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Land Acquisition for Public Interest on Land with Conservation Forest Status

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ABSTRACT

Article 6 of the UUPA states that land has a social function, meaning that if a parcel of land is needed for development in the public interest, the government has the authority to take the land under applicable laws and regulations. This research will examine land acquisition for the public interest on land with conservation forest status concerning the cable car development plan in the Rinjani forest area. With theoretical studies using Utility theory and development strategy theory. This type of research is empirical normative legal research with three approaches: Legislation, conceptual, and sociological. Based on the results of this study, it is concluded that the Rinjani cable car development process carried out above the conservation forest must prioritize the principle of environmental sustainability while maintaining conservation forest areas, and must look at the benefits and development strategies to create harmony in the national development process.

KEYWORDS

Land Acquisition, Public Interest, Conservation Forest



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INTRODUCTION

The National Land Law System (HTN) is one of the legal systems in Indonesia that recognizes religion as one of the elements in building HTN. This is indicated by the mention of "Religious Communalistic" as a conception of HTN. The "religious" element is shown in the Preface, Article 1, paragraph (2), and Article 5 of Law No. 5 of 1960 Concerning the Basic Regulation of Agrarian Principles (hereinafter referred to as UUPA).¹

Article 6 of the UUPA states that land has a social function. This means that if a parcel of land is needed for development in the public interest, the government has the authority to take it under applicable laws and regulations, which is termed land acquisition for the public interest. The current regulation governing land acquisition for the public interest is Law No. 2/2012 on Land Acquisition for Development in the Public Interest.

National development in all aspects is carried out to realize a just and prosperous society. Based on the General Elucidation of Law Number 2 Year 2012 on Land Acquisition for Public Interest, national development in all aspects includes the construction of markets, the construction of hospitals, road widening, the construction of flats, and the construction of other public facilities. National development for the public interest, such as this, requires a very large amount of land, either government-owned land or people's land, on which land rights need to be acquired for the public interest, by prioritizing the principles contained in the 1945 Constitution and national land law.²

The use of people's land for the public interest is related to Article 33, paragraph (3) of the 1945 Constitution, which states that the earth, water, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.¹ The right to control the State authorizes the state, among others, to regulate and organize the allocation, use, supply, and maintenance of the earth, water, and space. To organize the provision of land for various purposes of society and the state, the government may revoke land rights by providing adequate compensation in a manner regulated by law.³

The revocation of land rights in the public interest is still a problem in national development. The acquisition of people's land for government projects still raises many pros and cons in Indonesian society. The issue is growing more and more, because land is fundamental for everyone, so, ironically, the land issue is not handled seriously by the government. In its development, land issues are increasingly complex, so that the dimensions increase, including juridical, economic, political, social, religious magical dimensions, even for the State, land has a strategic dimension.

Land acquisition for the public interest is carried out based on Law No. 2/2012, which contains ten principles. Legal principles are not concrete legal rules, but rather a background for concrete regulations, and are general or abstract. Legal principles are applied indirectly. Public interests must take precedence over private interests, according to the legal principles that apply to the organization of common life in society. But even so, individual interests cannot be ignored because they are respected and protected by

¹ Andrian Sutedi, *Implementasi Prinsip Kepentingan Umum Dalam Pengadaan Tanah Untuk Pembangunan* (Jakarta: Sinar Grafika, 2008).

² Hamdi, "Penyelesaian Sengketa Penetapan Ganti Rugi Dalam Pengadaan Tanah Untuk Pembangunan Kepentingan Umum (Kajian Terhadap Undang-Undang Nomor 2 Tahun 2012)" (2014) 2:4 J IUS Kaji Huk dan Keadilan.

³ Soerojo Wignjodipoero, *Pengantar dan Asas-Asas Hukum Adat* (Jakarta: CV. Haji Masagung, 1988).



law; therefore, if the public interest conflicts with private interests, proper and fair compensation must be given.

