

LAW & SOCIAL POLICY | RESEARCH ARTICLE

Relocation and Community Empowerment from the Perspective of the 1945 Constitution of the Republic of Indonesia

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ABSTRACT

The government often implements relocation policies to convert strategic areas into various development projects, purportedly for the common good. The implications of these policies often create tensions due to the dichotomy between the sovereignty of community living space over land and the state's authority to regulate land use. This study analyzes the alignment between the implementation of relocation policies and community empowerment efforts with the constitutional mandate outlined in the 1945 Constitution of the Republic of Indonesia. This study uses normative legal research methods with a conceptual and legislative approach to produce a prescriptive analysis. Based on this analysis, the study formulates policy principles that the government should consider. Furthermore, this study analyzes the legal relationships among land, buildings, and historical ownership, and their implications for relocation and empowerment policies.

Keywords: Customary, Relocation Rights, Historical, Community Empowerment.

I. Introduction

Within the framework of a state based on the rule of law (*rechtsstaat*), Indonesia upholds the principle that the government must be subject to the law and must not place itself above it. The concept of a state based on the rule of law in Indonesia positions law as the highest norm governing the exercise of state power. Law is not merely a set of rules, but an instrument that binds and directs all aspects of state administration and social life in accordance with the rule-of-law paradigm. Philosophically, Indonesia's legitimacy as a rule-of-law state can be traced to Socrates, who emphasized that law must be rooted in moral principles. At the same time, Socrates stressed the obligation of every citizen to obey the law, even when it is perceived as unjust, as part of the social contract within the state. The dynamics between the theory and practice of a rule-of-law state are concretely manifested in agrarian conflicts in Indonesia, particularly in land acquisition for development in the public interest, which frequently give rise to legal disputes between public authorities and land rights holders. Various factors drive land conflicts in Indonesia. Common administrative issues include inaccurate land registration by Land Deed Officials (PPAT), weak law enforcement, and inadequate oversight by the authority. Operational problems also occur, including land-grabbing practices, agrarian mafias, and human negligence. In addition, conflicts may arise from substantive legal issues, particularly the

tension between ownership rights based on customary law, including the principle of *rechtsverwerking*, and the national legal system (Saly, Ekalia, and Tarumanagara, 2023). Within the framework of a rule-of-law state, these challenges require Indonesia to formulate firm and equitable legal regulations. Such regulations must serve a dual function: protecting citizens' rights while providing the government with legitimate guidance in implementing its policies.

Land conflicts are becoming increasingly intense, particularly in areas designated by the government as strategic zones. This designation is based on the assessment that such areas possess strategic value for infrastructure or other national development projects. The government's determination of an area's suitability for strategic projects is often accompanied by a narrative emphasizing the public interest. In practice, this narrative may function as a legitimizing instrument that shifts the bargaining position of affected communities. As a result, communities are frequently compelled to accept these policies with limited alternatives. In state theory, the positions of the government and society are not equal. The government holds sovereignty and controls state instruments that enable it to act more dominantly and decisively within the public sphere. This research examines the constitutionality of government actions in implementing relocation policies. The primary question is whether such policies are consistent with the principles and norms of the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945) or constitute actions exceeding legal authority (*ultra vires*) and amount to an abuse of power. Therefore, a more comprehensive analysis of the relocation policy is required. The study also focuses on the state's responsibilities and role toward communities affected by relocation, particularly in fulfilling fundamental rights and ensuring social justice.

II. Literature Review and Hypothesis Development

In examining relocation and community empowerment, the central focus lies in balancing the public interest with the protection of human rights guaranteed by the Constitution.

2.1. Constitutional Rights to Welfare and Housing

The primary constitutional basis for relocation, under the 1945 Constitution of the Republic of Indonesia, is found in provisions governing the right to a decent standard of living. Relocation should not be understood merely as the physical transfer of buildings, but as the fulfillment of constitutional mandates, including:

- a. Article 28H paragraph (1), which states that every person has the right to live in physical and spiritual prosperity, to have a residence, and to enjoy a good and healthy living environment.
- b. Article 33 paragraph (3), which affirms that the state controls land, water, and natural resources for the greatest prosperity of the people. The phrase "controlled by the state" implies an obligation for the state to manage relocation policies for public welfare rather than to implement evictions that lead to impoverishment.

2.2. Welfare State Theory

The Republic of Indonesia adheres to the concept of a welfare state, in which the government plays an active role in realizing social justice.

- a. State intervention: In the context of relocation, the government functions not only as a regulator of land but also as a protector of social welfare.
- b. Distribution of justice: Relocation should be viewed as an effort to redistribute access to improved infrastructure and environmental security, such as relocation from disaster-prone areas.

