

# Legal Aspects of Reimbursement for Land and ROW in Transmission Construction Projects at PLN Central Sumatra

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## ABSTRACT

**Objective** - This study aims to analyze the legal and contractual aspects related to the reimbursement scheme for land and ROW payments as a solution to completing transmission construction work during the Covid-19 pandemic. **Methodology/Approach** - This study uses a case study approach by analyzing contract documents, perception alignment, and related agreements between PLN and contractors. This study also examines the main elements of the contract in terms of the scope of work, with the addition of a reimbursement clause for land payments and ROW (Right of Way) at cost, as well as the addition of payment procedures. **Findings** - The results of this study indicate that the method of adding land reimbursement and ROW clauses to the agreement between the two parties can help complete transmission construction work according to the planned target, even though construction was underway during the Covid-19 pandemic, where the pandemic caused PLN to divert part of the budget to handling and controlling the impact of Covid on human resources, so that the budget for the work was temporarily constrained during the pandemic.

**Novelty/Benefits** - This study provides an alternative solution to the completion of transmission construction work during the Covid-19 pandemic, where budget constraints can be overcome by adding a land and row reimbursement clause that will be paid at cost to partners. This alternative solution can also be a practical reference for transmission construction work owners during the pandemic while maintaining professional relations between both parties.

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## INTRODUCTION

The development of electrical energy infrastructure, especially the electrical power transmission network, plays an important role in supporting economic growth and improving people's welfare. Because without electrical power transmission, the energy produced by power plants that are usually far from the load center cannot be distributed to the load or need area. Therefore, transmission is a very important component of electrical infrastructure in distributing electrical energy to a region. In the construction of electric power transmission, there are 2 parts of the land area affected, namely the land area for the tower base and the land area for the free

space of the conductor cable. In its construction, the land for the tower base will be cleared, while for the free space, Right of Way compensation will be carried out in accordance with applicable laws and regulations. In the process of land acquisition and Right of Way or ROW for electric power transmission, various obstacles are often encountered, including legal, social, and administrative problems. In this study, the implementation of the ongoing transmission construction project is faced with the Covid 19 pandemic which has an impact on the budget. This is because some of the budget for users of goods/services has been diverted to handling the pandemic, which has resulted in delayed payments for land acquisition and ROW which are actually payments made by users of goods and services for their provision. The delay in payment for land acquisition and ROW will also have an impact on the completion of construction work, which will result in additional idle costs for providers of goods/services because they cannot complete the work according to the planned time. So to overcome this obstacle, providers of goods/services are instructed to make land and ROW compensation payments first, which will then be reimbursed at cost to the providers of goods/services.

This scheme will certainly raise new legal challenges related to the implementation of payment obligations by providers of goods/services, including clarity of regulations, payment mechanisms, and their impact on the rights and obligations of the parties. Therefore, analysis of legal aspects related to the reimbursement scheme for land and ROW is very important. This study focuses on how the legal framework governs the instructions for payment of compensation for land and ROW by providers of goods/services in electricity transmission projects in Central Sumatra, the legal challenges faced in implementing the reimbursement mechanism, and legal solutions that can be applied to overcome problems arising from these instructions. This study aims to analyze the legal basis for instructions to providers of goods/services to pay compensation for land and ROW, identify legal challenges in the implementation of the reimbursement mechanism, and provide recommendations for legal solutions to ensure that the implementation of reimbursement runs according to the principles of justice and efficiency. The benefits of this study include theoretical contributions in the form of new insights into the study of land acquisition and ROW law in energy infrastructure projects, as well as practical benefits as a guideline for PT PLN (Persero) and providers of goods/services in handling reimbursement issues appropriately and in accordance with the law.

## **LITERATURE REVIEW**

Land acquisition and provision of free space Right of Way or ROW in electricity infrastructure development projects are issues that often cause debate. Various studies and literature have discussed the legal, administrative, and social aspects related to land acquisition, including their impact on the implementation of infrastructure projects. The following is a review of related literature relevant to the legal aspects of reimbursement for land and ROW.

### **Legal Framework for Land Acquisition and ROW**

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest is the main legal basis governing land acquisition in Indonesia. This regulation provides guidelines on procurement procedures, compensation, and dispute resolution. Soerjono Soekanto and Sri Mamudji (2001) explain the importance of clear regulations in avoiding conflicts between land owners and land users.