METHOD

The type of research used is normative empirical legal research (applied law research), which is a research that uses normative-empirical legal case studies in the form of legal behavior products, for example, examining the implementation of the enforcement of a norm, principle, or principle. The subject matter is the implementation or implementation of certain positive legal provisions that occur in society to achieve predetermined goals. The approaches used are statutory, conceptual, and sociological. The statutory approach is an approach used to review and analyze all laws and regulations related to the legal issues being addressed.⁴ In other words, the approach is carried out by reviewing the legislation that is relevant to the problem under study. Then the conceptual approach departs from the views and doctrines that develop in legal science. By studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand. Understanding of these views and doctrines is the basis for researchers in building a legal argument in breaking down the issues at hand. While the sociological approach examines and examines directly how the implementation and enforcement of a rule of law or legislation in society.

RESULT & DISCUSSION

I. Land Acquisition

The definition of the term "land acquisition" has changed several times. Article 1, point 1 of Presidential Decree Number 55 of 1993 on Land Acquisition for the Implementation of Development in the Public Interest is the first time the term "land acquisition" is mentioned. In this regulation, land acquisition is any activity to acquire land by providing compensation to those entitled to the land. Furthermore, in Article 1 point 3 of Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest, it is stated that land acquisition is any activity to obtain land by providing compensation to those who release or surrender land, buildings, plants, and objects related to the land or by revoking land rights.

Then there is another new regulation that provides a new understanding of land acquisition, namely Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest. Several provisions in Presidential Regulation No. 36/2005 on Land Acquisition for the Implementation of Development for the Public Interest have changed, including the definition of the term "land acquisition". In Article I of Presidential Regulation No. 65/2006, Article 1 letter 3 of Presidential Regulation No. 36/2005 is changed to land acquisition is any activity to acquire land by providing compensation to those who release or surrender land, buildings, plants, and objects related to the land.

After undergoing several changes to the regulations on land acquisition for the public interest, Law No. 2/2012 on Land Acquisition for Development in the Public

⁴ Salim HS & Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Jakarta: Raja Grafindo Persada, 2013).



Interest was enacted on January 14, 2012. Then, the Implementing Regulation of Law Number 2 Year 2012 was stipulated and enacted on August 7, 2012, namely Presidential Regulation Number 71 Year 2012 on the Implementation of Land Acquisition for Development in the Public Interest. Article 125 of Presidential Regulation No. 71/2012 states that when the Presidential Regulation comes into force, Presidential Regulation No. 36/2005 on Land Acquisition for Development in the Public Interest as amended by Presidential Regulation No. 65/2006 and its implementing regulations are revoked and declared invalid except for the land acquisition process as referred to in Article 123, namely the land acquisition process that was being carried out before the enactment of Presidential Regulation No. 71/2012 is completed based on the provisions before the Presidential Regulation came into force.

The definition of "Land Acquisition" has changed. Article 1, point 2 of Law Number 2 Year 2012 states that land acquisition is an activity to provide land by giving fair and adequate compensation to the entitled parties. Furthermore, in the implementing regulations, namely in Article 1, number 2 of Presidential Regulation Number 71 of 2012, it is stated that land acquisition is an activity to provide land by giving adequate and fair compensation to the entitled parties.

II. The Public Interest as Examined from Law No. 2/2012 on Land Acquisition for Development in the Public Interest

About the definition of public interest in Article 1 paragraph (6) of Law Number 2 Year 2012, public interest is the interest of the nation, state, and society that must be realized by the government and used to the greatest extent for the prosperity of the people. Land acquisition for development in the public interest in the law does not provide a clear limitation on public interest criteria. The limitation of public interest criteria is contained in Article 5 paragraph (1) of Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest, which states that "development for the public interest based on this Presidential Decree is limited to development activities carried out and subsequently owned by the government and not used for profit.....".

Thus, the concept of public interest in Law Number 2 Year 2012 has a broad meaning, namely by not limiting the criteria for public interest whether land acquisition for development is purely in the public interest, owned and controlled by the government is not used for profit (non-profit oriented) or land acquisition for development for profit is carried out by private parties (profit oriented).

In interpreting the notion of interest in Law Number 2 Year 2012, it is necessary to pay attention to the concept of the definition of public interest. In this case, Maria SW. Sumardjono proposes that for the concept of public interest not to be distorted in practice, in addition to fulfilling its designation, it must also be felt by the public (socially profitable or for public use or used by the public).⁵ The public interest may be said to be for the needs, requirements, or interests of many people or a broad purpose. However, this formulation is too general and has no limitations.⁶

⁵ Soemardjono & Maria Sri Wulan Sumardjono, "Kriteria Penentuan Kepentingan Umum dang anti Rugi dalam kaitannya dengan Penggunaan Tanah" (1991) 2:1 Bhumibhakti Adhiguna.