2.3. The Concept of Community Empowerment

Empowerment refers to the process of transforming conditions of powerlessness into conditions in which communities possess economic, social, and political capacity.

- a. Post-relocation empowerment: Relocation often disrupts economic access, for example, when fishermen are relocated far from coastal areas. Empowerment theory highlights the importance of capacity building to enable communities to adapt effectively to new environments.
- b. Meaningful participation: Communities should be regarded not as objects of development but as active subjects. This principle aligns with the concept of economic democracy embodied in the 1945 Constitution.

2.4. Principles of Land Acquisition and Public Interest

Fair compensation in land acquisition has evolved to cover not only physical losses, such as land and buildings, but also non-physical losses, including loss of livelihood and psychological impacts, thereby ensuring a more comprehensive and equitable form of restitution for affected communities.

III. Research Method

Normative legal research is a method that examines and analyzes law as a system of norms, rules, legal principles, doctrines, and theories, along with other relevant legal literature, to address the legal issues under study. This research employs a normative legal research method using two primary approaches: a conceptual approach and a statutory approach. This combination is intended to produce a prescriptive analysis by formulating constructive legal recommendations.

IV. Results and Discussion

Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees every person the right to live in physical and spiritual prosperity, including the right to housing, a good and healthy living environment, and access to health services. This study argues that, based on observations of relocation cases reported in the media, the government has fulfilled certain aspects of Article 28H paragraph (1), particularly in providing housing and making efforts to create a better living environment. Furthermore, Article 3 of Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest states that land acquisition for public purposes aims to provide land for development to enhance the welfare and prosperity of the nation, the state, and society, while ensuring the protection of the legal interests of entitled parties. As part of the planning process, the government conducted a population census using Family Card data to estimate the number of housing units required at the relocation site. However, the relocation implementation encountered two substantive challenges. First, there was resistance within the community to the relocation policy. Second, concerns emerged about perceived injustice in compensation, as the amount provided was considered insufficient to reflect the property's actual value, including its economic worth, historical significance, and social ties. Article 33 of Law of the Republic of Indonesia Number 2 of 2012 stipulates that the assessment of compensation by an Appraiser, as referred to in Article 32 paragraph (1), must be conducted on a plot-by-plot basis. The assessment covers land, aboveground and underground space, buildings, plants, objects related to the land, and other assessable losses. These other losses may include historical value and the social relationships attached to the land.



Figure 1. Relocation on the banks of the Ciliwung River

Source: Caritra.org. (2024, December 18). Normalisasi atau marginalisasi? Relokasi permukiman bantaran Sungai Ciliwung di Kampung Pulo.

4.1. The historical value attached to land, buildings, and their owners constitutes an unwritten norm that deserves recognition and respect.

From a legal standpoint, Indonesian positive law positions land, buildings, and owners as separate entities governed by distinct legal regimes. However, from historical and sociological perspectives, these elements are inherently interconnected and hereditary. The relationship between land, buildings, and the owner's family is not merely functional but forms part of identity and ancestral heritage (Earlene & Sitabuana, 2024). An analysis of relocation cases indicates that affected communities often perceive their land and homes as living entities that must be maintained and preserved. This perception stems from a value system that regards property as part of an intergenerational chain of life. Consequently, forced acquisition is viewed not only as a material loss but also as a rupture in socio-cultural continuity (Nugroho, 2022). The preservation of inherited land and buildings depends on the active commitment of future generations. They are expected to sustain this heritage through responsible stewardship so that its value and benefits endure over time. In practice, the government's relocation approach often overlooks the complexity of communities' attachments to inherited living spaces. Emotional bonds, collective identities, and ancestral values embedded in land and buildings are frequently absent from policy considerations (Earlene & Sitabuana, 2024). The state often perceives land and buildings primarily as assets subject to public control, detached from their owners' subjective attachments. This perspective underpins a largely top-down, positivistic relocation framework that relies on the state's right to control land, including through expropriation. However, the effectiveness and fairness of relocation policies become questionable when they are not supported by adequate sociological and psychological analysis. This concern is significant because the subjects of such policies are individuals and communities with strong attachments to place, for whom land and housing are integral to identity, history, and communal continuity. Therefore, a just relocation policy must accommodate these dimensions of spiritual and cultural attachment as part of substantive legal considerations (Wulansari, 2014).

