

Existence of Human Rights Protection in Land and Mining Conflicts: Evidence from Indonesia



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Article Info

Received: 20 April 2024

Revised: 09 August 2024

Accepted: 30 November 2024

Keywords:

Human Rights;

Protection;

Mining;

Land;

Acquisition.

Abstract

Human rights should not be subject to reduction under any circumstances except where such reductions are explicitly justified by law. In agrarian conflicts, regulations governing land acquisition may infringe upon individuals' fundamental rights, including land ownership rights, in the name of public interest. However, the extent to which the law can diminish the fundamental rights of citizens remains a subject of ongoing debate. This study explores how human rights can be preserved in agrarian conflicts, particularly land acquisition for public interest, followed by mining disputes. This doctrinal research employs a statutory, conceptual, and case study approach. The findings indicate that human rights in land and mining conflicts can be upheld if there is alignment between legal frameworks, the actions of field officers, and the idealism of judges in making rulings that prioritize protecting human rights. Moreover, the concept of land acquisition for public interest should not be construed as automatically granting the government the right to repurpose land for other purposes, even when such purposes are related to the primary objective of the land acquisition.

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1. Introduction

Human rights are inherent in human dignity and worth, which are fundamental to human existence.¹ These rights are essential for individuals to fully develop their abilities and potential and, therefore, cannot be diminished. Human rights are universal, belonging to all people regardless of race, ethnicity, nationality, or religion. However, in certain circumstances, the full realization of human rights may be subject to limitations, depending on specific conditions.² As a nation committed to upholding human dignity,

¹ Alison D Renteln, 'Human Rights', in *Encyclopedia of Violence, Peace, & Conflict (Third Edition)*, ed. by Lester R Kurtz, Third Edit (Oxford: Academic Press, 2022), pp. 276–98 <<https://doi.org/https://doi.org/10.1016/B978-0-12-820195-4.00227-2>>.

² Alberto Quintavalla and Klaus Heine, 'Priorities and Human Rights', *The International Journal of Human Rights*, 23.4 (2019), 679–97 <<https://doi.org/10.1080/13642987.2018.1562917>>.

<https://doi.org/10.62264/jlej.v2i3.107>

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Indonesia guarantees human rights in the 1945 Constitution of the Republic of Indonesia, which serves as the fundamental legal framework and the highest norm to be adhered to. The constitution emphasizes that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government.³

Protection of human rights is a consequence of the state's guarantee of rights always inherent in a human being. Thus, this protection must be implemented in all sectors of state administration, including in implementing national development. The state carries out sustainable development to achieve the state's goal of realizing a just and prosperous society.⁴ Development is essentially homework for every developing country, and it can be in the form of non-physical development or physical development. Non-physical development is intentionally related to economic, social, and cultural transformation through policies. Physical development can be implemented, one of which is by building public facilities. In physical development, the availability of extensive and strategic land. To meet these needs, the government carries out land procurement.⁵

Land acquisition is regulated by Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest in conjunction with the Job Creation Law and Presidential Regulation Number 71 of 2012 concerning implementing Land Acquisition for Development in the Public Interest. Specifically for land acquisition where the development is a national strategic project, the regulation also refers to Presidential Regulation Number 58 of 2017 concerning the Acceleration of the Implementation of National Strategic Projects. The regulation provides provisions for land acquisition for the public interest, which in its implementation can be coercive for someone to relinquish ownership rights to their land on the pretext that the development project is carried out to provide rights for the community in the broader group—the public. It is a challenge for the government and often conflicts with land rights in a smaller group within society.

The law, as established by the government, regulates the rights and obligations of legal subjects. It functions not only as a tool for ensuring compliance but also as a means of protecting these rights. While implementing the law is ideally carried out regularly and peacefully, it is impossible to entirely prevent violations from occurring.⁶ Each country

³ Abd. Muni, 'Hak Asasi Manusia Dalam Konstitusi Indonesia', *Al'Adalah*, 23.1 (2020), 65–78 <<https://doi.org/10.35719/aladalah.v23i1.27>>.

⁴ Muhammad Akib, F X Sumarja, and Heryandi, 'Environmental Law Policy as an Approach to Achieve Sustainable Development and Prosperity in an Era of Regional Autonomy', *Environmental Policy and Law*, 49.1 (2019), 83–87 <<https://doi.org/10.3233/EPL-190130>>.

⁵ Lego Karjoko, Zaidah Nur Rosidah, and I Gusti Ayu Ketut Rahmi Handayani, 'Refleksi Paradigma Ilmu Pengetahuan Bagi Pembangunan Hukum Pengadaan Tanah', *Bestuur*, 7.1 (2020), 1 <<https://doi.org/10.20961/bestuur.v7i1.42694>>.

⁶ Sudikno Mertokusumo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993), h. 140.

has its own way and mechanism of determining the legal protection given. Likewise, the law is set for land acquisition for public interest, especially in national strategic projects. However, the development should not violate human rights, even for a small group. This study analyzes the existence of human rights guarantees in the land acquisition conflict in Purwerojo. This case study provides an overview of the conflict between the local community and the government because of the land acquisition process intended to construct a dam, which is a public facility and a national strategic project. This conflict violates the natural rights of the local community due to land acquisition that is not by legal procedures. The parties aggrieved by the land acquisition filed a lawsuit with the Semarang Administrative Court. The result was the Semarang PTUN Decision No.68/G/PU/2021/PTUN.SMG and the Supreme Court Decision No.482 K/TUN/2021 rejected the residents' lawsuit requesting that the Governor's Decree No.590/20 of 2021 be canceled or declared invalid, rejected up to the cassation level. This conflict was also accompanied by repressive actions by law enforcement officers when residents held a demonstration rejecting the project.

