condition of the earth in a place; The surface of the earth that is given boundaries; Land; The limited surface of the earth occupied by a nation ruled by a country or becomes a country's territory; Materials from the earth; and land is also defined as a base (color, paint, etc.).⁸

Settlement of land disputes caused by the construction of toll roads regarding the compensation value to land rights holders based on the legal object of land as a form of tangible object can be resolved by comparing the land price listed in the Land Object Sales Value (NJOP) with the land price prevailing in the market, so that the compensation given to the land rights owner can be determined proportionally based on the compensation figure that is in accordance with the actual economic price of the land.

b. Rights as legal objects.

Rights as legal objects in land disputes caused by the construction of toll roads regarding the compensation value to land rights holders means that land acquisition carried out for development not only has an impact on land owners, but land rights

⁸ Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, Gramedia Pustaka Utama, Jakarta, 2015 hlm 1390

holders (not land owners) can also suffer losses which legally have the right to receive compensation.⁹

Compensation given to land rights holders is intended to provide compensation for the loss of benefits that should be felt by land rights holders. Land rights holders are broadly defined, namely: every party who has the right to utilize land in a factual sense. Rights that can be granted to rights holders (parties) based on Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights and Land Rights.¹⁰ and Government Regulation Number 24 of 1997 concerning Land Registration, such as: Ownership Rights, Cultivation Rights, Building Rights on State Land, Certificate of Building Rights on Land Management Rights, Right to Use on State Land, Right to Use on Land Management Rights, Land Management Rights, Waqf Land Ownership Rights, Ownership Rights on Apartment Units, Ownership Rights on Non-Apartment Units, and Mortgage Rights.¹¹

c. Buildings and objects on land as legal objects.

Buildings and objects on land as legal objects in land disputes caused by the construction of toll roads regarding the compensation value to land rights holders means that every building, plant and every object that forms a single unit and is attached to the land must be able to be calculated and determined to obtain compensation.

Settlement of compensation for buildings, plants and every fixed object attached to a land surface in a land dispute caused by the construction of a toll road against the value of compensation to the land rights holder can be done by calculating the value of each building, plant and every object attached to the land and which is part of the results of the land rights holder's business.

Calculation of each value component can be carried out by an independent institution (third party) in an accountable manner, so that land rights holders and parties who need land for toll road construction will benefit each other. This is in line with the substance of the Padang State Administrative Court decision number 8/G/PU/2020/PTUN.PDG.¹² which considers the existence of warehouse buildings that have been built by land rights holders from the impact of the toll road construction project.

3. Compensation as an aspect in considering the settlement of land disputes regarding the compensation value.

Compensation as an aspect in the consideration of resolving land disputes caused by the construction of toll roads for land rights holders means that every loss suffered by land rights holders must receive an appropriate compensation value between the land that

⁹ Dudu Duswara Machmudin, pengantar ilmu hukum sebuah sketsa, Refika Aditama, Bandung, 2010, hlm 53

¹⁰ Peraturan Pemerintah Nomor 40 Tahun 1996 tentang Hak Guna Usaha, Hak Guna Bangunan dan Hak Atas Tanah pasal 2

¹¹ Urip Santoso, Pendaftaran dan Peralihan Hak atas Tanah, Kencana, Jakarta, 2010, hlm. 261.

¹² Pengadilan Tata Usaha Negara Padang nomor 8/G/PU/2020/PTUN.PDG

is the object of toll road construction and every form of land utilization effort that has previously been carried out by the land rights holders.

The land components that become legal objects in the construction of toll roads must be based on the nature of the land object itself, such as: land as a legal object, rights as a legal object, and buildings and objects on the land as legal objects, as explained in the previous section.

Settlement of land disputes caused by the construction of toll roads for land rights holders can only be carried out as long as the parties, both land rights holders and the government, both respect the general principles of land acquisition, such as: the principle of humanity, the principle of agreement, the principle of benefit, the principle of justice, the principle of certainty, the principle of openness, the principle of participation, the principle of equality, the principle of welfare and the principle of sustainability.¹³

Especially for the community (land rights holders) who have an emotional relationship with the land they own, the resolution of land disputes caused by the construction of toll roads for land rights holders can only be carried out as long as the government and the parties involved take an emotional approach to the land rights holders, in addition to providing compensation with a certain nominal value.

