

Human Rights Violations in Indonesia's National Strategic Development Project

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ABSTRACT: The Indonesian Legal Aid Foundation has identified several typologies of structural land cases. One of them is land cases concerning the development of infrastructure projects. In recent years, the government has intensified particular infrastructure projects by designating them as National Strategic Projects (PSN). The designation of certain locations for these National Strategic Projects often overrules the consent of local communities who will be affected by the project. Some cases of infrastructure project development have occurred and impacted such communities. This paper will explicate how the accelerated development of infrastructure projects through the issuance of the Presidential Regulation on National Strategic Projects in 2016 and 2017 have violated community rights to land, the environment, and other human rights. The author will reveal the violation of these rights through examining cases on the construction of the Bener Dam in Central Java and the development of Bitung Toll Road in North Sulawesi. This paper projects one main finding that the government did not use the right to development approach and public needs-based approach in carrying out the project developments. Violations on a couple cases of development, such as Bener Dam and Bitung Toll Road, strengthen the analysis of governmental arbitrariness on conducting PSN in Wadas and Bitung.

KEYWORDS: National Strategic Projects, Bener Dam, Bitung Toll Road, development, human rights violation.



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HOW TO CITE:

Herwati, Siti Rakhma Mary & Pascal David Wungkana, "Human Rights Violations in Indonesia's National Strategic Development Project" (2023) 4:2 Indonesian Journal of Law and Society 1-32, online: <<https://doi.org/10.19184/ijls.v4i2.43006>>.

Submitted: 01/07/2023 Reviewed: 15/07/2023 Accepted: 30/08/2023

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I. INTRODUCTION

Indonesia recognizes human rights as constitutional rights and has incorporated its norms into the 1945 Constitution of the Republic of Indonesia. Several international covenants have also been ratified, including the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, and others. In addition, after the 1998 Reformation, Indonesia has enacted Law Number 39 of 1999 concerning Human Rights, as well as other sectoral laws and regulations that recognize guarantees and protections, human rights in the field of the environment, juvenile justice, protection of witnesses and victims, and others.

However, according to the Global Peace Index 2020 Vision of Humanity from the Institute for Economic and Peace, Indonesia is a country experiencing a decline in human rights enforcement. Of 83 countries, Indonesia fell six points from the previous year and is now ranked 49¹. Up to now, Indonesia is still faced with various human rights issues involving the state and corporations as actors. Land conflict is one of the unresolved problems. The direction of development announced by the government is still oriented towards infrastructure development which will involve a lot of land conversion.

Land cases are one of the most cases handled by the Indonesian Legal Aid Foundation (YLBHI) and its Legal Aid Institute (LBH) local chapters. In 2019, the wide area of 364 agrarian cases in 16 provinces was 523,432,751 hectares. Those structural land cases involved some extractive companies in plantation, forest, mining, and infrastructure sectors. Cases of plantations and forestry, in which some cases occurred in the past have always dominated. The situation around these cases are getting worse, because the government continues to extend companies' permits which escalates conflicts. Moreover, lack of government commitment to resolve the agrarian cases leads to exacerbated violations.

Cases related to infrastructure began to emerge when the government issued a policy on National Strategic Projects. Some of them have transformed into growing and prolonged conflicts. These overdue conflicts are a result of the development of national strategic projects that still continues in various places when the people object to its construction or by them responding to it repressively. The two cases that are studied within this paper are the Bener Dam Construction Case, or the Wadas case in Yogyakarta, and the Manado-Bitung Toll Road Construction Case in North Sulawesi.

The Wadas case occurred when the government arbitrarily decided Wadas Village as the location for andesite stone mining as material for the construction of Bener Dam, where most of the community rejected the development plan. Along its journey, the government continues the development plan in the midst

¹ Aqidatul Izza Zain (2021). Kemunduran Demokrasi dan Penegakan HAM Indonesia 2020. Kumparan. <https://kumparan.com/izzazain74/kemunduran-demokrasi-dan-penegakan-ham-indonesia-2020-1uxo4R5cJd6>.

of the community's rejection. The community disagrees with the Wadas Village being used as an andesite mining area because mining will damage the environment and disrupt the livelihoods of the community, most of whom are farmers. The community's rejection of the plan to build the Bener Dam was responded repressively by deploying thousands of security officers to Wadas Village under the pretext of securing land surveying. At that time, security forces committed violence and criminalized the community and their lawyers from LBH Yogyakarta.

The second case relates to the development of the Manado-Bitung toll road in Manado, North Sulawesi that violates the community's right to land. Since 2012, The Central Government built a toll-road construction across the Danowudu traditional forest in Bitung City, North Sulawesi. The PSN development was met by resistance from the Danowudu indigenous community and civil society in Bitung City. They argued that the policy was decided without consent or participation from indigenous community of Danowudu. Otherwise, the toll-road piles were constructed in a close-range with Aer Ujang water source which could affect pollution. Furthermore, the water source was sacred to the Danowudu community as well as Minahasa traditional community around the region and the construction could cause damage to the site. In the process, the Danowudu community jointly with civil society has publicly declared their resistance to the construction. Nonetheless, the government and other stakeholders responded with neglect and violence. In a visit by the Minister of Public Works and Housing to the toll-road location in 2020, the Danowudu elders asked the minister to move the construction location at least 200 meters from the Aer Ujang site. The demand was accepted by the minister and his statement was recorded in several newspapers. However, in its realization, the Public Works and Housing Ministry shifted the recent construction location only 13 meters from the first location which was meaningless and ignored the indigenous community's demand. In the aftermath, the community continued to resist by holding a demonstration at the toll-road area. They were dismissed violently by the Bitung Police Department with several demonstrators injured.

