

The Dynamics of Investment in the New Capital City (IKN) on the Use of Customary Land Rights (Hak Ulayat) in Legal Perspective

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Abstarct

The development plan for the New State Capital (IKN) will have an impact on the use of land or land as a place to build facilities and infrastructure to support the activities of the new capital which will move from the City of Jakarta to the Province of East Kalimantan. In addition to the construction of facilities and infrastructure in the New Capital area, it is possible for investment to enter both from within and outside the country who will invest in the New Capital, where the investment will require land in the form of land. Land in the New State Capital other than land owned by the state will be possible to include customary land or land with customary rights. Ulayat rights are one of the rights recognized by the state even at a level above other lands in the laws and regulations in the agrarian sector. Therefore, even though development is carried out including bringing in investment, the government must still pay attention to the interests of the community, including the interests of indigenous peoples.

Keywords: Investment, New State Capital, Customary Land (Ulayat Rights)

Introduction

The Republic of Indonesia is currently undergoing development in various fields, including the plan to relocate the State Capital City, which has been located in Jakarta, to East Kalimantan Province. The relocation of the State Capital City will undoubtedly impact the development of the surrounding areas of the new capital region. Concrete steps for the relocation of the New Capital City have been initiated since its inclusion in the 2020 National Medium-Term Development Plan (RPJM) for the period 2020-2024. In 2021, the initial steps began with the planning of Detailed Engineering Design (DED) (Yuniarto, 2022).

On January 18, 2022, the DPR (House of Representatives) held a plenary meeting and passed Law Number 3 of 2022 regarding the New State Capital. East Kalimantan Province was chosen as the location for the new State Capital, specifically the districts of Sepaku in Penajam Paser Utara Regency, and Samboja and Muara Jawa in Kutai Kartanegara Regency. The selected location is adjacent to major cities in Kalimantan, such as Samarinda to the North and Balikpapan to the East. Penajam Paser Utara Regency is rich and diverse in natural and cultural resources, including agricultural, forestry, and fishery resources due to its proximity to the Makassar Strait. Moreover, the region is inhabited by people from various religions and cultures, with the two major ethnic groups being the Paser Tunan and Paser Balik.

The locals' livelihood still depends on nature, with the majority working as fishermen and farmers. The multiculturalism present in Sepaku is also due to its designation as a transmigration destination. During the New Order era, Sepaku, which was administratively part of Balikpapan District, became a transmigration area for people from Central Java. Transmigrants were brought in the 1970s in several waves to cultivate land and become farmers in the area. The result of transmigration was the establishment of eight transmigration villages, named Sepaku (One to Four), and Semoi (One to Four). Transmigrants engaged in rice, crops, pepper cultivation, and cattle farming.

In the context of the development of the New Capital City, conflicts in narratives and interests are increasingly common. One of the most prominent narratives is the clash between ambitious development

policies and the values of the local community. The issue of relocating the State Capital City gives rise to two major interests, namely the macro interests of the state and the local elements' interests. Contrarian or critical narratives also address the inclusivity of the New Capital City for the local community and the environment, both in its construction and its future sustainability. In the current situation, where the New Capital City is not yet operational and the demographic shift has not occurred, Penajam Paser Utara Regency already faces several challenges. These include challenges in developing various infrastructure and facilities for the New Capital City, which will require a substantial amount of land, potentially including customary land rights (Hak Ulayat) of the local community, as well as for investors interested in investing and operating in the New State Capital.

Based on the above description, the author has chosen the title of this paper as "The Dynamics of Investment in the New State Capital City on the Use of Customary Land Rights (Hak Ulayat) in Legal Perspective."

Methods

In conducting this research, the method used by the author is normative juridical research method. Considering that the issues examined and studied are based on juridical aspects, namely on norms, regulations, legislations, legal theories, opinions of legal experts, especially in this case, the Basic Agrarian Law and the Investment Law, as well as various regulations in the field of economic law. The normative legal method is a research method that regards law as a system of norms, referring to principles, normative rules, regulations, court decisions, agreements, and teachings (Nazir, 2005).

