

Land Procurement for The Construction of PLN Electrical Substation In Pasar Kemis District, Tangerang Regency Based on Law No.2 of 2012 concerning Land Procurement for Public Utilities Construction (Sample Case : The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel)

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ABSTRACT

In building the public utilities, the government will carry out land procurement. However, sometimes the development for the public interest is not based on land procurement mechanisms. The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel shows that there are parties who construct public utilities that are not based on the land procurement mechanism, which is there is no compensation and relinquishment of land rights. In this case, PT PLN as an agency that requires the use of physical land that belongs to another party to build an electrical substation in Pasar Kemis District, Tangerang Regency. The agreement to build the electrical substation is only made through the the form of minutes agreement of Physical land use which is submitted voluntarily. What is the mechanism for land procurement for the construction of PLN electrical Substations based on Law No. 2 of 2012 concerning Land Procurement for Public Utilities Construction? How is the legal certainty of the construction of the PLN Electrical Substation in Pasar Kemis District, Tangerang Regency ? Author uses normative legal research methods and data interviews as supporting data. The results of the research reveal that there is a legal uncertainty in the construction of the PLN Electrical Substation in Pasar Kemis District, Tangerang Regency on land that has not been released by the holder of land rights.

Keywords : Land Procurement, Public Utilities, Compensation and Relinquishment of Rights.

1. INTRODUCTION

Land is very important for human life because land has a dual function, namely as a social asset and as a capital asset. Land as a social asset is a social binding of the unity among the society for viability and life, whereas a capital asset means that land is a capital factor in the development, and has grown as a very important economic object as well as a commercial material and an object of speculation. In the other hand, land must be used and utilized as much as possible for the welfare and prosperity of society, and its sustainability must also be maintained [1]. The human need for land is a basic need, because in daily life every human needs a place to live in the form of houses, apartments, flats, and others.

The definition of land has been regulated by Article 4 of the Basic Agrarian Law (referred to as UUPA) which means that the surface of the earth can be classified as land, meaning that land can be attached with various land rights, both owned by individuals or owned by the legal entity [2].

Basically, land has a close relationship with the construction of public utilities. Land and construction are interrelated entities. The use of land not only based on the interests of the holders of rights, but also must be guided by the public interest. Infrastructure construction for public interest has an important role as the engine of economic growth of a country. The rate of economic growth and investment of a country has a close relationship with the availability of infrastructure such as transportation, sanitation, telecommunications, and energy. This things can make infrastructure construction become an important essence of sustainable economic development. By increasing the quantity of infrastructure, it is expected that in the future it can spur economic growth [3].

Every human being really needs land to prosper his life. In achieving the social welfare in Indonesia, it is necessary for Indonesia government to regulate it. In accordance with the constitutional mandate as stated in Article 33 Paragraph (3) of the Constitution of the Republic of Indonesia, "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of society." Can be comprehended that this article mandates

the government to use land to embody the society welfare. Therefore, the construction of public utilities in a country must be upheld by the government.

To fulfil the construction needs, land is the important element. Every land that needed for construction can be in the form of land that has been managed by the state or land that has been managed by legal subjects with a right. If the land that required for construction is a state land, then the land procurement can be submit to the state directly. But the fact is the amount of state land to fulfil the construction needs is limited. This fact bring a consequences for the state to use community land, so that the construction of public utilities still continues.

As a state of law, Indonesia has UUPA to regulate agrarian processes and as a basic guidelines for other regulations. The provisions in UUPA provide a strong legal basis for the government to take land rights that owned by the community as regulated in Article 18, "for the public interest, including the interests of the nation and state, as well as the common interest of the people, land rights can be revoked, by providing appropriate compensation according to the method regulated by law. In Indonesia, the definition of public interest is regulated in Presidential Regulation No. 36 of 2005 concerning Land Procurement for the Implementation of construction in the Public Interest where the public interest is interpreted as the interests of most levels of society [4]. Meanwhile, according to John Salindeho, the public interest is defined as the interests of the nation and state regarding to social, politic, and psychological aspects [5]. The concept of public interest has a crucial position for the implementation of land procurement, it is because land procurement has a big impact to community rights as the holders of rights. Land procurement usually related with the problem of compensation agreement and also the problem of refusal to relinquish the land rights [6].

