



Challenges and Strategies in the Return of Land Bailout Funds for Toll Road Construction: A Detailed Analysis of PT Hutama Karya's Approach

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ABSTRACT: This study explores the factors that cause the delay in the process of returning the Land Bailout Fund (LBF) and examines potential problems related to the inability of the Government of Indonesia to return LBF to PT Hutama Karya (HK) in the context of the Trans Sumatra Toll Road project. Using a qualitative case study methodology in the framework of empirical law, this study integrates Gustav Radbruch's theory of legal objectives to analyze the current legal regulations. Primary data were collected through interviews with key informants and secondary data on the realization of LBF at PT HK. The findings show that the main cause of the delay is the length of time it takes for the Commitment Making Officer (CMO) to prepare the LBF return submission documents, coupled with the slow verification process at the State Asset Management Agency (SAMI). In addition, problems related to the Land Bailout Fund that cannot be returned arise when the land acquisition is outside the specified area or when the business use right permit is not extended. The current laws and regulations, including the regulations of the Minister of Public Works and Public Housing and the Minister of Finance, are unable to overcome this gap, resulting in the failure to achieve legal goals in terms of justice and legal certainty. This study shows that this legal ambiguity inhibits the effectiveness of the LBF mechanism and recommends legislative changes to address this gap. By refining the legal provisions, the study supports increased fairness and certainty, ultimately benefiting the government and entities such as PT HK.

KEYWORDS: Commitment Making Officer (CMO), Land Bailout Fund (LBF), State Asset Management Institution (SAMI), Trans Sumatra Toll Road.

INTRODUCTION

PT Hutama Karya (HK) is a state-owned enterprise engaged in the construction services business and has the status of a Toll Road Business Entity. PT HK is currently carrying out an assignment from the government to build a toll road on the island of Sumatra which stretches from Lampung to Aceh. This development is the mission of the Indonesian government to develop infrastructure to increase economic growth on the island of Sumatra. The construction of this toll road is expected to connect business areas on the island of Sumatra. The initial stage that needs to be done by the government is to provide or free up land that will be used for the construction of the Trans Sumatra Toll Road project. The purpose of this land acquisition has been regulated as stated in Government Regulation in Lieu of Law (PERPU) number 2 of 2022 concerning Job Creation chapter VIII article 10 paragraph 1b, namely, land for the public interest includes public roads, toll roads, tunnels, railway lines, railway stations, and railway operation facilities.

In preparing for land acquisition or acquisition, the government has regulated procedures related to land acquisition for the construction of the trans-Sumatra toll road project in Government Regulation Number 39 of 2023 concerning Amendments to Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest article 1 paragraph 2, where land acquisition is an activity carried out to provide land by providing adequate compensation and fair to the rightful parties. Land acquisition compensation is carried out by two mechanisms as stipulated in Presidential Regulation number 66 of 2020 concerning Land Funding for Development in the Public Interest in the Implementation of National Strategic Projects article 3 paragraph 3, namely, land funding is carried out by the Minister with the following mechanisms:

1. Payment of Indemnification directly to the Entitled Party, or
2. Payments to Business Entities that have previously made compensation payments.

The payment of compensation from the government to Business Entities for several funds that have previously been paid by Business Entities to the recipients of this compensation is called the Land Bailout Fund (LBF). The LBF mechanism has been regulated in the



Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia number 03/PRT/M/2017 concerning Amendments to the Regulation of the Minister of Public Works and Public Housing Number 18/Prt/M/2016 concerning the Determination and Procedures for the Use of Business Entity Bailout Funds for Toll Road Land Procurement article 2 paragraph 5, where the use of Business Entity funds can be carried out in the following cases:

1. There is no budget available, but the construction of national strategic projects must be carried out in the year in question; and
2. Lack of budget availability for land acquisition for the development of national strategic projects.

PT HK as a Toll Road Business Entity assigned by the government to carry out the construction of the Trans Sumatra Toll Road project has carried out the payment of compensation for land acquisition for the construction of the Trans Sumatra Toll Road project to the entitled parties using the Land Bailout Fund mechanism. The Land Bailout Fund mechanism carried out by PT HK has been implemented since 2016 until now. The Land Bailout Fund mechanism implemented by PT HK turned out to cause several problems that arose. These problems include uncertainty related to the period of the process of returning the Land Bailout Fund by the government to PT HK. The next problem is that the Land Bailout Fund that has been paid by PT HK has the potential to not be fully returned by the government. The potential for the Land Bailout Fund that cannot be returned by the government has the potential to cause losses for PT HK, because until now there is no clear policy or regulation to regulate other forms of replacement for the Land Bailout Fund that cannot be returned by the Government. This study will analyze the causes of the long return of land bailout funds from the government to companies, as well as the potential causes of land bailout funds that cannot be returned by the government to companies. Furthermore, this study will also discuss what strategies companies are taking to reduce the obstacles that arise.

