

The Land for the Community: Protection of Community Land Rights in Land Procurement for National Strategic Projects



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ABSTRACT: The government formed a policy that negated land rights for the community in Rempang. Also, They chose to side with foreign investment in national strategic projects which ultimately generated agrarian conflict. This research aims to analyze the minimal protection of community land rights in national strategic projects and the construction of community land rights protection in national strategic projects. The problem was studied through doctrinal research using statutes and a conceptual approach and analyzed using content analysis techniques. Based on the analysis, it is concluded that the government policy that negated the rights of the people on Rempang Island was not in line with the aim of the right to control the state, namely to maximize the prosperity of the people and customary law as the basis of national agrarian law which emphasizes protecting the rights of people who have lived for generations. To overcome this problem, government policy construction should emphasize the value of justice which pays attention to the weak and the social and cultural conditions of society. In making and implementing policies, public participation must also be taken into account.

KEYWORDS: Land Rights; Community; Rempang; National Strategic Project.

A. INTRODUCTION

The protection of land rights for the community in land acquisition for national strategic projects is a very important discourse because it is related to the fulfillment of community rights. Community rights relate to the individual's ability to access or use the land as well as the exclusivity or exclusion of other people from using the land. The state is present to protect and affirm the rights of the community, not to alienate or deny the rights of the community. It is expressly stated that the presence of the State is to protect the entire Indonesian nation and all of Indonesia's blood, including the protection of people's rights. This is the point that underlies the differences between national agrarian law and colonial agrarian law. The agrarian law that is to be developed is not a monopolistic, discriminatory, dependent, or exploitative agrarian law.¹ The national agrarian law intends to protect and create the greatest prosperity for the people. This then becomes the substance of the right to control the state. The state's authority is limited by its goal, namely the greatest prosperity of the people. This is also confirmed in the Constitutional Court Decision that one of the limitations of the right to control the state is the recognition and respect for the hereditary rights of the community. In this context, national agrarian law should be present to protect community rights, especially community rights that have existed since ancient times, including the rights of the Rempang community, which have existed since 1834 or before Independence Day. Efforts to create protection for the hereditary rights of the community, including for the Rempang community, became inconsistent when the National Strategic Project (PSN) was initiated, especially on Rempang Island. It was through the Regulation of the Coordinating Minister for Economic Affairs Number 7 of 2023 concerning the Third Amendment to the Regulation of the Coordinating Minister Republic of Indonesia Economic Sector Number 7 of 2021 concerning Changes to the List of National Strategic Projects (ratified on 28 August 2023) which includes the Rempang Eco-City development project as one of the National Strategic Projects in 2023. The consequence of determining Rempang Island as a National Strategic Project Area is the government must be proactive and they should try to provide land for the benefit of investors who invest their money for the benefit of the project. To obtain land to fulfill the interests of investors in carrying out their activities, the government has established a policy to relocate these communities. This obtained disagreement from the people who have lived in the area for generations. The government which only considers land as an economic commodity then faces disagreement from the Rempang people who have a holistic view. It not only views land as an economic commodity but also as social space, spiritual relations, and cultural relations.

¹ Slamet Widodo, 'A Critical Review of Indonesia's Agrarian Reform Policy', *Journal of Regional and City Planning*, 28.3 (2017), 204 <<https://doi.org/10.5614/jrcp.2017.28.3.4>>.

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This generated conflict. This conflict also showed the aspect of alignment between the interests of society on the one hand and the interests of investors on the other. Government policy seemed to prioritize economic aspects (investment interests) while negating community interests (social interests). Based on this description, this article aims to analyze the lack of protection of community land rights in land acquisition for national strategic projects and the ideal legal construction in ensuring the protection of community land rights in land acquisition for the benefit of national strategic projects. This article is different from the research of Sekar Banjaran Aji² and Paul Barnes because both used human rights and ethnographic perspectives in analyzing problems. This article used agrarian law principles as a basis for conducting analysis which was also examined from the concept of justice. Using an agrarian legal perspective is important because it relates to land ownership.

In compiling this article, the author first explained the inconsistency of the government's policy to relocate the Rempang community with the rules of national agrarian law. This section also explains the setting aside of community land rights for investment purposes. The next sub-discussion describes the construction of national agrarian law which protects community rights in land acquisition for national strategic projects based on justice. In this section, the author explains the basic principles that the government should pay attention to when procuring land for national strategic projects and also the mechanisms for carrying out new construction.

B. RESEARCH METHOD

This research was doctrinal research which emphasized the use of doctrine, theory, principles, values, and legal principles in analyzing a problem in analyzing land ownership issues on Rempang Island. It also used a statutory approach to analyze various substances and synchronize various related regulations and their relevance to the values and goals of creating social welfare.