The emotional relationships held by land rights holders that add to the difficulties in land acquisition for toll road construction include the following:

- a. Land rights holders feel that the land they own is a gift from their ancestors that must always be maintained;
- b. Land rights holders have a historical relationship that cannot be easily separated or forgotten, so that the land they own cannot be replaced with a certain nominal value;
- c. Land rights holders have emotional hopes, dreams and aspirations for the land they own/control, so that compensation in the form of relocation and the provision of money with a certain nominal value is not enough to erase all hopes, dreams and aspirations of land rights holders, even though these hopes, dreams and aspirations are subjective in nature.

4. Legal policy as an aspect in considering the resolution of land disputes regarding the value of compensation.

Land disputes caused by the construction of toll roads to land rights holders caused by gaps in the implementation of legal political aspects can also be reviewed from the decision of the Prabumulih District Court number 9/Pdt.G/2020/PN Pbm which describes the deviation of the stages in land acquisition by the government for the construction of toll roads, although the decision of the Prabumulih District Court number

¹³Maria S.W. Sumardjono, Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya, Penerbit Buku Kompas, Jakarta, 2008, hlm . 282.

9/Pdt.G/2020/PN Pbm rejected the lawsuit filed by the land rights holders, namely: "Declaring the Objection Applicant's Objection unacceptable; Sentencing the Objection Applicant to pay court costs of Rp678,300.00 (six hundred seventy eight thousand three hundred rupiah)".¹⁴

The legal policy that has been implemented in land acquisition (in this case for the construction of toll roads) has actually been formulated in Article 13 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (hereinafter simply referred to as the Law concerning Land Acquisition for the Public Interest), where the stages in the land acquisition process include: planning stage, preparation stage, implementation stage and handover stage.

Settlement of land disputes caused by the construction of toll roads regarding the compensation value to land rights holders in the legal political aspect can only be resolved on the condition that the government has a commitment to implement each stage that has been determined in the laws and regulations in a transparent and accountable manner to each land rights holder (without exception), so that each land rights holder receives proportional compensation according to their respective land objects.

5. Justice in the procurement system as an aspect of consideration in resolving land disputes regarding compensation value.

The judiciary in the procurement system as an aspect of consideration for resolving land disputes regarding the compensation value for land acquisition for toll road construction has a very large role in resolving any form of dispute that occurs between the government and land owners. The judiciary as a judicial institution is considered an independent institution that can objectively decide on land disputes between the government and land owners, although in some cases the judiciary has been used by certain authorities to legitimize arbitrary actions against land owners.

Agreement between the government and landowners can only occur as long as the agreed matters have been known and are in accordance with the needs and capabilities of the government and landowners in the context of toll road development. Every matter agreed by the government and landowners in the context of toll road development must be determined objectively and openly, both in terms of development planning and compensation that can be given to landowners as per the basic principles of land acquisition, namely: the principle of openness and the principle of justice.

The principle of transparency in land acquisition means that the community affected by the construction of the toll road has the right to obtain information about the project and its impacts, compensation policies, construction schedules, resettlement plans and replacement locations (if any), in addition to the principle of transparency in land acquisition also requires the community to be open in conveying any form of objection. This is in line with the existence of the principle of justice which requires compensation that can restore the socio-economic conditions of the affected community by taking into account losses to physical and non-physical factors.¹⁵ Therefore, the existence of the

¹⁴Pengadilan Prabumulih no 9/Pdt.G/2020/PN Pbm

¹⁵Maria SW Sumardjono, Id.

judiciary legally can be used as a means of implementing the principle of agreement, the principle of transparency and the principle of justice on condition that the judicial institution is given a role in the legislation to have the authority to determine several aspects of the land acquisition process.

Reviewing the settlement of land disputes caused by the construction of toll roads against the compensation value to land rights holders in relation to the theory of dispute resolution explained by Yahya Harahap, then the settlement of disputes that occur in practice must be resolved based on the applicable dispute resolution procedures. This illustrates the need for special formal law in resolving every land acquisition dispute problem.

Meanwhile, legal protection for land rights holders related to compensation disputes in toll road construction projects is linked to legal protection according to Philipus M. Hadjon, legal protection for land rights holders related to compensation disputes in toll road construction projects is a legal subject given the opportunity to submit objections or opinions before a government decision gets a definitive form.¹⁶

Formal law is very much needed in every land acquisition process for toll road construction. The formal law referred to in land acquisition for toll road construction is not only limited to formal law that regulates the procedures for resolving land disputes between the government (the party requiring the land) and the land rights holder.