This normative research is based on a literature study. In searching for and collecting the necessary data for this research, secondary data is used. Secondary data refers to data obtained from literature studies, archives, data from relevant government agencies, laws, and papers related to the investigated issue (Soerjono, Soekanto, & Mamudji, 2011).

The data analysis used is qualitative analysis, which is a data analysis method used for normative (juridical) aspects through a descriptive analytical approach. It involves describing the obtained data and establishing connections among them to obtain clarity on a truth or the opposite, thereby gaining new insights or reinforcing existing ones. Therefore, this analysis is in the form of explanations, not numerical statistics or other numerical forms..

Findings dan Discussion

Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) contains provisions regarding one aspect of indigenous peoples' rights related to their living space, namely customary rights as contained in Article 3 of the UUPA. Along with the recognition and respect for one aspect of indigenous peoples, namely customary rights, sectoral laws and regulations were later born after the UUPA, but the essence of the recognition is different (Sumardjono, 2008). According to the concept of national land law, communal land is seen as a separate entity adjoining state land and private land (land attached to a land right by an individual or legal entity). On the contrary, under Law Number 41 of 1999 concerning Forestry, customary forest is included as part of state forest (Sumardjono, 2008).

Recognition, respect and protection of indigenous peoples and their traditional rights have progressed quite proudly, especially in the reform era. State recognition of indigenous peoples and their entire existence is formally contained in statutory regulations, including the following:

1. The Second Amendment of the 1945 Constitution (Year 2000)

Article 18 B paragraph (2) : "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which are regulated in law". Article 28 I paragraph (3): "Cultural identity and rights of traditional communities are respected in accordance with the times and civilization developments".

2. TAP MPR Number IX/MPR/2001 concerning Agrarian Reform and Management of Natural Resources.
3. Law Number 23 of 1997 concerning Environmental Management

Article 9 paragraph (1) : "The government stipulates a national policy regarding environmental management and spatial planning while taking into account religious values, customs and values that live in society".

4. Law Number 39 of 1999 concerning Human Rights

Article 5 paragraph (3): "everyone, including vulnerable groups of people, has the right to receive more treatment and protection with respect to their specificity". Article 6 paragraph (1) : "in the context of upholding human rights, the differences and needs in customary law communities must be considered and protected by law, society and the government". Article 6 paragraph (2) : "The cultural identity of indigenous and tribal peoples, including rights to communal land is protected, in line with the times".

5. Law Number 41 of 1999 concerning Forestry

Article 1 letter f: "customary forest is a State forest that is in the territory of customary law communities". Article 4 paragraph (3) : "Forest control by the State continues to pay attention to the rights of customary law communities, insofar as they still exist and their existence is recognized, and does not conflict with national interests". Article 5 paragraph (1) : "Based on its status, forest consists of: (a) state forest; and (b) private forest".

6. Law Number 25 of 2000 concerning the 2000-2004 National Development Program (Propenas).

- a. Institutional Arrangement and Law Enforcement Program for Management of Natural Resources and Environmental Preservation.
- b. Community Role Enhancement Program in Natural Resource Management and Environmental Conservation.

7. Law Number 22 of 2001 concerning Oil and Gas

Article 34 paragraph (1) : "In the event that a Business Entity or Permanent Establishment intends to use parcels of private land or state land within its working area, the Business Entity or Permanent Establishment concerned must first make settlements with the right holders or users of land above the state, in accordance with the provisions of the applicable laws and regulations." Article 34 paragraph (2) : "Settlement as referred to in paragraph (1) is carried out by deliberation and consensus by means of:

- a. buying and selling, exchanging, proper compensation;
- b. recognition or other forms of reimbursement to rights holders or users of land above the state.

8. Law Number 20 of 2002 concerning Electricity

Article 35 paragraph (6) : "In the event that the land used by the holder of the Business License for the Supply of Electricity contains ulayat land and the like from customary law communities as long as it actually exists, the settlement shall be carried out by the holder of the Business License for the Supply of Electricity with the customary law community concerned in accordance with laws and regulations in the field of land taking into account the provisions of local customary law" .