The primary cause of the conflict was the acquisition of land for the dam's construction, coupled with land-clearing activities associated with andesite mining. Notably, the planning process for the location of andesite mining, intended as a supplementary material for the dam, did not include any public participation. Moreover, the andesite mining permits were integrated with land acquisition schemes for the dam's construction, a practice that does not align with legal provisions. This discrepancy arises from the distinction between the regulatory frameworks governing land use: land clearing for andesite mining falls under the legal mineral and coal mining regime, whereas dam construction is regulated by land acquisition laws designed for public interest purposes. The intersection of land clearing for strategic infrastructure projects and andesite mining provides a pertinent analytical lens through which to explore the marginalization of human rights during land conflicts.

Compared to previous research, Armalia Irawan et al. analyzed the land acquisition policy in Indonesia by comparing it with the regulation in the Netherlands. The findings focused on the legal protection method for affected communities through high compensation for the cost of landowners' losses.⁷ In another research study, Barid Hardiyanto discusses how agrarian reform addresses the inequality of rights between the state, public, and private in the context of implementing development. The research

⁷ Armalia Berlinda Irawan, Rahayu Subekti, and Bobur Baxtishodovich Sobirov, 'Legal Protection in Land Acquisition for Public Interest: A Dilemma Between State Regulation and Social Welfare', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.2 (2024), 124–44 <<https://doi.org/10.53955/JSDERI.V2I2.38>>.

focuses on how agrarian reform policies in the era of President Susilo Bambang Yudhoyono are inseparable from Indonesia's political conditions.⁸ Compared with the research of Christina M. Kennedy et al., it highlights the significant impact of development on Indigenous communities, noting that industrial expansion threatens nearly 60% of indigenous lands across 64 countries. It underscores the need for effective governance and management strategies to mitigate the risk of land conversion.⁹ While three studies provide valuable insights, several critical aspects related to the protection of human rights remain underexplored. Specifically, it is essential to foster legal and policy awareness regarding land acquisition or conversion, emphasizing that such processes should not be evaluated solely based on government or private sector compensation. Specific human rights cannot be quantified through financial compensation alone. Agrarian reform must, therefore, also prioritize safeguarding the rights of structurally disadvantaged communities.

Black's Law Dictionary defines protection as the act of protecting.¹⁰ Satjipto Rahardjo posited that legal protection entails safeguarding human rights from infringement by others, ensuring that individuals are shielded from harm. This protection is extended to society, enabling all rights conferred by law to be effectively granted and enjoyed.¹¹ According to C.S.T. Kansil, legal protection encompasses various legal measures that law enforcement authorities must take to ensure a sense of security, both mentally and physically, against disturbances and threats from any party.¹² Moreover, Philipus M. Hadjon argued that legal protection is an action to protect or assist legal subjects using existing legal instruments.¹³

Human rights are inherent in human beings, are natural, cannot be revoked (inalienability), and cannot be separated (indivisibility).¹⁴ On the other hand, a dilemma arises when these rights intersect with the public interest, particularly in the context of land acquisition. The key question is whether the human rights dimension can be subordinated in land acquisition for the public good and how the state justifies and

⁸ Barid Hardiyanto, 'Politics of Land Policies in Indonesia in the Era of President Susilo Bambang Yudhoyono', *Land Use Policy*, 101 (2021), 105134 <<https://doi.org/https://doi.org/10.1016/j.landusepol.2020.105134>>.

⁹ Christina M. Kennedy and others, 'Indigenous Peoples' Lands Are Threatened by Industrial Development; Conversion Risk Assessment Reveals Need to Support Indigenous Stewardship', *One Earth*, 6.8 (2023), 1032–49 <<https://doi.org/10.1016/J.ONEEAR.2023.07.006>>.

¹⁰ Bryan A. Garner, *Black's Law Dictionary*, 9th edn (St. Paul: West, 2009), h. 1343.

¹¹ Satjipto Raharjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2000), h. 54.

¹² C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989), h. 102.

¹³ Philipus M. Hadjon and others, *Pengantar Hukum Administrasi Indonesia*, 13th edn (Yogyakarta: adjah Mada University Press, 2019), h. 10.

¹⁴ Rahayu, *Hukum Hak Asasi Manusia* (Semarang: Badan Penerbit Universitas Diponegoro, 2010).

protects such actions. The answer to this question can be explored through the dynamics of human interaction with land from philosophical and historical perspectives. Amartya Sen conceptualizes development as freedom, with land ownership closely linked to human welfare.¹⁵ Access to land ownership is a basic need for living in society, especially for agrarian communities that still depend on the use of natural resources. In other words, Karl Marx stated that private land ownership is the root of exploitation and the source of class creation.¹⁶

History records this dynamic through various phases, starting from land as communal ownership in prehistoric societies, as a symbol of power during the kingdom era, as part of capital during the Industrial Revolution, to its role as a means for achieving welfare in the modern age.¹⁷ According to research by Miloon Kothari, the United Nations has articulated the fulfillment of the right to adequate housing and food since 1995, which has significant implications for recognizing land rights as a human right. However, this right to land is not found in any 'hard law' international human rights instruments but has emerged in soft law frameworks.¹⁸ This suggests that, in a formal sense, the right to land is still not fully protected and may be subject to removal depending on the context of the case. Yet, land inherently involves community life, culture, and livelihoods. This concept underscores the importance of continuing this research to provide evidence that the right to land must be fulfilled equitably. These circumstances ultimately positions the state at the center of wealth distribution through land ownership, with the state playing a regulatory role in promoting collective welfare. As with the state's sovereignty over land, water, and air, the state sets standards and determines the extent to which land can be privately owned and when it should be allocated for public use. Therefore, human rights play a crucial role in protecting individuals from the potential abuse of state power in seizing private land ownership.¹⁹

¹⁵ Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999). See Janna Miletzki, *Development as Freedom* (Macat Library, 2017) <<https://doi.org/10.4324/9781912281275>>.

