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# LEGAL ANALYSIS OF LAND ACQUISITION IN NATIONAL STRATEGIC PROJECTS: A CASE STUDY OF TOBA CASE NO. 5/PID SUS-TPK/2023/PN MDN

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## Authors' contributions

*This work was carried out in collaboration among all authors. All authors read and approved the final manuscript.*

## Article Information

<https://doi.org/10.70471/n9pee645>

## Open Peer Review History:

This journal follows the Advanced Open Peer Review policy. Identity of the Reviewers, Editor(s) and additional Reviewers, peer review comments, different versions of the manuscript, comments of the editors, etc are available here:

**Original Research Article**

**Received: 10/10/2024**  
**Accepted: 21/10/2024**  
**Published: 31/10/2024**

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## ABSTRACT

This study investigates the legal considerations in a corruption case surrounding land transactions in Desa Parparean, Kecamatan Porsea, Kabupaten Toba. The defendants, Daulat Napitupulu and Lumongga Marsaulina Aruan, held land leased to PT. Dok Bahari Nusantara for ship construction. The Ministry of Transportation later selected this land for a shipyard project to enhance tourism in the Lake Toba region. Allegations of corruption emerged during the land certification and compensation processes, prompting legal proceedings. This research applies a normative juridical approach, analyzing judicial decision-making in Case No. 5/Pid.Sus-TPK/2023/PN Mdn, focusing on whether

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**Cite as:** Simanjuntak, D. M., Syahrin, A., & Mulyadi, M. (2024). Legal analysis of land acquisition in national strategic projects: A case study of Toba case No. 5/Pid.Sus-TPK/2023/PN Mdn. *Asian Multidisciplinary Research Journal of Economy and Learning*, 1(4), 1-9 <https://doi.org/10.70471/n9pee645>

the defendants misused their authority in certifying and compensating for the land. The findings reveal complex historical and cultural dynamics, particularly around the ancestral and communal (ulayat) land rights of indigenous communities in Lake Toba. The court's evaluation extended to regulatory inconsistencies, highlighting the need to balance environmental protection with national development interests. Although no procedural or legal violations were found in this case, the decision underscores the importance of clear legal processes in protected areas. It also validates the defendants' land ownership certificate and the compensation determined through lawful and independent appraisal. This case emphasizes the critical role of transparent judicial procedures and the protection of indigenous land rights within national strategic projects.

**Keywords:** *land certification, protected areas, lawful, land acquisition, Lake Toba.*

## 1. Introduction

Land ownership issues in Indonesia, particularly concerning customary land (tanah ulayat), have become a significant concern in land law. Many lands managed by the government or private legal entities are often mismanaged, leading to unclear boundaries and management disputes. As noted by Sumardjono (2021), abandoned lands are frequently reclaimed by local communities for subsistence. In many cases, these uncertified lands become the subject of legal disputes, especially when the government or private parties attempt to reclaim them.

Lake Toba faces similar issues. According to Presidential Regulation No. 60 of 2021 on the Preservation of National Priority Lakes, Lake Toba has been designated a national strategic area. On the other hand, the customary land rights of indigenous peoples in the region are recognized under Local Regulation No. 1 of 2020, which grants rights to land they have managed for generations. Legal conflicts arise when customary land intersects with national development interests, as Simanulang (2023) highlights, noting tensions between customary rights and government regulations.

Issues arise when residents near the Lake Toba buffer zone register their land with the National Land Agency (BPN) to obtain ownership certificates. According to the Basic Agrarian Law (UUPA) No. 5 of 1960, customary land cannot be privately owned. However, in several cases, residents have obtained ownership certificates for land in protected areas, where such transfers should legally be prohibited. Simanjuntak (2021) emphasizes that legal ambiguities often create opportunities for residents to secure certificates for land that should be protected.

A prominent case involves the construction of a shipyard by the Ministry of Transportation in Desa Parparean, Kecamatan Porsea. In this project, the government compensated residents whose land was located in the buffer zone of Lake Toba, using it for public purposes. However, the legal validity of the certificates issued by BPN for this land was questioned, as the land was situated in a protected area. The Ministry of Public Works and Public Housing (PUPR) Regulation No. 28/PRT/M/2015 explicitly prohibits the issuance of ownership certificates in buffer zones.

The compensation process conducted by the Ministry of Transportation was also considered non-compliant with regulations. For instance, land in protected areas should not be subject to compensation since it is part of state-owned land. Nursadi (2007) explains that compensation in such cases could be considered an act of corruption, as it involves the misuse of public funds for land that should not be privately owned. This case illustrates the potential for abuse of authority in land acquisition processes.

