

Assessing Government Responsibility in Land Acquisition for National Strategic Projects

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Abstract

This study analyses the Government's responsibilities in implementing land acquisition in National Strategic Projects. This is qualitative research using a statutory approach, case and conceptual approaches. The primary legal materials resulted from relevant laws and legislation. The legal material collected is analysed prescriptively. The results showed that national strategic projects' land acquisition planning arrangements must be accommodated adequately and comprehensively. There are no land acquisition planning arrangements that accommodate justice, which has encouraged the creation of land acquisition conflicts. Research findings show that the Government's responsibility in acquiring land for National Strategic Projects is weak, and regulatory arrangements are unclear. Government responsibility still needs to be stronger and have strict legal regulations. Legal certainty for economic interests in National Strategic Projects is more dominant. At the same time, the Government has ignored the interests of law and justice for the affected communities.

Keywords: Land; Justice; Government Responsibility; National Strategic Projects.

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1. INTRODUCTION

The public interest doctrine has been deployed by successive state regimes in Indonesia to legitimise the forcible acquisition of land for the state and private interests since the colonial period [1]. Land acquisition is an important instrument for infrastructure development and a priority in accelerating National Strategic Projects. Land acquisition and National Strategic Projects are two sides of the same coin, and both can be distinguished but cannot be separated. Land acquisition is obtaining rights to land owned by the community through deliberation to reach an agreement regarding the form and amount of compensation by providing appropriate compensation. Land acquisition prioritizes legal certainty in order to pursue economic interests, but substantial justice for affected communities needs to be addressed. Society becomes weaker when dealing with the Government, and therefore, the Government's responsibility is questioned.

Here we note several contemporary factors compounding the ever present potential for land conflicts. Firstly, the reaching of the physical limits of land with little or no new frontiers into which to expand, has intensified the competition between different actors to secure access to any land they can. Secondly, the long-term structural crisis in the economies of the global South (and global North) has seen the conspicuous rise of precarious labour and an informal sector that has morphed into an informal economy that millions rely on for survival [2].

The author focused the study on three land acquisition problems in the National Strategic Project, namely the construction of the Bener Dam in Wadas Village, the construction of the New Yogyakarta Airport (NYIA), and the construction of the Yogyakarta-Solo Toll Road. The three problem formulations are as follows: First, what are the arrangements for land acquisition in National Strategic Projects? Secondly,

¹ Meckelburg, Rebecca, and Agung Wardana. "The political economy of land acquisition for development in the public interest: The case of Indonesia." *Land Use Policy* 137 (2024): 107017.

² Rigg, Jonathan, Albert Salamanca, and Eric C. Thompson. "The puzzle of East and Southeast Asia's persistent smallholder." *Journal of Rural Studies* 43 (2016): 118-133.

what is the Government's responsibility for implementing land acquisition in National Strategic Projects? Thirdly, what is the social justice-based land acquisition conflict resolution model in National Strategic Projects?

In this paper, the problem is addressed to formulate the second problem, namely how the Government is responsible for implementing land acquisition in National Strategic Projects. This writing focuses on the issue of Government responsibility in land acquisition for National Strategic Projects. The author analyzes the land acquisition problem in three National Strategic Projects: the construction of the Bener Dam in Wadas Village, the construction of the New Yogyakarta Airport (NYIA) and the construction of the Yogyakarta-Solo Toll Road. This problem cannot be separated from strategic policies to drive economic growth. To the author's knowledge, no previous research has similar studies and certainly different analyses. It is not an exaggeration to say that the research carried out has novelty.

Based on the results of library research searches, several studies are similar, but in principle, these studies are different. The research in question includes dissertation research conducted by Dito Syaferli entitled, *"Regulation of Land Acquisition for Development in the Public Interest and National Strategic Projects in Indonesia"*, at the Law Doctoral Program, Faculty of Law, Andalas University, Padang, 2003. The focus of this dissertation research is the study of National Strategic Projects assigned by the Central Government related to guaranteeing legal certainty, justice and maximum benefit for the prosperity of the people.