9. Law No. 7 of 2004 concerning Water Resources

Article 6 paragraph (2) : "Control over water resources as referred to in paragraph (1) is exercised by the Government and/or regional governments while still recognizing the ulayat rights of local customary law communities and similar rights, as long as they do not conflict with national interests and statutory regulations". Article 6 paragraph (3) : "The customary law community's customary rights over water resources as referred to in paragraph (2) are still recognized as long as they actually exist and have been confirmed by local regulations".

10. Law Number 18 of 2004 concerning Plantations

Article 9 paragraph (2) : "In the event that the required land is customary land rights of customary law communities which in reality still exist prior to the granting of the rights referred to in paragraph (1), the applicant for the rights is obliged to conduct deliberations with the customary community holding customary rights and residents holding rights over the land concerned to obtain an agreement regarding the surrender of the land and the compensation."

11. Law Number 31 of 2004 concerning Fisheries

Article 6 paragraph (2) : "Management of fisheries for the benefit of catching fish and cultivating fish must take into account customary rights and/or local wisdom and pay attention to the participation of the community".

12. Law Number 38 of 2004 concerning Road

Article 58 paragraph (3) : "Holders of land rights, or users of State land, or customary law communities, whose land is required for road construction, are entitled to compensation".

13. Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands

Article 1 Number 33: "Indigenous Peoples are a group of coastal communities who have been living in certain geographic areas for generations because of ties to ancestral origins, a strong relationship with Coastal Resources and Small Islands, as well as a value system that determines economic, political, social and legal institutions". Article 61 paragraph (1) : "The government recognizes, respects and protects the rights of Indigenous Peoples, Traditional Communities and Local Wisdom on Coastal Zone and Small Islands which have been used for generations". Article 61 paragraph (2) : "Recognition of the rights of Indigenous Peoples, Traditional Communities and Local Wisdom as referred to in paragraph (1) is used as a reference in the sustainable Management of Coastal Zone and Small Islands".

Further confirmation regarding the form of recognition of customary rights of indigenous peoples is the issuance of the Regulation of the State Minister for Agrarian Affairs/Head of BPN Number 5 of 1999 concerning Guidelines for Solving Indigenous Peoples' Ulayat Rights Issues. This provision provides criteria for the continuation of customary community customary rights based on the existence of indigenous peoples, their territory and customary legal order. However, the process to determine whether or not customary law community lands exist is still procedural in nature so that its essence is only formal legality.

The development of an area is inseparable from investment that enters or arrives in an area, as it is known that investment comes from the word *investment* (English), investment or investment. The definition of investment is capital intended to be further developed through business activities that are economical in nature, including domestic investment as well as foreign investment.

Investment or investment has supporting factors both internally and externally. The Internal Factors include:

1. Investment procedure that is not convoluted.
2. Uncertain political and security conditions.
3. Investment business sector.
4. There are closed and open business fields for PM.
5. The quality and ability of the workforce is not good.
6. Land ownership rights.
7. Aspects of legal protection and legal certainty.
8. Lack of various incentive facilities.

While the external factors include:

1. Interdependence between countries (geographical factors, natural resources, human resources, different capital.
2. Globalization and liberalization of the international economy.
3. Fierce competition among developing countries, giving rise to various commitments in the economic field:
 - a. GATT (*General Agreement on Tariffs and Trade*)
 - b. WTO (*World Trade Organization*)

c. Regional economic alliances (EU/ *European Union*)

d. AFTA/ *Asean Free trade Area* ,NAFTA/ *North American Free trade Area*)

In the context of indigenous peoples, investment cannot be separated from the value system adopted by indigenous peoples because the natural resources used in investment are integrated with the value system adopted by indigenous peoples. Similarly, the management system must be based on local values that live in indigenous peoples, for example, profit-sharing systems, leasing systems, loan-use systems with compensation, and so on. The question is how this value system can be enforced in line with investment objectives, the interests of indigenous peoples and the interests of the whole nation, whether the local value system conflicts with the established system created by state authorities.

The value system that lives, grows and exists within indigenous peoples is a system that has existed and lasted for a very long time, meaning that this system was not created on purpose by a few people or a handful of elites, but a system that has been tested by a group of people over a long period of time, then becomes a collective agreement and is practiced, so that the testing process is proven to be able to provide solutions and benefits for indigenous peoples if problems occur in investment.