¹⁶ Karl Marx, *Economic and Philosophic Manuscripts of 1844: Rent of Land* (Moscow: Progress Publishers, 1959). See *Karl Marx and Contemporary Philosophy*, ed. by Andrew Chitty and Martin McIvor (London: Palgrave Macmillan UK, 2009) <<https://doi.org/10.1057/9780230242227>>.

¹⁷ Colin Harris and others, *The Origins and Consequences of Property Rights* (Cambridge University Press, 2020) <<https://doi.org/10.1017/9781108979122>>.

¹⁸ Miloon Kothari, 'The Human Right to Adequate Housing and The New Human Right to Land: Congruent Entitlements', in *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (Cambridge: Cambridge University Press, 2020), 81–96 <<https://doi.org/10.1017/9781108676106.007>>.

¹⁹ Mohamad Ridwan Saripi, 'Perlindungan Hak Asasi Manusia Pada Proses Pengadaan Tanah Untuk Pembangunan Kepentingan Umum', *Lex Et Societatis*, 1.1 (2018), 37–45 <<https://doi.org/10.35796/les.v6i1.19170>>.

2. Research Methods

This study examines whether human rights can be upheld in agrarian conflicts involving land acquisition for public interest, followed by mining conflicts. While human rights are often regarded as essential and typically non-derogable, reducing other rights can diminish an individual's ability to lead a fulfilling life. Evidence of human rights violations must continuously be collected and analyzed, strengthening the scientific foundation for studies on human rights protection. Consequently, this research is a doctrinal study based on legal materials (library-based), including both primary and secondary legal sources, to construct new arguments, theories, or concepts that can serve as prescriptions for addressing the issues at hand.²⁰ The approach employed in this study is the Statute Approach, which examines laws and regulations related to the land acquisition process and the protection of human rights. Additionally, the study adopts a conceptual approach to provide arguments regarding the existence or absence of human rights guarantees in land and mining conflicts. This approach is further used to develop a perspective supporting legal arguments for protecting land rights as an integral human right linked to the right to life. The study analyzes a case of land conflict during the land acquisition process in Wadas Village, Purworejo, and can thus be characterized as case study research. The data collection method employed is a literature study involving the gathering of primary legal materials through the examination of various laws and regulations related to human rights protection and land acquisition, as well as relevant legal decisions, including the Semarang PTUN Decision No. 68/G/PU/2021/PTUN.SMG and the Supreme Court Decision No. 482 K/TUN/2021.²¹

3. Results and Discussion

Restrictions of Human Rights in the Concept of Property Ownership in Indonesian Legal Framework

Human rights must be respected, maintained, and protected. In Indonesia, human rights are sourced and culminate in Pancasila. It means that human rights are firmly guaranteed by the nation. Limitations of Human Rights in the Concept of Property Ownership: The Indonesian Legal Frameworks philosophy, namely Pancasila.²² The government guarantees the rights of its citizens through the constitution, including the right of every individual to pursue personal advancement, engage in collective efforts to secure their rights and

²⁰ Ian Dobinson and Francis Johns, 'Qualitative Legal Research', in *Research Methods for Law*, ed. by Mike McConville and Wing Hong Chui (George Square, Edinburgh: Edinburgh University Press Ltd., 2007).

²¹ M. F Dewata and Y. Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar, 2017), h.108.

²² Yeni Handayani, 'Pengaturan Hak Asasi Manusia dalam Konstitusi Indonesia dan Konstitusi Amerika Serikat', *RechtsVinding*, 2014, 1–9.

contribute to the development of society, the nation, and the state. Citizens are entitled to recognition, legal guarantees, protection, fair legal certainty, and equal treatment under the law. Every individual has the right to protect their person, family, honor, dignity, and property under their control. They are also entitled to a sense of security and protection from threats or fears that may arise from taking or refraining from specific actions, all of which are fundamental human rights.

Law No. 39 of 1999 (Human Rights Law) defines human rights as inherent in human nature and existence as creatures of God. These rights must be respected, upheld, and protected by the state, the law, the government, and all individuals to preserve human dignity and honor. This means that human rights do not originate from the state and law but solely from God, who is the creator of the universe and its contents. Therefore, human rights cannot be reduced (non-derogable rights).²³ However, in the context of guaranteeing and protecting human rights, there must be a balance between the rights and obligations of citizens. Individual freedoms and human rights are not absolute and must be limited by law to prevent harm to others. Any restrictions on the exercise of human rights can only be justified by law and must serve the purpose of ensuring the recognition and respect for the rights and freedoms of others. Such limitations may also be necessary to fulfill legitimate demands based on moral considerations, religious values, security, and public order in a democratic society.

Balancing the rights and obligations of individuals is particularly relevant when considering the transfer of property rights for the benefit of a larger group or society. The underlying objective is that the value of an asset may be enhanced by making it accessible to a broader population. Conversely, regulations that compel citizens to relinquish their rights can deprive them of their ability to enjoy what rightfully belongs to them. This is often the case in land acquisition by the government for public development projects, where landowners may be forced to relinquish their property rights for the greater public good. In Indonesia, such regulations are enforced, and citizens cannot refuse land acquisition for public purposes. This concept reflects the idea that an individual's rights may be limited by the rights of others, particularly when the exercise of one person's rights could infringe upon the rights of a larger group. Nonetheless, the rights of any individual should not be arbitrarily eliminated; respect for these rights must be maintained within reasonable boundaries, ensuring a fair and just balance.

