

Legal Politic in Providing Infrastructure in Indonesia, is Human Right Still Have Any Places?



Ricca Anggraeni, Indah Mutiara Sari

Abstract: Indonesia government has put a lot of efforts to fix infrastructure for strengthening the economy. This can be seen from the increasing amount of infrastructure budgeting in 2015 which up to 290 trillion. As a state law, certainly every government effort must be based on legal instruments in the form of legislation. From the various regulations that governing the providing infrastructure, normatively there are various material content of norms that truly potential to violate the human rights. For example the presidential regulations number 58 of 2017 concerning the acceleration of the Implementation National Strategic Projects is stating that the location of national strategic projects which not in accordance with spatial layout, can be given some recommendation about the spatial layout suitability with the location of strategic project from Agrarian Minister, and also from the head of National Land Agency. Another problem that arises from the act of providing infrastructure is agrarian conflict which blooms due to the procurement of land for public interest which is legalized through the regulation. Ironically there are numbers of ambivalence policies in Indonesian government, which comes together with the high amount of land conflict, forced evictions for plantation and infrastructure projects. These credible data, shows the genuine dilemma from Indonesian government, because on one side there are efforts to develop infrastructure to strengthen the economy, but on the other side the development actually undermines the recognition of human rights in Indonesia. And finally the main problem wanted to be resolved is why the kind of legal politics that not come by prioritizing the protection of human rights in infrastructure development can be accommodated through the regulations? This research uses doctrinal type research, in order to elaborate theories, to reveal the real meaning and the right purpose of legal politic in providing infrastructure in Indonesia.

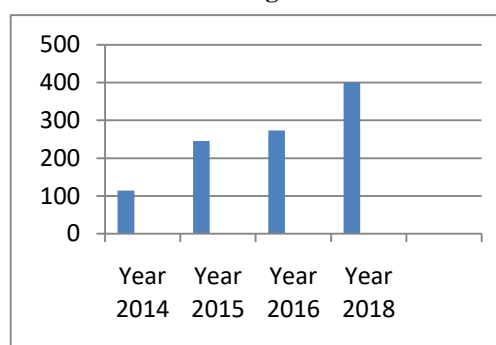
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I. INTRODUCTION

From 2014 to 2018, there was a very significant difference regarding the amount of infrastructure development expenditure. The infrastructure development

budget in 2014 stood at 155 trillion, changing to around 410 trillion in 2018 [Financial Ministry of Indonesia, <https://www.kemenkeu.go.id/publikasi/berita/ini-capaian-pe-mbangunan-infrastruktur-indonesia/>, 2019]

Table 1.1. The increase in infrastructure development budget



which means there is an increase of more than 100% for infrastructure. This effort carried out by the Government certainly with the great purposed, that is to pursue economic growth and reduce development disparities between regions.

Another effort taken for the economic growth is by improving regulations that governing the infrastructure development sector. This is presented to guarantee the synergy between the efforts to develop infrastructure and economic growth, and also to fulfill the justice of development in Indonesia. Improvement of regulations is also chosen by the Government as one of the efforts, so that infrastructure development projects can get justification in terms of their authority and legality. Regulatory improvements were also chosen to ensure the concept of rule of law in Indonesia was maintained well, so all government's actions in the administration of the state has the right legal basis, so that human rights are maintained and protected because there is no arbitrariness in the administration of the state.

However, empirically, the fulfillment of needs in the field of development and infrastructure provision are almost like two different edge blades, At one hand, the government wants to fulfill the development justice and improve economic growth of all regions in Indonesia, but on the other hand, behind that massive development, there must be people who are neglected by the aspect of justice, such as evictions carried out by the executor of the international airport in West Java construction,

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which affected the homes and paddy fields of the residents because they had become construction sites.

Therefore, by seeking the legal politics behind the construction of the Kertajati West Java International Airport, the author wants to prove that the presumption of law is a tool for capitalist interests is really exists. This is become an important issue because on one hand this international airport can be a source of pride for some people in West Java, but on the other hand it is also the causes of the elimination of five community groups and their houses and farms because it was used as the airport construction location.

This disclosure is done by questioning why is the kind of legal politics that do not prioritize recognition and protection of human rights in infrastructure development can be accommodated through regulation? What is the right and balanced solution for the Government to develop the infrastructure, where human rights can still be well accommodated too?

This research comes to find the true and right answers, in order to provide a solution for the development of infrastructure in Indonesia. Therefore, doctrinal type research was chosen, in order to elaborate theories to reveal the real meaning, the right purpose and also the true principles in governing the norms about the providing of infrastructure in Indonesia.