RESEARCH METHODS

This type of research is empirical/nondoctrinal legal research with a qualitative approach to case studies. In this study, the researcher will discuss in depth the problems that occur related to the Land Bailout Fund mechanism which will then be linked to the current legal basis. The researcher will analyze the legal basis with Gustav Radburch's theory of legal objectives. The data used in this study is sourced from primary data obtained from interviews with resource persons and secondary data obtained from data on the realization of the Land Bailout Fund at PT HK for the period until March 31, 2024.

RESULT & DISCUSSION

A. *Factors causing the length of the Land Bailout Fund return process.*

Based on the results of the researcher's interview, the initial process for submitting Land Bailout Fund returns from the government to PT HK is through reconciliation submissions, where this reconciliation submission must be accompanied by complete files or documents related to submitting Land Bailout Fund return from the government to PT HK. The factors that cause the length of the Land Bailout Fund return process are the long process of completing the complete documents for submitting Land Bailout Fund reconciliation by the Commitment Making Officer (CMO).

The next factor that causes the length of the Land Bailout Fund return process to PT HK is the length of the verification process or research on the completeness of administrative files by the State Asset Management Institution (SAMI). SAMI is an institution under the Ministry of Finance of the Republic of Indonesia that makes compensation payments for land either using the direct payment mechanism to residents or using the Land Bailout Fund mechanism to business entities. Data on Land Bailout Fund payments that have not been returned by the government to PT HK until March 31, 2024, are presented in the table below:



Table 1. LBF payments that have not been refunded by the Government as of March 31, 2024.

Segment	LBF Payments That Have Not Been Refunded by the Government (In Million)					Total LBF Has Not Been Refunded (In Million)
	2020	2021	2022	2023	2024	
Medan - Binjai	-	-	-	-	-	-
Palembang - Sp Indralaya	-	-	-	-	-	-
Bakauheni - Terbanggi Besar	-	-	-	-	-	-
Pekanbaru - Dumai	-	-	487	1,031	-	1,518
Sigli Banda Aceh	3,968	-	-	1,814	-	5,781
Padang Sicincin	-	-	1,887	23,786	-	25,673
Taba Penanjung Bengkulu	-	-	304	1,810	-	2,114
Prabumulih Muara Enim	-	-	-	-	-	-
Pekanbaru Bangkinang	-	187	3,983	1,884	-	6,053
Binjai - Langsa	-	-	-	8,571	1,841	10,412
Bangkinang Pangkalan	-	-	-	95	-	95
Indrapura Kisaran	-	-	-	250	-	250
Terbanggi - Pematang - Kayu Agung	-	-	-	-	-	-
Total	3,968	187	6,660	39,241	1,841	51,896

Based on data as of March 31, 2024, the total Land Bailout Fund that has not been returned by the government to PT HK is IDR 51,896 million. Of the total value, the position of the Land Bailout Fund return process can be detailed in the following table:

Table 2. LBF repayment process that has not been returned by the Government as of March 31, 2024.

Segment	Total LBF Has Not Been Refunded (In Million)	Reconciliation Has Not Been Proposed (In Million)	Reconciliation has been in process of issuing a letter to TRRA (In Million)	SAMI Research / Verification Process (In Million)	SAMI Research / Verification Results are Incomplete (In Million)	Potential LBF is Non-Refundable (In Million)
Medan - Binjai	-	-	-	-	-	-
Palembang - Sp Indralaya	-	-	-	-	-	-
Bakauheni - Terbanggi Besar	-	-	-	-	-	-
Pekanbaru - Dumai	1,518	-	-	-	1,518	-
Sigli Banda Aceh	5,781	1,814	-	-	3,968	-
Padang Sicincin	25,673	7,139	-	6,917	11,617	-
Taba Penanjung Bengkulu	2,114	-	-	-	-	2,114
Prabumulih Muara Enim	-	-	-	-	-	-
Pekanbaru Bangkinang	6,053	-	187	5,867	-	-
Binjai - Langsa	10,412	5,426	531	-	-	4,455
Bangkinang Pangkalan	95	-	61	-	34	-
Indrapura Kisaran	250	250	-	-	-	-
Terbanggi - Pematang - Kayu Agung	-	-	-	-	-	-
Total	51,896	14,629	779	12,784	17,136	6,569

Based on the table above, at the stage where reconciliation has not been submitted, there is still Land Bailout Fund worth Rp. 14,629 million, most of which is Land Bailout Fund payments in 2023. From the data above, it can be concluded that Commitment Making Officer (CMO) is still unable to complete the file for the reconciliation application for Land Bailout Fund returns paid in 2023, resulting in the Land Bailout Fund return process cannot be submitted to the next stage.