"Normatively, various international and national instruments have recognized property rights to land as an integral aspect of human rights. The Universal Declaration of Human Rights (UDHR) of 1948 guarantees the right to private property and protection from arbitrary

²³ Yuwanda Tri Maryoga, 'HAM Di Meja Hijau: Sebuah Review Buku "Pengadilan Hak Asasi Manusia Di Indonesia, R. Wiyono" Pranadamedia, Jakarta 2015', *Lex Scientia Law Review*, 2.2 (2018), 241–48 <<https://doi.org/10.15294/lesrev.v2i2.27588>>.

seizure. Article 17 states: 'Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.' Furthermore, the International Covenant on Economic, Social, and Cultural Rights mandates that every state is responsible for ensuring the right to an adequate standard of living and decent housing. While the UDHR provides broad principles, the International Covenant emphasizes that states can be held accountable for implementing property rights within their territories. The Indonesian Constitution similarly enshrines these principles, echoing Article 17 of the UDHR in its legal framework, as reflected in Article 36 of the Human Rights Law, which also incorporates the right to welfare. The concept that property rights serve a social function is particularly noteworthy in Indonesian law. As elaborated in Article 36, paragraph (3), the exercise of property rights must consider the public interest. This provision allows for the potential revocation of property rights for the sake of public interest, provided that reasonable compensation is given for any immediate and significant losses. Thus, while property rights are fundamental, they are not absolute and inviolable; their exercise can be subject to limitations by the law."²⁴

The rationale for limiting human rights arises from the inherent friction when individuals, each with their rights, interact with others and their social environment. Within this context, the concept of limiting or restricting human rights is employed, aiming to establish a balance that serves the public interest and maintains social order. In principle, as outlined in the UDHR, the 1945 Constitution of the Republic of Indonesia, and the Human Rights Law, restrictions on human rights can be justified when they are necessary to respect the rights and freedoms of others and ensure security and public order.

Article 29, paragraph (2) of the UDHR specifies that everyone may be subject to limitations on their human rights, provided such limitations are prescribed by law: 'limitations as are determined by law.' Similarly, Article 28J, paragraph (2) of the Indonesian Constitution interprets these limitations as subject to legal determination. The requirement for the legal formulation of such restrictions ensures that they are legally legitimized and protect individuals from arbitrary actions by the state. As laws are products of political consensus, they reflect the people's will, as expressed through their elected representatives in the legislative body.²⁵ Conversely, restrictions on human rights are ineffective or invalid if

²⁴ Stanisław Puchniewicz, 'Property Rights as The Source and Limitation of The Rights of an Individual, and The Foundation of a Society According to Murray Newton Rothbard', *Zoon Politikon Issue*, 10, 2019, 65–66 <<https://doi.org/10.4467/2543408XZOP.19.004.11349>>.

²⁵ Fitriani Ahlan Sjarif, 'Perkembangan Strategi Mewujudkan Partisipasi Masyarakat Yang Bermakna Dan Bermanfaat Dalam Pembentukan Undang-Undang', *Jurnal Legislasi Indonesia*, 20.4 (2023), 109–24 <<https://doi.org/10.54629/jli.v20i4.1196>>.

they are not prescribed by law.²⁶ Therefore, limitations on public interest, such as land acquisition, can only be justified if they are explicitly regulated by law.²⁷

Bozeman defines the concept of public interest as serving social survival and long-term collective welfare.²⁸ In contrast, Sorauf argues that applying the public interest must not contradict fundamental public principles and must not serve selfish or personal interests.²⁹ In this context, the state, as a legal entity, protects and safeguards the public interest. Given that various competing interests exist within the public sphere, the state's role is to mediate these interests and ensure they can be pursued peacefully.³⁰ Thus, the state can use the 'public interest' notion as the legal basis for justifying restrictions on private land ownership, particularly in land acquisition.³¹

Justification of Human Rights Restrictions through Land Acquisition Regulations for Public Interest

The National Human Rights Commission, in Standard Norms and Regulations Number 7 Concerning Human Rights to Land and Natural Resources, stipulates that restrictions on rights related to land ownership must meet 4 (four) elements: specified by law, intended for public welfare, necessary in a democratic society, and adhere to the principles of human rights restrictions. Regarding legality, these restrictions must be clear, firm, measurable, and based on law. Beyond that, restrictions based on certain subjective opinions cannot be legally binding and are considered human rights violations. Meanwhile, regarding public welfare and a democratic society, restrictions must be oriented toward the public interest for all, transparent, accountable, and non-discriminatory. They must not eliminate the essential

²⁶ For comparison: The Supreme Court, in Decision Number 46/P/HUM/2018, has stated that the provision prohibiting former corruptors from becoming legislative candidates regulated in KPU Regulation (PKPU) Number 20 of 2018 concerning Nomination of Members of the DPR, Provincial, Regency, and City DPRD and PKPU Number 26 of 2018 concerning the Second Amendment to PKPU Number 14 of 2018 concerning Nomination of DPD Members. The basis for its consideration is that restrictions on the right to nominate as a legislative member cannot be regulated in institutional regulations because restrictions on political rights must be regulated by law.

²⁷ Komnas HAM, *Standar Norma Dan Pengaturan Nomor 7 Tentang Hak Asasi Manusia Atas Tanah Dan Sumber Daya Alam* (Jakarta: Komnas HAM RI, 2021), h. 68-73.

²⁸ Barry Bozeman, *Public Values and Public Interest: Counterbalancing Economic Individualism* (Georgetown University Press, 2007) <<https://doi.org/10.1353/book13027>>.