II. METHOD

Based on the identification of the problems found in this study, a qualitative type of doctrinal type is needed. This doctrinal research is also supported by the type of non-doctrinal research. Non-doctrinal research is carried out because researchers want to gain knowledge from the public regarding the empirical conditions of the Construction of the West Java International Airport, in Kertajati, Majalengka. This non-doctrinal research was conducted by interviewing several communities whose land was affected by Infrastructure Development

The doctrine to guide researchers in carrying out this research is the concept of human rights, political law. This research with the doctrinal type begins with taking the legal reality in the form of legislation governing the provision of infrastructure.

III. RESULT AND FINDINGS

A. Infrastructure Development Trend in Indonesia

Infrastructure development in Indonesia today is highly upholds to the principle of "equitable development". This can be seen from the determination of national strategic projects that seems very interested with the kind of investment that was aimed towards the strategic sectors, and certainly the return value's amount from the investment also becomes the government's huge concentration in infrastructure development.

The infrastructure budget in the National Budget always continues to increase from 2015 to 2019[Liputan6, "pembangunan infrastuktur tetap jalan dapat dongkrak pertumbuhan ekonomi", <https://www.liputan6.com/bisnis/read/3943982/pembangunan-infrastruktur-tetap-jalan-dapat-dongkrak-pertumbuhan-ekonomi>]

[onomi, 2019], this fact shows the government's seriousness in massively developing infrastructure. But if it refers to the types of infrastructure that are built, it is seen that the infrastructure built is actually more likely to be related to the transportation of people and not the transportation of goods.

The development of infrastructure in Indonesia frequently not appropriate in prioritizing projects to be built for the benefit of the community, because adequate infrastructure budget allocations are considered more crucial than adequate budget allocations to fulfill the citizens' requirements.

The benefits of some infrastructure buildings in Indonesia have not been maximized, such Kertajati Airport which quiet from passengers. These are the concrete evidence of infrastructure development that not comes and based on the citizens and local residents's requirements .

B. Legal Politics Infrastructure Development in Indonesia

From the various types of legislations that exist, the infrastructure sector also have regulations at the operational technical level, starting from the Presidential Regulation until the Ministerial Regulation in various fields, like the Minister of Transportation Regulation, Minister of Finance Regulation, and Minister of Public Works and Public Housing Regulation, even to the level of the Head of Agency/Institution Regulation. what is surprising, is that the operational technical regulations must also work in synergy with regulations in other sectors in the form of laws, such the Law on the National Development Planning System, the Law on Railways, the Law on Sports, the Law on Roads, The Law on Procurement of Land for Public Interest, and many more are in accordance with the infrastructure that will be provided by the state.

The multisector of legislation that regulates and deals with infrastructure, shows that the state has to provide the infrastructure in various fields so that people are more easily connected and carry out the activities which can affect the growth and improve the economy. And also its undeniable, that actually the provision of infrastructure is directed to increase the economic growth and the welfare of the Indonesian people.

And just to achieve the purpose of the country, the state feels right to use the power to get the goals, including the legal instruments. Eventually legislation just comes as normative law to achieve that goals. The statement above can be proven by seeing the various regulations that govern the provision of infrastructure. Starting from the Presidential Regulation Number 38 of 2015, Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects as amended by Presidential Regulation Number 58 of 2017, Minister of National Development Planning / Head of National Development Planning Agency Number 4 Year 2015 concerning Procedures for Implementing Government Cooperation, Presidential Regulation Number 78 of 2010 concerning Infrastructure Guarantee in a public private partnership project carried out through an infrastructure guarantee business entity,

Presidential Regulation Number 71 of 2012 concerning Land Procurement for Development in the Public Interest which has been amended several times, the latest by Presidential Regulation Number 148 of 2015, Presidential Regulation Number 75 of 2014 concerning Acceleration of Provision of Priority Infrastructure as amended by Presidential Regulation Number 122 of 2016, Presidential Regulation Number 2 of 2015 concerning National Medium-Term Development Plan for 2015-2019, Presidential Regulation Number 102 of 2016 concerning Land Procurement Funding for Development in the Public Interest in the Implementation of National Strategic Projects, Minister of Finance Regulation Number 143 / MFR.011 / 2013 concerning about Guidelines for Providing Feasibility Support for Part of Construction Costs on Public Private Partnership Projects in Infrastructure Provisioning, Minister of Finance Regulation Number 223 / MFR.011 / 2012 concerning Provision of Feasibility Support for Part of Construction Costs in Public Private Partnership Project in Infrastructure Provisioning, Regulation of the Head of the Government Goods / Services Procurement Policy Institute Number 19 of 2015 concerning Procedures for the Implementation of Procurement of Public Private Partnership Project in Infrastructure Provisioning, and Regulation of Indonesia Government Goods / Services Procurement Policy Number 29 of 2018 concerning Procedures for Procurement of Implementing Business Entities in Providing Infrastructure through Public Private Partnership on the Initiative of Ministers / Institution Heads / Regional Heads.