Another related research was conducted by Maftuchan was entitled *"Fulfillment of Human Rights and Infrastructure Development: Study of National Strategic Project Regulations in Indonesia."* The study focuses on National Strategic Project infrastructure development projects, starting from the planning, budgeting, implementation and monitoring evaluation stages. Next, an analysis will be carried out on the participation of affected and beneficiary communities.

The findings of Syaferli's research concluded that in national development planning arrangements, aspects of land acquisition planning for development in the public interest have not been accommodated, considered, or need to be formulated adequately. The planning arrangements for land acquisition for

development in the public interest still need legal certainty in national development planning. In the regulation of land acquisition for development in the public interest through National Strategic Projects, there has been disharmony and overlapping arrangements. Affected communities are only positioned as objects of infrastructure projects. The regulations for implementing National Strategic Projects still need to contain or comprehensively regulate human rights principles in order to protect and fulfil citizens' human rights.

The Government's responsibilities in land acquisition for National Strategic Projects that will be evaluated and analyzed point to five things. These are responsibility in development plans, public consultation, compensation, consignment, and legal action. The Government's responsibility is to determine the working of an ideal legal system for land acquisition and guarantee the resolution of land acquisition conflicts that prioritize justice.

2. METHOD

This is qualitative research using a statutory approach, comparative and conceptual approaches. The primary legal materials resulted from relevant laws and legislation.³ Furthermore, the data were analyzed with content analysis to analyze the formulation of the problem and then made a conclusion and suggestion. Those legal material collected are analysed prescriptively.

3. GOVERNMENT RESPONSIBILITY IN LAND ACQUISITION FOR NATIONAL STRATEGIC PROJECTS: THE CURRENT CHALLENGES

The state is an abstract personification, and the Government is positioned as an individual or organization with a legal entity representing the state's interests. The Government acts through the people within it, who serve as state officials. The existence of an attempt to link actions carried out by state officials to fulfil the capacity of government actions that represent the state's interests is referred to as imputation, imputability, or attribution [4]. In particular, groups are created based on subjects that can be considered to represent a state to carry out certain actions with the consequence that the state is responsible for what it does.

The Government's responsibilities are closely related to the rule of law principles. In the rule of law, the use of authority or power cannot be separated from the restrictions set out in law because the use of authority departs from the concept of division of power, which is the characteristic or character of the rule of law [5].

³Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.

⁴Eko Riyadi (ed). *To Promote: Membaca Perkembangan Wacana Hak Asasi Manusia Di Indonesia*. Yogyakarta: Pusham UII, 2012: 331-332

⁵Haggard, Stephan, Andrew MacIntyre, and Lydia Tiede. "The rule of law and economic development." *Annu. Rev. Polit. Sci.* 11 (2008): 205-234.

Conventionally, the concept of a legal state is always associated with the principles of Government, which must be based on law and the constitution, as well as the division or separation of state power into different functions.

The Government has an obligation to assume responsibility for acts that violate the law, in principle, restoring conditions to the way they were before the law violation occurred. However, if the return to its original position cannot be carried out, the Government must provide compensation as a liability. If an act violates the law and causes harm to every citizen, the Government is liable and obliged to compensate its citizens. However, on the other hand, the Government is not liable if there is no unlawful act. It is only obliged to provide compensation if there are statutory regulations that specifically determine the provision of such compensation. Here, the Government is not obligated to provide compensation when the action is aimed at carrying out public duties or the public interest for which

no statutory regulations require in implementing public duties.