Furthermore, the land transactions involving compensation in the Lake Toba buffer zone highlight regulatory overlap between the Basic Agrarian Law and other technical regulations, such as Presidential Regulation No. 81 of 2014 on the Spatial Planning of the Lake Toba Area. Kusumawardani (2022) argues that such overlaps create legal ambiguities, leading to violations in land acquisition processes for public purposes. Kusumawardani adds that this ambiguity is often exploited by individuals for personal gain. In some cases, conflicts between higher regulations, such as the Basic Agrarian Law, and technical regulations issued by ministries, often lead to legal uncertainty. Sembiring (2018) suggests that priority should be given to higher regulations, such as the Basic Agrarian Law, to ensure that protected areas are preserved according to their intended purpose.

Based on this background, this study aims to analyze the legality of land ownership certificates issued in the Lake Toba buffer zone and the land transactions involving compensation, which may lead to corruption. This analysis seeks to provide legal solutions to address regulatory overlaps and prevent corruption in land acquisition in protected areas. Pulungan (2023) emphasizes that this research is essential for improving Indonesia's land law system, particularly in managing customary land in protected areas.

## 2. Method

This study employs a normative juridical research method, focusing on the examination of legal regulations and court rulings relevant to the issues raised. The normative juridical method is used to analyze the legality of issuing land ownership certificates in the protected buffer zone of Lake Toba, as well as the implications of corruption in land transactions.

### 2.1 Research Approach

The research adopts two approaches:

1. **Legislative Approach** (Statute Approach): This involves reviewing various regulations related to land ownership and management, including:
  - Law No. 5 of 1960 concerning Basic Agrarian Principles, which governs land ownership in Indonesia.
  - Ministry of Public Works and Public Housing (PUPR) Regulation No. 28/PRT/M/2015 on buffer zones and the prohibition of issuing ownership certificates in protected areas.
  - Presidential Regulation No. 81 of 2014, which designates Lake Toba as a National Strategic Area for tourism.
2. **Case Approach**: This approach reviews relevant court rulings, particularly those related to corruption in land transactions within protected areas around Lake Toba, such as the Medan District Court's ruling No. 5/Pid.Sus-TPK/2023/PN Mdn. This method helps understand the application of agrarian and criminal law in practice, especially in handling corruption cases related to land acquisition.

### 2.2 Type and Nature of Research

This research is **prescriptive** in nature, aiming to provide legal solutions or recommendations for the issues studied. The prescriptive research focuses on analyzing legal rules and their implementation in resolving land ownership conflicts and corruption. The goal is to propose alternative solutions for future legislation to prevent corruption in land acquisition within protected areas.

### 2.3 Data Sources

The study relies on secondary data, which is categorized into three types:

1. **Primary Legal Materials**: These include the regulations serving as the foundation for the research, such as:
  - Law No. 5 of 1960 on Basic Agrarian Principles.
  - PUPR Regulation No. 28/PRT/M/2015 on buffer zones and protected areas.
  - Medan District Court Decision No. 5/Pid.Sus-TPK/2023/PN Mdn.
2. **Secondary Legal Materials**: These comprise legal books, journals, and scientific articles discussing issues related to land acquisition, agrarian law, and corruption.
3. **Tertiary Legal Materials**: Supporting materials such as legal dictionaries, legal encyclopedias, and technical guidelines that offer a deeper understanding of legal terms and concepts used in the research.

## 2.4 Data Collection Techniques

Data is collected through **literature review** and **document analysis**:

- **Literature Review:** This involves reviewing legal literature related to the issues studied, including textbooks, academic journals, legal articles, and other relevant academic publications discussing land ownership in protected areas and corruption.
- **Document Analysis:** This involves collecting and analyzing official documents such as court rulings, legal regulations, and archives related to the issuance of land certificates and the land transactions in the Lake Toba area.

## 2.5 Data Analysis Techniques

The collected data is analyzed using qualitative analysis, which involves interpreting the data based on applicable legal norms. The analysis process includes:

1. **Data Categorization:** Grouping the data according to relevant categories, such as legal regulations, court decisions, and legal literature.
2. **Data Interpretation:** Identifying the relationships between the application of agrarian and criminal law in the context of land acquisition in protected areas.
3. **Conclusion Drawing:** Drawing conclusions based on the premises identified during the analysis process, which are linked to legal theories and the concept of justice discussed in the study.