⁶ Olloan Sitorus & Dayat Limbong, *Pengadaan Tanah untuk Kepentingan Umum* (Yogyakarta: Penerbit Mitra Kebijakan Tanah Indonesia, 2004).



In addition, it is expected that land acquisition for development in the public interest, so that the benefits are felt by all the people, there must be criteria limitations, including:

1. Development activities carried out by the government, owned by the government, and not carried out for profit (non-profit oriented).⁷
2. Development activities carried out by the government provide a limitation that the process of implementing development can only be carried out by the government, then the activity is truly owned by the government, this sentence provides a limitation that development activities for the public interest cannot be owned by individuals or the private sector. In addition, land acquisition for the public interest does not aim to make a profit.⁸
3. In interpreting public interest development, where the elements of public interest are mentioned in Article 1 paragraph (6) of Law No. 2/2012, we must still pay attention to the elements of public interest in Article 5 paragraph (1) of Presidential Decree No. 55 of 1993.

In addition, it pays attention to the 10 (ten) principles of land acquisition for the public interest stipulated in Article 2 of Law Number 2 Year 2012, as well as the principles of land acquisition as described in this legal paper, Letter B. Principles of Land Acquisition. By continuing to pay attention to the matters mentioned above, it is hoped that the debate in understanding the concept of public interest in land acquisition for development can be reduced.

1. Definition of Forest and Forest Area

Based on Article 1 paragraph (1) of Law Number 19 of 2004 Concerning the Stipulation of Government Regulation instead of Law Number 1 of 2004 Concerning Amendments to Law Number 41 of 1999 Concerning Forestry into Law by the provisions of Law Number 41 of 1999 Concerning Forestry states that: "Forest is an ecosystem unit in the form of an expanse of land containing biological resources dominated by trees in a natural environment, which is inseparable from one another". There are several elements contained in the definition of forest above, namely: the element of a large expanse of land, the element of trees, flora, and fauna, the element of the environment, and the element of government regulations.

Article 1 paragraph (2) of Law Number 19 of 2004 Concerning the Stipulation of Government Regulation instead of Law Number 1 of 2004 Concerning Amendments to Law Number 41 of 1999 Concerning Forestry into Law by the provisions of Law Number 41 of 1999 Concerning Forestry states that: "Forest area is a certain area designated or determined by the government to be maintained as a permanent forest."

Based on their main functions, forests are divided into protected forests, production forests, and conservation forests. Based on Article 1 paragraph (7) of Law Number 19 of 2004 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law by the provisions of Law Number 41 of 1999 concerning community forestry that: "Production forests are forest areas that have the main function of producing forest products."

⁷ Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum dalam Pengadaan tanah untuk Pembangunan* (Jakarta: Sinar Grafika, 2008).

⁸ *Ibid.*



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Meanwhile, based on Article 1 paragraph (8) of Law Number 19 of 2004 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law by the provisions of Law Number 41 of 1999 concerning community forestry that: "Protection forests are forest areas that have the main function of protecting life support systems to regulate water systems, prevent flooding, control erosion, prevent seawater intrusion, and maintain soil fertility."

2. Definition of Conservation Forest

Article 1 paragraph (9) of Law Number 19 of 2004 Concerning the Stipulation of Government Regulation instead of Law Number 1 of 2004 Concerning Amendments to Law Number 41 of 1999 Concerning Forestry into Law by the provisions of Law Number 41 of 1999 Concerning Community Forestry that: "Conservation forests are forest areas with certain characteristics, which have the main function of preserving the diversity of plants and animals and their ecosystems."

By the Act, conservation consists of:

a. Nature Reserve Forest Area

Nature reserve forest areas are forests with certain characteristics that have the main function as areas for preserving plant and animal diversity and their ecosystems, which also function as areas of life support systems.

b. Nature Conservation Forest Area

Forests with certain characteristics, which have the main function of protecting the life support system. Preservation and sustainable use of biological resources and ecosystems.

c. New Park

Forest areas are designated as hunting tourism sites.