The tangent point of the various regulations governing the provision of infrastructure is providing facilities for business entities to cooperate with the government in providing infrastructure, and to provide the guarantee of legal certainty in the provision of infrastructure. but the problem is when the government policy is actually present to provide convenience and guarantee legal certainty in the provision of infrastructure, not balanced by human rights protection towards community whose territory is affected by the predefined location. This can be seen from the construction of norms contained in several regulations governing the provision of infrastructure, especially regarding land acquisition. As in Presidential Regulation Number 3 Year 2016 which regulates Spatial Planning, it stipulates that for the location of National Strategic Projects that are not in accordance with the Regional Spatial Plan, Regional Spatial Detail Plan, or Zoning Plan for Coastal Areas and Small Islands which technically is not possible to move from the planned location, can be made spatial adjustments for that. Even the Minister of Agrarian and Spatial Planning / head of the National Land Agency can provide some recommendations on the suitability of the spatial plan for the location of the strategic project with the provisions of legislation for the location of national strategic projects that are not in agreement with spatial planning [article 19, President Regulatory Republic of Indonesia about Acceleration Implementation National Strategic Project].

In addition, in the Presidential Regulation which regulates general land procurement, explicitly stated that agencies can

implement the development despite objections or claims in court. And also supported by tax incentives that will be given to the public who do not file a claim for the determination of location and support the implementation of land acquisition for the public interest [article 113 until article 115, President Regulatory Republic of Indonesia about Procurement of Common Land].

Seeing the construction of norms, the legal politics owned by the government for the provision of infrastructure is indeed to provide facilities and guarantee legal certainty for business entities or the private sector to cooperate with the government in providing infrastructure. With the ease and guarantee, the truly direction is to stimulate the private sector or business entity to invest in infrastructure. but behind the legal politics, the other hidden direction of policy is that the community must support the infrastructure supply projects, even though at the expense of their rights to property that actually stay under their control. The legal politics can be seen from the Government's reward by providing tax incentives for people who support and do not make claims on their land if they become areas that have been designated as locations for infrastructure development.

C. Portrait of Human Rights Negations in Kertajati Airport Infrastructure Organization

One of the implementation of the state is by carrying out infrastructure development. One of the international standard infrastructure projects that have started the operations is Kertajati International Airport. The airport is planned to be built on 1,800 hectares of land. Certainly to realize this airport development must take over the land in which there are residents' dwellings and also fields that are used as residents' livelihoods. At the end of 2016 or at 1st Phase, the West Java Provincial Government has successfully carried out 530 hectares of land acquisition activities. The location of land acquisition is located in three villages, namely Kertajati Village, Bantarjati Village and Kertasari Village and prioritized for the construction of the air side (Runway I), as well as a small portion of the land side. But in its implementation, the process of land acquisition for BIJB development was not in accordance with the expected target, both in terms of time and area of land acquisition and the existence of villages that refused to be released, namely Sukamulya Village. These conditions and situations affect the implementation of the construction of the West Java International Airport. In addition, the implementation of land acquisition policies that are not carried out simultaneously raises its own problems, concerning the suitability of prices and the degree of public acceptance of the sustainability of development programs [Waluyo Zulfikar dan Yayat Rukayat, 2017; 14].

According to a number of villagers affected by land acquisition [Secretary Village of Kertajati, 2019], the construction plan of Kertajati Airport is not clearly known, because the approach taken by the parties holding the construction of Kertajati Airport is only through village officials, and the village apparatus does not persuasively disseminate information to the land owners.

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When the land acquisition process will be carried out, the landowners are not given clarity about the price of the land to be acquired,

people who are finally forced to release their land are only asked to submit land ownership documents to the local court, and after that the residents get a sign repayment of compensation payments while obtaining a statement of the price for the land acquired. Ironically, the prices set by the actors of infrastructure development are baseless, because each land that is given compensation is very unusual from the market price. Based on the results of the interview, information was obtained that the large land price and also having a sturdy building on it were charged the same price as a small house that stood on a narrow land. This is what causes residents to refuse to release their land.