## 2.6 Conclusion Drawing

The conclusions in this study are drawn using **deductive reasoning**. This method involves deriving specific conclusions from general legal norms (agrarian law and corruption law) to the specific cases studied. This approach allows the researcher to evaluate how consistently and fairly the existing legal regulations have been applied in resolving land disputes in protected areas, particularly in relation to corruption in land transactions in the Lake Toba region.

# 3. Results and Discussion

## 3.1 Legality of Land Ownership Certificate Issuance in Protected Areas

### A. Ancestral History of the Ulayat Community in Lake Toba

In the Lake Toba Region (KDT), conflicts and injustices often arise concerning indigenous land rights. Indigenous communities frequently report land grabs and criminalization by entrepreneurs and state officials seeking land for personal or institutional gain. A notable instance is the land occupation in Sigapiton by the Lake Toba Authority (BPODT), which allegedly seized land without lawful mechanisms, resulting in the indigenous community's loss of their land rights. This case has gained the attention of YPDT (Lake Toba Lovers Foundation), a body actively advocating for indigenous land rights in KDT. Additionally, Toba Pulp Lestari (TPL) is seen as detrimental to indigenous interests, with its transformation of protected and productive forests into Industrial Plantation Forests (HTI). This not only affects the local environment but also disrupts indigenous cultural values and livelihoods. The lack of formal legal evidence in compliance with Indonesia's positive law poses significant challenges for these communities, compounded by the interpretation of Article 5 of the 1960 Agrarian Law, which is often overlooked by central government policies, especially since Lake Toba's designation as a national priority tourism area.

Historically, land rights in KDT were governed by customary laws that bonded the ulayat (indigenous) community to the land. Since ancient times, these lands have been managed by clans who initially settled in the area. The first settlers held authority to determine land use, including for farming, settlement, and forest management, and to grant permission to newcomers. Although lacking written evidence, indigenous communities'

control over land is communally recognized based on long-standing customs, a practice upheld until the Basic Agrarian Law was implemented.

#### B. Emergence of Private Land Ownership from Ulayat (Communal) Land

The transition from communal to private ownership of customary lands in KDT is rooted in a long history of individual relationships with ulayat land. Initially, ulayat land was communally held by clan members who first claimed it. Over time, personal ownership began to be acknowledged, particularly through customary transactions such as "jual lepas" (outright sale) or "jual gade" (pledge). With this shift, indigenous communities could manage land without restrictions from the clan, as long as it complied with customary laws. Eventually, this transfer of land rights into private ownership was recognized by national law, while the collective nature of ulayat rights remained as a cultural heritage.

Implementing national land law for customary lands is challenging, particularly due to Indonesia's legal pluralism. Each indigenous group has a unique legal system that may conflict with others. Thus, the government's creation of the Basic Agrarian Law (UUPA) aimed to integrate fundamental customary law principles into a more universal national legal framework. The hierarchy of land rights established in UUPA begins with the nation's rights over land, followed by state control, ulayat rights of customary law communities, and individual rights. This system seeks to uphold indigenous land ownership while aligning it within the national legal framework.

#### C. Land Ownership Certificates as Legal Proof

Indigenous communities often face barriers to meeting national legal requirements for proving land ownership. Land ownership certificates, recognized as valid proof under law, are difficult to obtain for communities with limited access to the judicial system. Indonesia's negative publication system allows certificates to serve as strong but not absolute proof of ownership, meaning they may be disputed if stronger evidence supports another claim. However, for indigenous communities long settled in certain areas, certificates can provide critical legal protection and ensure rights over land.

The significance of land ownership certificates (SHM) is increasingly evident in KDT, especially after the enactment of Government Regulation No. 24 of 1997. This regulation ensures that after five years, a land certificate cannot be contested unless there is solid evidence to annul the claim. Nonetheless, this process remains challenging for indigenous communities due to limited information and high costs.

#### D. Registration Procedures for Land Rights Derived from Ulayat Land

Land registration in KDT can occur in two ways: systematic and sporadic. Systematic registration involves simultaneous registration for an entire area or village, while sporadic registration is carried out gradually on an individual basis. The process begins with document preparation, filing of an application letter, and proceeds through land measurement and certification. The government also involves local leaders and indigenous communities in this process, particularly to ensure that registered land is indeed under communal control. However, community involvement is often limited, as not all members have access to or knowledge of the government-mandated land registration procedures.

