

## **The Arrangement of the Civil Code (BW) On the Fulfillment of the Rights and Obligations of the Parties in the Release of Land for the Construction of Toll Road of Banda Aceh- Sigli**

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**Abstract:** Book II of the Civil Code (BW) is declared to be not applicable as long as it concerns the soil, water and natural resources that are contained therein coinciding with the enactment of the Basic Principle of Agrarian Law (UUPA) of 1960. However, UUPA does not regulate about the applicable legal actions related to the rights and obligations of a person on his/her land. Thus, Book III of the Civil Code (BW) is stated to remain applicable as long as it does not conflict with the principles of agrarian law, although in fact there are no positive laws available regarding legal actions on land rights. Therefore, it is necessary to further study about the regulation of the Civil Code (BW) on the fulfillment of the rights and obligations of the parties in the release of land for the construction of Banda Aceh-Sigli Toll Road. This research uses a type of normative-empirical research. Thus, the result of the research analysis that is obtained is that the regulation of the Civil Code on the fulfillment of rights and obligations between the parties involved in the release of land for the construction of the Banda Aceh-Sigli toll road can be seen in the provisions in articles 1460 and 1465 of the Civil Code concerning the rights of the parties in the sale and purchase, while the provisions regarding the obligations of the parties in the sale and purchase of land can be seen in articles 1473-1512 of the Civil Code and 1513-1518 of the Civil Code. Where the buyer's rights to dependents on the material that have been determined and the seller's right to demand the price of the material, as well as the seller's obligation to give the goods and bear it, then the buyer's obligation to pay the purchase price at the time and place specified in the agreement. It is recommended for the Government to update the contents of the Basic Principle of Agrarian Law (UUPA) to guarantee the fulfillment of the rights and obligations of each person in the sale and purchase of land transactions towards the release of land for public interest.

**Keyword:** the rights and obligations, sale and purchase of land, construction of Banda Aceh-Sigli Toll Road.

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Date of Submission: 20-08-2019

Date of Acceptance: 04-09-2019

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### **I. INTRODUCTION**

The basis of the state in Pancasila and the 1945 Constitution of the Republic of Indonesia regulates about the government needs to carry out the development for public interest. In carrying out the development for the public interest, land procurement is needed which is carried out by prioritizing the principles of humanity, democracy, and justice. The implementation cycle of land procurement<sup>1</sup> consists of 5 (five) stages, including: (1) Inventory and identification of land ownership, ownership, use and utilization; (2) Assessment of Compensation; (3) Deliberations on determining compensation; (4) compensation payment; and (5) Release of agency's land. Therefore, the implementation cycle of land procurement in the deliberation stage of determining the compensation for land that is involved between the land owner and the committee of land procurement must be realized in order to reach the agreement between the parties.

In 2013 the Public Appraisal Service Office (KJPP), which is a business valuation services and asset consultants, was formed. Assessment is carried out based on assessment procedures that have been validated in the assessment rules or Standard Operating Procedures (SOP).<sup>2</sup> Asset valuation is defined as the valuation process of an appraiser in providing an opinion on the value of an asset, based on the results of an analysis on the facts that are objective and relevant by using the methods and principles of valuation that is applicable. KJPP is

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<sup>1</sup><https://omtanah.com/2011/01/10/tahapan-dalam-pelaksanaan-pengadaan-tanah-untuk-instansi-pemerintah/>, "Stages in implementing land procurement for Government agencies", accessed on February, 20, 2019 (13.00 PM).

<sup>2</sup><https://www.kajianpustaka.com/2016/10/pengertian-tujuan-fungsi-dan-manfaat-sop.html>, "Definition, objectives, functions and benefits of SOP", accessed on March, 23, 2019 (16.00 PM).

also a business entity that has obtained a business permit from the Minister as a forum for the Public Appraiser to provide his services.