For people whose land will be used for construction, the relinquishment of their right has a economic and social consequences, moreover if their land is the only area for them to live as well and as a source of livelihood. Therefore, the land takeover for public interest construction should be done based on principles of humanity, justice, certainty, sustainability, and harmony [7].

Land procurement is regulated under Law No. 2 of 2012 concerning Land Procurement for public utilities construction (Land Procurement Law). In that regulation, land procurement defined as activities to provide land by giving an adequate and fair compensation to the entitled party. To be able to carry out development for public utilities, the government will uses state land. If state land is not sufficient or cannot maximize development, the government can use land from individuals or groups by carrying out the land procurement. In implementing land procurement, the land procurement team must pay attention to the rights of the people affected by land procurement. Government should give the people that affected by land procurement a proper compensation to ensure their rights and legal protection. Based on Article 41 paragraph 2 of Land Procurement Law, every holder of land rights when receiving compensation is obliged to relinquish his rights to

the government. Basically, Property rights are fundamental rights for humans. In the 1945 Constitution Article 28 H paragraph (4), it has been explained that every person has the right to own property rights without being taken arbitrarily. For this reason, every citizen's right to own something is the right to own land, as no one can contest a human right inherent in every individual and group [8].

Based on land procurement mechanism, the relinquishment of rights should be done before the construction of public utilities begin, the example of the implementation of land procurement that ignores the mechanism that has been regulated under positive law is the construction of electrical Substation in Pasar Kemis District, Tangerang Regency. This mega project is reaping various pros and cons that cause a very long conflict. It emerged because there is a limited liability company which name is Putera Daya Perkasa (PDP Ltd) that affected by the land procurement for public utilities. The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel shows that there are parties who construct public utilities that are not based on the land procurement mechanism, which there is no compensation and relinquishment of rights. In this case, PLN Ltd. (PT Perusahaan Listrik Negara) is an agency that requires the use of physical land that belongs to another party to build an electrical substation in Pasar Kemis District, Tangerang Regency. In this case, PLN Ltd. Requires ± 1,62 ha land area. Then, PDP Ltd as the holder of land rights support this construction plan and turn over it land to PLN Ltd, but the agreement is only made through the form of minutes of agreement of Physical land use which is submitted voluntarily on November 26th 1990.

However, in this case we can see that PLN Ltd did not do the mechanism of land procurement based on land procurement law, which is there is no relinquishment of rights. PLN Ltd also did not give the compensation at all. Because of this construction, PDP Ltd can not use their land even PDP Ltd still the holder of land right. Under the land procurement law, if PLN Ltd want to construct the public utilities such as electrical substation, PLN Ltd should have owned the land first, and after that PLN Ltd is legal to construct the electrical substation. On 2006, PDP Ltd sent PLN Ltd a note about a compensation issue. Until 2017, PLN Ltd still not give the compensation, then PDP Ltd sued PLN Ltd with demand for compensation. According to this case, we can see the implementation of land procurement for public utilities construction does not always go according to plan.

Beside that, according to Article 30 of Law No. 30 of 2009 concerning Electricity, the use of land to exercise their right shall require the holders permit for the supply of electrical power to provide land compensation to the holder of land right, buildings, and plants. Land compensation shall be given to the direct use of land by the holders of permit for the supply of electrical power as well as to buildings and plants on the land. As we can see, every the use of community land shall be given the compensation and there shall be a relinquishment of right.

