

Land Acquisition for National Strategic Projects to Enhance the Interconnectedness and Supply Chain Infrastructure

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Abstract- Infrastructure development in Indonesia has a very significant influence on national economic growth and supply chain interconnectedness. The current regime truly pays more attention to infrastructure development by rapidly developing supply chain infrastructure. It became the main program in his regime. To realize and launch the supply chain infrastructure and development, it certainly requires land acquisition. As a form of government attention to supply chain infrastructure development, various policies are made by the government. However, the legal norms in the policy carry the risk of antinomy of norms for the land acquisition process in supply chain infrastructure development. The study aims to investigate the need of land acquisition concept for a national strategic project to improve people's welfare to increase the national economic growth by emphasizing on supply chain infrastructure and connectivity development programs. This study used qualitative research methods with a normative and casuistic approach. The results showed that the concept of accelerating land acquisition for national strategic projects can reach an equilibrium point, both for the welfare of the people as land owners and economic growth targeted as an objective of improving people's connectiveness, supply chain competitiveness and economic productivity.

Keywords: supply chain infrastructure, land acquisition, policy, national strategic projects.

1. Introduction

For human life, land has a very important role, because naturally there is a direct relationship between humans and the land. The bond between people and the land that has always been seen today has become very complex with various dimensions, so that taking the land without any element of willingness from the right holder will cause problems not only regarding the land, but also about matters relating to it. The interrelationship between political, social, cultural aspects about land such as regarding registration, ownership provisions and use as well as land acquisition in Indonesia is complicated problem [17, 11, 2]. President-elect Republic of Indonesia for 2019-2024, Joko Widodo has a program as the acceleration of supply chain infrastructure and connectivity development with a focus on improving welfare, supply chain competitiveness and economic productivity [8, 14]. The development of infrastructure as the priority programs has the aims to increase people's productivity and competitiveness. The data shows that the

performance of national logistics will increase in 2019 [6]. This means that infrastructure development has an influence on the quality of Indonesia's investment to encourage better economic growth. Thus, it can be assumed that people's productivity and competitiveness are also pushed up by the development of infrastructure. Developing infrastructure is believed to improve the connectivity between regions in Indonesia. To facilitate the infrastructure development, it requires the sufficient land availability. In connection with this, the land has a variety of grades, good grades juridical, social, economic and cultural-spiritual values [13]. There is a gap between the availability of land for supply chain infrastructure and connectivity development in the national interest with the ownership of the land to individual or group. The government in carrying out its role and function to carry out development must be based on appropriate public policies, including when there is a stagnation in the process of land acquisition for infrastructure development, in order to avoid the negative impact on the social economy of the community as holders of land rights.

The presidential regulation then followed by the issuance of Presidential Instruction No. 1 of 2016 on Accelerating the Implementation of the National Strategic Projects. Presidential Instruction Number 1 of 2016 instructed the officials to resolve problems and obstacles in implementing the national strategic project; to provide support in accelerating the implementation of the national strategic project including taking discretionary efforts in order to overcome concrete and urgent problems; to refine, revoke, and or replace, statutory provisions that do not support and hinder the acceleration of the implementation of the national strategic project; and to prepare legislation and/or policies needed to accelerate the implementation of the national strategic project. This study used qualitative research methods with a normative and casuistic approach. The results showed that the concept of accelerating land acquisition for national strategic projects can reach an equilibrium point, both for the welfare of the people as land owners and economic growth targeted as an objective of improving people's connectiveness, supply chain competitiveness and economic productivity.

