

Legal Protection of Citizens/Residents Land Rights in Relation to the Badung Regional Regulation on the Gatot Subroto-Canggu Road Development Plan



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ABSTRACT: This thesis examines the legal protection of citizens' rights in relation to urban infrastructure development, focusing on the case of the planned construction of the Gatot Subroto-Canggu Road in Badung Regency, Bali. The study aims to analyze the legal framework surrounding land acquisition for public infrastructure projects and its impact on citizens' rights. The background of the research stems from the increasing demand for infrastructure due to economic growth and the need to balance public interest with individual property rights. The research explores the legal and regulatory context of land acquisition for public projects in Indonesia, emphasizing the importance of citizens' rights and just compensation. The analysis delves into relevant laws and regulations, including the Basic Agrarian Law and regional spatial planning regulations. The study also examines the specific case of the Gatot Subroto-Canggu Road development, which has encountered challenges in terms of land acquisition, resulting in uncertainties for affected citizens. Based on interviews and legal analysis, the research finds that citizens' rights have been overlooked in the planning and implementation of the Gatot Subroto-Canggu Road project. The lack of clear regulations and timelines for the project has led to legal and economic uncertainties for affected citizens. This situation raises concerns of potential violations of the principle of non-arbitrariness and the right to just compensation. The study contributes to the understanding of legal protections for citizens' rights in the context of infrastructure development and underscores the significance of harmonizing public interest and individual property rights within the Indonesian legal framework.

KEYWORDS: Infrastructure Plan, Road Development, Legal Protection, Resident's Rights, Gatot Subroto-Canggu

I. INTRODUCTION

In the realm of tourism, the birth of the tourism industry in Indonesia can be traced back to 1962 when Hotel Indonesia was inaugurated. However, it wasn't until 28 years later, in 1990, that comprehensive legislation on tourism was established with the enactment of Law No. 9 of 1990 concerning Tourism. This law, fundamentally aligned with the fourth paragraph of the Opening Clause of the 1945 Constitution of the Republic of Indonesia, aims to achieve social justice for all Indonesian citizens. The privilege of Law No. 10 of 2009 includes the freedom to travel and utilize leisure time through tourism, recognized as a fundamental human right. Among Indonesia's enchanting destinations, Bali stands out as a captivating island with both natural and cultural attractions. The district of Badung, situated within Bali, possesses significant tourism potential. Despite the global economic crisis triggered by the COVID-19 pandemic, which caused a contraction of the economy by -16.55% in 2020 from 5.81% in 2019, the economic growth of Badung Regency has shown a positive trajectory. Post-pandemic recovery saw an increase in tourist arrivals in 2022, reaching 447,944 individuals (BPS Badung Regency, 2023).

The improved economic growth and rising tourist visits to Badung Regency are poised to stimulate a heightened demand for various forms of infrastructure. The surge in infrastructure needs is largely attributed to the robust influx of investments. Infrastructure development serves not only as an economic growth catalyst but is also driven by the pressure of economic expansion itself. Equitable and high-quality infrastructure availability contributes to socio-economic advancement, enriching the lives of all members of society, thereby becoming one of the cornerstones of economic development. Yet, in the context of development, particularly in infrastructure projects, the pivotal issue of land comes to the forefront, as almost every development endeavour necessitates land as a resource. The realization of development projects hinges on the availability of land as a space for their execution. As development efforts intensify, the demand for land increases correspondingly. Paradoxically, the availability

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of land for development is constrained by the rapid growth of the population¹. Amidst these circumstances, the availability of land for development holds paramount importance as the outcomes of development efforts are meant to enhance the well-being of the populace². Nevertheless, the acquisition or expropriation of land for development purposes, grounded in the concept of the common good, is not without challenges. Much of the land is owned by individuals or groups who hold specific interests in the land. Additionally, compensation issues remain contentious. The affected communities often feel that the compensation offered by the Government is inadequate, while the Government maintains the opposite perspective, leading to conflicts between the Government and segments of the populace. The regulation of land in Indonesia is governed by Law No. 5 of 1960 concerning Basic Agrarian Principles³. The formation of this law is rooted in the state's authority designated for the public interest, as stipulated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which asserts the state's control over land and natural resources for the prosperity of the people. The implementation of state authority over land for public or social purposes is governed by Article 2 of Law No. 5 of 1960, which empowers the state to regulate land allocation, usage, supply, and maintenance, as well as legal relationships between individuals and land⁴. The dynamics between development, land, and the public's rights necessitate comprehensive legal and administrative frameworks. The adequate protection of individual land rights and the facilitation of development projects aligned with public interests must be pursued concurrently⁵. This paper delves into the intricate legal dimensions surrounding land acquisition for public infrastructure, specifically focusing on the case of the proposed Gatot Subroto-Canggu Road development project in Badung Regency. The study seeks to examine the legal protection of citizens' rights and interests within the context of this infrastructure initiative and to provide insights into the overall legal framework that governs land acquisition for public projects in Indonesia.

