

## LEGAL OVERVIEW OF COMPENSATION FOR LAND IN THE DEVELOPMENT OF PT. PLN'S SUTET TOWER NETWORK IN THE TAKTAKAN DISTRICT OF SERANG CITY, BANTEN PROVINCE

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### Abstract

*The implementation of land compensation to the community for the construction of the Extra High Voltage Transmission Network (SUTET) by PLN falls under the Ministry of Energy and Mineral Resources (ESDM). The Ministry of Energy and Mineral Resources released Ministerial Regulation (Permen) ESDM number 13 of 2021 regarding Free Space and Minimum Clearance Distance for Electric Power Transmission Network and Compensation for Land, Buildings, and/or Plants Located in the Free Space of Electric Power Transmission Network. This regulation was enacted by Minister of ESDM Arifin Tasrif on June 17, 2021, and took effect upon its promulgation on June 17, 2021. With this regulation, the rights of the community whose land is traversed by the transmission will receive compensation. However, the regulation does not comprehensively address the impact of the development and compensation for the transmission lines of 500 kV or 150 kV, leading to injustice and legal uncertainty. PLN's responsibility for the land value of the community affected by the construction of the SUTET transmission network is limited. In providing compensation to the community whose land is traversed by the Extra High Voltage Transmission Line (SUTET), PT PLN follows existing regulations. PLN refers to Ministerial Regulation No. 01.P/47/MPE/1992 on SUTET Free Space and SUTET for Electricity Distribution Article 5 paragraph (3) concerning land for establishing support structures, including buildings and plants on that land, which must be cleared and compensated.*

**Keywords:** Land, PLN, SUTET

### 1. INTRODUCTION

Land is an essential need for humans throughout their lives, from birth to death. In a cosmological context, land is not just a place of residence for humans but also their origin and ultimate destination. The presence of land has wide-ranging impacts, including in economic, social, cultural, and political aspects (Limbong, 2017).

By definition, land can be described as the "earth's surface or the layer of earth located above it" (Tim Penyusun Kamus Pusat Bahasa, 2018). However, in the legal framework governed by Law Number 5 of 1960 Regarding Basic Agrarian Principles (Basic Agrarian Law), land holds a deeper meaning. This law grants rights and authority to individuals to manage and utilize land, including elements such as the earth's body, water, and the space above it.

The concept of land in a legal context refers to the surface of the earth itself. However, land rights pertain to an individual's rights over a specific portion of this earth's surface, with clear limitations in two dimensions: length and width. The concept of land use and utilization regulated by the Basic Agrarian Law is not solely confined to the earth's surface. This is because humans require a portion of the earth's layer beneath it, as well as access to water and the space above it. Therefore, land rights encompass not only

the earth's surface but also other elements, including the earth's body beneath it, water, and the space above it (Sahnan, 2018).

However, it is important to remember that at the highest level, all land rights remain under the control and authority of the State as a representation of the power of the entire population. This is regulated in accordance with Article 33, paragraph (3) of the Constitution of the Republic of Indonesia of 1945. In this context, the authority of the State includes:

1. Regulating and implementing the allocation, utilization, supply, and maintenance of the earth, water, and airspace.
2. Determining and regulating legal relations between individuals and the earth, water, and airspace.
3. Determining and regulating legal relations between individuals and legal actions involving the earth, water, and airspace.

With the increasing population growth of the Republic of Indonesia by 1.36 million people per year, it will certainly impact the rising living needs of the society, including basic necessities, additional requirements, and luxury needs. The government of the Republic of Indonesia strives to support the fulfillment of these needs while also boosting the economy and welfare of the population through infrastructure development. This includes sectors such as transportation, housing, irrigation, telecommunications, and electricity. The economic growth of the community must be balanced with the availability of electricity in sufficient quantity and quality, consistently distributed through the 500 kV Extra High Voltage Transmission Network (SUTET) or the 150 kV Transmission Network (SUTT).

The development of the SUTET 500 kV or SUTT 150 kV network is a significant land acquisition initiative for public interest as regulated by Law No. 12 of 2012; Government Regulation No. 71 of 2021, and the Agrarian Law. The progress of the development process that has occurred in Indonesia not only influences land prices in various locations, causing a surge, but also creates an environment where land has become a significant economic commodity with a very high value. Consequently, there is a possibility that future developments will face challenges in managing the upward trajectory of land prices.

The development of infrastructure in these sectors requires land acquisition as essential infrastructure for related projects. It is important to note that in the process of land acquisition, existing rights to the land must be respected. Thus, land becomes not only a basic human need but also a crucial component in the development of infrastructure aimed at fulfilling the needs of society, including electrical infrastructure (IESR, 2010).