This fact is clearly very contrary to what is meant by Article 28G Paragraph (1) which gives every person the right to property under his control, and Article 28H paragraph (4) which reads "every person has the right to have personal property rights and such ownership rights may not be taken arbitrarily by anyone "

Local residents also explained clearly that the existence of Kertajati International Airport did not bring economic benefits to the surrounding community, because the residents were not directly involved to work at the airport and aerocity West Java International Airport Kertajati, Majalengka. This fact contradicts the promises made by the BIJB prior to the holding of land acquisition, that the community will be involved in absorbing labor both in the development process and in the operation process of the airport.

This facts explained that the community wants and expects economic improvement from the construction of this Kertajati International Airport. However, it turned out that after the infrastructure development project was completed, there was no longer a psychological relationship between the community and the organizers of the Kertajati International Airport. This indicates that there is no social and psychological compensation to the community around Kertajati International Airport. Based on the results of interviews conducted, psychologically, the Kertajati community was disappointed and there was no hope for the construction of Kertajati Airport. The absence of hope from the Kertajati community can be seen from the increase in the number of Indonesian workers who choose to work abroad. Thus, the operation of the airport has not yet affected the economic life of the Kertajati community. Willy nilly, it is handed over to the airport organizer, because it is included in the location to be built.

Property and private property rights of the people who live in Kertajati, according to some residents who were interviewed, were taken over by a repressive approach from the organizers of West Java International Airport infrastructure assisted by village officials. Regarding this fact, it clearly shows ambivalence in the provision of infrastructure in Indonesia.

D. Solution to Build Infrastructure with Protecting of Human Rights

As a state law these infrastructure must have their law instrument as the basis, and these law be recognize by the

legislation. Therefore many legislation are issued. This legislation will then regulate the executive both in the implementation and the law on building infrastructure. As the regulation apply, we could see the political law in Indonesia which include the collaboration between the public and private partnership.

By the various legislation that regulate the infrastructure, it is seen that these legislation intersect with numerous legislation sectors. The sectors of infrastructure which allow the government to collaborate with the private sector consist of economic infrastructure and social infrastructure, which includes:

1. Transportation infrastructure
2. Road infrastructure
3. Water and irrigation resources infrastructure
4. Drinkable water infrastructure
5. Centered wastewater processing infrastructure
6. Local wastewater processing infrastructure
7. Garbage processing infrastructure
8. Communication and information infrastructure
9. Electricity infrastructure
10. Jail infrastructure
11. Public housing infrastructure

This mean that regulation on infrastructure providence must be synergize with those sectoral regulations. But, from the numerous legislations that regulate the infrastructure providence then technically operational, after it is studied, evidently it is directing towards the easiness and certainty for the private company to collaborate with the government on providing the infrastructure. With this ease and assurance then private companies are stimulated to invest on the infrastructure. In terms of this mechanism, citizens are forced to support the infrastructure project even though it means taking the power to control. Thus, there are rights from the community that are reduced by the interests of infrastructure development. Infrastructure development is truly a priority, so the government provides rewards through tax incentives for people who support and do not make claims on their land if they become areas that have been designated as locations for infrastructure development. Finally, human rights are contextually removed for the sake of infrastructure development which is said to be in the public interest.

Kontras in a report stated that there was a number of ambivalence to government policies along with the still high land conflicts, forced evictions for infrastructure projects, as happened in the West Java International Airport (BIJB) infrastructure development project in Kertajati, Majalengka.

This situation shows that there is a legalization of reducing human rights through legal products produced by the Government as state administrators. If based on an understanding of the Politics of Law proposed by Mahfud MD, then the direction of the policy of administering the state to achieve the objectives of the state will be seen to be influenced by politics even in the formation of law and its enforcement. Law in this case is very possible to be influenced by politics, including in the field of infrastructure provision.

With this, Trubek stated about the law which is very dependent on the interests of the capitalists, because the law is believed to play a very important role in economic growth, and is a precondition for economic progress (precondition for economic change). Because of compromising with the interests of the capitalists, then the establishment and enforcement of the law is very likely to become an institution that reduces its competence, in order to fulfill certain interests with growth arguments and for economic progress. So, if later in the legislation governing the provision of infrastructure does not favor the respect and protection of human rights, but it is easier for business entities to build infrastructure, it can be ascertained that it is due to the influence of political interests that agree to increase economic growth. Economic growth certainly must be encouraged or supported by a business climate and investment that is friendly for the business entity, including in the provision of infrastructure, which is predicted to be able to shorten the distance and connect people and goods within a country. Through this support, it is expected that there will be market expansion, the distribution of goods and services that are evenly distributed, so that the total supply of goods and services is balanced in all regions of Indonesia [Eko Wicaksono Pambudi, 2013; 21-22]. Empirically, indeed in the provision of infrastructure there is a situation that does not take sides in upholding and protecting human rights. As in the construction of infrastructure in the West Java International Airport (BIJB) in Kertajati, Majalengka. Takeover of residential land and agricultural land used as livelihoods was carried out in three villages, namely Kertajati Village, Bantarjati Village and Kertasari Village. However, this process left a bitter story in several community members whose houses and land were used as locations for the construction of West Java International Airport. Starting from forced efforts and repressive approaches carried out, because the compensation provided is not in accordance with the price, so that the degree of public acceptance of the sustainability of the development program is lame between one citizen and another citizen. This is what causes some residents to experience psychological distress [interview with member of Village Kertajati, 2019].