2. Public Policy in Land Acquisition to Improve Supply Chain Infrastructure

Public policy is visible when the government in 2016 issued Presidential Decree No. 3 of 2016 on the Acceleration of Project Implementation Strategy National as amended by Presidential Decree No. 56 of 2018 concerning the Second Amendment to the Presidential

Decree No.3 of 2016 on Accelerating the Implementation Project National Strategy. The Presidential regulation emphasized that the national strategic project is a project implemented by the government, regional government, and/or business entity that has strategic characteristics to increase growth and equitable development in order to improve community welfare and regional development. Ministers/heads of institutions, governors, and regents/mayors provide licensing and non-licensing requirements for the implementation of the national strategic projects in accordance with their authority. In addition, the minister or head of the institution as the person in charge of the national strategic project proposes the completion of licensing and non-licensing required to start the implementation of the national strategic project since the enactment of this Presidential Regulation. Licensing and non-licensing required to start the implementation of the national strategic project as intended, in terms of location determination, environmental license, borrowing and use of forest areas license; and / or building license. The Governor or regent/mayor as the person in charge of the national strategic projects in the regions provides licensing and non-licensing needed to start the implementation of the national strategic project in accordance with their authority.

Presidential Instruction No. 1 of 2016 on Accelerating the Implementation of the National Strategic Projects can be seen as the potential antinomy norm with Law Number 2 of 2012 on Land Acquisition for Development for Public Interest. This is because the Presidential Regulation and Presidential Instruction have a legal effect in the form of the release of land rights from the affected community. This means that there are rights from the land owner that must be released when the land is used for infrastructure development [12]. Meanwhile, according to Law Number 2 of 2012 to obtain land rights from the land rights of others is done by using the agency land acquisition, or various institutions switchover other rights. There is a limitation when land acquisition is required by private/non-government parties, so that the concerned must carry out land acquisition through the process of transferring rights in the normal way such as buying and selling, exchanging or other means agreed upon voluntarily by the parties concerned. Arrangements regarding infrastructure development by mechanism of land acquisition which utilizes expropriation of land rights will clash norm when setting by Presidential Regulation Number 3 of 2016 as amended last time with Presidential Regulation Number 56 of 2018 and the first Presidential Instruction Number 1 of 2016 dealing with Law Number 2 of 2012 and Presidential Regulation Number 71 of 2012 on the Implementation of Land Procurement for Development for Public Interest. In order to increase infrastructure development, the Indonesian Government introduced a scheme of infrastructure development cooperation by involving the participation of the private sector, which known as Public Private Partnership (PPP) scheme. In order to regulate the implementation of development projects with this scheme, the Government has published Presidential Regulation Number 38 of 2015. This rule add to the list of policies established by the

government to increase the acceleration of infrastructure development for the sake of national economic growth.

Through public-private partnership's scheme, the government is collaborating with the Enterprises for the development of social and economic infrastructure in Indonesia, including infrastructure defined as the acceleration of the strategic project. The PPP's scheme seems to be a rational and logical scheme, given the state financial condition which does not allow the government to carry out its own acceleration of strategic infrastructure development projects. However, regarding land requirements for infrastructure development, Law Number 2 of 2012 needs to be referenced. According to Article 1 paragraph 2 Law No. 2 of 2012 land acquisition refers to activity to provide land by giving compensation proper and fair to those who are entitled. Meanwhile, the definition of land according to [15] is the capital of life. To be called a living capital, land must significantly contribute, among others, to improve the welfare of the community and ensure the sustainability of social and national system [3]. Thus, an equilibrium is needed in the acquisition of land for infrastructure development, so that economic growth increases with infrastructure development by prioritizing the lives of landowners.

Public interest has accommodated by Law No. 2 of 2012 as defined in Article 1 paragraph 6, which states that the public interest is the interest of the nation, the state, and people must be realized by the government and used for the greatest prosperity of the people. The purpose of holding a land acquisition is for the implementation of development in order to improve the welfare and prosperity of the nation, state and society while still ensuring the legal interests of the rightful party [7, 9]. Thus, including the development of infrastructure in the public interest that should be realized by the government for the welfare of the people. The concept of the public interest should no longer be limited by the types of development mentioned in limitation by laws and regulations, but rather oriented towards improving welfare. In practice, development may occur in the public interest, but does not cause welfare effects for the community. Therefore, in fulfilling the need for land for infrastructure development, it must be carried out through a process that ensures there is no coercion of the will of one party to another party. Considering that the community must give up their land for a development activity, thus, it must be guaranteed that their socio-economic welfare will not be worse than the original condition, at least it must be equivalent to the condition before the land is used by another party.