According to the case, the land procurement for construction of PLN electrical substation in Pasar Kemis District, Tangerang Regency shows there is no legal

certainty and legal protection for the holder of land right. The land procurement without compensation and relinquishment of right is contrary with 1945 Constitution Article, Land Procurement Law, and Electricity Law. With this research, author want to discuss more about the problem in land procurement for the construction of PLN Electrical Substation in Pasar Kemis District, Tangerang Regency based on Law No.2 of 2012 concerning Land Procurement for Public Utilities Construction (Sample Case : The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel)

1.1. Related Work

Based on the description above, the title of the research entitled : “Land Procurement for The Construction of PLN Electrical Substation Pasar Kemis District, Tangerang Regency Based on Law No.2 of 2012 concerning Land Procurement for Public Utilities Construction (Sample Case : The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel)”

1.1.1. The Land Procurement for Construction of Electrical Substation

Land procurement activities for construction of public utilities, theoretically, are based on certain principles and are divided into two subsystems, namely land procurement by the government because of public interest and land procurement by the government because it is not in the public (commercial) interest [9]. The land acquisition that is carried out through land acquisition or the release of land rights often results in conflict. There are three principles that must be applied during the land procurement activities. First of all, the government must make a limitation that make individuals or private party cannot own the public utilities. Second, only state who can provides a development of public interest, such as develop or construct the public utilities. Because in practice, there is so many public utilities that managed and owned by private party. Third, every development for public utilities must be refer to public interest, the agency who take the project to build a public utilities should not looking for profit, because if there is a profit it will be not qualified as a land procurement for public utilities.

Land procurement for public utilities construction should conducted according to spatial and regional planning [10]. Spatial and regional planning are intended in order to make the land procurement based on the land procurement mechanism that has been regulated under land procurement law. In case if the land procurement is not fit with the spatial and territorial plans, the land cannot be expanded and developed.

Basically, the land procurement for public utilities construction must based on mechanism that has been

regulated under land procurement law and another related law, if the government will make a electrical substation, then the government must apply the electrical law. Law No 30 of 2009 concerning Electricity (Electricity Law) is the main law governing the electricity sector, its implementation is mainly governed by the following regulations such as Governmental Regulation No 14 of 2012, as amended by Governmental Regulation No 23 of 2014 about Electricity Business Provision (GR 14/2012), Governmental Regulation No 42 of 2012 on Cross-Border Sales and Purchases of Electricity (GR 42/2012), and Governmental Regulation No 62 of 2012 on Electricity Support Business (GR 62/2012). The implementation of the electricity law is also governed by additional regulations at presidential, ministerial, provincial, and director general level. So during the land procurement for construction of PLN electrical substation, the government must apply land procurement law, electrical law, and another related law that regulate the details of land procurement process, such as government regulations and implementing regulation [11]. Electrical substation is important for society needs, electrical substation is a part of an electrical generation, transmission, and distribution system. Substations transform voltage from high to low, or the reverse, or perform any of several other important functions. This substation can produce and distribute the high amount of electricity. The purpose of a substation is to step down high voltage electricity from the transmission system to lower voltage electricity so it can be easily supplied to homes and businesses in the area through lower voltage distribution lines. PLN Ltd, the Indonesian national electrical utility company is responsible to distribute electricity to society. Land procurement is regulated under Law No. 2 of 2012 concerning Land Procurement for public utilities construction (Land Procurement Law). In that regulation, land procurement defined as activities to provide land by giving an adequate and fair compensation to the entitled party. To be able to carry out development for public utilities, the government will uses state land. If state land is not sufficient or cannot maximize development, the government can use land from individuals or groups by carrying out the land procurement. In implementing land procurement, the land procurement team must pay attention to the rights of the people affected by land procurement. Government should give the people that affected by land procurement a proper compensation to ensure their rights and legal protection.

Implementation of land procurement for public utilities construction, particularly electrical substation does not always go according to plan. In some practice, there are some peoples who did not relinquish their right to government and receiving compensation from government, this practice is not based on land procurement law. Article 41 land procurement law regulate that if there is a land procurement, the entitled party should conduct relinquishment of right and provide the evidence of control or ownership of the land procurement object to the agency which requires the land through the land agency. Then, that party has right to get the compensation.