²⁹ Frank Joseph Sorauf, 'The Public Interest Reconsidered', *The Journal of Politics*, 19 (1957), 616–39 <<https://doi.org/10.2307/2126954>>.

³⁰ Roscoe Pound, 'A Survey of Public Interest', *Harvard Law Review*, 58.7 (1945), 909–29.

³¹ Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia', *Land Use Policy*, 137 (2024), 107017 <<https://doi.org/https://doi.org/10.1016/j.landusepol.2023.107017>>.

rights of the community in a democracy.³²

At the normative level, restrictions on land acquisition based on public interest are more appropriate under the current framework than the regulations in place prior to 2012. This shift is attributable to the enactment of Law Number 2 of 2012, which governs the legal land acquisition process. Before this law, regulations governing land acquisition for public interest, which had been in effect since 1961, were primarily issued as *beschikkingen* (administrative decrees) and subordinate rules. Notable among these were Presidential Instruction No. 9 of 1973 on the Implementation of Land Rights Revocation, Presidential Decree No. 55 of 1993, Presidential Regulation No. 36 of 2005, and Presidential Regulation No. 65 of 2008, all of which addressed land acquisition for public development projects. The use of regulations under the law to restrict land rights has since been criticized as violating human rights.

However, from an empirical perspective, significant challenges persist in land acquisition for public interest. Data from the National Human Rights Commission on agrarian conflicts over the past four years indicate that, on average, 2,700 complaints are received annually, with a peak of 3,190 cases in 2022. These complaints are primarily driven by repressive actions carried out by the police, government, and corporations, often involving the use of violence. The underlying issues are typically related to disputes over compensation and the lack of meaningful community involvement. For example, on February 8, 2022, violent actions were perpetrated by the police against the residents of Wadas, Purworejo, during the land measurement for the purpose of andesite stone mining. The National Human Rights Commission's study identified significant issues in land acquisition for public interest, highlighting a power imbalance between the community and the government. The community, with its limited bargaining power, is vulnerable to forced evictions, displacement, inadequate compensation, and even criminalization. In some instances, such actions have led to environmental disasters or damage. Meanwhile, the government, wielding substantial power, often resorts to security forces to act violently and violently.

Upon closer analysis, the primary issue in land acquisition for public interest lies in the criteria used to define the concept of public interest and the extent of community involvement in the decision-making process. First, the parameter of public interest must be clearly defined from the outset, as this is the basis upon which private land ownership may be revoked. Normatively, Article 1, Number 6 of Law Number 2 of 2012 defines public interest as the interests of the nation, state, and society, which must be realized by the government and utilized to the greatest extent possible for the welfare of the people. Based on this definition,

³² Anna Zlobina and others, 'Back to Basics: Human Rights Violations and Dehumanization', *Current Opinion in Behavioral Sciences*, 51 (2023), 101263 <<https://doi.org/10.1016/j.cobeha.2023.101263>>.

it can be concluded that land acquisition for public interest involves the provision of land for the benefit of the nation, state, and broader community, accompanied by fair and appropriate compensation for the affected parties, all aimed at achieving the welfare of the people.³³ According to John Salindeho, public interest encompasses the interests of the nation and state as well as the common interests of the people. It takes into account social, political, psychological, and national defense and security aspects based on the principles of national development while respecting national resilience and the archipelago perspective.³⁴

Two key variables are at play: the foundation of national and state interests and the objective of promoting the welfare of the people. The allocation of national and state interests is explicitly outlined in Article 10 of Law Number 2 of 2012, which enumerates 18 specific areas, including national defense and security, ports, airports, terminals, waste disposal, processing facilities, and other public infrastructure. Additionally, the attachment to Presidential Regulation Number 58 of 2017, which amends Presidential Regulation Number 3 of 2016 concerning the Acceleration of National Strategic Projects (PSN), designates 248 infrastructure developments as PSN. Another crucial indicator, as emphasized by Maria S.W. Sumardjono, is that such allocations should not only be appropriate in their distribution but must also deliver tangible benefits to the community, ensuring social profitability or serving public use.³⁵

Public interest is clearly defined in its designation, yet the management and execution of this interest remain open to interpretation. Suntoro argues that the parameters of public interest are still vague, particularly about commercial aspects. Furthermore, his analysis suggests that Law Number 2 of 2012 is more accommodating and flexible toward the private sector's pursuit of profit, in contrast to previous regulations, which explicitly stated that 'development for the public interest, as outlined in this Presidential Decree, is limited to development activities conducted and subsequently owned by the government, and not intended for profit-making purposes.' This regulatory loophole has been used to justify land acquisitions, allowing collaboration with the private sector to pursue profit-oriented goals.

Another significant issue is the lack of community involvement in decision-making processes. The foundation for community participation in this context lies in the concept of free, prior, and informed consent, a key principle of human rights. Ideally, communities should have the autonomy to grant or withhold approval and must be provided with comprehensive information throughout the development process, including details on

³³ Putri Lestari, 'Pengadaan Tanah Untuk Pembangunan Demi Kepentingan Umum Di Indonesia Berdasarkan Pancasila', *SIGn Jurnal Hukum*, 1.2 (2020), 71–86.

³⁴ John Salindeho, *Masalah Tanah Dalam Pembangunan* (Jakarta: Sinar Grafika, 1988), h. 40.