Before KJPP is existed, the land compensation price assessment team is the committee of land procurement, in which the land procurement committee consists of relevant regional apparatus and elements of the National Land Agency. This is based on article 6 paragraph 5 of Presidential Regulation of the Republic of Indonesia Number 65 of 2006 concerning Amendments to the Presidential Regulation Number 36 of 2005 concerning Land Procurement for the Implementation of Development for the Public Interest. However, since the enactment of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, the compensation assessment team transferred authority to KJPP, this was also based on the determination of the land agency that established the assessment team.<sup>3</sup>

The fact that occurred in August 2018 was related to the land compensation case for the construction of the Banda Aceh-Sigli toll road; there was a mismatch in the price of land that is valued low by the land procurement committee. In fact, the local residents complained about issues related to the determination of the price of land acquisition made by KJPP to the Aceh House of Representatives (DPRA). In their statement, local residents said that their land was valued at Rp. 40,352 per meter by the KJPP. Whereas, in 2010 the surrounding land was valued at Rp. 72,000 per meter by the Government of Aceh for the construction of Vocational Aviation Middle School Complex in Blangbintang, then in 2013 The Government of Aceh has also bought land of the community for the needs of the Indonesian Air Force at Rp 130,000 per meter. Thus, according to the community, the value of compensation price set by KJPP is too low than the standard value. This is not in accordance with the Fair Reimbursement Value (NPW) or Compensation Assessment (PGR).

It can be seen in August 2018, there are several plots of land that have problems with the price of compensation including, in the village of Bung Pageu covering an area of 10,000 m<sup>2</sup> and in Teupin Bate Village sub-district of Blang Bintang of Aceh Besar Regency covering an area of 5,000 m<sup>2</sup>. The landowner refuses the results of the deliberations without agreement and also refuses the amount of value of the compensation that is stipulated.<sup>4</sup>

The basis for determining the measurement point for land procurement for development in the public interest is based on several principles, namely as follows: the principle of humanity, the principle of justice, the principle of expediency, the principle of certainty, the principle of transparency, the principle of agreement, the principle of participation, the principle of prosperity, the principle of sustainability, and the principle of harmony.<sup>5</sup> It is also clearly stated in article 2 of Law Number 2 of 2012. Thus, it can be said that this is contrary to the content of article 2, point (f) of the Law No. 2 of 2012 concerning agreements in deliberations to be the basis for granting compensation to the rightful parties that is contained in the minutes of agreement. However, in the reality, the agreement was not realized.

On the other hand, Banda Aceh-Sigli toll road project must continue but does not disregard the principle of agreement in the deliberation between both related parties for the realization of justice and prosperity in the construction. In this case, the release of land must also be carried out in order to facilitate the construction of the Banda Aceh-Sigli toll road so that it can be built immediately. It should be noted that for every major development, there will definitely be the release of land that must be carried out, so that the rights and obligations between the parties must be fulfilled as well. In Article 36 of the Law on land procurement for the construction in public interest, it is explained that there are several types of granting compensation including: money, land replacement, resettlement, ownership of shares or other forms agreed by both parties. The agreement between the two parties becomes a benchmark for an agreement in order to release the land. Based on the results of the interview with the land procurement committee, he said that the form of compensation that is given to the community was in the form of giving money to parties whose land was affected in the construction of the toll road.

The form of giving money for compensation for land is a form of the sale and purchase of land carried out by the parties. The Communities whose land is affected in the construction is as sellers while the party who take the land for the construction is as buyers. Thus, a sale and purchase agreement that causes one party to bind itself to another party arises. One of the requirements of the agreement is an agreement between the parties that bind themselves and it is regulated in article 1320 of BW. Agreement is a subjective requirement in the agreement, if this subjective requirement is not fulfilled, it can lead to the cancellation of the agreement. Therefore, it is interesting for researchers to further study the regulation of the Civil Code (*BW (Burgerlijk Wetboek)*) on the fulfillment of rights and obligations among the parties involved in the release of land for the construction of the toll road of Banda Aceh-Sigli.

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<sup>3</sup>Article 31-32 of the Act Number 2 year 2012 on land procurement for development for public interest, pages. 16.

<sup>4</sup>Verdict Number 53/Pdt.G/2018/PN Jth, <https://putusan.mahkamahagung.go.id/putusan/9a81114b932bd42d765be67a0cf0bf07>, accessed on August 3, 2019, (13.10 PM)

<sup>5</sup>Muwahid, "Principles of land procurement for development for public interest", Al Hikmah Journal of Islamic Studies, Volume 6, Number 1, March 2016, pages. 5-14.