The construction of development projects that continue to grow in Indonesia not only forces land prices in various places to always increase, but has also created an atmosphere where land has become an economic commodity that has a very high value, so it is likely that further development will have difficulty in managing the rate of development of land prices.

Electric power is a form of electrical energy that is generated, transmitted, and distributed for various purposes, except the use of electricity in communication, electronics, or science. Electricity, on the other hand, covers all aspects related to the production and use of electricity as well as all efforts that support the provision of

electricity itself. Efforts in the provision of electricity include generation, transmission, distribution, and sale of electricity to consumers.

The President of the Republic of Indonesia has announced the Development of Electricity Infrastructure as one of the National Strategic Projects through Presidential Regulation Number 3 of 2016 which aims to expedite the implementation of strategic projects at the national level. Furthermore, PT PLN (Persero), a State-Owned Enterprise (SOE), is given a special task by the Government to carry out the strategic project in accordance with the provisions stipulated in Presidential Regulation Number 4 of 2016 which refers to the acceleration of electricity infrastructure development.

This special assignment is recorded in a power company plan covering a 10-year period, namely the 2018-2027 Electricity Supply Business Plan (RUPTL). This RUPTL has been approved by the Ministry of Energy and Mineral Resources. In this RUPTL, there are details about the plan to develop electricity infrastructure throughout the Republic of Indonesia. This includes power plants, high voltage networks, medium voltage networks, low voltage networks, and substations. All of this planning is based on projected electrical energy needs in accordance with industrial development and population growth.

The RUPTL also includes targets for achieving electricity infrastructure output each year, including power generation capacity (in megawatts), transmission networks to deliver high-voltage/extra-high-voltage electricity (35 to 500 kilovolts), high-voltage/extra-high-voltage substations, and distribution networks (under 35 kilovolts). The success of PT PLN (Persero) in achieving its power supply target depends not only on building power generation capacity, but also on its ability to develop the capacity of the transmission network, which acts as a link between the power plant and the distribution system, and provides electrical energy to consumers' homes at low voltage.

However, the expansion of the network is a natural outcome of advancements in electricity technology, serving as an essential component in enhancing the quality and sustainability of the electricity distribution system. Despite its crucial importance and expected benefits, there are individuals who exhibit opposition towards this progress. Concerns frequently arise regarding the potential health hazards associated with the radiation emitted from the 500 kV SUTET or 150 kV SUTET network, as well as allegations of discriminatory practices, infringement of rights, and grievances from the community towards the government. These issues hold significant significance and should be carefully taken into account.

The topic of land is perpetually captivating due to its multifaceted implications on people's lives and sustenance. A pressing predicament encountered in both developed and developing nations is the diminishing availability of agricultural land, which serves as a crucial catalyst for progress. This issue is particularly pronounced in countries where communities heavily depend on agriculture for their livelihoods and consequently hampers their agricultural pursuits (Soemardjono, 2008).

Land is a social asset, as a means of binding social unity among communities for life and livelihood. Meanwhile, as development capital, land is a crucial factor in economic growth as well as a material for valuation and an object of speculation. Constraints on land acquisition for the public interest in Indonesia refer to the provisions of Article 18 of the UUPA:

"In the public interest, including the interests of the nation and state as well as the common interests of the people, land rights may be revoked, by providing adequate

compensation and in accordance with the method regulated by Law No. 20 of 1961 concerning the revocation of land rights."

The article explicitly asserts that in the event of individuals losing their land rights, even if it is for the greater good of the public, they must receive appropriate compensation. Nevertheless, if those who have been deprived of their rights are not provided with compensation, it cannot be considered as a mere land acquisition, but rather as a violation of their land rights by the party in need (Satjipto Rahardjo, 2006).

According to Hudson (2001), the demand for infrastructure increases as people's expectations for improved living standards and public services rise. This trend is consistent with urban development and population growth, which also contribute to the increased need for infrastructure. Quelilroz, in a study conducted by the World Bank (Hudson, 2001), highlights the close relationship between economic development and infrastructure development, particularly in the case of roads. Additionally, the development of electrical energy infrastructure, such as the 500 kV SUTT or 150 kV SUTT transmission, plays a crucial role in supporting urban development and meeting the growing demand for a better quality of life.

In terms of land acquisition, the legal treatment differs depending on whether the land is directly or indirectly used. Directly used land requires payment of compensation, while land that is not directly used is compensated in a different form. The determination of compensation amount takes into consideration various factors, including Base Price Value, Market Price Value, and NJOP. On the other hand, indirectly used land is not acquired and does not receive compensation, but compensation is provided due to its being affected by the 500 kV SUTT or 150 kV SUTT transmission. This aligns with the regulations set forth in Minister of Energy and Mineral Resources Regulation No. 12 of 2021. The compensation for land, buildings, and plants affected by the transmission is based on their economic value. Any disagreement with this approach is perceived by the community as an act of injustice.