II. LITERATURE REVIEW

Government authority stems from the people and is delegated to the president. The president, as the central government's responsible figure, transfers, or delegates some of these powers to local regions through decentralization, deconcentration, and auxiliary tasks, as guided by laws⁶. The principle of legality tightly intertwines with government authority, asserting that all binding provisions for citizens must be based on the law⁷. This principle underscores the rule of law, emphasizing governance based on legal statutes. Consequently, legitimacy of governance necessitates that governmental powers derive from legislative regulations. Three theoretical modes of obtaining authority are attribution, delegation, and mandate⁸. Attribution involves granting governance power by legislators to governmental bodies, delegation involves transferring governance power from one body to another, and mandate pertains to an authorized party acting on behalf of the grantor.

Indonesia, as a legal state, recognizes all individuals as subjects of the law. The Constitution's Article 27 states that all citizens share equal status in law and government and must uphold the law and government without exception⁹. The concept of individual law, as defined by legal scholars, encompasses regulations regarding human beings as legal subjects, their capacity to hold rights, their capacity to independently exercise these rights, and factors influencing these capacities¹⁰. Law governs relationships between community members and legal subjects¹¹. A legal subject is someone capable of holding rights and obligations according to the law. Different scholars provide varying definitions of a legal subject, ranging from those with rights and responsibilities to individuals recognized by law as supporters of rights and obligations¹². Ultimately, the concept of a legal subject includes both humans and legal entities, ensuring their recognition and support of rights and obligations¹³.

In land acquisition for development purposes, discontent often arises among affected citizens whose land rights are involved. Compensation becomes a complex and central issue in government land acquisition using rights to land. In various developing countries, alternative indices are available to determine fair compensation. The principle of social function of land rights emphasizes that land rights should benefit both holders and society, striking a balance between individual and public interests. Achieving this balance in compensation is challenging. Compensation should respect individual rights and interests without making anyone wealthier or poorer than before. Presidential Regulation No. 35 of 2005 and Law No. 22 of 2012 detail compensation as the replacement for physical and non-physical losses resulting from land acquisition for public interests¹⁴. Fair compensation aims to respect rights and interests forfeited for the common good.

The theory of legal protection originates from natural law and maintains that law stems from God, embodying both universal and timeless values¹⁵. Legal protection involves efforts to fulfill rights and provide aid, ensuring a secure environment for victims and witnesses¹⁶. Legal protection, being adaptive, flexible, predictive, and anticipatory, serves weaker members of society, ensuring social, economic, and political justice. Legal certainty ensures that laws are clear, logical, and not open to multiple interpretations. Legal certainty is the foundation for justice and utility in law¹⁷. Gustav Radbruch's theory underscores that legal certainty, justice, and utility are fundamental values in law. Legal certainty entails legality, factual basis, predictability, and immutability. This certainty guides legislation to ensure that laws are clear, reasonable, and effective. Legal certainty maintains

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Equilibrium between individual and societal interests¹⁸. Legal authority involves rights and obligations, encompassing attribution, delegation, and mandate. Attribution involves creating authority through legal division of state power. Delegation transfers authority from higher to lower officials based on legal power, while mandate entails granting power to act on behalf of the grantor. Land acquisition authority lies within legal regulations, enabling local governments to act for public benefit.

III. RESEARCH METHODS

The research methodology involves a combination of normative-empirical research methods¹⁹. This approach integrates normative legal elements with empirical data, focusing on the implementation of legal norms (laws) in specific legal events within a society. It encompasses the study of normative legal behavior and actual behavioral patterns in a societal context. The research distinguishes between Normative Legal Research, which examines normative legal behavior and principles, and Empirical Legal Research, which explores the actual behaviors within a community²⁰. The data collection methods include primary data obtained through direct sources, such as interviews with empirical individuals and respondents.

The study adopts various problem-solving approaches, including the Statute Approach (analyzing legal regulations)²¹, Conceptual Approach (exploring legal concepts and doctrines)²², and Case Approach (seeking truth and justice in real-life legal scenarios). Data is sourced from primary materials (laws and official records)²³, secondary materials (publications for analysis), and tertiary materials (complementary legal resources)²⁴. Data collection involves techniques like interviews and questionnaires. The research site focuses on a proposed infrastructure project in Banjar Batu Culung Kerobokan, Badung Regency, due to its tourism significance and existing traffic issues. The data analysis follows a qualitative approach, encompassing data reduction, presentation, and preliminary conclusions, which may evolve based on subsequent data collection and insights gained during the research process.