This research used content analysis as a technique for analyzing data. This technique consisted of several stages, namely collecting data through literature study, creating certain themes to classify data (coding frame), coding data or classifying data, analyzing data using various concepts, theories, and values, and at the final stage presenting the result or write this scientific work.³

C. RESULT AND DISCUSSION

1. The Lack of Legal Protection of Rempang Community Land Rights in Land Acquisition for National Strategic Projects

This case in Rempang attracted public attention, which was one of the agrarian conflicts in Indonesia. Based on data from the Agrarian Reform Commission. In 2022, there were 212 agrarian conflicts and the most recent is the Rempang case. This area is land owned and controlled by the community. Based on information from the Riau Islands Malay Traditional Institute and the Indonesian Forum for the Environment, there are 16 Old Malay Villages occupied by the Malay Tribe, the Orang Laut Tribe, and the Orang Darat Tribe which have existed on Rempang Island for hundreds of years, namely since 1834.

Over time, agrarian conflicts have increased and this involves various parties including the government, society, and the private sector. The conflict on Rempang Island is very interesting because of the possibility of issuing management rights to the Batam Concession Agency on the island. Based on these management rights, the government can collaborate with third parties to carry out business activities on the island. On this basis, the government is collaborating with PT Makmur Elok Graha (MEG) to develop Rempang into a Free Trade and Free Port Area (KPBPB) covering an area of 17,000 hectares. In this case, PT Makmur Elok Graha obtained building use rights above management rights. One of the investors who will invest in the island is the construction of an integrated glass and solar panel factory by Xinyi International Investment Limited from China worth US\$ 11.5 billion or equivalent to IDR 173.51 trillion. In 1992, the Rempang Island area was designated as an Industrial Area to develop industry on the island of Batam as stated in Presidential Decree No. 28 of 1992. Hence, the desire to give management rights to BP Batam to give management rights to Rempang Island has actually existed since 1993 with the issuance of Minister of Agrarian Decree No. 9 – VIII- 1993 concerning Management and Management of Land in the Industrial Area of Rempang Island, Galang Island, and Other Surrounding Islands. In this Decree, it is stated that the Ministry of Agrarian Affairs is willing to grant management rights to the entire island area of Rempang, Galang, and its surroundings. However, in dictum C of this Decree, it is stated that if the land area to which management rights will be granted contains land and buildings belonging to the community, compensation must be settled. In the Strategic Plan of the Batam Concession Agency for 2020-2024, it is emphasized that the government (Concession Agency) of Batam wants to grant management rights on Rempang Island as in the following quote:⁴

² Sekar Banjaran Aji and Achmad Firas Khudi, 'Indonesia's National Strategic Project, Displacement, and the New Poverty', *Journal of Southeast Asian Human Rights*, 5.2 (2021), 136–53 <<https://doi.org/10.19184/jseahr.v5i2.23399>>.

³ Satu Elo and others, 'Qualitative Content Analysis', *SAGE Open*, 4.1 (2014), 215824401452263 <<https://doi.org/10.1177/2158244014522633>>.

⁴ Badan Pengusahaan Batam, *Rencana Strategis Badan Pengusahaan Batam 2020-2024* (Batam, 2020).

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In addition, it is necessary to issue regulations regarding the determination of land management rights (HPL) for Rempang Island to Galang Baru Island to be included in the management of KPBPB Batam, considering that since January 2015 the land in this area was still in the status quo. Thus, various investment and development activities on the island Rempang to Galang Baru Island cannot yet be carried out optimally even though on the other hand the Government has built adequate road and water infrastructure. It is expected that Government Regulations and regulations that support KPBPB Batam on these islands will remove obstacles to development and investment plans that will increase growth for the region and surrounding economic activities. The description above actually shows that there is a strong will or desire from the government to use Rempang Island for economic development purposes and to facilitate private parties to invest in the area. This effort became more intense since the designation of the Batam-Rempang-Galang area as a free trade zone on April 1, 2009. In order to follow up on this, the Batam Concession Agency's Strategic Plan for 2020-2024 also seeks to grant management rights to this land. In fact, in this Strategic Plan, it is proposed that a Government Regulation be made regarding the Management of Rempang Island and Galang Island to increase investment in the area. It received support again with the enactment of Regulation of the Coordinating Minister for Economic Affairs Number 7 of 2023 concerning the Third Amendment to the Regulation of the Coordinating Minister for Economic Affairs of the Republic of Indonesia Number 7 of 2021 concerning Amendments to the List of National Strategic Projects (ratified on 28 August 2023) which included the Rempang Eco-development project -City as one of the National Strategic Projects in 2023. National Strategic Projects and/or programs are implemented by the Government, Regional Government, and/or business entities that have a strategic nature to increase growth and equitable development to improve community welfare and development area. The inclusion of the Rempang Eco-City development project as one of the National Strategic Projects has the consequence that the government must provide convenience in acquiring land for investors in the area as regulated in Article 4 letter g of Government Regulation of the Republic of Indonesia Number 42 of 2021 concerning Ease of National Strategic Projects which regulates that The government is obliged to facilitate the resolution of problems in business licensing and land acquisition for National Strategic Projects. Besides, this is confirmed in Article 22 of Presidential Regulation Number 03 of 2016 concerning the Acceleration of Implementation of National Strategic Projects which states that the Central Government and/or Regional Governments can provide support to business entities in the process of providing land. The form of support gives priority to the provision of land and use of land belonging to the central government or regional government.