At the stage of incomplete SAMI research or verification results, CMO has also not submitted the lack of Land Bailout Fund return submission documents requested by SAMI so that the Land Bailout Fund return process is also still constrained by a long time due



to the process of fulfilling the completeness of files or documents by CMO. At the stage of research/verification of document completeness by SAMI, the duration of the verification process from the date of the Land Bailout Fund return submission letter from Toll Road Regulatory Agency (TRRA) can be seen in the following table:

Table 3. The process of research/verification of document completeness by State Asset Management Institution.

Segment	LBF value (In Million)	TRRA Letter Number	Date of TRRA Letter	SAMI Approval Letter Number	Date of SAMI Approval Letter
Padang Sicincin	4,774	TN.12.02-P/144	22-Jan-24	S-483/LMAN/2024	17-Apr-24
Padang Sicincin	2,143	TN.12.02-TI/138	22-Feb-24	S-480/LMAN/2024	05-Apr-24
Pekanbaru Bangkinang	5,867	TN.12.02-TI/176	28-Feb-24	Still in the process of verifying completeness of documents	-
Total	12,784				

Based on the table above, for the total Land Bailout Fund value of Rp. 12,784 until April 30, 2024, only two SAMI approval letters have been issued. The approval letter is for Land Bailout Fund values of Rp. 4,774 million and Rp. 2,143 million. The two letters took more than a month from the date of the submission letter from TRRA.

The realization of Land Bailout Fund payments carried out by PT HK at this time is using funds returned by SAMI and using internal funds as explained in the excerpt of the researcher's interview with the resource person. If SAMI has not returned Land Bailout Fund to PT HK, the company must prepare other funds, in this case internal company funds if there is an urgent Land Bailout Fund payment application to be paid immediately. The duration of the Land Bailout Fund return has little impact on the company's cash flow but does not cause a significant effect.

B. Factors causing the potential for Land Bailout Fund that cannot be returned by the government.

The next problem is related to the potential of DTT which cannot be fully returned by LMAN. The remaining DTT balance of PT Hutama Karya as of March 31, 2024, is IDR 51,896 million. From the remaining balance, there is a potential non-refundable DTT by the government of Rp. 6,569 million, as presented in the detailed table below:

Table 4. Total potential Land Bailout Fund that cannot be returned by the government.

Segment	Total LBF Has Not Been Refunded (In Million)	Potential LBF is Non-Refundable (In Million)	Refundable LBF (In Million)
Medan - Binjai	-	-	-
Palembang - Sp Indralaya	-	-	-
Bakauheni - Terbanggi Besar	-	-	-
Pekanbaru - Dumai	1,518	-	1,518
Sigli Banda Aceh	5,781	-	5,781
Padang Sicincin	25,673	-	25,673
Taba Penanjung Bengkulu	2,114	2,114	-
Prabumulih Muara Enim	-	-	-
Pekanbaru Bangkinang	6,053	-	6,053
Binjai - Langsa	10,412	4,455	5,957
Bangkinang Pangkalan	95	-	95
Indrapura Kisaran	250	-	250
Terbanggi - Pematang - Kayu Agung	-	-	-
Total	51,896	6,569	45,327



Based on the data of the table detailing the total potential of non-returnable LBF above, the details of land status for the Taba Penanjung - Bengkulu, and Binjai - Langsa sections are explained in the table as follows:

Table 5. Details of Potential Land Bailout Fund that the Government cannot Return.

Segment	Payment Request Letter Number (PRL) from CMO	PRL Date	LBF Value (In Million)	Land Status	SAMI Rejection Letter Number
Taba Penanjung - Bengkulu	KU.02.06/015415/CN/SPP-UGK/VIII/2023/IVTS-02	11-Aug-23	1,810	Standing (plants/arable crops) on land outside the designated location	CMO did not submit LBF refund
	TN.02.06/UGK/DT/015415/CN/2022/IVTS-01	05-Dec-22	304		CMO did not submit LBF refund
Binjai - Langsa	TN.02.06/015415/AG/2022-106	14-Dec-22	204	Stands (plants/cultivated crops) on land with state property status where the business permit/business use rights have not been extended by the land owner	S-992/LMAN/2023
	TN.02.06/015415/AG/2023-08	03-Feb-23	780		S-1410/LMAN/2023
	TN.02.06/015415/AG/2023-60	24-Jul-23	142		S-371/LMAN/2024
	TN.02.06/015415/AG/2023-88	09-Nov-23	3,329		CMO did not submit LBF refund
Total			6,569		