The existence of formal law should function as a law that can prevent a dispute from occurring, so that the existence of formal law must be formulated and enforced in every stage of the land acquisition process for toll road construction. The existence of formal law that functions as a formal dispute prevention has actually been regulated in the legal system in force in Indonesia. One of these can be reviewed from the substance of Article 13 of the Law on Land Acquisition for Public Interest.

The existence of Article 13 of the Law on Land Acquisition for Public Interest has substantially regulated the procedures for land acquisition to prevent a dispute, but in practice the procedures for land acquisition are not implemented ideally, resulting in prolonged disputes in the community. Article 13 of the Law on Land Acquisition for Public Interest explains that land acquisition for public interest is carried out through the stages of planning, preparation, implementation and submission of results.

Problems in practice, resolving land disputes caused by the construction of toll roads regarding the compensation value to land rights holders tends to take a lot of time, energy and is a prolonged process, so that resolving land acquisition disputes for the construction of toll roads can only be carried out by land rights holders who have legal knowledge or economic capabilities.

Settlement of land disputes caused by the construction of toll roads regarding the compensation value to land rights holders can only be carried out by a small portion of

¹⁶ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Edisi Khusus, Cetakan Pertama, Penerbit Peradaban, Surabaya, 2007, hlm.2-5

the community (land rights holders), when compared to the many legal problems that occur in practice due to land acquisition for the construction of toll roads.

Settlement of land acquisition disputes for public interest, especially the settlement of land disputes caused by the construction of toll roads against the value of compensation to land rights holders, so far still follows the formal law of each jurisdiction, such as: procedures for resolving land disputes caused by the construction of toll roads against the value of compensation to land rights holders can be through formal law (procedural law) of the state administrative court as long as it substantively contains administrative violations and state official policies, while the procedures for resolving land disputes caused by the construction of toll roads against the value of compensation to land rights holders can use civil law jurisdiction (HIR) as long as it substantively contains elements of civil violations.

The difference in procedures for resolving land disputes caused by the construction of toll roads regarding the value of compensation to land rights holders has resulted in a lack of certainty and equal justice among land rights holders, because each court has a different point of view according to the competence of each court.

Legal Protection for Land Rights Holders Regarding Compensation Disputes in Toll Road Construction Projects

The construction of toll roads carried out for the public interest is essentially carried out to improve the welfare of society in general. The construction of toll roads is considered to be able to provide easy access without limits for the economic mobility of society which can indirectly build intelligence, welfare and economic, social and cultural equality in all aspects of people's lives.

The construction of toll roads that have great benefits for the wider community certainly cannot be built without obstacles, because the construction of toll roads has in fact overlapped with the land rights holders affected by the construction of toll roads. The government (state) is required to be fair to the land rights holders affected by the toll road construction project, because the land rights holders also have a number of rights and legal protections that must be obeyed by the government (state).

The government on behalf of the state must be objective in determining the priority scale of protection between land rights holders and public interests. Land rights holders and public interest rights are a form of causality (cause and effect) that cannot be chosen, because land rights holders affected by the construction of toll roads can also be considered as public interests.

The causal relationship between land rights holders and the public interest which is the basis for the construction of toll roads can be descriptively argued as follows:

1. The construction of toll roads always requires a lot of land, so that many land rights holders will lose their land (affected parties).
2. The large number of land rights holders affected by the construction of toll roads can also be considered as members of the general public who are related to the public interest which must be protected.

Public interest in legal and terminological terms has not been able to describe the priority scale and the minimum number of objectives that can be categorized as "public" whose interests must be protected. The public interest referred to in the literature so far only refers to the interests of the community in large numbers; and this implies that, land rights holders in large numbers should also receive proportional protection as a form of legal protection in the name of "public interest".

3. Land rights holders are the general public who are concrete in nature, while the general public as the target of toll road construction is considered to be a public who has an abstract nature.

The form of legal protection that can be provided to land rights holders can be provided by understanding the position of land rights holders in legal construction, both in terms of land status with land rights holders and the legal relationship between land rights holders and the government.

The land that is used as the object of toll road construction is not only owned by urban communities, but the land affected by toll road construction is also owned by indigenous communities, even though the land owned by indigenous communities does not have a certificate or proof of ownership recognized by the state.

Any land owned by an individual or body that has a certificate or any land owned by an indigenous community that does not have a certificate, is equally considered to be an object that is legally protected by law.

Land is considered as an object that can be owned and protected by law, because land has universally applicable material properties. The material properties inherent in land in legal construction can be viewed from the perspective of Sri Soedewi Masjchoen Sofwan.