1.1.2. Legal Certainty in Land procurement for public utilities construction

Based on land procurement mechanism, the relinquishment of rights should be done before the construction of public utilities begin. Relinquishment of land procurement object will receive proper compensation. In the other hand, the granting of compensation for the land procurement object will be granted directly to the entitled party [12]. At the time of granting the Compensation, the entitled party who receive compensation must conduct relinquishment of right and provide the evidence of control or ownership of the land procurement object to the agency which requires the land through the land agency. The entitled party who receives compensation is responsible for the validity and legality of the evidence of possession and ownership which has been delivered. Relinquishment of land procurement object for public interest which owned by the government of owned by state owned enterprise or regional owned enterprise will not receive compensation, unless the land procurement object which have contained building thereon and actively used for implementation of government duties, state owned enterprise, and village treasury. At the implementation of granting the compensation and relinquishment of right that have been conducted or the distribution of compensation has been deposited in the district court, the ownership of right of land from the Entitled Party become null and the evidence of right is no longer valid and the land is under direct of the state. The Entitled Party who receives Compensation or Agency which obtain the land from Land Procurement for Public Interest may be granted with the tax incentives. Relinquishment of land procurement object are conducted by the authorized officer or officer who obtain delegation authority. The officer who violates land mechanism provisions will be imposed with administrative sanction according to the prevailing laws and regulations. The agency which requires the land may start conducting the construction activities after the delivery of land procurement result. Certainty principle is to provide a legal certainty of land availability in the process of Land Procurement for development and guarantee the Entitled Party to obtain proper Compensation

1.2. Our Contribution

Based on the background and problem formulation, the objectives in this research are to find out the the mechanism for land procurement for the construction of PLN electrical Substations based on Law No. 2 of 2012 concerning Land Procurement for Public Utilities Construction and also to find out how is the legal certainty of the construction of the PLN Electrical Substation in Pasar Kemis District, Tangerang Regency on land that has not been relinquished by the holder of right.

1.3. Paper Structure

This paper structure is using research method to collect data, manage data, and conclude data according to the problem formulation. This legal research is to study the particular law. This legal research is carried out with a series of scientific activities based on methods, systematics, and a certain thought. The type of research in this legal research is normative research. The definition of normative research is research that provides a systematic explanation of the rules governing a certain legal category, as well as analyze the relationship between regulations and future development. The author uses four legal materials that obtain from the results of a literature review, library material, and legal material.

2. BACKGROUND

2.1. Legal Certainty

Legal certainty is the traditional justification of land procurements by prescription in the Netherlands and elsewhere. However, as land information systems become more comprehensive and reliable, this justification increasingly loses its foundation. The Dutch system of land procurement has got implications for the interpretation of the requirement of good faith. The public records (Open bare register) are a repository of notarial deeds and other legal documents concerning the legal status of immovable property and other things and assets that can only be transferred through registration in the public records [13]. The Dutch Civil Code stipulates that the user will never be in good faith if s/he claims to be ignorant of information contained in the public records. In other words, there is an obligation to check the public records.

The traditional goal of land procurement is to promote legal certainty. This goal assumes different shapes, depending upon the factual and legal situation at hand. When one of parties acts in good faith during the land procurement, but the procedure turns out to be invalid, the parties who act in good faith will get a legal protection and legal certainty. Legal certainty will be a solid justification if there is a conflict between the parties. The parties that has been agreed the land procurement should respect the agreement of land procurement. Any justification of land procurement by prescription on grounds of legal certainty would thus have to show that a procurement by prescription in a specific case does not render the public records and the land register less reliable or that the acquisition serves a more important, legal certainty-related interest.

The user's physical control of the land without the owner's permission over a long period of time for construction of public utilities implies that the agency that control the land violate the law. Every land procurement should based on mechanism that has been regulate under land procurement law and other law that related to the construction of public utilities. There may be a public interest in owners monitoring and controlling the use of their property that is

distinct from the public interest in legal certainty. As land is a valuable and limited resource, wasteful conflicts over land use should be avoided. Continuous illegal land use encourages users to develop an economic, social or emotional bond with the land and make investments, which may be irrecoverable if the owner claims the land back [14].