Previous research by Sutyono (2018) highlighted the obstacles to the implementation of Law No. 2/2012, including minimal coordination between institutions and public dissatisfaction with the compensation value. This indicates the need for an in-depth evaluation of the effectiveness of land acquisition policies, especially in the context of strategic infrastructure projects.

Regulation of the Minister of Energy and Mineral Resources Number 13 of 2021 concerning Free Space and Minimum Free Distance of Electric Power Transmission Networks and Compensation for Land, Buildings, and/or Plants Located Below the Free Space of Electric Power Transmission

Networks is the legal basis for providing compensation for affected communities located below the electric power transmission line. This compensation provision is also often rejected, especially rejection of the compensation value. The community asks for a compensation value exceeding the assessment results of the KJPP (public appraisal service office), so persuasive mediation and a family approach are very important in implementing this ROW compensation, although in the regulations the electricity business license holder can proceed to the consignment stage or deposit in court against the landowner community who rejects the compensation value.

### **Reimbursement Mechanism in Infrastructure Projects**

*Reimbursement* is a method of reimbursement by service users to service providers for costs that have been incurred for a particular purpose. In the context of land acquisition and ROW, this mechanism can be used when users of goods/services face budget constraints, in this study it is budget constraints as an impact of the Covid-19 pandemic. The article by Wijayanti (2020) discusses that the reimbursement mechanism can be an effective solution to overcome delays in land acquisition and ROW, but requires a clear legal framework to avoid potential disputes.

The COVID-19 pandemic presents additional challenges in the implementation of infrastructure projects. The budget diverted to handle the pandemic has resulted in delays in land acquisition and ROW. In conditions like this, instructing providers of goods/services to make compensation payments in advance is a practical step, but it needs to be supported by appropriate contract amendments. Research by Rahmawati (2021) underlines the importance of contract amendments to accommodate changing situations without sacrificing the principle of fairness for all parties.

### **Legal Challenges in Land Acquisition and ROW**

Some of the major challenges faced in land acquisition and ROW include:

1. **Regulatory Ambiguity:** The ambiguity of technical regulations can lead to different interpretations in the field. This is reinforced by the findings of Nasution (2019), who stated that regulations often do not explicitly regulate the reimbursement mechanism in land acquisition.
2. **Budget Constraints:** Most strategic infrastructure projects rely on the state budget, which tends to fluctuate due to external factors such as the pandemic. This is reviewed by Handayani (2020), who emphasized the need for flexibility in managing project budgets.
3. **Social Conflict:** Community dissatisfaction with the compensation value or ROW compensation value often triggers legal disputes. A study by Prasetyo (2017) shows that mediation is often the most effective dispute resolution method in this context.

### **METHOD**

This study uses a normative legal approach to analyze the legal aspects of reimbursement for land and rights of way (ROW) in energy infrastructure projects, especially in the Central Sumatra region. This approach is carried out by reviewing relevant laws and regulations, legal documents, and scientific literature to understand the legal basis and practical implications of land compensation payment instructions by goods/service providers.

### **Research Approach**

1. **Statute Approach:** This study examines Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Presidential Regulation Number 71 of 2012, and other related regulations. This approach aims to identify the legal basis used in the implementation of reimbursement.

2. Conceptual Approach: Analysis is conducted on the concepts of reimbursement, land and row acquisition, and contract amendment in the context of infrastructure projects. This approach helps explain the relevant legal theories and their application in this case.
3. Case Approach: A case study was conducted on an electricity transmission project in Central Sumatra, where the goods/services provider was instructed to pay land compensation and ROW first due to the limited budget of the goods/services user during the COVID-19 pandemic. This approach provides insight into the implementation of field practices and the challenges faced.

#### **Method of collecting data**

This study uses secondary data obtained through:

- Literature Study: Involves gathering information from books, journal articles, reports, and legal documents related to land acquisition and reimbursement.
- Project Documents: Analyze electricity transmission project documents related to land compensation payments and ROW.

#### **Data Analysis Methods**

The data obtained were analyzed using analytical descriptive methods:

1. Description: Describes data related to regulations, theories, and practices of reimbursement in land acquisition and ROW.
2. Analysis: Evaluate the clarity of regulations, the relevance of legal theory, and the effectiveness of practice in the field.
3. Conclusion: Prepare recommendations based on the results of the analysis to address the identified legal constraints.