The community does not want to sell the land and this is a right that must be respected because, in the view of traditional communities, land has social, cultural, and spiritual dimensions. Thus, it is not only considered from an economic perspective (holistic view). The problem becomes more complex because the community has not handed over their land, but there is a possibility that the government has issued land rights on Rempang Island in the name of the Company.⁵

This condition is a denial of the aim of the right to control the state. It is not in line with customary law as the basis of national agrarian law which can be explained further as follows:

1. The Denial of the purpose of the right to control

The granting of management rights (as one of the implementations of the right to control the state) is also a mistake if viewed from the Constitutional Court Decision. The right to control the state (the word controlled in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia), which in this case is manifested in the state's authority to issue certificates. It is limited by the word used or the aim, namely the greatest prosperity of the people. This policy of granting management rights is not in line with the greatest prosperity of the people. In the decision regarding Law no. 27 of 2007 concerning the Management of Coastal Areas, it clearly states that there are four limits to the right to control the state (in Article 33 paragraph (3)) and one of them is the right to control from generation to generation. Moreover, this condition actually shows the neglect of the existence of the people who have lived in the Rempang region for generations and have established a strong historical relationship with the region. This neglect of the existence of the Rempang community also led to neglect of the community's land rights. This clearly contradicts the aim of national agrarian law, namely to create maximum prosperity for the people. This is also actually not in line with the goal of the national strategic project, namely improving community welfare as explicitly stated in the definition.

Further discussion on this matter brings the author to issues related to partiality. This alignment can be seen from the Medium-Term Development Plan which is more oriented towards increasing investment. Thus, efforts are made to provide a red carpet for investors by providing various conveniences including in terms of land acquisition so that the government must play an active role in providing facilitation for investors in carrying out their activities. The government in the Rempang case prefers to use the domain *verklaring* approach as was the case in the Dutch era. Domain *verklaring* is a statement of land ownership from the Dutch

⁵ <https://news.harianjogja.com/read/2023/09/11/500/1148087/penjelasan-mahfud-md-terkait-status-tanah-di-pulau-rempang-nasib-masyarakat-adat-tanda-tanya>

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government for land that cannot be proven. This *verklaring* domain can be divided into two, namely *vrij landsdomein* and *onvrij* lands domain. The land owned by the community on Rempang Island seems to be viewed by the government as *onvrij* lands domain, namely state land over which the community has control. The use of the *verklaring* domain concept emphasizes the existence of certificates as proof of ownership of the Rempang Community's land. In fact, this community has occupied the Rempang area since hundreds of years ago. At this point, it can be stated that the formal aspect has overcome the substance, namely the existence of an intensive relationship between the Rempang people and their land.

2. Not in line with customary law as the basis of national agrarian law (Article 5 of Agrarian Law)

The construction of agrarian legal thinking is customary law which recognizes land ownership based on hereditary control.⁶ This is also recognized in the current juridical instrument, namely PP No. 24 of 1997 concerning Land Registration which states that hereditary control in good faith can be the basis for obtaining land rights. This is ironic because the current implementation of the right to control the state has denied its purpose. In fact, the government also recognizes land control by the community. This is proven by the Batam City Government issuing Circular No. 09/TP/I/2002 dated 17 January 2002, concerning Land Order (Prohibition of Land Transactions) on Batam and Rempang Islands. However, strangely the government prefers to give the land to BP Batam and investors. The description above is interesting to examine from the cybernetic concept put forward by Talcott Parsons which stated that economic and political aspects in the case above have a higher energy power than social forces including law. Thus, with this ability, the economy can override social interests in this case community interests as happened on Rempang Island. This condition is truly very miserable. It is not following the objectives of national agrarian law, namely to provide maximum prosperity to the people and respect for hereditary rights. This condition also clearly does not follow the objectives of progressive law which emphasizes conscientious law and favors weak parties. It is based on substantive justice with holistic and comprehensive thinking.