2.2. Public Utility

A public utility is an entity that provides goods or services to the general public. Public utilities may include common carriers as well as corporations that provide electric, gas, water, heat, and television cable systems. Public utilities are meant to supply goods/services that are considered essential; water, gas, electricity, telephone, and other communication systems represent much of the public utility market. The transmission lines used in the transportation of electricity, or natural gas pipelines, have natural monopoly characteristics. If the infrastructure already exists in a given area, minimal benefit is gained through competing. In other words, these industries are characterized by economies of scale in production [15]. There are many different types of public utilities. Some, especially large companies, offer multiple products, such as electricity and natural gas. Public utilities have historically been considered to be a natural monopoly. This school of thought holds that the most cost-efficient way of doing business is through a single firm because these are capital-intensive businesses with unusually large economies of scale and high fixed costs associated with building and operating the infrastructure, e.g. power plants, telephone lines and water treatment facilities [16].

According to Article 4 paragraph (1) Land Procurement Law, land for public interest is used for the construction of:

- a. national defense and security;
- b. public road, toll road, tunnel, railroad, railway station, and railway operational facility;
- c. reservoirs, dams, weir, irrigation, drinking water channels, water and sanitary sewer, and others irrigation buildings;
- d. ports, airports, and terminals;
- e. oil, gas and geothermal infrastructures;
- f. generators, transmitters, relay stations, network and power distribution;

- g. government's telecommunication and information networks;
- h. landfills and waste treatment;
- i. Government/Regional Government's hospital;
- j. public safety facilities;
- k. Government/Regional Government's cemeteries;
- l. social facility, public facility and green open space;
- m. nature reserve and cultural reserve;
- n. Government/Regional Government/village office;
- o. structuring urban slums and/or land consolidation, as well as housing for low income communities with lease status;
- p. education infrastructure or Government/Regional Government school;
- q. Government/ Regional Government sport infrastructure; and
- r. Public market and public parking lot.

Over the past several decades, traditional public utilities monopoly position has eroded. For instance, wholesale electricity generation markets, electric transmission networks [17], electricity retailing and customer choice. The public utilities for electricity is provide by electrical corporation. The term "electrical corporation" when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property alone, solely for his own use or the use of his tenants and not for sale to others, and excepting also, where the electricity is to be used exclusively in operations incident to the working of metalliferous mines and mining claims, mills, or reduction and smelting plants, and the transmission lines and distribution systems are owned by the consumer or where several consumers severally own their individual distribution systems and jointly own, in their own names or through a trustee, the transmission lines used in connection therewith and transmit such electricity, whether generated by themselves or procured from some other source, over such transmission lines and distribution systems without profit, and to be used for their private uses for the purposes aforesaid in places outside the limits of incorporated cities,

towns and villages, and not for resale or public use, sale or distribution.

Electricity is important for society needs, so that government have built many electrical substation at several area. electrical substation is important for society needs, electrical substation is a part of an electrical generation, transmission, and distribution system. Substations transform voltage from high to low, or the reverse, or perform any of several other important functions. This substation can produce and distribute the high amount of electricity. The purpose of a substation is to step down high voltage electricity from the transmission system to lower voltage electricity so it can be easily supplied to homes and businesses in the area through lower voltage distribution lines. PLN Ltd, the Indonesian national electrical utility company is responsible to distribute electricity to society. PLN Ltd as a state owned enterprise has a obligation to distribute electricity to society. In this case, PLN Ltd has a program to distribute electricity in Pasar Kemis District, Tangerang Regency. This area need electricity supply to increase economic growth. With this electrical substation, Pasar Kemis District can developing several industries and increase community prosperity. So we can conclude that electrical substation, specifically in Pasar Kemis District, Tangerang Regency is a Public Utilities.