This study uses a normative legal method, which focuses on the analysis of legal norms contained in laws and regulations and construction contract documents, especially in the context of the PLN Transmission Development project in Sumatra. Approach This normative approach was chosen because this study focuses on the analysis of the contents of the contract and related legal regulations, without conducting direct observation of the project implementation. This approach allows the identification of weaknesses in contract law while offering solutions based on existing legal theories and regulations. In addition, this study also involves an empirical study of the PLN transmission case in Central Sumatra to strengthen the normative analysis. This study uses several data sources to provide a comprehensive analysis of the legal issues in the PLN transmission contract in Central Sumatra.

#### **Data collection technique**

##### **1. Document Study**

Data was obtained through a literature review, such as the PLN Transmission Development Project Contract in Central Sumatra between PLN and the Contractor, Contract Amendment Documents, and Meeting Minutes.

##### **2. Literature Study**

Additional data was collected from relevant journals, books, and scientific articles to support the normative analysis.

#### **Data Analysis Techniques**

##### **1. Identify Legal Problems**

Legal issues arising from the non-approval of the reimbursement scheme are analyzed based on documents and regulations.

##### **2. Regulatory Analysis**

The regulations relating to contracts and principles of construction law are interpreted to understand the legal position of each party.

### 3. Evaluation of Alternative Solutions

Alternative dispute resolution options, such as mediation or arbitration, are evaluated to determine the best mechanism for maintaining working relationships and resolving disputes..

## RESULT AND DISCUSSION

In this context, at the time of the ongoing transmission construction project work in 2019 and targeted to be operational by the end of 2020 with the scope of work including procurement of goods, civil construction work, installation of electrical and mechanical equipment, testing and operation and commissioning with APLN funding sources.

Meanwhile, the land acquisition work for the construction of the tower and the provision of free ROW space for the cable pulling work is provided by the user of goods and services. In this case, when the work was underway in 2020, the Covid-19 pandemic occurred which had an impact on the budget for this construction project.

Meanwhile, the delay in payment of land acquisition and ROW will also have an impact on the completion of construction work, so that it will cause additional idle costs both from the side of the workforce with a fairly large number and from the side of the equipment for the goods/services provider, because they cannot complete the work according to the planned time. So to overcome this, a joint discussion was held to get an agreement from both parties and to amend the scope of the agreement between the FIRST PARTY and the SECOND PARTY.

### A. Mutual Agreement Solution for Changes to Contract Clauses

- Letter of Agreement between the two parties in 2019 regarding the construction of 150 kV transmission in the PLN Central Sumatra region.
- Minutes of the meeting to discuss land acquisition and ROW in 2020.
- PLN Central Sumatra Letter regarding Additional Work Instructions for 2020.
- Amendments to changes in scope of work and addition of reimbursement clauses.

### Article 1 Scope of Work

#### **Originally:**

The FIRST PARTY provides work to the SECOND PARTY and the SECOND PARTY agrees and accepts to carry out transmission construction work with a scope of work in accordance with but not limited to:

1. CHAPTER IV.1 General Provisions of Employment (KUP)
2. CHAPTER IV.4 Pictures
3. CHAPTER V List of Contents 1 Bill of Quantity (BoQ)
4. CHAPTER V Table of Contents 3 Technical Particular Guarantee (TPG).

#### **Become:**

The FIRST PARTY provides work to the SECOND PARTY and the SECOND PARTY agrees and accepts to carry out transmission construction work with a scope of work in accordance with but not limited to:

1. Still.
2. Still.
3. Still .
4. Still.
5. Make payments for the release of land for transmission tower sites and compensation for land, plants and/or buildings on the ROW route based on the FIRST PARTY's instructions, the payment value of which will be reimbursed by the FIRST PARTY at cost.

## **Article 2 Payment Procedures.**

### **Originally:**

Payment to the SECOND PARTY is made by the FIRST PARTY with the conditions in accordance with the provisions listed below:

1. Down Payment.
2. Construction Work Progress Payment.
3. Payment upon handover of the first stage of work.
4. Payment after the maintenance period is complete.
5. Currency
6. Payment method

### **Become:**

Payment to the SECOND PARTY is made by the FIRST PARTY with the conditions in accordance with the provisions listed below:

