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# AN INCONVENIENT TRUTH ABOUT THE EXPROPRIATION OF THE CUSTOMARY LAND RIGHTS OF THE INDIGENOUS PEOPLE OF INDONESIA

*THE CASE OF REMPANG 'ECO-CITY'*

## INTRODUCTION

In Indonesia, there are many land conflicts associated with rapid economic development either from Government Infrastructure and Public Facilities projects or by private sector initiatives such as the development of a modern integrated city. A recent case that caught the public's attention in Indonesia, due to the massive and continuous social unrest surrounding it, involved the development of an integrated new township named "Eco City" on Rempang Island. Rempang is connected by bridge to Batam Island and is located in the Riau Archipelago where it enjoys a strategic location by being very close to Singapore and Malaysia. Rempang also benefits from its close proximity to the modern infrastructure located in Batam such as an International Airport, Seaport, and Ferry Terminal to/from Singapore and Johor Bahru-Malaysia. A further benefit for Rempang is the fact that Batam has also been granted the status of

Special Economic Zone (SEZ) by the Indonesian Federal Government.

"Eco-City" is a mega proposal of mixed-use land development, which will be comprised, of an integrated industrial, trade, and tourism development on Rempang Island, which covers an area of around 17,000 ha, and involves a total investment of around \$25.4 billion USD. One of the developments will be a major investment by Xinyi Glass Holdings (China) which plans to develop the second-biggest glass factory in the world. Rempang 'Eco City' is one of the National Strategic Projects spearheaded by the Indonesian Federal Government with the aim of improving Indonesia's economic competitiveness with Singapore and Malaysia.



Batam and Rempang Islands are managed by the Batam Authority (BP Batam), a government entity which under Presidential Decree No 41/1973 (“PD 41”) is granted the Right to Manage (Hak Pengelolaan – HPL) all of the land on Batam Island, and including Rempang Island.

HPL has been given the task to ensure that there should be no excessive land ownership accumulation or land speculation by investors. As a result, land ownership in Batam is generally leasehold property and there is no recognition of individual land rights. However, before PD

41 was issued, there were already customary land rights (communal land) owned by the indigenous people, known as “Kampung Tua” or the “Old Village”. The indigenous people have lived on Rempang Island for almost 200 years as documented in the London Treaty of 1824.

The conflict erupted because the indigenous people who lived on Rempang Island suddenly encountered land expropriation by outside entities. The local people of the “Old Village” refused to be relocated due to the fact that they have lived in this area since their

ancestors' time. It will be an ideal outcome if the "Old Village" is protected and sustained as one of the tourism features in line with the resort development plan for "Eco City". However, if relocation is unpreventable, compensation must be 'fair and reasonable' so that these indigenous people could continue their life with an improved living standard today and for future generations.

### LAND RIGHTS IN INDONESIA

Land tenure in Indonesia is regulated by Agrarian Law No 5/1960, whereby all lands are ultimately owned by the State in its role as the representative of the people, and managed for the optimum benefit of the people. This power has been translated into three types of land tenure in Indonesia:

1. **State Land**, which could be imposed with Right to Manage (HPL) given to government entities
2. **Individual Land Rights**, comprised of freehold (SHM) and leasehold lands (Hak Guna Bangunan-HGB, Hak Guna Usaha-HGU, Hak Pakai-HP) which could be owned by individuals or legal entities
3. **Customary Land** (communal land) owned by indigenous peoples as customary rights owners

The Interior Ministry issued a regulation in 2014 (Permendagri 52/2014) to provide Guidance for Recognition and Protection for the indigenous people, and this needs to be followed by local government in recognizing the customary land rights in their area. However, there is still a lack of local government awareness and initiatives towards the protection of customary land rights in Indonesia.

Customary land rights should be traced back and identified through careful observations on the following:

1. History
2. Cultural heritage

3. Natural signs and physical marks such as the age of hardwood planted trees
4. Acknowledgment and testimony from the traditional elders and customary institutions

### PROBLEM IDENTIFICATION

The root of the problem of land expropriation in Indonesia towards Customary Land is the fact that there is no formal recognition by the government on the communal rights of the indigenous people because their land tenure is unregistered. Refer to Practice Manual for Valuation of Unregistered Land (UN-Habitat, 2021), customary land rights are not only assessed through economic value but also the non-economic value of the land rights to reflect social ties, cultural traditions, ancestral links, friendship bonds and so on. These may include social and cultural value, religious and spiritual value and environmental value.

Should indigenous people be relocated or displaced, the amount of compensation offered has mainly been based upon the physical assets (land and improvements) and not typically taken into account the non-economic impacts that have to be endured by these indigenous peoples. This omission in the compensation equation can eventually cause long-term impoverishment that does not achieve the stated sustainable development goals.

Based on FAO voluntary guidelines (section 9.5), it is said that "Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, the State should recognize and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands".