2.3. Land Procurement Mechanism

Based on Law No.2 of 2012 concerning Land Procurement for Public Utilities construction, Land procurement for Public Interest will be held through following stages, such as planning, preparation, implementation, and delivery of result. Land procurement for Public Interest plan is based on Regional Spatial Layout Plan and development priority as stated on Medium-Term Development Plan, Strategic Plan, and respective Government Agency Work Plan. After that, government will held land procurement preparation. The respective agency which requires the land jointly with provincial government based on Land Procurement plan document shall perform three things, which is notification of construction plan, preliminary data collection of development location plan, and public consultation of development plan. The notification development plan shall be presented to public on development location plan for public interest, either direct or indirectly.

After that, there is land procurement implementation, based on location determination of development for public interest, the agency which requires the land shall submit the

application of land procurement implementation to the land agency. Implementation of land procurement consists of :

- Inventory and identification of control, ownership, use, and utilization of land
- Appraisal of compensation
- Deliberation on the compensation determination
- Distribution of compensation
- Relinquishment of agency's land

After the determination of construction location for public interest, the entitled party may only transfer the right of his land to the agency which requires the land through the land agency. The transfer of right is performed by granting compensation which value is determined on the announcement of location determination. The granting of compensation for the land procurement object will be granted directly to the entitled party. The Compensation is granted to the Entitled Party based on the appraisal result which is determined in the deliberation and/or the district court/supreme court's decision. At the time of granting the compensation, the entitled party who receive compensation must conduct relinquishment of right and provide the evidence of control or ownership of the Land Procurement. The Entitled Party who receives Compensation is responsible for the validity and legality of the evidence of possession and ownership which has been delivered. Any objection from other parties n the land procurement object which has been delivered to the agency which requires land will become the responsibility of the entitled party who receives compensation. Anyone who violating the provision will be imposed with criminal sanction according to the prevailing laws and regulations.

Based on sample case in The South Jakarta District Court Decision Number 642/Pdt.G/2017/PN.Jkt.Sel, the construction for electrical substation in Pasar Kemis District, Tangerang Regency only requires ± 1,62 ha land area. Based on prevailing laws in Indonesia in Article 53 Ministry of Agrarian Law No.6 of 2015, to provide efficiency and effectiveness, land procurement for public interest which only requires land area which is not more than 5 ha, the land procurement can be carried out directly by the relevant agency that requires land with the Entitled Party, by way of buying and selling or exchanging or other ways that has been agreed by both parties. According to this law, it means land procurement for PLN Electrical Substation can implemented by this type of land procurement, which is tend directly towards parties. However, this direct land procurement still shall be

implemented based on regional spatial layout plan. In the other hand, regarding the determination of compensation, the direct land procurement requires that the agency shall continue the implementation of appraisal service in determining the sale and purchase value or exchange or other methods that has been agreed by both parties. The determination of this compensation is carried out in the form of deliberation between the government and the entitled party. After both parties reached the agreement, the land agency will revoke the property rights. Finally, there will be a land clearing execution.

2.4. Compensation and Relinquishment of Right

According to Article 9 Law No.2 of 2012 concerning Land Procurement for Public Utilities Construction, The exercise of Land Procurement for Public Interest must regard to the balance between development interest and public interest. Land Procurement for Public Interest is conducted by granting adequate and fair Compensation. Compensation means an adequate and fair compensation to the entitled party in the process of land procurement. The Entitled Party is obliged to relinquish its land at the time of the Land Procurement for Public Interest exercise after the granting compensation or based on a final and binding on court decision. The appraisal of compensation value is conducted per land area, including land, space above and under ground, building, plants, object related to land, and/or other losses that can be assessed. Distribution of compensation may be granted in the form of :

- a. Money
- b. Land replacement
- c. Resettlement
- d. Share ownership
- e. Other form approved by both parties

The means of “compensation in the form of share ownership” is share investment in the development activity for relevant Public Interest and/or the management which