Based on table 5 above, the factor that causes the emergence of potential Land Bailout Fund that cannot be returned is because the object of land acquired and paid for by the Land Bailout Fund mechanism by PT HK is on land that is outside the location determination for the Bengkulu - Taba penanjung section. As for Binjai – Langsa, the land that has been paid has the status of state property which the Right to Use Business permit for the land has not been renewed by PT Perkebunan Nusantara as the owner of the land. It was explained that State Asset Management Institution would not make Land Bailout Fund compensation payments that had been paid by PT HK only for stands or plants on the land object without paying the land object concerned. This is because the land permit has not been renewed by the landowner and the location of the land that is outside the location determination. On table 5 above, the Binjai – Langsa section was once submitted for a Land Bailout Fund return but was rejected by State Asset Management Institution with proof of a rejection letter from State Asset Management Institution.

The researcher identifies shortcomings in the current legal regulations regarding the Land Bailout Fund (LBF) return process, specifically examining the Toll Road Regulatory Agency's (TRRA) regulation PUPR No. 03 of 2017 and the State Asset Management Institute's (SAMI) regulation No. 95 of 2023. These regulations fail to align with Gustav Radbruch's legal objectives, particularly in terms of justice and legal certainty. Justice, as defined in this context, involves equal treatment under the law and equitable distribution of rights and obligations. Legal certainty should ensure clear regulations and consistency in legal applications. The absence of specific clauses or standard operating procedures (SOPs) that define timelines for completing Land Bailout Fund reconciliation document by the Commitment Making Official (CMO), as well as for verifying these documents by SAMI, indicates a lack of justice and legal certainty. This has led to extended delays in the Land Bailout Fund return process for PT HK. Additionally, the lack of regulation concerning the non-refundable Land Bailout Fund paid by PT HK exposes the company to potential financial losses, reflecting the inadequacy of the legal framework in safeguarding rights and ensuring clarity and consistency, thus impacting PT HK adversely.

C. Strategies carried out by the Company related to the constraints of the Land Bailout Fund.

Based on the results of the researcher's interview with the source person, PT HK has made several efforts related to the problem of the length of the duration of fulfilling the completeness of files by Commitmen Making Officer (CMO) and the process of verifying the completeness of Land Bailout Fund (LBF) return documents by State Asset Management Institution (SAMI). The first effort made is PT HK has assigned special personnel stationed at each project location who have job descriptions related to land acquisition and LBF returns for Trans Sumatra Toll Road development projects. These personnel are expected to be a liaison to bridge the



interests of PT HK with the land acquisition CMO and other stakeholders related to each project so that they can coordinate more intensely to help accelerate the land acquisition process and the LBF return process.

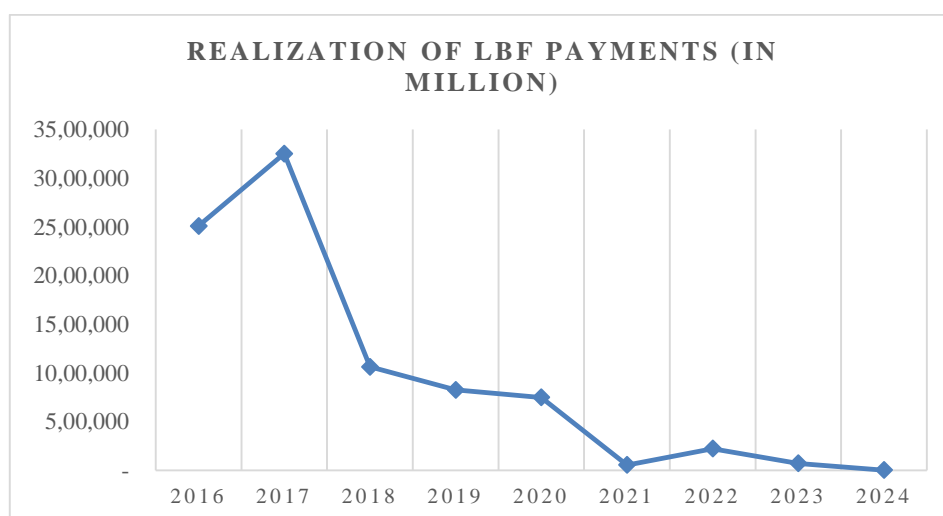
The next strategy made by PT HK is to coordinate regularly with Toll Road Regulatory Agency (TRRA) to confirm the reconciliation agenda to be implemented by TRRA, so that land object areas that have considerable value will be a priority for PT HK to submit Land Bailout Fund return reconciliation which will be coordinated with the land acquisition CMO, so that it can immediately complete the Land Bailout Fund return application file or document. PT HK also actively coordinates with SAMI so that SAMI can arrange priority stages in verifying the submitted Land Bailout Fund return documents.