Control of land by the state is a control whose authority gives rise to the responsibility, namely, for the prosperity of the people. On the other hand, people can also have land rights. Property rights are hereditary, the strongest and fullest rights people can have over land, bearing in mind the social functions attached to land ownership. In other words, an individual's relationship with land is legal and gives rise to rights and obligations. Meanwhile, the state's relationship with land gives rise to authority and responsibility. However, in reality, the government does not carry out development but by investors. If the criteria used are social benefits, land acquisition should contribute to the welfare of the people in the long term. This wrong understanding of the meaning of public interest has implications for negligence in identifying the public interest in the implementation stage. Despite an increase in public spending, Indonesia's infrastructure gap is, by far, the largest in ASEAN (Figure 1) [6].

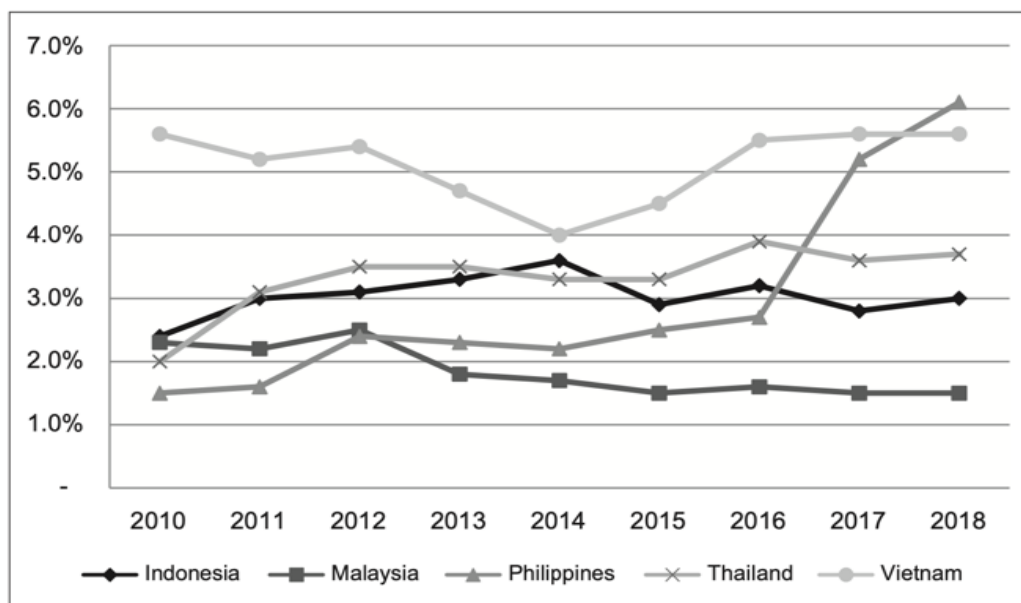


Figure 1: Infrastructure Spending as a Share of GDP in Select ASEAN Countries (percentage of GDP)

Source: Secondary data, 2024 (processed)

The liberal development paradigm, which prioritizes the construction of mega projects of facilities and infrastructure to support economic globalization in its development, has marginalized ecological justice for minority communities. The government's responsibility in land acquisition, as occurred in the construction of the Bener Dam, the construction of the New Yogyakarta Airport (NYIA) and the construction of the Yogyakarta-

Solo Toll Road, is considered to be a weak point. This is demonstrated in various issues of Government responsibility. The government's responsibility refers to responsibility for development plans, public consultations, compensation and consignment, and legal efforts to fulfil justice [7].

⁶ Salim, Wilmar, and Siwage Dharma Negara. "Infrastructure development under the Jokowi administration: Progress, challenges and policies." *Journal of Southeast Asian Economies* 35, no. 3 (2018): 386-401.

⁷Adam, Latif. "The Roles and Problems of Infrastructure in Indonesia." *Ekonomi dan Keuangan Indonesia* 60, no. 1 (2012): 105.

The rejection of the construction of the New Yogyakarta Airport was addressed with a lawsuit to annul the Yogyakarta Governor's Decree No. 68/KEP/2015 through the Yogyakarta State Administrative Court. The Yogyakarta State Administrative Court later granted the lawsuit filed by the affected residents.