## II. RESEARCH METHOD

This study uses a normative-empirical research method, which is the merging of normative legal approaches with the addition of various empirical elements. The normative-empirical research method is related to the implementation of normative legal provisions (laws) in its action on any particular legal event that occurs in a society.<sup>6</sup> Using primary, secondary and tertiary legal material<sup>7</sup>, the data collection is conducted through library data and field data in the form of interviews with communities whose land is affected with the construction of the Banda Aceh-Sigli toll road.

**Study Location:** sub-district of Blang Bintang, Aceh Besar Regency, Aceh.

## III. DISCUSSION

### A. General description of Sub-district of BlangBintang, Aceh Besar Regency.

The sub-district of BlangBintang is located in Aceh Besar Regency, Aceh Province. The capital of the sub-district of BlangBintang is located in Cot Meuraja, the total area of Sub-district of BlangBintang is 41.75 km<sup>2</sup> (4,175 Ha) consisting of 26 Villages including: Bueng Pageue, Bueng Sidom, Cot Bagie, Cot Geundreut, Cot Hoho, Cot Jambo, Cot Karieng, Cot Leu'ot, Cot Madi, Cot Malem, Cot Mancang, Cot Meulangen, Cot Mon Raya, Cot Nambak, Cot Puklat, Cot Rumpun, Cot Sayun, Data Makmur, Eumpee Bata, Gampong Blang, Kayee Kunyet, Lam Siem, Lam Me, Meulayo, Paya Ue, Teupin Batee.<sup>8</sup> The boundaries of the sub-district of BlangBintang include:

- in the North : Sub-district of Kuta Baro
- in the South : Sub-district of Montasik
- in the West : Sub-district of Ingin Jaya
- in the East : Sub-district of Montasik and Mesjid Raya

It is recorded that the population of Sub-district of Blang Bintang is 12,575 people.<sup>9</sup> From 26 villages located in Sub-district of BlangBintang, it is recorded that there are 6 villages affected in the construction of the toll road, including: Gampong Blang, Gampong Cot Malem, Gampong Bung Pageu, Gampong Data Makmur, Gampong Teupin Batee and Gampong Kayee Kunyet. The condition of the land in 6 villages of the Sub-District of BlangBintang that is affected by the construction of Banda Aceh-Sigli toll road is the land that has diversity of status on the land. It means that some of the land is productive and there is also non-productive land, where there are other objects related to the land, such as buildings, plantation crops and agriculture. On the other hand, there is also vacant land that is not utilized.

### B. The validity of the sale and purchase agreement on Land according to the Civil Code (BW)

Provisions in book II (second) of the Civil Code (BW) are declared to be not applicable as long as it concerns the soil, water and natural resources that are contained therein coinciding with the enactment of the Basic Principle of Agrarian Law (UUPA) of 1960. While book III (third) of the Civil Code is declared to remain valid as long as it does not conflict with the principles of agrarian law, although in fact there are no positive laws available regarding legal actions on land rights.<sup>10</sup>

Binding Agreement of Sale and Purchase of Land Rights is an agreement between "prospective" buyers and "prospective" sellers with the object of land rights. Land rights as objects of sale and purchase can be in the form of ownership rights, Cultivation Rights, Building rights or the Right of Use. Based on the principle of freedom of contract<sup>11</sup> as stipulated in the provisions of article 1338 of the Civil Code, it mentions that all treaties made legally apply as a law for the parties who made them. The agreement cannot be withdrawn except by agreement of both parties, or for reasons which according to the law are declared sufficient for it. An agreement

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<sup>6</sup>Jonaedi Efendian Johnny Ibrahim, "Normative and empirical legal research methods", Publisher by Prenadamedia Group, Jakarta, 2018, pages 103-105.

<sup>7</sup>Amiruddin and zainal Asikin, "Introduction to legal research methods", Publisher by PT. RajaGrafindo Persada, ninth edition, Jakarta, 2016, pages 118-120.

<sup>8</sup>Central statistic of Aceh Besar District, "Blang Bintang Sub-District in 2018", catalog BPS 1102001.1108081, pages. 3-8.

<sup>9</sup>*Ibid*, pages.9.