1. Still
2. Still
3. Still
4. Still
5. Still
6. Still
7. Reimbursement
  - a. In addition to the construction value stipulated in Article 5 of the agreement regarding the contract value, there is a reimbursement value for land acquisition work and ROW compensation.
  - b. The SECOND PARTY is instructed by the FIRST PARTY to make payments for land acquisition and ROW compensation that has been carried out by the FIRST PARTY's land team, and the reimbursement is at cost.
  - c. In the case of land ownership by a PKP (Taxable Entrepreneur), the PKP is required to issue a tax invoice.
  - d. Reimbursement of tower site land costs and ROW compensation is carried out in accordance with the flowchart contained in the amendment attachment, with the following provisions:
    - Land acquisition and ROW compensation management is carried out by the land team in accordance with the land acquisition and ROW compensation files.
    - The FIRST PARTY provides a letter of instruction to the SECOND PARTY to make payments for land acquisition and ROW compensation to the land owner according to the documents and list attached by the FIRST PARTY land team.
    - Payments made by the SECOND PARTY must be in accordance with the list of instruction letters from the FIRST PARTY and via bank transfer.



- Requests for reimbursement for the acquisition of land for the tower site and ROW compensation as mentioned above can be made by the SECOND PARTY to the FIRST PARTY by completing the following documents:
  - Copy of the agreement letter
  - Copy of Amendment to the Agreement for land acquisition and ROW compensation.
  - Letter of request for payment of reimbursement of costs
  - Receipt with stamp is sufficient.
  - The FIRST PARTY payment instruction letter is accompanied by a list of land locations and ROW.
  - Proof of transfer from the SECOND PARTY to the land owner.
  - Job inspection request letter
  - Work progress report
  - Work inspection minutes
  - Payment minutes

### **Article 3 Other Provisions.**

1. Other provisions contained in the agreement between the two parties referred to in this amendment are not subject to change and remain valid as long as they do not conflict with the amendment to this agreement.
2. This amendment to the agreement is an inseparable part of the main agreement.

## **B. Relevant Theoretical Framework and Legal Principles**

### **a. The Treaty of Our Lord**

The terminology *pacta sunt servanda* comes from Latin, meaning agreements must be kept. This principle is the basis (*ratio legis*) of the provisions of Article 1338 paragraph (1) of the Civil Code, which stipulates that every agreement made legally applies as a law for those who make it. In this case, it means that the joint agreement that has been agreed upon is valid and applies to both parties.

### **b. Principle of Good Faith**

The principle of good faith is one of the legal principles of agreements as stipulated in Article 1338 paragraph (3) of the Civil Code. The principle of good faith in an agreement letter is very important in the eyes of the law because it reflects the honest and sincere intentions of the parties involved in the agreement. In this context, the principle of good faith requires each party to act transparently, not to deceive, and to try to complete the agreement in a fair manner, without any intention to harm or take advantage of the other party illegally.

The following are several aspects related to the principle of good faith in agreements in the eyes of the law:

#### **1. Obligation to Act Honestly and Sincerely**

The principle of good faith requires parties to an agreement to act honestly, openly and sincerely. They must not have the intention to deceive, conceal important facts, or act fraudulently. Every action taken within the framework of the agreement must reflect good intentions.

#### **2. Prevent Abuse**

In practice, this principle serves to prevent abuse of power or legal loopholes that could harm other parties. For example, if one party to an agreement uses unbalanced or unfair information for their personal gain, then such action could be considered a violation of the principle of good faith.

### **3. Impact on the Validity of the Agreement**

If it is proven that one of the parties acted without good faith in making or executing an agreement, then the agreement can be considered null and void or invalid. This can happen if there is an element of fraud, coercion, or lies that affect the initial agreement.

### **4. Ensuring Legal Certainty and Trust**

The principle of good faith also provides a sense of trust between the parties involved in the agreement. This trust is important to maintain healthy legal relations and ensure that the agreement can be carried out in accordance with the provisions that have been mutually agreed upon.

The application of these principles provides a strong foundation for the completion of ongoing work that is constrained by budget as a result of the Covid-19 pandemic.

## **CONCLUSION**

Studythis analyzes legal and contractual aspects related to the reimbursement scheme for payment of land and ROW as one of the solutions to complete transmission construction work during covid 19. Based on the results of the analysis of the contract clauses and applicable regulations, it can be concluded that the reimbursement scheme as one of the efforts to complete transmission construction work during the covid 19 pandemic can be used as one of the solutions by prioritizing the principle of good faith to achieve common goals. Of course, this must first take into account the limits of the reimbursement value to be completed, so as not to disrupt the contractor's cash flow for the completion of all construction work items.

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