2. Legal Construction in Justice-Oriented Handling of Agrarian Cases in Rempang

Legal philosophy as *matter scientiarum* is a branch of ethical philosophy whose substance is values/morality. The value of justice is the best in law as stated by Ronald Dworkin, Bur Rasuanto, and Saint Augustine. In this case, conceptually and practically, discourse regarding justice must be part of constructing law, including the construction of national agrarian law, including concerning the Rempang case. Ronald Dworkin and Amartya Sen as contemporary philosophers have expanded the discourse regarding justice, especially in the context of resource distribution. According to him, in the distribution of resources (especially land in the Rempang case) we must pay attention to two things, namely favoring the weak (disadvantaged person) and also paying attention to the social and cultural conditions of the community concerned (personal preferences).

The weak party in the Rempang case is the community. This can be measured using various indicators both from an economic perspective, namely the difference in economic capabilities/resources between people who have weak economic capabilities and the government and entrepreneurs who have better economic capabilities. Capabilities in the context of political or policy access are also different. The public does not have authority and access to policies while the government is the party with the authority to make policies. The existence of weaknesses in these two aspects means that the Rempang community, as the weak party, must have their rights protected. The second aspect is paying attention to the social and cultural conditions of society (personal preference). This means that agrarian policy in Rempang must pay attention to these conditions. One thing that needs to be emphasized is paying attention to the holistic meaning of land in society, namely understanding the relationship between land and society not only in economic dimensions but also in political, economic, spiritual, social, and cultural dimensions of society. The government must pay attention to the community's views and not only emphasize economic values as has been the case (transcendental view). Moreover, currently, the concept of a substantive legal state which emphasizes the state's role is not only passive but also actively protects the individual rights and cultural rights of the community concerned. In this case, it protects the relationship between society and its land which has cultural, social, and spiritual dimensions.

The two aspects above are the most important and have a conceptual dimension. Besides, there is a need for an integrated policy in resolving the Rempang case. In making policies, the government should take appropriate steps in revising policies. The. According to Adam Podgorecki, people must pay attention to 4 (four) things, namely:⁷

⁶ Adriaan Bedner and Yance Arizona, 'Adat in Indonesian Land Law: A Promise for the Future or a Dead End?', *The Asia Pacific Journal of Anthropology*, 20.5 (2019), 416–34 <<https://doi.org/10.1080/14442213.2019.1670246>>.

⁷ Meg Stacey, 'B.S.A. PRESIDENTIAL ADDRESS: SOCIAL SCIENCES AND THE STATE: FIGHTING LIKE A WOMAN', *Sociology*, 16.3 (1982), 406–21.

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1. Taking control of the situation well;
2. Analyzing existing assessments and placing them in a hierarchy of matters. In this case, the analysis also includes assumptions regarding whether the method to be used will not cause an effect that worsens the situation;
3. Verifying hypotheses, such as whether a method is thought to be used, will ultimately lead to the desired goal;
4. Measurement of the effects of existing legislation.

The description by Adam Podgorecki above brings the author to the understanding that there needs to be a change in approach in the Rempang case from a very elitist approach with an ethical perspective. The approach that should be used is an emic perspective by looking at the participation of the entire community. The concept of public participation shows that the public must be actively involved in decision-making. Therefore, the public's views are considered and influence decision-making. In other words, participation is genuine participation, not pseudo-participation. If possible, reach citizen control in the participation ladder proposed by Sherry Arnstein. This public participation shows that there needs to be a study of the social, cultural, economic, and spiritual conditions of the community concerned. So, there needs to be a comprehensive study of the society concerned (sociological study). Thus, the policies taken can also be better. Another aspect is good communication in the formation and enforcement of these policies.

D. CONCLUSION

The Land acquisition for a national strategic project on Rempang Island has not protected or even negated the rights of the Rempang community. This policy is not in line with the restrictions on the right to control the state in the Constitutional Court Decision, namely respecting the rights of the community from generation to generation. The policies implemented by the government tend to adapt the verklaring domain concept which requires the public themselves to prove their ownership through a certificate. This is also not in line with customary law as the basis of national agrarian law which recognizes hereditary land rights. This also favors the government towards investors compared to the community. To solve this problem, new policy construction is needed to protect people's rights, namely basing policies on the value of justice. The value of justice can be achieved by siding with the weak, namely the Rempang people who have limitations in the political, economic, and social fields. Furthermore, the government must pay attention to the social and cultural conditions (personal preferences) of the people concerned who hold political views on land. In the procedural realm, the government must emphasize integration that involves the community (public participation). In this case, public participation should arrive at the community control stage.

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