Sri Soedewi Masjchoen Sofwan explains the nature of material rights, such as:¹⁷

- a. Property rights that have the nature of providing enjoyment (*zakelijk genotsrecht*).¹⁸

Property rights that have the nature of providing enjoyment (*zakelijk genotsrecht*) mean that land can provide benefits that are needed by the owner/controller of the object, so that the owner/controller of the object can enjoy every benefit generated from the object.

- b. Property rights that have the nature of providing guarantees (*zakelijk zakeheidsrecht*).¹⁹

Property rights that have the nature of providing guarantees (*zakelijk zakeheidsrecht*) means that land that has property properties can provide guarantees for land rights holders to carry out certain legal acts or to obtain guarantees for all benefits generated from the land as an object. The guarantee that is one of the properties owned

¹⁷ Sri Soedewi Masjchoen Sofwan, *Hukum Perdata : Hukum Benda*, Liberty, Yogyakarta, 2000, hlm. 29.

¹⁸Departemen Pendidikan Nasional Ibid, hlm. 962.

¹⁹Departemen Pendidikan Nasional Ibid, hlm. 563.

by an object is in line with the principle of land acquisition for public interest, namely: land acquisition for public interest must be based on the principle of certainty and the principle of sustainability.

Legal protection for land rights holders related to compensation disputes in toll road construction projects can be based on the protection of property rights owned by legal subjects, because land is a permanent object to which ownership and control rights can be attached which are legally protected in every legal jurisdiction.

Land acquisition for toll road construction by the government must continue to respect the property rights owned by land rights holders, so that the government cannot act arbitrarily against land rights holders, even though land acquisition is carried out in the name of public interest. Property rights owned and attached to land rights holders must be able to be compensated or compensated in accordance with the value of the land as an object by the government, so that the government cannot unilaterally revoke the property rights of land rights holders without being based on compensation and compensation in accordance with the value of the object itself (in this case land).

Land rights as property rights that have a closed nature have implications for the form of absolute legal protection for every land rights holder. This can also be interpreted that land rights holders have the right to defend the property rights they have from anyone (including the government/state) from forced takeovers, unless the forced takeover is based on a court decision and law. This is in line with the view of Sri Soedewi Masjchoen Sofwan who explains that property rights are absolute rights to an object, so that these rights provide direct power over an object and can be defended against anyone.

The existence of laws governing land acquisition for public interest cannot be used as a basis for the government to unilaterally take land from the land rights holders themselves. This is based on the fact that the government and land rights holders have equality in discussing relocation, compensation or damages obtained by land rights holders as per the principle of equality and the principle of agreement which are the philosophical basis for land acquisition.

The existence of the Law on Land Acquisition for Public Interest does not immediately provide legitimacy to the government to use its authority (power) to unilaterally determine the value of compensation that can be given to land rights holders, in addition to the existence of the Law on Land Acquisition for Public Interest also cannot be used as a basis for the government's right to forcibly take land from land rights holders who refuse compensation or deviate from the land acquisition process carried out by the government.

The existence of a law on land acquisition can only provide protection to land rights holders and provide a settlement of land disputes caused by the construction of toll roads regarding the compensation value to land rights holders on the condition that the Law on Land Acquisition for Public Interest provides authority for judicial institutions to become neutral parties that bridge the gap in agreement and equality between the government and land rights holders that occur in practice, as the basic principle stated explicitly in the Law on Land Acquisition for Public Interest.

Legal protection for land rights holders related to compensation disputes in toll road construction projects will never be realized as long as every law on land acquisition for public interest is only used as a basis for rights and arguments by the government to carry out arbitrariness in taking basic rights from land rights holders that are constitutionally protected.

Some government policies have been arbitrary on the basis of arguments in laws and regulations governing land acquisition for public interest. This can be seen from the government policy stated in Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for Public Interest. Chapter II (Land Acquisition), Article 2, section (b) of Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for Public Interest substantially implies a government policy that can revoke land rights by force on the basis of land acquisition for public interest.²⁰

The construction of toll roads can actually change people's lives in various sectors of life, so that the construction of toll roads can be categorized as a public interest. The public interest contained in the construction of toll roads is not interpreted as a comparison of priority scales that require the government to choose public interests and ignore the personal interests inherent in each land rights holder.