In another piece of legislation, Article 1 paragraph (2) of Law Number 5 of 1990 concerning the Conservation of Living Natural Resources and Ecosystems states that: "Conservation of biological natural resources is the management of biological natural resources whose utilization is carried out wisely to ensure the balance of its supply while maintaining and improving the quality of its diversity and value". By referring to the existing legislation, there appears to be a dualism in the definition of conservation, on the one hand explaining that conservation means area, and on the other hand, conservation is defined as a function or activity.

Underlying the attitude that conservation is the notion of area, it seems to forget that forests are one of the utilization of biological natural resource ecosystems in ecosystem units which are one of the utilization of biological natural resource ecosystems in ecosystem units which are one of the pillars of conservation. As a consequence, conservation is a must for forest management.

Based on the description above, if it is related to the root of the problem, namely the cable car construction plan above the conservation forest, it creates many issues in the community, the function of conservation forests, which has the main function of preserving plant and animal diversity and their ecosystems is directly threatened. The plan to build the Rinjani Cable Car (KGR), which takes place around Mount Rinjani, is rolling like a snowball, reaping pros and cons in the community. From the results of coordination between the Head of the Gunung Rinjani National Park (TNGR)



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Center and the Head of the NTB Provincial LHK Office, the following information was obtained:⁹

- a. The construction of KGR has been planned since 2016 and has drawn pros and cons.
- b. The KGR development plan is outside the conservation area of Gunung Rinjani National Park, more precisely in the Protected Forest Management Unit (KPHL) area of West Rinjani, Tastura, and Pelangan.
- c. The KGR development license is the authority of the NTB Provincial Government, in this case, the NTB Environment and Forestry Service (LHK), and has so far obtained a principal permit from the NTB LHK Service.
- d. The future process will involve all stakeholders in conducting studies, both in terms of ecology, geology, economics, and social issues.

The existence of Mount Rinjani National Park has been a magnet that brings tourists to see and enjoy its beauty, as well as being a life support both in terms of Ecology, Economy, and Social aspects for the people of Lombok. The Gunung Rinjani National Park area has become a source of income for tourism actors in the Rinjani Rim who work to provide services for tourists, both foreign and domestic. There are around 1,700 people who depend on climbing tourism in 4 (four) official routes, namely Sembalun, Timbanuh, Aikberik, and Senaru.

However, if the issue of land acquisition for the public interest on land with conservation forest status is associated with the construction of the rinjani cable car in terms of the theory of benefits, where the author sees from two sides, if viewed from a positive perspective, the cable car construction will become a new icon for the world of tourism in West Nusa Tenggara Province, which serves to increase the regional budget, and also provides employment opportunities for local communities. However, the process of building the Rinjani cable car may threaten the existence of the conservation forest ecosystem. Moreover, the process of building a suspension bridge takes a long time. The construction of the Rinjani cable car project, which has a length of 10 kilometers outside the Mount Rinjani National Park area, right in Karang Sidemen Village, North Batukliang District, Central Lombok.

Furthermore, the author also examines in terms of development theory, which is a way to achieve the vision and mission formulated in the form of strategies to improve performance. Performance is strongly influenced by how an organization (government) achieves success or fails from a government organization's mission.¹⁰

Development is an effort to improve the dignity of people who are unable to escape from the trap of poverty and backwardness. Building communities means enabling or empowering them. The beginning of the development process based on community development is expected to spur community participation in the development process itself. The essence of development is from and for all people. Thus, to achieve the intended development goals, it must involve and in turn be enjoyed by all levels of society. This demand is actually by the concept of sustainable development if the people's economy develops. It is hoped that the construction of the hanging kerta can be a great opportunity for the community to improve their standard of living.

⁹ Ahmad Viqi, "Pembangunan Kereta Gantung Rinjani Dimulai Hari Ini, Ditarget Rampung 2025", (2022), online: *detikbali* <<https://www.detik.com/bali/nusra/d-6467935/pembangunan-kereta-gantung-rinjani-dimulai-hari-ini-ditarget-rampung-2025>>.

¹⁰ Dewi Nortika, "Strategi pembangunan", (2023), online: <<https://sandyherdians.wordpress.com>>.



CONCLUSION

The process of building the Rinjani cable car, which is carried out above the conservation forest, must prioritize the principle of environmental sustainability while maintaining the conservation forest area, and must look at the benefits and development strategy to create harmony in the national development process.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

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