**VALUATION PERSPECTIVE**

Currently, the International Valuation Standards (IVS) has acknowledged the unregistered real property interest as stated in IVS 400 Real Property Interests in paragraph 20.2:

“A real property interest is a right of ownership, control, use or occupation of land and buildings. A real property interest includes informal tenure rights for communal/community and or collective or tribal land and urban/rural informal settlements or transition economies, which can take the form of possession,

occupation and rights to use”.

Indonesian Valuation Standards (SPI) has discussed Valuation in Land Acquisition for the Development of Public Interest in SPI 204, which refers to Law No. 2/2012 on Land Expropriation for Public Use and Law No. 11/2020 on Jobs Creation where the amount of compensation is determined by an Independent Public Valuer.

Categories of compensation and basis of value are discussed below:

<b>PHYSICAL LOSS COMPENSATION</b>	<b>NON-PHYSICAL LOSS COMPENSATION*</b>
<ol style="list-style-type: none"> <li>1. Land</li> <li>2. Space above ground and underground</li> <li>3. Building</li> <li>4. Plants</li> <li>5. Other objects attached with land</li> </ol>	<ol style="list-style-type: none"> <li>1. Compensation for loss due to the rights release from the land owner which will be given in the form of cash (premium), which include matters related with:                             <ol style="list-style-type: none"> <li>a. Loss of work or business which includes change of profession</li> <li>b. Emotional loss (solatium) or intangible loss related with property acquisition which has been occupied for generations</li> <li>c. Other types of loss that could be anticipated based on valid planning documents</li> </ol> </li> <li>2. Transaction cost, where base assumptions are formed by moving cost, emptying cost, taxes and notary cost</li> <li>3. Waiting time compensation based on replacement of time difference between the date of valuation and date of payment</li> <li>4. Land severance</li> <li>5. Other non-physical loss</li> </ol>

**BASIS OF VALUE - IVS**

No Basis of Value mentioned	
No Basis of Value mentioned	Societal disruption maybe >> market value

**BASIS OF VALUE – INDONESIAN VALUATION STANDARDS (SPI 204)**

Fair Replacement Value	
“Market Value” with special assumption that the customary land is registered	Loss payment and disturbance compensation for non-physical loss

\* as stated in SPI 204

When there has been mention on the emotional loss (solatium) in SPI 204, but it has not been clearly explained on how to measure the solatium, and it still simply discussed the solatium in relation with heritage residential property only.

It has not addressed the fact that customary land is related with broad socio-cultural aspects of the indigenous people such as their food sources, local knowledge of their habitat and landscape for many generations that could not be easily replicated in other locations. They might find difficulties to adapt in the places of relocation due to their lack of necessary skills to adapt to this new environment or the absence of 'local knowledge'.

Rao (2018) identifies sociocultural capital as:

- Security, including livelihood security; security of physical space and protection from eviction or relocation
- Self-identity through possessions; in terms of social status; through personalization of property, place and occupancy; as part of territorial identity. This might include traditional land use rights, including access to communal pasture, forests, fishing rights, medicine, natural resources, religious sites, infrastructure and services, such as transport routes, schools, health centers and community centers
- Social capital, including relationships and ownership as sociocultural status
- Social equity and empowerment (political, gender and social)
- Psychological well-being, personal comfort and convenience

Natural capital takes the form of ecosystem services.

Socioeconomic capital and natural capital are rarely, if ever traded in the market.

The valuation of sociocultural and natural capital remains an area that requires further research in the valuation field, as this falls outside the concept of economic value that is well understood by the valuation profession. In the future, it is likely that non-economic value will be an increasingly important aspect that should be considered by Valuers, especially when dealing with loss compensation in land expropriation.

Parallel with this, there are discussions by some experts aimed at quantifying Non-Economic Loss and damage (NELD) as related to climate change. A key UN **technical paper** commissioned after COP18 in 2012 discussed several 'quasi-economic' approaches: economic valuation, multi-criteria decision analysis (MCDA), composite risk indices, and semi-quantitative assessments.

Refer to FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forest in the Context of National Food Security (2022), policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable.

## CONCLUSION

In closing, concerning the aforementioned case of "Eco City" on Rempang Island, the Indonesian Government should endeavor to protect the customary land rights of the Indigenous people. In the event that relocation is imminent, the compensation (Fair Replacement Value) should consist of not only the economic value (or market value) of the physical asset (assuming it is tradable in the market), and the economic loss, but it must be added with the non-economic value that is derived from the sociocultural capital and natural capital. Nevertheless, if there is no

other option but the relocation of the Indigenous people, the compensation should be 'fair and just' to ensure that the "at risk" indigenous people could both sustain and retain their traditional lifestyle while simultaneously enjoying an improved living standard today and for future generations.

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References:

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