Based on empirical facts about legal politics from the actions of state administrators in the provision of infrastructure that better guarantee the interests of the private sector or business entities to invest by marginalizing the human rights side, it is necessary to "rehabilitate" so that the political influence in the establishment and enforcement of law does not create difficulties in the construction of regulatory norms that govern the provision of infrastructure.

Legal certainty guaranteed by the concept of the rule of law in order to guarantee and protect human rights is sometimes betrayed by the process of forming normative laws in the form of legislation. This is what Trubek calls the law to fulfill certain interests capable of being a tool or instrument to guarantee the interests of the capitalists to encourage economic growth which is held up as the goal of the state.

Legislation concerning the provision of infrastructure that has already been formed with the influence of political interests to guarantee the ease of investing in infrastructure development needs to be rehabilitated so as not to become a

basis for justifying arbitrary actions of the state in taking over land for infrastructure development. Rehabilitation also needs to be done so that it can balance the bargaining position of the community, so that the human rights side is not reduced because of the importance of infrastructure development which is not necessarily a suitable need for the local potential of a region.

Rehabilitation is carried out by placing the process of establishing legislation in accordance with procedures, meaning that it needs planning, drafting, discussion, ratification / enactment, and enactment [article 1, Law about Procedural to Produce Regulations]. It is said to be appropriate so that being a means of rehabilitation for legislation that contains legal politics that reduces human rights is not just a formality, so that there is no lying about the process being carried out. If there is no lie against the process of forming regulations, then the community will always be involved and anticipated for their participation.

If public participation is always opened in the formation of legislation, the construction of norms that tend to negate the human rights side will not arise for any reason. That is, there is a balance of influence between politics that are intertwined in the formation of the law with the influence of the interests and needs of citizens who can indeed provide ideas when the land becomes the location of the implementation of infrastructure projects. Thus, the solution comes from the willingness to form the law itself not to deceive the process, or from the parties who become facilitators of infrastructure development to not take sides with capitalist interests. The facilitator must really be a "defector" in the direction of state policy if the application of legal products is not in accordance with the constitutional provisions or the principle of human rights protection. Participation that opens communication is a place for rehabilitation of the direction of state policy in the provision of infrastructure that is not pro with human rights.

IV. CONCLUSION

Reasons that cause legal politics that do not prioritize recognition and protection of human rights in infrastructure development can be accommodated through regulations or legislation governing the provision of infrastructure because the law is very likely to be influenced by politics, including in the field of infrastructure provision. This is what is called a law that is very dependent on the interests of the capitalists, because law is believed to play a very important role in economic growth, and is a prerequisite for economic progress. Because of compromising the interests of the capitalists, the formation and enforcement of law has the opportunity to become an institution, to fulfill certain interests with growth arguments and for economic progress. So, if later in the legislation governing the provision of infrastructure does not favor the respect and protection of human rights, but it is easier for business entities to build infrastructure, it can be ascertained that it is due to the influence of political interests that agree to increase economic growth.

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The balanced solution for the Government for infrastructure development with the community so that their human rights can be protected is by rehabilitating the laws and regulations of laws and regulations legislation governing the provision of infrastructure, so as not to be the basis for justifying the actions of arbitrary state administration in taking over land for infrastructure development. Rehabilitation also needs to be done so that it can balance the bargaining position of the community, so that the human rights side is not reduced because of the importance of infrastructure development which is not necessarily a suitable need for the local potential of a region. Rehabilitation is carried out by placing the process of establishing legislation in accordance with the procedure, so that there is no lying about the process being carried out. If there is no lie against the process of forming regulations, then the community will always be involved and anticipated for their participation. If public participation is always opened in the formation of legislation, the construction of norms that tend to negate the human rights side will not arise for any reason.

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Indah Mutiara, she was born on 19 September 1996 in Ambon city, now, she registered as a final year undergraduate student at Pancasila University, she also registered as an internal and external research assistant in the law faculty of Pancasila University. She is also a frequent speaker in national research and also actively comes as an international conference

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