The existence of public interest and land rights attached to individuals are two (2) things that cannot be chosen together, but public interest and land rights attached are both protected in the constitution of the Indonesian nation. Therefore, the existence of the Law on Land Acquisition for Public Interest should ideally be placed between public interest and land rights attached to personal rights.

The existence of the Law on Land Acquisition for Public Interest should ideally place a balance between public interest and land rights inherent in private rights in several ways, such as:

a. Legal protection for land rights holders related to compensation disputes in toll road construction projects can only be realized as long as the Law on Land Acquisition for Public Interest includes a formulation of articles explaining the authority of judicial institutions, both in the land acquisition process and when land compensation problems occur between the government and land rights holders;

b. Legal protection for land rights holders related to compensation disputes in toll road construction projects formulates restrictions on government policies that substantively provide legitimacy to the government to take land rights by force and unilaterally.

c. Legal protection for land rights holders related to compensation disputes in toll road construction projects can be realized as long as the Law on Land Acquisition for Public Interest formulates how to calculate the compensation that can be received by land rights holders;

²⁰ Peraturan Presiden Nomor 36 Tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum. Bab II (Pengadaan Tanah), Pasal 2, bagian (b)

d. Legal protection for land rights holders related to compensation disputes in toll road construction projects can only be realized as long as the Law on Land Acquisition for Public Interest regulates more concrete procedures for the realization of the principles stated in the substance of the Law on Land Acquisition for Public Interest itself;

e. Legal protection for land rights holders related to compensation disputes in toll road construction projects can be realized as long as the Law on Land Acquisition for Public Interest can be realized as long as it formulates the terms and conditions on which land rights can be revoked and cancelled from land rights holders due to several previously determined limited conditions (further revocation and cancellation of rights must be examined and decided through a judicial institution).

Legal protection for land rights holders is considered a right inherent in a legal subject and regulated by law. Legal protection for land rights holders can only be implemented as long as it is regulated by law (in this case, statutory regulations) that apply to every citizen.

While Reviewing the settlement of land disputes caused by the construction of toll roads against the value of compensation to land rights holders in relation to the theory of dispute resolution explained by Yahya Harahap, then the settlement of disputes that occur in practice must be resolved based on the applicable dispute resolution procedures. This illustrates the need for formal law in resolving every land acquisition dispute problem.²¹

The existence of law in legislation is related to legal protection for land rights holders related to compensation disputes in toll road construction projects which are considered as a form of guarantee that cannot be removed simply by a government policy. The rights held by legal subjects as land rights holders are rights that have a mandatory nature from legislation at the level of "law". The rights granted to land rights holders cannot be revoked or eliminated solely based on legislation below "law".

The existence of government regulations, presidential regulations or technical regulations in other forms cannot be used as a basis for revoking rights inherent in land rights holders, so that land acquisition carried out by the government by taking it by force or making compensation unilaterally by the government without obtaining approval from the rights holders (in this case the land rights holders) can be considered a form of violation committed by the government on the basis of public interest.

The government as an executive institution only has the authority to implement the laws that have been established without being able to take or release the rights owned by land rights holders. The government which deliberately establishes a technical regulation to be used as a basis for the release of land rights or the provision of compensation unilaterally can be considered a policy that is contrary to two (2) legal principles, namely:²²

²¹ M Yahya harahap, *Beberapa Tinjauan Mengenai System Peradilan Dan Penyelesaian Sengketa*, Citra Aditya Bhakti, Bandung: 1997, hlm 280

²² Muh Ibnu Fajar Rahim Membedakan Prinsip Hukum dan Asas Hukum <https://kumparan.com/muh-ibnu-fajar-rahim/membedakan-prinsip-hukum-dan-asas-hukum-1wIIVCghYK2/4> diakses 1 Januari 2025

a. The government has violated the basic rights of citizens.

The government has violated the basic rights of citizens, meaning that the land rights inherent to land rights holders have been given protection in law, so that the inherent land rights should be protected by the government as the executive institution implementing the law.

The government can only take land rights that are inherent to land rights holders through the application of laws by the judicial institution. The taking and determination of compensation carried out by the government in the context of land acquisition for the construction of toll roads (public interest) can only be justified with two (2) conditions, namely:

1) The taking of rights and compensation has been regulated firmly and clearly in laws and regulations at the statutory level; and

2) Regulations on the release of land rights and compensation by the government can only be executed after obtaining a court decision that is individual and final in nature.

The existence of laws and court decisions that have permanent legal force is a requirement for taking the rights owned by land rights holders, in addition to the existence of laws and court decisions that have permanent legal force is also a requirement for determining the amount of compensation that must be given by the government to land rights holders who do not agree (agree).