#### E. Lake Boundary Regulations According to Legislation

Lake boundary regulations designate buffer zones around Lake Toba, which are meant as environmental protection areas and cannot be privately owned. Key regulations governing the Lake Toba boundary include North Sumatra Regional Regulation No. 1 of 1990, Presidential Regulation No. 81 of 2014, and Ministry of Public Works Regulation No. 28 of 2015. Nonetheless, violations frequently occur, with many structures erected within protected areas intended to remain under government oversight. Conflicts arise when privately-owned land, supported by local government-issued certificates, is found within these protected zones.

## F. Legal Certainty in the Transfer of Rights After Government Control

Legal certainty is crucial in land disputes in KDT, particularly regarding government or third-party control of ulayat lands. This principle safeguards indigenous rights, ensuring that their land rights are not arbitrarily seized or criminalized. Legal certainty in land rights encompasses aspects of justice, benefit, and legal security for rights holders who have long held land in good faith. When a transfer of rights occurs, indigenous communities expect the national legal system to clarify their rights status, especially for land that has been communally owned for generations.

Guided by Government Regulation No. 24 of 1997, the transfer of rights can proceed through several stages, including verification of the relevant land certificate. The regulation also ensures that rights holders do not lose their rights as long as they meet the stipulated conditions. Furthermore, the emphasis on legal certainty through ownership certificates offers indigenous communities assurance that their land cannot be challenged or transferred without formal consent.

### 3.2 Legality of Land Sales with Compensation to the State

#### A. Requirements for Land Certificate Issuance

Land certificate issuance requirements are outlined within a legal framework that ensures legal certainty and fairness in land ownership. According to Daniel S. Lev (1990), law often serves as a political instrument where political power can influence its application in practice. Rights such as sale, grant, inheritance, and long-term physical occupation serve as essential bases for land certificate issuance. In the Lake Toba area, however, the state's control over land under Article 33 of the 1945 Constitution is controversial, as interpretations of "state control" remain debated to this day.

#### B. Process of Issuing Land Certificates for Lake Toba Boundaries

The Basic Agrarian Law (UUPA) No. 5 of 1960 establishes customary law as the foundation for indigenous land control, including ulayat rights granting communities authority over ancestral lands. Land registration under Article 19 of UUPA, updated with Government Regulation No. 24 of 1997, aims to provide legal certainty. Although ownership certificates serve as strong evidence, issuing certificates in Lake Toba's protected boundaries contradicts regulations since lands within these zones are designated for public purposes rather than private interests.

#### C. Definition and Types of Unlawful Acts in Criminal Law

Unlawful acts are an element of corruption, as stipulated in Articles 2 and 3 of the Anti-Corruption Law. In this context, unlawfulness may be formal (violating regulations) or material (contravening societal norms of propriety and justice). Issuing ownership certificates in Lake Toba's boundaries is viewed as formally unlawful, violating protected land regulations, and potentially causing state financial losses.

#### D. Criminal Acts of Corruption in Land Acquisition for Public Purposes

Corruption in land acquisition often involves private interests conflicting with public ones. According to the Anti-Corruption Law, corruption includes not only unlawfully enriching oneself but also abusing power or authority, leading to state losses. In the case of Ownership Certificate No. 221, the issuance of a certificate in Lake Toba's protected area—land intended as state property—raises suspicions of corruption, as the issuance may reflect administrative irregularities.

#### E. Legal Consequences of Issuing Certificates in Protected Areas

Issuing certificates in Lake Toba's protected boundaries carries potential legal consequences, including certificate revocation and criminal charges for those involved. In this case, a certificate issued for Lumongga Marsaulina Aruan in the protected area could be deemed invalid if administrative or collusive misconduct is proven. Consequently,

issuing certificates in protected zones can result in criminal sanctions, certificate annulment, and the land's reversion to state ownership.

### **3.3 Judicial Considerations in Rendering Verdicts**

#### **A. Land Ownership and Validity of Ownership Certificate**

This case centers on land ownership based on an informal Ownership Certificate (SKHM) No. 470/116/2033/2015, held by the defendant since 1986. The legal analysis reveals that this ownership is primarily based on customary law, with the community acknowledging the defendant's uncontested possession for decades. Defendant I, Daulat Napitupulu, demonstrated consistent physical control over the land through agricultural activities, establishing physical possession. According to agrarian law, customary land ownership may be recognized by the state, provided there is clear evidence of long-term possession and no competing claims (Setyowati, 2019). In this case, the defendant's certification process aligns with the sporadic registration procedure under Government Regulation No. 24 of 1997 on Land Registration, which requires proof of customary land ownership, physical control, and public notification.