The construction of PLN towers faces numerous challenges that hinder the land acquisition process. Limited information possessed by the involved parties often impedes the alignment process. Additionally, difficulties in identifying the objects affected by the transmission pose a recurring problem when assessing compensation payments. However, the availability of informative land plots related to the issue can be addressed through collaborative efforts among the parties involved in providing data.

The map facilitates the coordination between the parties seeking land and the community, which acts as the provider of land, in order to streamline the process of acquiring land. Apart from the aforementioned intersectoral challenges, opposition from residents also emerges due to disputes over the compensation price for land acquisition, disagreements regarding the release of only a portion of the community's land instead of the entire plot, and a decline in the value of land, which are the prevailing issues encountered during the construction of this tower.

## **2. RESEARCH METHODS**

The normative research methodology employed entails interpreting the law based on its written form, such as legislation, or as a compilation of norms and rules that govern human behavior in a reasonable manner (Amiruddin & Asikin, 2019). This analytical

approach places emphasis on utilizing secondary data sources or relevant literature to address the research problem at hand. Normative legal analysis involves examining the legal norms outlined in regulations or laws pertaining to the research subject. This approach serves as a normative framework that begins with broad premises and leads to specific conclusions. Its primary aim is to generate fresh insights within both theoretical and practical realms (Marzuki, 2016).

### **3. RESULTS AND DISCUSSION**

Throughout history, from the time of Sokrates to the era of François Géný, Natural Law theories have consistently upheld the principle of justice as the pinnacle of legal systems (Friedrich, 2004). These theories place great emphasis on the pursuit of justice, recognizing its significance in establishing a fair and equitable society. Within the realm of Natural Law theories, various perspectives on justice and the construction of a just society have emerged, encompassing notions of rights, freedoms, opportunities for power, income, and prosperity. Notable examples of these theories include Aristotle's exploration of justice in his renowned work "Nicomachean Ethics," John Rawls' comprehensive theory of social justice presented in his influential book "A Theory of Justice," and Hans Kelsen's profound analysis of law and justice in his seminal work "General Theory of Law and State."

Aristotle's perspectives on justice are expounded upon in his notable works, namely Nicomachean Ethics, Politics, and Rhetoric. Notably, the Nicomachean Ethics extensively delves into the subject of justice. In accordance with Aristotle's philosophy of law, justice is regarded as the fundamental pillar of his legal philosophy, as "law can only be established in relation to justice." (Van Apeldoorn, 1996). Essentially, this conception of justice entails a harmonization of equal rights rather than absolute equality.

Aristotle discerned equal rights based on proportional rights. The notion of equal rights perceives human beings as a collective entity or an identical vessel. It can be comprehended that all individuals or every citizen, in the eyes of the law, are deemed equal. Conversely, proportional equality gauges the rights of each individual in accordance with their abilities and accomplishments.

Moreover, Aristotle's perspective on justice encompasses two distinct categories: distributive justice and commutative justice. Distributive justice entails allocating resources and rewards to individuals based on their accomplishments. On the other hand, commutative justice involves treating all individuals equally without considering their achievements, particularly in the context of exchanging goods and services (Faiz, 2009).

Several concepts of justice proposed by American philosopher in the late 20th century, John Rawls, are included in his works "A Theory of Justice", "Political Liberalism", and "The Law of Peoples". These works have had a significant influence on the discourse of justice values (Friedrich, 2004).

John Rawls, widely recognized as the pioneer of "liberal-egalitarian of social justice," posits that justice is the primary virtue of the existence of social institutions. However, the virtue for the entire society cannot be realized or questioned for justice by every individual who has experienced it. Particularly, the marginalized members of society who are in search of justice (Friedrich, 2004).

Rawls' perspective implies the existence of a situation that is equal and equitable for every individual within society. There are no differences in status, position, or having



a higher position between one another, allowing each party to reach a fair agreement. This is Rawls' view as a "baseline position" that relies on the harmonization of reflective balance, based on the principles of rationality, freedom, and equality, in order to govern the basic structure of society.

While John Rawls translated the concept of "veil of ignorance" as a condition in which every individual is confronted with the complete lack of knowledge about themselves, including their social position and specific doctrines, thus blinding them to the existence of any consensus or evolving understanding of justice. Through this concept, Rawls encourages society to develop principles of fairness by considering his theory known as "Justice as Fairness" (Rawls, 2020).

According to John Rawls' perspective on the concept of the "original position," there are primary principles of justice, including the principle of equality, which states that every individual is equal in universal freedom, rights, and compatibility, as well as inequality in social and economic needs among individuals. The first principle is expressed as the principle of equal freedom, encompassing freedom of religion, political liberty, freedom of speech and expression, while the second principle is expressed as the difference principle, which emphasizes equal opportunity principle.