The cases were handled by Yogyakarta Legal Aid Institute (LBH Yogyakarta) and Manado Legal Aid (LBH Manado), chapters offices of YLBHI, which provided legal assistance to people who experienced or were victims of structural cases. This raises the question, how human rights violations occurred in these cases? How did the state respond to it?

II. RESEARCH METHOD

The findings presented in this paper are the outcome of empirical research utilizing a case study approach to examine instances of human rights violations funded by national strategic initiatives. This study is grounded by observations and experiences gained from aiding community groups in Yogyakarta and

Manado that have been impacted by infrastructure and plantation development. The researchers employ qualitative methodologies to assess the repercussions of human rights infringements on the community, aiming to ascertain the measures that the state should implement to guarantee their safety while the national strategic projects persist.

III. THE NATIONAL STRATEGIC PROJECT

The term National Strategic Project (PSN) appears in Presidential Regulation (Perpres) No. 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects. Article 1 paragraph 1 of this Presidential Regulation states that PSN is "a project implemented by the Government, Regional Government, and/or business entity that has a strategic nature to increase growth and equitable development in the context of improving community welfare and regional development".

PSN is a continuation of the Master Plan for the Acceleration of the Implementation of Indonesia's Economic Development (MP3EI), which was designed and implemented during the presidential period of President Susilo Bambang Yudhoyono (SBY). When Jokowi was elected as president, he no longer used the term MP3EI and replaced it with PSN. This change of terminology of MP3EI is seen as a political act for Jokowi's regime.² According to Jokowi, there is a difference in the orientation between the MP3EI and the development perspective that will be carried out in his administration. Even without the term MP3EI, Jokowi continues the spirit of the MP3EI by focusing on agriculture, food sovereignty and all infrastructure.³ Thus, Presidential Regulation No. 32/2011, which is the legal basis for implementing the MP3EI itself, has never been revoked under Jokowi's regime. Meanwhile, a number of infrastructure investment projects that were on the MP3EI project list were also re-listed on Jokowi's PSN list.

The projects included in the national strategic projects include, toll road infrastructure development projects; national road projects or non-toll national strategies; intercity rail facilities and infrastructure projects; inner-city rail project; airport revitalization project; construction of new airports; other strategic airport development projects; construction of new ports and capacity building; the one million homes program; oil refinery construction; gas pipeline or LPG terminal projects; waste energy projects; drinking water infrastructure supply projects; communal wastewater system supply projects; construction of flood retaining embankments; cross-border post development projects (PLBN) and

² Elisa Valenta Sari. (2014). Jokowi Ganti Istilah MP3EI Karena Berbau Politis. CNN Indonesia. <https://www.cnnindonesia.com/ekonomi/20141218132635-92-19063/jokowi-ganti-istilah-mp3ei-karena-berbau-politis>

³ Fabian Januarius Kuwado. (2014). Jokowi Isyaratkan Tak Lanjutkan Program MP3EI Dalam Pemerintahannya. Kompas.com. <https://nasional.kompas.com/read/2014/09/05/17485041/Jokowi.Isyaratkan.Tak.Lanjutkan.Program.MP3EI.dalam.Pemerintahannya>

supporting facilities; dam project; broadband coverage improvement program; other strategic science and technology infrastructure projects; development of priority industrial areas or special economic zones; tourism projects; smelter construction projects; and agricultural and marine projects.

To accelerate the implementation of National Strategic Projects, the government also issued Presidential Instruction No. 1 of 2016 concerning the Acceleration of National Strategic Projects Implementation aimed at officials to resolve problems and obstacles, and take policies in accelerating the implementation of National Strategic Projects. In addition, to accelerate the implementation of priority infrastructure projects in Indonesia, the Government established the Committee for the Acceleration of Priority Infrastructure Delivery (KPPIP).

The government places PSN as a special program, which can change spatial regulations in an area. This policy stated in Article 19 paragraph (2) of Presidential Decree No. 3 of 2016 on the Acceleration of National Strategic Projects Implementation : "In the event that the location of the National Strategic Project is not in accordance with the Regional Spatial Plan, Detailed Regional Spatial Plan, or Small Islands Zoning Plan and it is technically not possible to move it from the planned location, spatial adjustments can be made according to with the provisions of the legislation in the field of spatial planning".

This Presidential Regulation was later updated to become Presidential Regulation No. 58 of 2017, Presidential Regulation No. 56 of 2018, and Presidential Regulation No. 109 of 2020. In its appendix, there are 201 projects and 10 PSN programs with an investment value of 4,817.7 trillion. Dams and toll roads occupy the first and second positions of PSN, numbering 60 and 47 respectively. Examining problems and potential impact of the PSN, this paper explicates the human rights violations at the Bener Dam and Manado-Bitung Toll Road which are stated in the appendix to the Presidential Regulation.