3. National Strategic Projects for developing the Supply Chain infrastructure

National strategic projects for developing the supply chain infrastructure and connectivity development require land acquisition. According to Presidential Regulation Number 56 of 2018, there are 223 projects + 3 program, which covers 12 projects and 3 project, the program details are 69 road sector projects; 51 dam sector projects; 29 regional sector projects; 16 railway sector projects; 11 energy sector projects; 10 port sector projects; 8 water & sanitation sector projects; 7 airport sector projects; 6 irrigation sector projects; 6 smelter projects; 4 technology

projects; 3 housing projects; 1 agriculture/marine project; 1 sea dike project and 1 educational project. In addition there is 1 electricity program; 1 aircraft industry program and 1 economic equality program.

Developing supply chain infrastructure and connectivity development is needed to increase the economic competition between regions, as it can act as a stimulus movement of diverse economic activity. Through the acceleration of supply chain infrastructure and connectivity development, it is expected to create strong connectivity between regions, reduce logistics costs, reduce inequality, improve the quality of life of the people, and reduce the existence of economic disparities between regions in Indonesia, which will ultimately lead to increased competitiveness and stimulus for economic growth to reach developed countries [4]. The land acquisition has to clarify the land's classification status in Indonesia. According to Law Number 6 of 1960, the classification status of the land in Indonesia is divided into state land and land rights. Land rights and state land are the rights to control the state. Then, to explain per distinctions between the two, the land is referred as the land rights of the state in the narrow sense, while the ground state known as the ground state in a broad sense. State land is different from the land rights, is often termed state land that is directly controlled by the state. The agrarian basic law about the land rights is the lands controlled individually by the primary rights are right to cultivate, right to use and right to use. However, by expanding the legal sources, [5] stated that besides properties, right to cultivate, right to use and right to use, national land laws also recognize the rights over other land which is also controlled individually. These individual rights are located on customary land, community land, management rights land and on land rights that are within the forest area. Thus, the term of land rights not only refers to land rights that are governed by legislation but also those stipulated in customary law. Hence, the state land is different from non-land rights, then the state land includes waqf land, communal land, community land and land in forest areas. In addition, state land also includes residual lands that are not included either in land rights or endowment, communal land, community land and land in forest areas. The remaining lands can be referred as lands that are actually controlled directly by the State.

Land, according to agrarian basic law also has a social function [1, 10]. The application of the principle of the social function of land rights in general are set in Law No. 2 of 2012. In the Law, land acquisition is in the public interest, which means providing land for the implementation of development in order to improve the welfare and prosperity of the nation, state, and society while continuing to guarantee the legal interests of the entitled parties. Land acquisition for public purposes is carried out by the government, and those who have rights to it, must release their land at the time of land acquisition in the public interest after giving proper and fair compensation or based on a court decision that has obtained permanent legal force. The land which will be built for something in the public interest will become the property of the government/regional government or become the property of the state owned enterprises if used

for its interests. Land for public purposes as intended by Law No. 2 of 2012 for infrastructure development. The land used for infrastructure development fulfilled social functions.