Regarding the potential for Land Bailout Fund that cannot be returned by the government, PT HK is currently very selective if there is a plan to submit a Land Bailout Fund Payment Request Letter from CMO to PT HK. It aims to filter land objects that have the potential cannot to be returned by the government because currently there is no regulation or legal basis for accommodating related to Land Bailout Fund objects that cannot be returned by the government.

Table 6. Details Realization of Land Bailout Fund Payment of PT Hutama Karya.

Segment	Realization of LBF Payments (In Million)									Total LBF Payment (In Million)	Total SAMI Refund (In Million)	LBF Amount Has Not Been Refunded (In Million)
	2016	2017	2018	2019	2020	2021	2022	2023	2024			
Medan - Binjai	194,570	301,462	236,619	249,072	77,356	10,032	-	-	-	1,069,111	1,069,111	-
Palembang - Sp Indralaya	32,294	8,224	-	1,679	-	-	-	-	-	42,197	42,197	-
Bakauheni - Terbanggi Besar	2,242,763	1,425,318	169,138	58,272	5,754	(410)	-	3	-	3,900,837	3,900,837	-
Pekanbaru - Dumai	38,948	79,020	76,344	29,352	166,777	14,108	2,178	8	-	406,734	405,217	1,518
Sigli Banda Aceh	-	-	168,023	400,528	304,113	13,964	9,411	4,364	-	900,403	894,622	5,781
Padang Sicincin	-	-	-	14,743	13,450	-	56,374	39,900	-	124,468	98,795	25,673
Taba Penanjung Bengkulu	-	-	-	-	171,973	10,164	304	1,810	-	184,250	182,136	2,114
Prabumulih Muara Enim	-	-	-	-	4,712	-	-	-	-	4,712	4,712	-
Pekanbaru Bangkinang	-	-	-	-	-	7,210	9,341	3,061	-	19,613	13,559	6,053
Binjai - Langsa	-	-	-	-	-	-	13,302	20,105	1,841	35,248	24,836	10,412
Bangkinang Pangkalan	-	-	-	-	-	-	386	863	-	1,250	1,155	95
Indrapura Kisaran	-	-	-	-	-	-	130,912	1,473	-	132,384	132,134	250
Terbanggi - Pematang - Kayu Agung	-	1,436,294	412,346	72,755	3,642	-	-	-	-	1,925,036	1,925,036	-
Total	2,508,575	3,250,317	1,062,469	826,402	747,777	55,068	222,208	71,588	1,841	8,746,244	8,694,348	51,896

Based on the data in table 6 above, the realization of Land Bailout Fund payments from 2016 to April 2024 tends to experience a significant decrease. The decline is shown in the chart as follows:



Picture 1. Realization of Land Bailout Fund Payment Chart of PT Hutama Karya.



The chart above illustrates the downward trend in the realization of Land Bailout Fund payments by PT HK. This is in line with the selective process carried out by PT HK if there is a plan to submit Land Bailout Fund Payment Request Letter from CMO by considering the level of urgency for the payment of land acquisition through the Land Bailout Fund mechanism.

CONCLUSION

Based on the results of the analysis regarding the payment mechanism for Land Bailout Funds implemented by PT HK on the National Strategic Project for the construction of the Trans Sumatra Toll Road. There are still problems regarding the length of the process for returning the Land Bailout Funds that have been paid by PT HK. This obstacle is caused by the long process of completing the documents for submitting a return of Land Bailout Funds carried out by the Commitment Making Officer. Apart from that, the length of time during the document completeness verification process carried out by State Asset Management Institution. Another obstacle that also arises is the potential for Land Bailout Funds that cannot be returned by the government because the land object is outside the designated land acquisition location and the Business Use Rights permit has not been extended. These three obstacles are currently not yet regulated in the current regulations. So the current regulations still do not fulfill the aspects of legal objectives in terms of justice and legal certainty based on Gustav Radburch's theory of legal objectives.

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