³⁵ Maria SW Sumardjono, 'Kriteria Penentuan Kepentingan Umum Dan Ganti Rugi Dalam Kaitannya Dengan Penggunaan Tanah', *Bhumibhakti Adhiguna*, 2.1 (1991), 13.

planning and compensation. Although the normative framework stipulates that deliberations with the community should occur to determine the location of development and the form or amount of compensation, community involvement has been narrowly construed in practice. For instance, when objections or rejections arise regarding government plans, including issues related to compensation, these concerns are often addressed through judicial mechanisms, including both state administrative and general courts.³⁶ The mechanism for determining the compensation value, which is not regulated for objects affected by land acquisition for public interest, creates ambiguity, thus opening up opportunities for other interpretations.³⁷ Ultimately, the assessment is based on the Public Appraisal Service Office (KJPP) findings. If the community rejects the proposed compensation, the resolution process proceeds through legal action in the courts. While this approach is grounded in professional standards and aims to optimize the compensation assessment, it effectively establishes a new norm that may function as a coercive mechanism, compelling acceptance of the compensation offered.³⁸

Beyond the two primary issues in land acquisition for public interest, the friction between the community and government consistently attracts public attention. On one hand, the community has the right to protect its land, which is already private property. On the other hand, the government pursues a development agenda intended to serve the public interest. This tension brings human rights into focus, particularly from the community's perspective, about the efforts made by the government to ensure protection for affected individuals. Yesi Nurmantiyas et al. argue that this protection is essential to prevent physical and financial harm to the community and to mitigate excessive conflict. In practical terms, the government must provide compensation in a form agreed upon by both parties—the land acquisition team and the affected community. This compensation must comply with relevant laws and regulations.³⁹

Standard Norms and Regulations Number 7 on Human Rights to Land and Natural Resources advocates for a paradigm shift, recognizing society as an active participant in development. Consequently, efforts must be made to transition from traditional approaches,

³⁶ Agus Suntoro, 'Tinjauan Hak Asasi Manusia Terhadap Regulasi Pengadaan Tanah Bagi Kepentingan Umum', *Jurnal HAM*, 10.2 (2019), hlm. 217-232 <<https://doi.org/10.30641/ham.2019.10.217-232>>.

³⁷ Suwardi and Widyawati Boediningsih, 'Kajian Pengadaan Tanah Untuk Pembangunan Kepentingan Umum', *Seikat: Jurnal Ilmu Sosial, Politik Dan Hukum*, 2.5 (2023), 478 <<https://doi.org/10.55681/seikat.v2i5.940>>.

³⁸ Maria SW Sumardjono, *Dinamika Pengaturan Pengadaan Tanah Di Indonesia: Dari Keputusan Presiden Sampai Undang-Undang* (Yogyakarta: Gadjah Mada University Press).

³⁹ Yesi Nurmantiyas Sari, Rizal Nugroho, and Al Khanif, 'Land Acquisition for Public Interests: A Review from the Human Rights Context', *Indonesian Journal of Law and Society*, 1.1 (2020), 34 <<https://doi.org/10.19184/ijls.v1i1.16757>>.

such as eviction, expulsion, and other forms of coercion, to more humane methods. Additionally, it is essential to prioritize multi-party deliberation to reach a consensus on project approval, the valuation and amount of compensation for land affected by the acquisition, and the forms of compensation to be provided. In this case, the National Human Rights Commission recommends 5 (five) compensation options, including land, resettlement, money, shares, or other forms agreed upon by the parties.

Existence of Human Rights in Land Acquisition Conflicts for Public Interest and Mining, Case Study: Wadas Village Community vs. Governor

This case study shows that land acquisition for public interest continues to generate conflict as regulated by laws and regulations. The guarantee of human rights, particularly the right to land and the right to a decent standard of living, remains challenging to uphold, and the state often violates these rights. This case involves two distinct regulatory frameworks for land acquisition: land regulation and mining regimes. Land ownership is a fundamental right, and the owner has the prerogative to act or refrain from acting on their property, provided such actions do not violate legal provisions. An owner may refuse to sell or relinquish their land rights. However, Indonesia recognizes the concept of land acquisition for the public interest. Such acquisition is undertaken to secure land for development, accompanied by the revocation or transfer of land rights. Public interest encompasses the interests of the nation, state, and society, which the government must realize for the collective welfare. In this context, land acquisition is carried out with the provision of adequate and fair compensation to the rightful owner.

This reflects a logical consequence of the land system, in which national land law recognizes and respects the rights of individuals and communities to land and land-related resources. However, the law also grants the state certain public powers, including the authority to regulate, formulate policies, manage, organize, and oversee land use, as outlined in the principles of land acquisition. Consequently, while land may be privately owned, its use is subject to national laws that regard land as a communal resource, particularly when required for state purposes. In this context, land acquisition for public interest is intended to construct the Bener Dam in Wadas Village, Bener District, Purworejo Regency, Central Java, a national development project. The dam is designed to provide irrigation for 15,519 hectares of rice fields and to supply raw water to three districts: Purworejo, Kebumen, and Kulonprogo.⁴⁰

⁴⁰ Muhammad Zaky Adriansa, Nur Adhim, and Ana Silviana, 'Pengadaan Tanah Bagi Pembangunan Bendungan Bener di Desa Wadas Kabupaten Purworejo (Tahap I) (Studi Kasus Hambatan Dalam Pengadaan Tanah di Desa Wadas)', *Diponegoro Law Journal*, 9.1 (2024), 138–54 <<https://doi.org/10.14710/dlj.2020.26278>>.

The Law governs the land acquisition process on Land Acquisition for Development in the Public Interest, Presidential Regulation Number 58 of 2017 (which amends Presidential Regulation Number 3 of 2016 regarding the Acceleration of the Implementation of National Strategic Projects and its subsequent amendments), and Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest. In general, by the Law on Land Acquisition for Development in the Public Interest, the land acquisition for the Bener Dam project meets the required procurement criteria. The dam's construction is explicitly listed as a public interest development project under the legal framework. Additionally, the land acquisition process has been followed by a compensation procedure for the affected parties. However, the existence of these regulations and the compensation provided cannot guarantee that no human rights violations have occurred. The community's opposition to the land acquisition cannot be disregarded.