IV. RESULTS AND DISCUSSION

Spatial planning plays a significant role in shaping the development and future of Indonesia. The dynamic nature of law, the importance of citizen participation, and the coordination between government levels are essential factors in successful spatial planning²⁵. Balancing development with environmental protection and ensuring citizens' rights are respected are key principles that should guide spatial planning initiatives. By strengthening coordination, enhancing citizen participation, and clarifying land ownership and usage rights, Indonesia can work towards a more sustainable and harmonious future²⁶. The study sheds light on the complex interactions between legal frameworks, government policies, and citizens' rights within the context of spatial planning. The recommendations provided aim to contribute to more effective and equitable spatial planning practices in Indonesia, ultimately leading to a more prosperous and sustainable society.

The concept of "public interest" in land acquisition is defined, encompassing national and communal welfare. Practical procedures involve planning, location determination, committee tasks, negotiations, compensation, land release, and ownership management. The legal protection system aims to respect landowners' rights and maintain social justice. This protection upholds the principles of human rights, certainty, utility, and fairness²⁷. Preventive and remedial measures are integral to this legal safeguarding. To prevent exploitation and conflicts, proper compensation and inclusive discussions are crucial aspects of land acquisition. Effective legal protection and mechanisms for consultation between landowners and the government can ensure balanced and mutually beneficial development, aligning with Indonesia's goals for progress and prosperity.

A. Development Plan for Gatot Subroto-Canggu Road Infrastructure

Infrastructure development is a key driver of economic progress and an essential component of regional and national growth. The planning and execution of such projects involve various stages, including spatial planning, feasibility studies, environmental assessments, engineering design, land acquisition, and physical construction. Effective governance, stakeholder engagement, and adherence to legal regulations are crucial to successful infrastructure development²⁸. The case of the Gatot Subroto-Canggu Road project exemplifies the intricate relationship between regional development and tourism²⁹. Well-planned transport infrastructure not only facilitates movement but also enhances the attractiveness of tourist destinations. However, challenges arise, such as land acquisition, coordination among different levels of government, and potential legal and social disputes. Robust legal frameworks, transparent procedures, and effective community engagement are vital to navigating these challenges.

Local governments hold the responsibility for orchestrating development plans in alignment with national goals. This involves comprehensive spatial planning, coordination with various stakeholders, and compliance with legal regulations. The case study underscores the importance of infrastructure, especially road development, as a catalyst for economic advancement. The participation of communities and local leadership in decision-making processes ensures that infrastructure projects align with the

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needs and aspirations of the people they serve.

B. Legal Protection for Citizens Affected by Gatot Subroto-Canggu Road Infrastructure Development Plan

Infrastructure development, including road construction, often requires land acquisition, which can lead to legal and social complexities. The legal protection of citizens affected by such projects is paramount to ensure fairness, minimize disputes, and promote sustainable development. The legal framework governing land acquisition for public purposes, as outlined in various regulations and laws, seeks to strike a balance between public interest and individual rights. Challenges arise when implementing land acquisition, including issues related to land ownership, valuation, compensation, and procedural transparency.

It is important for governments to ensure that land acquisition processes adhere to legal procedures and uphold citizens' rights. In the case of the Gatot Subroto-Canggu Road project, it is crucial to provide affected citizens with accurate information, involve them in consultation processes, and ensure fair compensation for their land and assets. The legal protection of citizens affected by infrastructure development requires a multidimensional approach. Adequate compensation, transparent procedures, clear communication, and community engagement are essential elements to address concerns and prevent legal disputes. Governments must establish mechanisms to address grievances, provide legal avenues for redress, and ensure that the benefits of infrastructure development are equitably distributed among all stakeholders.

V. CONCLUSIONS

The legal protection of citizens' rights and interests in the context of the Gatot Subroto-Canggu Road infrastructure development plan appears to be insufficient and plagued by regulatory ambiguities. The suppression of citizens' rights and the absence of clear guidelines have led to a situation where citizens' land remains locked in bureaucratic processes, causing economic and social losses. Addressing these issues necessitates a comprehensive review of the regulatory framework, ensuring that citizens' rights are upheld, and that a transparent and efficient development process is established. Furthermore, legal mechanisms should be put in place to address the grievances of affected citizens and hold responsible parties accountable for any violations of legal norms. Only through these actions can the intended benefits of infrastructure development be realized while safeguarding the rights and welfare of the citizens and residents of the Badung region.

ACKNOWLEDGMENT

The researcher would like to express gratitude to various parties who have participated and provided assistance from the beginning to the end of this research process, including the assessment team at Warmadewa University and employees of the Public Works Department.

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