That this system is able to explain, provide solutions and benefits for those who invest as well as for the indigenous peoples themselves. This means that this system does not conflict with the economic values of Pancasila socialism which prioritizes the interests of the Indonesian people. Respect for communal rights as common rights of indigenous peoples. The philosophy of life of the indigenous people is "communal morality", meaning that everything rests on the interests of the people. If there is a conflict between individual interests and communal interests, then individual interests must be set aside. In this principle, society is seen as a big family that protects individuals, if there are problems between individuals and society as a big family there is always a way of deliberation as a leading solution. However, the lack of respect for the interests of the community as a family is tantamount to destroying shared life. Likewise with investments made in shared rights (to customary land), one must always look at the larger interest, namely the common interest as a big family.

Determination of territorial boundaries as limits for recognition of the rights of others. The happiness, well-being and survival of a community is seen in terms of the world's "balance". Recognition of other people's property rights, must be seen within the framework of "balance" towards the world, namely how to treat, respect other people's rights fairly. This means that the lack of respect for the rights of others is seen as a form of threat to the world's "balance", because individuals are seen as a constructive part, creating a world balance which is understood by indigenous peoples as a unit that is totality. Therefore, setting clear boundaries in investing means maintaining a "balance" within indigenous peoples and the world as a whole.

Maintain ecological balance. Continuity of past, present and future lives is seen as intertwined like an unbroken chain (*sustainable*). The present life is determined by the past life, and the future is determined by the present. Thus the most important thing is how the bonds that exist in each phase of life are not interrupted and not damaged, because damage will cause destruction in the next generation. In forest management (the narrow sense is land) it must be seen in a series that supports each other, taking into account the wisdom and balance of environmental management in a wise way. In a cultural dimension, Dayak people maintain the sustainability of the forest (read: land) for generations by planting fruits that can be enjoyed from generation to generation. This reality is not only understood as an effort to enjoy the results (economic in nature), but is also seen as an effort how people maintain the continuity of existing family life from generation to generation, so that communal life between clans (sedatuk) continues continuously without interruption. Maintaining community within the clan is an effort that must be prioritized, above individual interests.

This cultural wisdom really determines the sustainability and integrity of the forest and its natural surroundings. The destruction of nature lies in how humans behave towards the natural surroundings, if greed dominates humans, then the continuity of nature will not be able to survive. Conversely, if human treatment of nature is wiser, then nature will provide benefits and prosperity for humans. The cultural reality that is formed in Dayak people regarding how they must be wise in managing nature is a life experience that they did not learn in formal school, but it is an experience of their life in and in the natural surroundings. This experience has taught them from generation to generation in protecting and managing the natural surroundings because they are part of nature itself, nature is their own life and nature is their own world.

Therefore, before taking something from nature, the Dayak people must give something first, such as opening new land, cultivating forests for farming, they must meet certain conditions. (Mubyarto, 1989).

Good investment will not harm the community because investment laws and regulations are based on investment principles, including: legal certainty , transparency , accountability , equal treatment , togetherness , fair efficiency , sustainability , environmental insight , independence and balance of progress and national economic unity.

With the aim of investment or investment, including: Increasing national economic growth , Creating jobs , Increasing sustainable economic development , Increasing the competitiveness of the national business world , Increasing the capacity and capability of national technology , Encouraging people's economic development , Processing economic potential to become a real economic power and Increasing people's welfare.

Conclusion

Investments to be made in the New Capital City should still consider the existence of customary law community's rights (Hak Ulayat), including recognition in both formal and material dimensions. Formal recognition is dispersed in various sectoral regulations and legislations. Therefore, in the development of the new area of the New Capital City, investment development is expected to be guided by regulations governing the management and use of land, including both state-owned land and customary land or Hak Ulayat.

Acknowledge

In the context of agrarian reform, the government needs to have a strong political will to build a robust legal framework concerning agrarian resources (including Hak Ulayat) by actively involving various stakeholders such as Non-Governmental Organizations, academics, legal experts, and the community to ensure justice and certainty in the agrarian sector for the investment activities to be carried out in the development of the New Capital City (IKN).

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