4. Land Acquisition for the Development of Public Interest

Land acquisition for the implementation of supply chain infrastructure and connectivity development in the public interest by the government/regional government is carried out by way of releasing/handing over land rights. Land acquisition other than for the implementation of development in the public interest by the government/regional government is carried out by way of buying and selling, exchanging or other means agreed upon voluntarily by the parties concerned. The release/transfer of land rights is carried out based on the principle of respect for land rights, namely the provision of compensation. In the acquisition of land for the development of public interest, it can be done by surrendering/releasing, preceded by providing compensation and revocation. Therefore, legal procedures for land acquisition must be accompanied by the release/transfer of rights from the holder of land rights to other parties. The relinquishment of rights can itself be in the form of sale, transfer, grant or revocation. However, what applies to land acquisition in the public interest is only in the form of relinquishment of rights in the sense of surrender in exchange for compensation and revocation of rights after deliberations have not found an agreement. Land grants for public interest development have thus far been said to have never happened even though they are not actually prohibited by the development of public interests. The Agrarian Basic Law said that the public interest is expressed in terms of allocation, for the interests of the nation, the common interests of the people and the interests of development. It can be concluded that what is meant by public interest is an interest whose benefits can be felt by the community as a whole and/or directly. There are three principles that can be concluded that an activity is truly in the public interest. The principles require the activity really owned by the government. In other words, the private sector and individuals cannot have the types of public interest activities that require the acquisition of land rights or the state. The other principles are that it is related to development activities carried out by the government and not intended for profit.

Some actual cases in land acquisition critically posed the pattern of the government's performance in order to improve the general welfare through the development of infrastructure in a planned and integrated. It however does not come to underestimate the value of legal certainty and its application. This means that the regulations established to legitimize the legal actions of government in infrastructure development must necessarily carry the value of legal certainty. The legal norms contained in it are able to encourage the Indonesian people to achieve their desired and mutually agreed goals. However, the political foundation of government laws are seems clearly through Presidential Instruction No. 1 of 2016 which gives legitimacy to break through legislation which obstruct or impede acceleration of strategic projects. From its type,

the Presidential Instruction is not included to the legislation. However, the norm gives freedom of action to the ranks of government, both at the central and regional levels to cut down the regulations that hinder national strategic projects. nature of this case, the government has a view that based on the principle of expediency, so that legal certainty can be accomplished. Such infrastructure development certainly requires land as its container. if only the land inventory is still large, the construction of public facilities will not encounter a problem. The problem here is limited natural resource of land. The available land has been heavily clad with land rights, and state land has very limited supply.

However, regarding to the social function of the land itself, Article 6 of the Basic Agrarian Law stated that all land rights have a social function. This means that any land rights that exist on a person, cannot be justified, that the land is used (or not used) solely for his personal interests, especially if it has the potential to cause harm to the community. Its use must be in accordance with its circumstances and the nature of its rights, so that it can benefit the welfare and happiness of the owner, and also benefit society and the community. The Basic Agrarian Law also takes into account individual interests. The interests of the community and the interests of individuals must be balanced, until finally the main objectives, namely prosperity, justice and happiness for the Indonesian people are achieved. The researcher considers that it is necessary to establish a system of land acquisition for the public interest that is centralized and no longer submitted to regional heads or ministers concerned. In trimming the bureaucracy mandated by Presidential Instruction No. 1 of 2016 actually led to disharmony between the desire of the government, businesses implementing the project, with the community residents affected by land acquisition for the determination of the public interest, particularly that relating to the guarantee of its future.

Even though the government is currently implementing supply chain infrastructure and connectivity development through the public-private partnership's scheme, it turns out that its presence actually raises new problems and even contradicts the government's goods and services procurement provisions. This not only creates a centralized system to control the authority that is too broad for regional bureaucrats who utilize the weaknesses of the central-regional supervision system, but also needs to open a channel of communication between citizens affected by the determination of land acquisition for infrastructure development.

5. Conclusion

The concept of land acquisition for national strategic projects is to improve people's welfare in order to increase national economic growth, and also to create a centralized system by continuing to open the channels of communication between communities affected by the determination of land acquisition for infrastructure development. Institutions that provide a channel for public participation in public services, such as Ombudsman, must be included in the land acquisition process for supply chain infrastructure and connectivity development. This is truly important considering that land is a capital of life,

both for individuals, groups and communities. The values contained in the land should be able to maintain the sustainability of the Indonesian social and national system.

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