The government cannot take land rights and determine compensation unilaterally against land rights holders who do not agree only through technical regulations (regulations under the law), even though the construction of toll roads has the purpose of public interest. This is based on the principle of land acquisition, namely: the principle of equality between the government and land rights holders.

b. The government has violated the nation's constitution.

The government has violated the nation's constitution, meaning that the taking of land and compensation determined and given unilaterally to land rights holders through technical regulations is considered to be in conflict with the Indonesian nation's constitution.

The Indonesian Constitution and laws guarantee the granting and protection of land rights to holders of rights to their property, so that taking and compensation given to holders of land rights can only be done through law and not through technical legal products issued by the government itself.

The legal logic used in taking rights and compensation given to land rights holders must be through law, namely the equality of binding legal force. The legal logic used in taking and compensation to land rights holders, is the legal source and legal basis used as the basis for the granting of land rights, namely:

1) The granting of rights to a person (legal subject) must be done through law, so that the revocation of a person's rights (legal subject) must also be done through law; and

2) The application of laws that revoke a person's rights (legal subjects) can only be examined and decided objectively through a court decision that has permanent legal force.

Legal protection for land rights holders related to compensation disputes in toll road construction projects is linked to the legal system in force in Indonesia, both protection at the constitutional level and at the statutory level, so the legal protection provided at the constitutional level and at the statutory level has an inseparable overlap. The overlap in legal protection for land rights holders related to compensation disputes in toll road construction projects is in the protection of personal rights as a legal subject and social protection as a public interest.

The intersection between the protection of personal rights as a legal subject and social protection as a public interest has given the implication that, between personal rights and public rights, a balance point must be reached (proportional, where personal rights cannot be used as a basis for deviating from public rights; and public rights cannot be used as a reason to set aside personal rights).

The existence of personal rights and public rights based on the Indonesian constitution and laws related to legal protection for land rights holders regarding compensation disputes in toll road construction projects can be further explained as follows:

1. Legal protection of personal rights as land rights holders.

Legal protection of personal rights as land rights holders means that the law has legally granted rights to individuals as legal subjects to exercise and defend any rights granted for any reason, as long as the rights held do not conflict with applicable laws.

Protection of personal rights as land rights holders has been constitutionally regulated in several parts in Article 28 of the 1945 Constitution (hereinafter simply referred to as the 1945 Constitution), in particular Article 28D number (1), Article 28G number (1), Article 28H number (4), Article 28I and Article 28J number (2) of the 1945 Constitution.

Article 28D paragraph (1) of the 1945 Constitution explains that everyone has the right to recognition, guarantee, protection and legal certainty that is fair and equal treatment before the law. Every recognition, guarantee, protection and legal certainty also applies to land rights holders to utilize their land. Land acquisition for the construction of toll roads intended for the public interest must legally continue to consider aspects of recognition, guarantee, protection and legal certainty to land rights holders that have been granted based on the constitution of the Indonesian nation.²³

Article 28G number (1) of the 1945 Constitution further emphasizes constitutional protection for every person (in this case land rights holders) to implement, maintain and utilize the land rights they own. Article 28G number (1) of the 1945 Constitution explains that every person has the right to protection of themselves, their family, honor, dignity and property under their control, and has the right to a sense of

²³ Undang-Undang Dasar 1945 Pasal 28 D angka (1)

security and protection from the threat of fear to do or not do something that is a basic human right.²⁴

The government's policy of immediately legitimizing itself in the form of technical regulations to forcibly take and unilaterally determine compensation for land rights holders for the construction of toll roads, even though the land acquisition carried out by the government is intended for the public interest, means that the government has been deemed to have violated the basic rights of land rights holders.

The word "whoever" contained in Article 28H number (4) of the 1945 Constitution (the ownership rights may not be taken over arbitrarily by anyone) has emphasized that forced takeover and unilateral determination of compensation cannot be carried out without the consent of the owner (in this case the land rights holders). The words "the ownership rights may not be taken over arbitrarily by anyone" in Article 28H number (4) of the 1945 Constitution also emphasize that, every form of policy and technical regulation used as a means for the government to obtain authority cannot be justified constitutionally, even though forced takeover and compensation carried out unilaterally against the land acquisition object are based on public interest.²⁵

The existence of the Law on Land Acquisition for Public Interest cannot directly give the government the authority to execute land for the construction of toll roads, because forced acquisition and unilateral determination of compensation are not the authority of the government, but are the authority of the judiciary.