<sup>10</sup>Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah jo. Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 tentang Peraturan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, yang menyebutkan, bahwa peralihan hak atas tanah dan hak milik atas satuan rumah susun melalui jual-beli, tukar-menukar, hibah, pemasukan dalam perusahaan, dan perbuatan hukum pemindahan hak lainnya, kecuali pemindahan hak melalui lelang yang dapat didaftarkan jika dibuktikan dengan akta yang dibuat oleh PPAT yang berwenang menurut ketentuan peraturan perundang-undangan yang berlaku. Namundemikian, bagaimana syarat-syarat, saat terjadinya, dan pembatalan peralihan atau pemindahan hak atas tanah tidak diatur dalam dua peraturan perundang-undangan tersebut, sehingga dapat kekosongan hukum.

<sup>11</sup>Mukhidin, "Principles of freedom of contract in relation to the standard agreement", 2010, <http://e-journal.upstegal.ac.id/index.php/Cermin/article/download/53/62>, accessed on date august 18, 2019, (14.00 PM).

must be carried out in good faith. Such legal concepts, in fact, are not contradictory and acceptable to agreements with the object of land rights.

The legislations that govern legal actions on land, for example: what and how the terms and validity as well as cancellation of Sale and Purchase, exchange, grants, lease and other legal actions of land rights. The legal actions on land are not clearly regulated in UUPA<sup>12</sup>, therefore, in order to avoid a legal vacuum against it, thus the articles in Book III of the Civil Code related to the regulation of practice of people's daily transactions on objects in the form of land rights are needed.

In reality, there has been a consensual / formal agreement as stipulated in Book III of the Civil Code between the seller (the land affected by the construction) and the buyer (the party who took the land for construction purposes). Consensual / formal agreement is a binding agreement since the existence of agreement between both parties.<sup>13</sup> Materially, the Binding Agreement on Sale and Purchase of land rights (PPJB HAT) has created the transfer of land rights when an agreement is reached based on the PPJB-HAT, even though the price has not been paid in full and the goods have not been delivered. Regarding the consensual nature of the agreement, it can be seen more firmly in the provisions of Article 1458 of the Civil Code which states that "The sale and purchase is considered to have occurred between the two parties, immediately after these people reach an agreement on the material and its price, even though the object has not been submitted, nor the price is not paid yet".

### **C. The fulfillment of rights and obligations of both parties involved in the release of land according to the Civil Code (BW) in the construction of toll road of Banda Aceh- Sigli.**

The fulfillment of rights and obligations is an engagement that results in legal consequences of the agreement of parties that are binding and it needs to be realized reciprocally between the parties in order to carry out their obligations as a legal action to fulfill the rights of each party.<sup>14</sup> The Rights and obligations are based on Article 1338 of the Civil Code and fulfill the requirements in Article 1320 of the Civil Code, so that the agreement made is a binding law or law for the parties to be implemented. If between the parties do not carry out their obligations, they then can be sued by the other party for breaking the promise (default) on contract that has been made.

The fulfillment of rights that is carried out as fulfillment of obligations according to the agreement of the parties in the contract include as a legal act that can be accounted for, because the contracting is carried out by the parties in accordance with the agreed terms and the parties making the contract are those who are competent in carrying out legal actions including the contract which is made limited to certain matters and the purpose of making legal contracts are based on good faith, namely for halal reasons.

Fulfillment of the rights of the parties of sale and purchase can be examined through the provisions of book III of the Civil Code on sale and purchase in articles 1460 and 1465 of the fifth chapter. However, the fulfillment of the obligations of the parties to the sale and purchase are mentioned in the second part of article 1473-1512 Civil Code concerning obligations for the Seller and the third part of articles 1513-1518 of the Civil Code concerning the obligations of the Buyer.<sup>15</sup> Sale and purchase in this case applies to movable and immovable objects (static), so that sale and purchase of land which include as immovable objects can be related to this study. Therefore, based on this study we will see the applicability in fulfilling the rights and obligations of the parties to the release of land in the construction of the toll road of Banda Aceh-Sigli. Based on the Civil Code provisions mentioned above, it can be described that the rights of the parties in the sale and purchase of land include:

- 1) Article 1460 of the Civil Code, the buyer's right to dependents on material/ goods/land that has been determined from the time of purchase even though the transfer has not been made
- 2) Article 1460 of the Civil Code, the seller's right to demand prices on the material / goods / land.
- 3) Article 1465 of the Civil Code, the right to purchase price must be determined by both parties (seller and buyer) in accordance with the agreement or choose a third party to estimate the price of the object.