In response to these concerns, the National Human Rights Commission has undertaken efforts to address the issue through various approaches. On September 16, 2021, the Commission received a public complaint regarding alleged environmental destruction and acts of intimidation against residents. The community has the right to defend their property, as well as their right to life and a healthy environment, all of which may have been violated. The alleged actions potentially infringe upon the right to life, the right to work, the property right, and the right to adequate housing. In response to the complaint and by its monitoring functions as stipulated in Article 89, Paragraph 3 of the Human Rights Law, the National Human Rights Commission conducted field investigations and gathered information from various stakeholders on September 28-29, 2021.⁴¹ This conflict ultimately led to the villagers filing an administrative lawsuit.

However, the Semarang State Administrative Court, in case number 68/G/PU/2021/PTUN.SMG ruled that the Wadas residents' lawsuit should be rejected. The lawsuit sought the annulment or invalidation of the Decree of the Governor of Central Java, Number 590/20 of 2021, which concerns the Update on the Determination of Land Acquisition Locations for the Construction of the Bener Dam in Purworejo and Wonosobo Regencies, Central Java. This Decree was issued under Presidential Regulation Number 58 of 2017 regarding the Acceleration of the Implementation of National Strategic Projects, which had been amended several times by the time of the conflict. The plaintiffs, representing the local community, challenged the validity of the legal basis for the Governor's Decree. However, the court upheld the validity of Presidential Regulation Number 58 of 2017, affirming that it remained in force. The Supreme Court's ruling later reinforced this decision in Case Number 482 K/TUN/2021. Both decisions relied on the Presidential Regulation to issue the Governor's Decree while overlooking the primary regulatory framework. In a state

⁴¹ Komnas HAM, 'Komnas HAM Upayakan Penyelesaian Kasus Penambangan Wadas Purworejo', 2021.

of law, human rights violations are not limited to physical infringements. Violations that result in the loss of a citizen's rights, particularly when the state fails to protect them, also constitute human rights violations. The Supreme Court's ruling fails to consider the fundamental philosophy and legal implications of the Presidential Regulation, a delegated regulation.⁴² The hierarchical status of delegated regulations is always subordinate to the primary regulation or law—in this case, the Land Acquisition Law. The protection of human rights through administrative justice becomes ambiguous when judges, lacking sufficient rationale, rely solely on the provisions of the Presidential Regulation, which the executive enacted.

The strong opposition to this project is partly due to the land acquisition for the dam, followed by the acquisition of land for developing andesite quarry mining operations. The purpose of granting the mining permit is to secure raw materials for the dam's construction. In this case, the establishment of mining operations is perceived as part of a broader land acquisition project for the public interest. However, land acquisition for the public interest falls under the land regulation regime, while the development of mining land should be governed by the mining licensing regulation regime.

In response to this, the Directorate General of Minerals and Coal, Ministry of Energy and Mineral Resources, issued Letter Number T-178/MB.04/DJB.M/2021 on July 28, 2021, addressing the letter from the Directorate General of Water Resources, Ministry of Public Works and Public Housing, No. PR.02.01-DA/758, dated June 24, 2021, concerning the application for a mining permit for the National Strategic Project of the Bener Dam. The government did not adequately consider the legal implications of clearing land for mining purposes under the pretext of fulfilling material requirements for the dam's construction. Importantly, land acquisition for mining purposes is not recognized under the Land Acquisition Law, which applies explicitly to land acquired for public interest projects. This distinction means that the land acquisition regulations for public interest, which presuppose a predetermined type of land use, cannot be applied to land clearing for mining activities, even if the mined materials are intended for use in the dam's construction.

The state's failure to properly understand and apply these regulations has led to a violation of the human rights of residents. Many people lost their homes, their livelihoods, and the quality of their environment. Most of the residents of Wadas were farmers, and the mining activities disrupted their sense of security, leaving them in a state of poverty and hardship. The physical and mental well-being of the community, which had been relatively prosperous, was severely impacted. It is important to note that, according to Article 5 of Law

⁴² Sholahuddin Al-Fatih and others, 'The Hierarchical Model of Delegated Legislation in Indonesia', *Lex Scientia Law Review*, 7.2 (2023), 629–58 <<https://doi.org/10.15294/lesrev.v7i2.74651>>.

Number 30 of 2014 concerning Government Administration, the implementation of government administration must adhere to the following principles: a) the principle of legality, b) the principle of human rights protection, and c) the general principles of good governance.⁴³

The mining permits issued by the local government contradict and violate several fundamental constitutional rights, including the right to life, the right to work, the right to property, and the right to adequate housing. These rights are enshrined in Articles 28A, 28D, paragraph (2), 28G, paragraph (1), and 28H, paragraphs (1) and (4) of the Constitution. The right to life ensures that every individual has the right to live and to defend their life and livelihood. Communities affected by land acquisition projects have a right to maintain their means of survival wherever they may reside. In addition, individuals have the right to work, including the right to fair compensation and proper treatment in employment relationships. The release of land rights and the associated changes in land use have led some individuals to lose their livelihoods as farmers. Furthermore, individuals are entitled to protecting their personal safety, family, honor, dignity, and property and the right to security and protection from threats, whether related to action or inaction. In this case, the right to live in physical and spiritual well-being, to have adequate housing, to enjoy a healthy environment, and to receive health services are also at risk of violation. The constitutional right to ownership, including land ownership, is explicitly protected. It states that everyone has the right to own private property, which cannot be arbitrarily seized. However, this right is violated in agrarian conflicts related to land acquisition for public interest and land clearing for mining, particularly when such actions do not comply with regulatory provisions. In the case of the Bener Dam, the agrarian conflict has been further exacerbated by tensions between the community and law enforcement. According to data from the National Human Rights Commission, 67 residents were arrested and taken to the Purworejo Police Station. The Institute for Community Studies and Advocacy (Elsam) reports that seven were activists, and ten were children among those arrested.