Article 28H number (4) of the 1945 Constitution descriptively describes that the authority held by the government cannot be interpreted as a basis for the right to carry out forced acquisition and unilateral compensation, even for the public interest. The authority held by the government in carrying out land acquisition cannot be carried out in an arbitrary manner. This is based on the fact that in principle, the protection of human rights is the responsibility of the state.

Protection of human rights is in principle the responsibility of the state, as constitutionally regulated in Article 28I of the 1945 Constitution, which explains that, "The protection, advancement, enforcement and fulfillment of human rights is the responsibility of the state, especially the government."

Article 28I of the 1945 Constitution is related to legal protection for land rights holders related to compensation disputes in toll road construction projects, which illustrates the existence of a deviation (distortion) between the function of the government (state) to protect land rights with forced acquisition and compensation carried out unilaterally against land rights holders who do not agree (agree) to the choice of compensation and compensation forms offered unilaterally by the government.²⁶

Constitutional legal protection for land rights holders is not interpreted as absolute protection, because constitutional legal protection given to land rights holders also overlaps with constitutional legal protection with the protection of the rights of other

²⁴ Undang-Undang Dasar 1945 Pasal 28 G angka (1)

²⁵ Undang-Undang Dasar 1945 Pasal 28 H Angka (4)

²⁶ Undang-Undang Dasar 1945 Pasal 28 I

people and the community. Constitutional legal protection given to land rights holders should be carried out while still considering every aspect that is equally constitutionally protected for other people and the community.

The party that can determine the priority scale between constitutional legal protection for land rights holders and constitutional legal protection for other people and the community can only be the judicial institution (court), because the judicial institution is considered a neutral and independent institution in examining and assessing the priority scale of protection that must be prioritized between legal protection for land rights holders and legal protection for the rights of other people and the community.

The limitations and tolerance between constitutional legal protection given to land rights holders and constitutional legal protection given to other people and society have been emphasized in Article 28J number (2) of the 1945 Constitution which states that, "In exercising their rights and freedoms, every person is obliged to submit to the limitations established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society."²⁷

Article 28J number (2) of the 1945 Constitution describes the constitutional position in providing legal protection to land rights holders, namely that legal protection provided to land rights holders must be limited by the protection of rights provided to other people and the community, but restrictions on the protection provided to land rights holders must not be carried out in an arbitrary manner (in this case arbitrariness carried out by the government or authorities).

The government that establishes a policy to conduct procurement by means of forced acquisition and determining compensation unilaterally is considered to have committed arbitrariness, even though the actions taken by the government have been based on technical regulations. Technical regulations formed and implemented by the government are considered not in accordance with the value of legal objectivity, because the government in the land procurement process has two (2) conflicting roles.

The conflicting roles of government in the land acquisition process can be further explained as follows:

a. The government as a party that requires land and is involved in the negotiation process with land rights holders.

The government's position in land acquisition can be illustrated as a buyer who is in need of an item and is trying to bargain the price from the seller. This illustration shows that the buyer (in this case the government) and the seller (in this case the land rights holders) have the same position and are not constitutionally excluded.

b. The government as the maker of technical regulations and as the implementing party of the technical regulations themselves.

²⁷ Undang-Undang Dasar 1945 Pasal 28 J angka (2)

The government as the maker of technical regulations and as the implementing party of the technical regulations itself means that the government in land acquisition for public interest has two (2) roles which do not reflect the principles of justice and certainty as stated in the law.

The government has two (2) roles in land acquisition for public interest, namely: the government as the party that makes the technical regulations aimed at implementing the mandate of the law on land acquisition for public interest; and the government as the party that implements the technical regulations that have been formed by the government itself.

The government, according to the principle of equality stated in the law, is the party that requires land to be used as a means of public interest, so that the government is indirectly the same party as the land rights holders.

2. Legal protection of general rights as part of the public interest.

Legal protection of public rights as a public interest means that the law has provided protection to the public to carry out common interests without being overshadowed by the use of personal rights that are contrary to the law. Legal protection of common interests has been constitutionally regulated in the 1945 Constitution. The 1945 Constitution has constitutionally provided objective protection between personal interests and public interests.

The restrictions on land rights holders as personal rights regulated in Article 28 of the 1945 Constitution also regulate the existence of public interest in the use of personal rights. This can be seen from Article 28J number (2) of the 1945 Constitution which states that, "In exercising their rights and freedoms, everyone is obliged to submit to the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society."