Empirical conditions demonstrate a gap between regulatory practice and constitutional principles. This discrepancy is reflected in the suboptimal implementation of guarantees for the rights of indigenous peoples over their customary territories, as explicitly mandated by Article 18B, paragraph (2), of the 1945 Constitution of the Republic of Indonesia. The provision affirms that the state recognizes and respects indigenous communities and their traditional rights, provided that they remain in existence and are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law. In reality, constitutional recognition and respect have not yet translated into practical implementation. These norms have not fully evolved into living law and remain confined mainly to law in books, limiting their practical impact in protecting and empowering communities (Dahlan, 2019).



Figure 2. The indigenous community of Negeri Piliana, Tehoru District, Central Maluku Regency, Maluku, conducted a traditional procession to oppose the installation of a Conservation Production Forest boundary marker.

Source: Kompas Lestari, "Tanah Ulayat dan Masyarakat Adat yang Terpinggirkan."

4.2. Compensation Not Equivalent to the Value of Land and Buildings

Indonesia embraces a distinctive conception of the rule of law, which differs from both the Continental European Rechtsstaat tradition and the Anglo-Saxon Rule of Law. This distinction arises from Indonesia's historical development, its approach to the recognition and protection of human rights, and its method of guaranteeing those rights. The model adopted is commonly referred to as the Pancasila Rule of Law. According to Sudjito bin Atmoredjo, the Pancasila Rule of Law is founded upon Pancasila as the supreme legal source and is constructed from three integral elements: Pancasila values, national law, and state objectives. Within this framework, Pancasila functions as both a source of values and a philosophical foundation for the formation of national law. The national legal system, in turn, serves as a strategic instrument for achieving the state's established goals (Kristiani, 2020). Based on this perspective, it is essential to examine the implications of implementing the Pancasila Constitution in Indonesia. The fundamental purpose of law is to regulate and protect human rights and interests. Accordingly, the law holds the authority to determine which aspects of human interests require regulation and protection. Legal protection must derive from two principal sources: first, formal statutory provisions; and second, broader legal norms recognized within society. This shared normative framework governs patterns of interaction among citizens and between society and the state, reflecting what is understood as the public interest (Isra, 2016). As an instrument for safeguarding both individual and collective interests, law is formulated with clear normative objectives. Its primary aim is to establish order and harmony in social life, thereby ensuring that rights and interests are protected universally (Liam, 2014). To achieve this purpose, the law allocates rights and obligations among citizens, delineates authority, institutionalizes mechanisms for resolving disputes, and maintains legal certainty as the foundation of social stability.

Gustav Radbruch's theory posits that law is guided by three interrelated objectives: justice (Gerechtigkeit), legal certainty (Rechtssicherheit), and utility (Zweckmäßigkeit). A legal system can be considered ideal only when these three elements operate in harmony. Justice is realized when law is both specific and beneficial; legal certainty is meaningful only when grounded in justice and utility; and the utility of law is realized when it is implemented fairly and predictably (Lathif, 2017). In the context of relocation, the government seeks to realize legal certainty through compensation or restitution policies. Although formal mechanisms for compensation have been established, resolving legal disputes requires more than mere certainty (David Tan, 2021). The principle of certainty must be balanced with substantive justice. Therefore, compensation schemes should not be limited to providing replacement housing but should also encompass

broader forms of material restitution. Such measures would foster a more equitable balance between legal certainty and justice. Issues of historical value and social attachment frequently arise in agrarian conflicts across Indonesia. Although these elements are challenging to quantify in monetary terms, they can be documented and formally presented during deliberations to inform compensation decisions. Recognizing these non-material dimensions is crucial to demonstrating the broader scope of losses experienced by communities affected by development projects undertaken in the public interest.



Figure 3. Residents of Kampung Taman Pelangi, Surabaya, were given seven days to vacate their homes after receiving compensation from the Surabaya City Government.

Source: Kompas Surabaya, "Dapat Ganti Rugi Proyek Flyover, Warga Taman Pelangi Surabaya Diberi Waktu 7 Hari."

V. Conclusion

The implementation of relocation and community empowerment in current practice has not fully aligned with the constitutional mandates outlined in the 1945 Constitution of the Republic of Indonesia (UUD NRI, 1945). On the one hand, the provision of decent and healthy housing, as mandated by Article 28H paragraph (1), has been carried out. On the other hand, the implementation of Article 18B paragraph (2), which guarantees recognition and respect for customary law communities and their traditional rights, remains inadequate. This condition indicates that Indonesian positive law has not yet comprehensively recognized, respected, and effectively protected the customary rights of indigenous peoples. Accordingly, the government's responsibility should not be confined to ensuring legal certainty alone, but must also extend to the realization of substantive justice, particularly in the determination of compensation. Compensation should not be calculated solely based on replacing physical assets; it must also take into account the socio-cultural, historical, and spiritual values embedded in customary land and in the lives of indigenous communities.

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