Furthermore, John Rawls reinforces his view on justice that a differentiated justice development program for society should consider two principles of justice. Firstly, it ensures equal rights and opportunities to basic freedoms to the extent that they are equally available to every individual. Secondly, it is capable of reorganizing the social and economic inequalities that occur in order to provide fair advantages (Kelsen, 2008).

According to Utrecht, legal certainty encompasses two meanings. Firstly, the existence of general rules enables individuals to know what actions are permissible and prohibited. Secondly, it provides legal security for individuals and flexibility for the government, as these general rules allow individuals to understand what can be done or carried out by the State towards them (Utrecht, 1989).

Legal certainty is achieved when a regulation is made and enacted precisely, as it governs in a clear manner. Clear in the sense that it does not create doubt and is logical. Clear in the sense that it establishes a system of norms that are consistent with other norms, thus avoiding conflicts or normative contradictions. Legal certainty refers to the application of law that is clear, stable, consistent, and consequential, and its implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but they factually characterize the law. An uncertain and unjust law is not just a bad law.

Legal certainty is the key to effective law enforcement. With certainty, it is expected that all law enforcement agencies can carry out their duties effectively, ensuring that the goals of the state are achieved concretely. Certainty refers to a definite state, provision, or order. Law, in essence, must be certain and just. It should serve as a guide for behavior and be just because it should support a reasonable order. It is only through fairness and certainty that the law can fulfill its function. Legal certainty is a question that can only be answered normatively, not sociologically.

Legal certainty reflects the certainty of the law. The concept of a rule of law state itself originates from the fundamental concept of legal sovereignty, which states that the highest authority in a state is the law. Therefore, all state institutions, regardless of their names, including citizens, must submit, obey, and uphold the law without exception. This

means that the state, as the creator and enforcer of the law, must abide by the law in all its activities. In this sense, the law carries the state. Based on the understanding that the law derives from the legal consciousness of the people, the law possesses authority that is not related to any individual (impersonal).

The criminal justice system is a network of courts that utilizes substantive criminal law, formal criminal law, and criminal enforcement law. However, if it becomes too formal, relying solely on the interest of legal certainty, it can result in injustice.

The Rule of Law is the Rule of Law, and as a concrete consequence in the administration of the State, especially the Government, it must be based on the applicable Positive Law. This becomes the main requirement in the decision-making process of the State to ensure that the State's administrators do not act arbitrarily.

Aristotle formulated the Rule of Law, in which citizens are involved in the state's deliberations (ecclesia), with the aim of establishing a state that is governed by law and guarantees justice to its citizens. Justice needs to be taught, and the State must set an example in obedience to the law, especially in the administration of the State.

The essence of the concept of the rule of law in a country is derived from the fundamental concept of legal sovereignty, which essentially states that the highest authority in a country is the law. Therefore, all state institutions, regardless of their name, including citizens, must submit to and uphold the law without exception. As the creator and enforcer of the law, the state must adhere to the law in all its activities. In this sense, the law guides the state. Based on the understanding that the law originates from the legal consciousness of the people, the law possesses an authority that is not related to personal differences.

Friedrich Julius Stahl added Kant's concept of the rule of law in his effort to explain the concept of the rule of law (Stahl, 1847). It encompasses key elements, including the recognition and protection of human rights. In order to protect these human rights, the governance of the state must be based on the principle of separation of powers or the *trias politica*. In carrying out its duties, the government must be based on existing rules or laws, and if it violates the provisions, there is an administrative court that will resolve it (Hutabarat et al., 2022).

#### **4. CONCLUSION**

The compensation for land affected by the construction of electricity networks by PLN, as outlined in Ministerial Regulation ESDM number 13 of 2021, is based on the provisions set by the Ministry of Energy and Mineral Resources. This regulation, which was enacted by Minister Arifin Tasrif on June 17, 2021, ensures that individuals whose land is traversed by transmission lines will receive appropriate compensation.

However, this regulation does not comprehensively address the impact of compensation for the development of 500 kV SUTT or 150 kV SUTT transmissions. This lack of clarity may result in unfairness and legal uncertainty.

When it comes to compensating communities for the value of land affected by the construction of electricity networks, PLN follows the guidelines set forth in existing regulations. Specifically, PLN refers to the Regulation of Energy and Mineral Resources Number 01.P/47/MPEL/1992, which stipulates that land, including any buildings or plants located on it, must be released and compensated for the construction of buffer sites for SUTET. In cases where land or buildings were affected by the SUTT/SUTET free

space project, compensation was provided under the Minister of Mining and Energy Decree No. 975 K/47/MPEL/1999, which replaced the previous regulations.

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