Protection of public interests is constitutionally linked to legal protection for land rights holders regarding compensation disputes in toll road construction projects. This has been constitutionally stated in Article 33 paragraph (3) of the 1945 Constitution, which states that, "The land, water and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people."²⁸

The words "used for the greatest prosperity of the people" stated in Article 33 paragraph (3) of the 1945 Constitution are interpreted as "public interest" which must be protected in land use. Public interest in land use becomes a priority scale in land use, while still providing protection of personal rights to land rights.

The implementation of Article 33 number (3) of the 1945 Constitution which requires protection of public interests is further regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (Basic Agrarian Law). Article 2 of the Basic Agrarian Law explains that the earth, water and space, including the natural resources contained

²⁸ Undang-Undang Dasar 1945 Pasal 33 angka (3)

therein, are controlled at the highest level by the state, as an organization of power for all the people.²⁹

The state is given the right to control all land for public interest, so the state is given authority, such as:

- a. The state is given the authority to regulate and organize allocation, use and supply.
- b. The state is given the authority to maintain the earth, water and space.
- c. The state is given the authority to determine and regulate legal relations between people and the earth, water and space.
- d. The state is given the authority to determine and regulate legal relations between people and legal acts concerning the earth, water and space.

The authority granted by the state (government) in land acquisition for public interest must not result in losses for land rights holders, because land rights holders are also legally protected by the 1945 Constitution as the Constitution of the Indonesian Nation, although protection of personal rights is regulated in a different section. This is in line with Article 2 paragraph (3) of the Basic Agrarian Law which explains that, authority derived from the right to control from the state is used to achieve the greatest prosperity of the people, in the sense of happiness, welfare and freedom in the society and legal state of Indonesia which is independent, sovereign, just and prosperous.³⁰

The existence of protection for land rights holders and protection of public interests in the context of land acquisition for toll road construction must be viewed as two (2) intersecting sides that cannot be separated from one another, so that between legal protection for land rights holders and protection of public interests, theoretically and practically, a narrow dichotomy cannot be made.

The legal protection position for land rights holders and legal protection for the public interest will always be in harmony and related. In legal protection for land rights holders there is always legal protection for the public interest; and in every legal protection for the public interest there is always legal protection for land rights holders.

The interconnected legal protection between legal protection for land rights holders and legal protection for the public interest can be implicitly reviewed from the substance of Article 6 and Article 7 of the Basic Agrarian Law. Article 6 of the Basic Agrarian Law explains that, "All land rights have a social function", while Article 7 of the Basic Agrarian Law explains that, "In order not to harm the public interest, ownership and control of land that exceeds the limit is not permitted".³¹

Legal protection for land rights holders related to compensation disputes in toll road construction projects in practice will not result in protracted problems as long as

²⁹ Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 2

³⁰ Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 2 ayat 3

³¹ Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria Pasal 6 dan pasal 7

land rights holders and the government (the party that needs the land) respect and appreciate each other's rights. Land rights holders must respect and honor the existence of public interests that must be prioritized, while the government must also always respect the existence of personal rights inherent in land rights holders by providing compensation and damages in accordance with the objective value of the land.

The ideal laws and regulations governing land acquisition for public interest will not be able to prevent disputes as long as the laws and regulations on land acquisition for public interest cannot be complied with by the parties involved. The laws and regulations have substantively regulated proportionally the position of personal rights and public interest rights, but these laws and regulations have never been implemented in an ideal and integrated manner.

In practice, land rights holders only think about the greatest possible compensation without considering the public interest as a common interest, while in practice, the government only thinks about the smooth running of the toll road construction program without considering the burden on land rights holders to move and release the land they own with minimal compensation.

Legal protection between land rights holders, the community and the government can only be realized as long as it is mediated by an independent and impartial judicial institution. The judicial institution is considered a third party that can assess the implementation of the land acquisition process carried out by the government, so that every land acquisition process can always be in line with every principle and applicable laws and regulations.

IV. CONCLUSION

Settlement of toll road construction disputes regarding compensation value to land rights holders can only be done through an independent judicial institution . Settlement of land acquisition disputes for public interest must have special material and formal laws. Settlement of land acquisition disputes for public interest cannot be done unilaterally only by the government which has equality with land rights holders. and Legal protection for land rights holders related to compensation disputes in toll road construction projects must be in accordance with applicable laws. Land rights are considered as private property rights that are constitutionally protected

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