Similarly with the obligations of the parties, the obligations of the seller can be described as follows:

- 1) Article 1473 of the Civil Code, The seller must state clearly, for what he binds himself to the Buyer.
- 2) Article 1474 of the Civil Code, the Seller has two main obligations including to hand the goods and to bear it.

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<sup>12</sup>Supriyadi, "The Position Of Binding Agreement On Buying And Selling Rights To Land In The Perspective Of Ground Law", Mataram National Land Agency, publisher by Arena Hukum, Volume 9, number 2, Agustus 2016, pages. 208-209.

<sup>13</sup>Komariah, "Civil Law", Muhammadiyah Malang University, Malang, 2002, pages. 171.

<sup>14</sup>Reinhard Polton, "Fulfillment of rights and obligations pursuant to agreement of the parties in the contract reviewed from the Book of Laws", Civil Law, *Lex Crimen* Vol. VI/No. 3/May/2017, pages.138.

<sup>15</sup>The Civil Code of law (*Burgerlijk Wetboek*), Publisher by Wipress, 2007, Pages. 321- 330.

- 3) Article 1478 of the Civil Code, the Seller is not obliged to hand the buyer's items, if the buyer has not paid the price while the seller does not allow the delay of payment to him
- 4) Article 1482 of the Civil Code, the obligation to hand over an item includes everything that becomes its equipment and is intended for its permanent use, along with a proof of ownership if any.
- 5) Article 1505 of the Civil Code, The seller is not required to guarantee the goods on defects that are visible and can be known by the buyer.

The obligation of the buyer, including:

- 1) Article 1513 of the Civil Code, The main obligation of the buyer is to pay the purchase price at the time and place specified in the agreement.
- 2) Article 1514 of the Civil Code, If at the time of making an agreement, it was not specified regarding the time and place of payment, then the buyer must pay at the place and at the time of delivery of the item.
- 3) Article 1515 of the Civil Code, The buyer, even though there is no explicit agreement, must pay interest on the purchase price, if the goods that is sold and delivered give other results or income.

#### **IV. CONCLUSION**

Based on the explanation above, it can be concluded that the regulation of the Civil Code (*BW (BurgerlijkWetboek)*) on the fulfillment of rights and obligations between the parties involved in the release of land for the construction of toll road of Banda Aceh- Sigli can be seen its provisions in articles 1460 and 1465 of the Civil Code concerning the rights of both parties in the sale and purchase, while the provisions regarding the obligations of the parties in the sale and purchase of land can be seen in articles 1473-1512 Civil Code and in articles 1513-1518 Civil Code.

Rights of the parties in the sale and purchase of objects in the Civil Code, including: the buyer's right to dependents on material / goods / land that have been determined since the time of purchase even though the transfer has not been made, the seller's right to demand prices on the material / goods / land and the right to the purchase price must be determined by both parties (seller and buyer) in accordance with the agreement, or choose a third party to estimate the price of the object. However, the obligations of the parties in the Civil Code include: The seller must state clearly, for what he binds himself to the Buyer, the Seller has two main obligations including to hand the goods and to bear it, the Seller is not obliged to hand the relevant items, if the buyer has not paid the price while the seller does not allow the delay of payment to him, the obligation to hand over an item includes everything that becomes its equipment and is intended for its permanent use, along with a proof of ownership if any, The seller is not required to guarantee the goods against defects that are visible and can be known by the buyer, The main obligation of the buyer is to pay the purchase price at the time and place specified in the agreement. If at the time of making an agreement, it was not specified regarding the time and place of payment, then the buyer must pay at the place and at the time of delivery of the item and The buyer, even though there is no explicit agreement, must pay interest on the purchase price, if the goods that is sold and delivered give other results or income.

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IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with Sl. No. 5070, Journal no. 49323.

Intan Purnama. " The Arrangement of the Civil Code (BW) On the Fulfillment of the Rights and Obligations of the Parties in the Release of Land for the Construction of Toll Road of Banda Aceh- Sigli." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 09, 2019, pp. 37-42.