2. CONCLUSION

1. LAND PROCUREMENT MECHANISM FOR THE CONSTRUCTION OF PLN ELECTRICAL SUBSTATION IN PASAR KEMIS DISTRICT, TANGERANG REGENCY CAN BE IMPLEMENTED WITH DIRECT LAND PROCUREMENT ACCORDING

based on agreement between the parties. The land agency conducts deliberation with the entitled party to determine the form and/or amount of compensation based on appraisal of compensation. In the event of no agreement on the form and/or amount of Compensation, the Entitled Party may submit objection to the relevant district court. Distribution of Compensation basically shall directly grant to the Entitled Party of the Compensation. However, in the event of the Entitled Party is absence, the Entitled Party by law may provide authority to other party. The authority receiver may only accept authority from one person who entitled for the Compensation.

In the other hand, Land procurement law define relinquishment of right as a termination of legal relationship from entitled party to the state through Land Agency. Relinquishment of right shall be done before the construction for public utilities begins. The agency is prohibited to start the construction project if the right has not been relinquished by the holder of land right. The relinquishment of right is generally stated in the form of an agreement with reciprocal obligations, so that holder of land right relinquished their right to the party who will use or utilize the land, and the party who will utilize the land will hand over a certain amount of money which is generally referred to as compensation. Based on this case, PDP Ltd did not get any compensation and has not been relinquished the right which means the land procurement for Electrical substation in Pasar Kemis is not based on mechanism. Land procurement which not based on mechanism will bring a law consequences, which is PLN Ltd is prohibited to use PDP Ltd land because it is not legal, PDP Ltd shall be given the compensation and relinquished the right first. This mechanism is intended to give the holder of land right a legal protection and legal certainty. PLN Ltd Land Procurement defined as a tort, because the land used for construction of public utilities is owned by PDP Ltd. For commercial activities, where PLN Ltd earns income from the establishment of the substation, it is appropriate that a rental fee is charged for the plot of land. Although PDP Ltd turn over the land to PLN Ltd voluntarily, but there is no relinquishment of right, Based on the prevailing laws, this handover is not legal.

TO ARTICLE 53 MINISTRY OF AGRARIAN LAW NO.6 OF 2015 , WHICH CAN BE CARRIED OUT DIRECTLY BY THE RELEVANT AGENCY THAT REQUIRES LAND WITH THE ENTITLED PARTY, BY WAY OF BUYING AND SELLING OR EXCHANGING OR OTHER WAYS THAT HAS BEEN AGREED BY BOTH PARTIES. HOWEVER, THIS DIRECT LAND

PROCUREMENT HAS TO ADJUST WITH LAND PROCUREMENT LAW AND ELECTRICITY LAW.

2. THERE IS NO LEGAL CERTAINTY FOR LAND PROCUREMENT WITHOUT COMPENSATION AND RELINQUISHMENT OF RIGHT IN CASE OF THE SOUTH JAKARTA DISTRICT COURT DECISION NUMBER 642/PDT.G/2017/PN.JKT.SEL. THE FORM OF MINUTES AGREEMENT OF PHYSICAL LAND USE WHICH IS SUBMITTED VOLUNTARILY TO HAND OVER THE LAND FROM PDP LTD TO PLN LTD IS NOT LEGAL BECAUSE THERE IS NO

RELINQUISHMENT OF RIGHT. EVERY LAND PROCUREMENT MUST INCLUDE THE COMPENSATION ALLOTMENT AND RELINQUISHMENT OF RIGHT, BUT IF THE HOLDER OF LAND RIGHT HAND OVER THE LAND VOLUNTARILY TO THE AGENCY, IT MUST BE IMPLEMENTED WITH RELINQUISHMENT OF RIGHT. THIS LAND PROCUREMENT IS NOT BASED ON MECHANISM THAT HAS BEEN REGULATED IN PROCUREMENT LAW, SO THE CONSEQUENCES IS PDP LTD DOES NOT GET ANY LEGAL PROTECTION.

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[14] Cf merrill (note 42), 1131 ; J.W. Singer, "The Reliance Interest in Property" 1998, stanford law review 611, 664

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