Therefore, the People's Consultative Assembly of the Republic of Indonesia, with the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights assigns the High State Institutions and all Government Apparatus to respect, uphold and disseminate understanding of human rights to the entire community. In the research of M. Graziano Ceddia et al., it is stated that institutional

⁴³ Nurfaika Ishak, Rahmad Ramadhan Hasibuan, and Tri Suhendra Arbani, 'Bureaucratic and Political Collaboration Towards a Good Governance System', *BESTUUR*, 8.1 (2020), 19 <<https://doi.org/10.20961/bestuur.v8i1.42922>>.

factors influence regulating land ownership and forest conservation.⁴⁴ In the Bener Dam conflict, local communities who preserve their environment need protection from state institutions and state apparatus to gain access to human rights as they should. This is because Indigenous communities are usually better able to protect their environment. In the case of environmental damage in Canada, it was stated that the last pillar of future energy justice concerns the worldview of the primordial relationship of indigenous/native communities with nature.⁴⁵ Ariel BenYishay et al. stated that community groups have a role in controlling deforestation.⁴⁶

Attachment I of Presidential Regulation Number 53 of 2021, concerning the National Action Plan for Human Rights for 2021-2025, outlines several strategic targets for protecting community human rights. These include strengthening legal guarantees and protective policies, enhancing the resolution of land conflicts based on human rights, increasing community participation in the licensing process for activities that may impact community rights—particularly those involving state-owned or regional enterprises—and ensuring access to legal aid services for individuals in conflict with the law. This also provides effective legal, health, and psychosocial support services alongside comprehensive and effective recovery programs for affected communities. However, the successful implementation of these policies will be significantly hindered if human rights are not understood and applied within a framework that considers the balance of rights. The most vulnerable parties suffer the most significant material and non-material losses in land disputes. Consequently, ownership rights must be safeguarded and protected by the state, which must refrain from using legal mechanisms to seize benefits from its citizens unjustly. The right to life and secure, decent housing are fundamental and must be prioritized in such cases.

Similarly, ownership rights are frequently overlooked under the argument that land control resides with the state, whose use is regulated by laws and regulations. The communal use of land is often cited as a valid justification for diminishing or negating the human rights of smaller groups or individuals. Government actions that prioritize legal formalities (*rechmatigheid*) over the practical benefits (*doelmatigheid*) for the affected population may inadvertently serve to legitimize human rights violations. The history of Indonesia has been

⁴⁴ M. Graziano Ceddia, Ulrich Gunter, and Alexandre Corriveau-Bourque, 'Land Tenure and Agricultural Expansion in Latin America: The Role of Indigenous Peoples' and Local Communities' Forest Rights', *Global Environmental Change*, 35 (2015), 317 <<https://doi.org/10.1016/J.GLOENVCHA.2015.09.010>>.

⁴⁵ Margot A. Hurlbert and Ranjan Datta, 'When the Environment Is Destroyed, You're Destroyed: Achieving Indigenous Led Pipeline Justice', *Energy Research & Social Science*, 91 (2022), 5 <<https://doi.org/10.1016/J.ERSS.2022.102711>>.

⁴⁶ Ariel BenYishay and others, 'Indigenous Land Rights and Deforestation: Evidence from the Brazilian Amazon', *Journal of Environmental Economics and Management*, 86 (2017), 30 <<https://doi.org/10.1016/J.JEEM.2017.07.008>>.

marked by various forms of suffering, social unrest, and injustices arising from unfair and discriminatory practices based on ethnicity, race, skin color, culture, language, religion, class, gender, and other social statuses. Such unjust and discriminatory behavior constitutes a violation of human rights, both vertical (perpetrated by state officials against citizens or vice versa) and horizontal (between citizens themselves). In many instances, these actions fall within gross human rights violations.⁴⁷ In this context, the rights to a decent life and property have been inadequately protected.

4. Conclusion

Under normal circumstances, human rights must be protected by the state, and non-derogable rights must be upheld without exception. However, in certain situations, some human rights may be subject to limitations. Such limitations must be grounded in lawful and legitimate regulations and implemented strictly with established procedures. At the community level, where implementation directly affects individuals, actions must be carried out with respect for human dignity. Dispute resolution judges must demonstrate heightened sensitivity to human rights issues, prioritizing the protection and welfare of citizens over mere legal formalism. When not executed by these principles, the reduction of human rights can lead to the violation or complete elimination of those rights. The land acquisition conflict for public interest and mining in Wadas Village, Purworejo, serves as a salient example of the erosion of multiple human rights simultaneously. Among these, the right to a decent life and ownership are the most critical and must be given primary consideration. Access to a decent standard of living and the right to own land are fundamental needs for individuals within society; these rights cannot be forfeited simply by adhering to lower-level regulations that do not align with the constitutional framework.

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⁴⁷ Roger Claude Liwanga, 'The Meaning of Gross Violation of Human Rights: A Focus on International Tribunals' Decisions over the DRC Conflicts', *Denver Journal of International Law & Policy*, 44.1 (2015), 68 <<https://ssrn.com/abstract=3648565>>..

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