In Decision Number: 07/G/2015/PTUN.YK, the Panel of Judges stated that the object of the dispute was the Decree of the Governor of the Special Region of Yogyakarta No. 68/KEP/ 2015 dated 31 March 2015 concerning the Determination of Construction Locations for the Development of a New Airport in the Special Region of Yogyakarta has conflicted with the Yogyakarta Special Region Provincial Spatial Planning Plan because none of the provisions mandates the construction of a new airport in Yogyakarta. Instead, what exists is the development of Adi Sutjipto Airport.

Settlement of land acquisition conflicts in construction for developing the New Airport in D.I. Yogyakarta needs to comply with legal principles [8]. Affected communities do not receive legal certainty and justice [9]. When the public was about to submit a legal action for judicial review of the cassation decision, it turned out that Supreme Court Regulation Number 2 of 2016, which regulates Procedure Guidelines for State Administrative Courts, had been issued. The cassation decision is a final decision for which no legal review is available. With the cassation decision that the review could not be carried out, the development stage continued at the land acquisition stage.

The political nature of land governance in Indonesia, has a productive element that is exploited by local communities and their allies and other actors with social interests in claiming land. Inconsistent laws, overlapping regulations, incomplete data and territorial maps provide different social actors with legal arguments to assert or defend their land claims on moral or ideological grounds and the opportunity to establish their claims within legal jurisdictions [10].

Land acquisition is the most crucial problem and has high conflicts in toll road construction. If this problem is not resolved immediately, it will have an impact on delays in toll road construction, as well as on other related problems. Land acquisition problems are mainly related to land compensation, socialization, land ownership status, the existence of disputes, the emergence of land speculators, and moreover, the issue of compensation for institution land is actually not only related to the compensation value itself but also what needs to be considered is the ecological value of the forest area which has been converted [11]. Ecologically, immaterial values need to be taken into account in terms of pollution reduction, the ability to conserve water, and aspects of food security despite its economic effect.

The Release or transfer of land rights must be based on the principle of respect for land rights. Rationally, to protect someone's rights, every land acquisition must be carried out with appropriate compensation, and to be said to be feasible, the minimum compensation is that it is in accordance with Market Value. The selling value of the tax object which is used as the basis for the calculation has the potential not to fulfill the element of proper compensation. It is a common understanding that the sale value of tax objects often does not represent market value.

Justice is meant if the owner of Land Rights has received compensation that is deemed adequate because the compensation has been able to be beneficial and provide them with a better life. For example, by giving up their land rights and then getting compensation payments which can then be used to finance their children's schooling, or they can use it for business capital, besides that, they can also occupy a new house that is in a better condition than their previous house [12].

Another thing that according to the author needs to be considered is the need for an institution, agency that is directly appointed to supervise the land acquisition process. The basis for the need for supervision is to carry out control and monitoring so that there is no abuse of authority or it does not ran in accordance with existing regulations [13]. The tasks and powers given to

⁸Fitriantoro, Muchamad Imam. "Drivers of Conflict in Urban Infrastructure: Case Study of the New Yogyakarta Airport." *Jurnal Politik* 6, no. 1 (2020): 4.

⁹Abiad, Abdul, and Renard Teipelke. "Infrastructure provision in developing Asia's giants: A comparative perspective on China, India, and Indonesia." *Journal of Infrastructure, Policy and Development* 1, no. 1 (2017): 24-43.

¹⁰ Hall, Derek, Philip Hirsch, and Tania M. Li. "Introduction to powers of exclusion: land dilemmas in Southeast Asia." National University of Singapore Press and University of Hawaii Press, 2011.

¹¹ Rahayu, Lisna & Kipuw, Desiree. (2020). The Correlation between Toll Road Development and the

Improvement of Local Economy (Case Study: The Soroja Toll Road). *International Journal of Sustainable Transportation Technology*. 3. 26-36. 10.31427/IJSTT.2020.3.1.5.