#### **B. Violations in the Land Acquisition Process and Use of State Funds**

Issues surfaced with the construction of Porsea Port, a government project funded with a state budget allocation of IDR 30,000,000,000. The land acquisition process for this project should have complied with government regulations, particularly given its proximity to Lake Toba, which is governed under Presidential Regulation No. 81 of 2014 concerning Lake Toba Regional Spatial Planning and Ministry of Public Works and Housing Regulation No. 28/Prt/M/2015 concerning Lake Boundary Establishment. In this case, the Land Inspection Committee A neglected to complete the necessary procedural steps, including thorough legal examination, before verifying the physical data, in violation of National Land Agency Regulation No. 7 of 2007, which mandates comprehensive legal verification before land certification.

#### **C. Legal Considerations Regarding Land Ownership in Lake Boundaries**

A critical point in this case is the disputed land's location near Lake Toba, a designated national strategic area. Under Presidential Regulation No. 81 of 2014, lake body areas are state-controlled, and land use near these boundaries must adhere to buffer zone regulations. Measurements by the Sumatra II River Basin Agency show the land's elevation between 903.5 meters and 904.8 meters above sea level, close to the boundary defined at 904 meters. Agrarian law expert Yusuf Saiful Zamil (2020) asserts that land below 904 meters elevation is classified as state property, implying that the defendant's land, if within this boundary, should not qualify for private certification. However, there has been no indication that the issued land certificate has been invalidated by the State Administrative Court.

#### **D. Impact of Land Compensation Determinations**

The compensation granted by the Ministry of Transportation to the defendant, totaling IDR 2,997,060,000, has drawn scrutiny. While this amount aligns with the allocated budget, there is no evidence that the defendant influenced or pressured the land acquisition committee to determine this compensation. The entire process was based on independent appraisal findings and was approved by the Ministry of Transportation. This finding underscores that the defendant did not engage in corrupt practices in the compensation determination process. As Mardiasmo (2018) emphasizes, government project compensation must be determined objectively and independently to ensure fair compensation for affected parties.

## E. Court Ruling

Ultimately, the court ruled that the defendant had not engaged in any illegal conduct in the land acquisition process. There was no evidence that the defendant manipulated certification procedures or interfered with the land acquisition process. The court's decision to acquit the defendant was based on the principle that the defendant's land ownership certificate had not been invalidated by any competent authority. This ruling aligns with the legal doctrine that individuals acting in compliance with existing laws cannot be penalized for those actions (Hartono, 2016). The valid land certificate, with no objections raised during the leasing process to PT Dok Bahari Nusantara, further reinforces the defendant's legal status as the rightful landowner.

## 4. Conclusion and Recommendations

### 4.1 Conclusion

From the analysis of Case No. TOBA 5/PID SUS-TPK/2023/PN MDN, it can be concluded that this case reflects issues in the land acquisition process that did not fully adhere to the legal procedures. However, from the perspective of agrarian law and judicial review, the defendant successfully demonstrated the legality of the land ownership, both from a physical and social possession that had been maintained since 1986.

The land acquisition process by the government and the compensation determination in the National Strategic Project (Porsea Port) were not proven to involve corruption or any legal violations by the defendant. The court's decision to acquit the defendant was based on evidence showing no misuse of authority or manipulation during the land acquisition and certification process.

The fact that the land is located near the buffer zone of Lake Toba adds legal complexity. However, based on measurements and evaluations conducted by relevant authorities, the defendant's land does not fall within the state-controlled buffer zone of the lake. Thus, the defendant holds legitimate ownership of the land, and the compensation received from the government resulted from an objective, independent appraisal process.

### 4.2 Recommendations

The government and relevant agencies, particularly the Land Inspection Committee, must ensure that every step of land acquisition for national strategic projects follows the procedures outlined in the regulations, including comprehensive legal verification and the involvement of local communities. Transparency in land acquisition will help minimize the potential for future legal conflicts. Furthermore, the designation of buffer zones should be more clearly and firmly regulated, taking into account the environmental, social, and economic aspects that involve local communities.

The compensation determination process for land acquisition must continue to be conducted transparently and objectively, through independent appraisals that consider market value, land potential, and the socio-economic impact on landowners. This mechanism is crucial to prevent potential conflicts and ensure fairness for all parties affected by development projects. To ensure that national strategic projects proceed in accordance with applicable regulations, independent supervision and audits should be enhanced. This step will provide assurance that the use of public funds is in line with its intended purpose and will help avoid the misappropriation of public funds.

Empowering communities through legal education on land rights and the government's land acquisition mechanisms is essential. This will raise awareness among the public about their rights and obligations in development projects, and encourage their active involvement in maintaining the legality and validity of the land they own.

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