¹²Widodo, Wahyu, Supto Budoyo, and Toebagus Galang Windi Pratama. "The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030." *The Social Sciences* (2018).

¹³ Setyawan, Lazarus Tri, and Habib Adjie. "Reconstruction of Land Procurement Policies and its Compensation for Interests of National Strategic Projects." *International Journal of Innovative Science and Research Technology* 6, no. 3 (2021): 437-442.

supervisors start from land acquisition planning to termination of the legal relationship between the entitled party and the object of land acquisition, considering that at this stage, the community has received or received certainty and rights that must be received for the loss of their rights to land.

As a result, the land acquisition planning arrangements for National Strategic Projects and aspects of land acquisition planning have not been accommodated and need to be formulated adequately. The absence of land acquisition planning arrangements for National Strategic Projects that accommodate justice has encouraged the creation of land acquisition conflicts. Land acquisition arrangements for land acquisition for development in the public interest through National Strategic Projects have yet to provide adequate guarantees for legal certainty, protection and justice.

4. CONCLUSION

The Government's responsibility in procuring land for National Strategic Projects show that it still needs to be stronger. This weak responsibility is also influenced by aspects of land acquisition planning that need to be formulated adequately. Inconsistent laws, overlapping regulations, incomplete data and territorial maps provide different social actors with legal arguments to defend their land claims and the opportunity to establish their claims within legal jurisdictions. On the other hand, legal certainty in the name of carrying out land acquisition for development in the public interest in National Strategic Projects is more dominant. At the same time, the Government has ignored the interests of legal protection and justice for affected communities.

REFERENCES

- Abiad, A., & Renard, T. (2017). Infrastructure provision in developing Asia's giants: A comparative perspective on China, India, and Indonesia. *Journal of Infrastructure, Policy and Development*, 1(1), 24-43.
- Adam, L. (2012). The Roles and Problems of Infrastructure in Indonesia. *Ekonomi dan Keuangan Indonesia*, 60(1), 105.
- Eko, R. (ed). (2012). *To Promote: Membaca Perkembangan Wacana Hak Asasi Manusia Di Indonesia*. Yogyakarta: PUSHAM UII, hlm. 331-332.
- Fitriantoro, M. I. (2020). Drivers of Conflict in Urban Infrastructure: Case Study of the New Yogyakarta Airport. *Jurnal Politik*, 6(1), 4.
- Haggard, S., MacIntyre, A., & Tiede, L. (2008). The rule of law and economic development. *Annu Rev Polit Sci*, 11(1), 205-234.
- Hall, D., Hirsch, P., & Li, T. M. (2011). Introduction to powers of exclusion: land dilemmas in Southeast Asia. National University of Singapore Press and University of Hawaii Press.
- Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.
- Meckelburg, Rebecca, and Agung Wardana. "The political economy of land acquisition for development in the public interest: The case of Indonesia." *Land Use Policy* 137 (2024): 107017.
- Rahayu, L., & Kipuw, D. M. (2020). The correlation between toll road development and the improvement of local economy (case study: the Soroja Toll road). *International Journal of Sustainable Transportation Technology*, 3(1), 26-36. doi: 10.31427/IJSTT.2020.3.1.5.
- Rigg, J., Salamanca, A., & Thompson, E. C. (2016). The puzzle of East and Southeast Asia's persistent smallholder. *Journal of Rural Studies*, 43, 118-133.
- Salim, W., & Negara, S. D. (2018). Infrastructure development under the Jokowi administration: Progress, challenges and policies. *Journal of Southeast Asian Economies*, 35(3), 386-401.
- Setyawan, L. T., & Habib, A. (2021). Reconstruction of Land Procurement Policies and its Compensation for Interests of National Strategic Projects. *International Journal of Innovative Science and Research Technology*, 6(3), 437-442.
- Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*.