A. To Life And A Healthy Environment

Provisions on the right to life and right to a healthy environment can be found in Articles 28A and 28H of the 1945 Constitution of the Republic of Indonesia, Article 9 of the Human Rights Law, and Article 6 of the Covenant on Civil and Political Rights. The state has an obligation to ensure the creation of conditions in which every citizen can enjoy the right to live without any threat to that right. This includes the right to improve their standard of living, the right to live in peace, security, peace, happiness and prosperity both physically and mentally. One of the steps that must be taken by the state is to protect the environment from destruction, pollution, and climate change. Article 6 General Comment No. 36 (2018) of the International Covenant on Civil and Political Rights, on the right to life, Paragraph 62 mentions:

Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach.

Environmental protection and sustainable development are an inseparable part of the fulfillment of human rights. Indonesia has enacted environmental protection in Law Number 32 of 2009 concerning Environmental Protection and Management. The law mandates the protection of the environment as a constitutional right of citizens according to Article 28H of the 1945 Constitution of the Republic of Indonesia.

The right to life and the right to a healthy environment may be stretched out that includes the right to have a decent living. Article 11 of the Covenant on Economic, Social and Cultural Rights mentions the recognition of the right of everyone to an adequate standard of living for one and one's family, including food, clothing and housing, and to the continuous improvement of living conditions. One of the important aspects to be fulfilled in guaranteeing the right to food and the right to be free from hunger is the guarantee of access to land. For this reason, the state is obliged to take steps to improve the means of production, conservation and distribution of food, and to develop or improve agricultural systems in such a way as to achieve an efficient development and utilization of natural resources.

B. The Right to Development

The idea of the right to development began to develop in the 1950-1960s after the increasing number of developing countries in the United Nations after colonization. The right to development was first mentioned as a distinct right in 1966 when the Foreign Minister of Senegal, Doudou Thiam referred to it at the General Assembly of the United Nations. At that time, Thiam linked the failure to achieve the UN development goals with the failure of the newly decolonized States to resolve the growing economic imbalance between the developing and developed worlds.⁴ Besides that, there is also Raul Prebisch, an Argentine

⁴ United Nations Special Rapporteur on the Right to Development. (2017). United Nations Special Rapporteur on the Right to Development: An Introduction to the Mandate, p. 5.

economist who introduced the structural disadvantage argument of developing countries into international discussion.⁵

The right to development has actually been the initial goal of the United Nations (UN). This is reflected in the UN charter "to promote social progress and better standards of living in greater freedom" and "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Article 1, 55, and 56 UN Charter state that peaceful and friendly relations among nations require conditions of stability and wellbeing – words that clearly emphasize the importance of the right to development. The charter also prohibits discrimination and mandates the United Nations to promote, among other things: higher standards of living; full employment; conditions of economic and social progress and development; and universal respect for human rights.⁶

The Universal Declaration of Human Rights (UDHR), the next UN document, has very important points which later become the main thing for the international community's understanding of the right to development, like promoting social progress and a better standard of living and recognize the right to non-discrimination, the right to participate in public affairs and the right to an adequate standard of living. The Universal Declaration of Human Rights also contains the right of everyone to social and international order. The UDHR also contains the right of everyone to a social and international order in which the rights and freedoms set forth in it can be fully realized.

In the 1980s, some categories for human rights appeared, namely the right to peace and security, the right to development, and the right to a healthy environment. These rights provide the necessary framework for the full enjoyment of all other rights. However, there is no requirement that one category of human rights be a prerequisite for another. These rights are categorized as solidarity rights, because they require international cooperation and aim to build society⁷. The UN Declaration on the right to development that was proclaimed in 1986 contained six elements. First, people-centered development, which identifies “a human person” as the central subject, participant, and beneficiary of development (Article 2). Second, a human rights based-approach that requires development to be carried out in a “in which all human rights and fundamental freedoms can be fully realised” manner (Article 1). The right to development is an inalienable human right based on which every human being has the right to

⁵ Felix Kirchmeier. (2006). The Right to Development - Where Do We Stand? Dialogue on Globalization, 23(2006). Friedrich-Ebert-Stiftung, p. 6.

⁶ United Nations Special Rapporteur on the Right to Development. Loc.cit.

⁷ Wolfgang Benedek. (2012). Understanding Human Rights: Manual on Human Rights Education. NWV Neuer Wissenschaftlicher Verlag, Wien, p. 39.

participate in, contribute to, and enjoy economic, social, cultural and political development. Third, participation, which insists on the “active, free and meaningful participation” character of individuals and populations in development (Article 2). Fourth, equity, which highlighted the importance of the “fair distribution of the benefits” of development (Article 2). Fifth, non-discrimination, which allows no “distinction as to race, sex, language or religion” (Article 6). Sixth, self-determination, that requires a full realisation of the right of peoples to self-determination, including full sovereignty over their natural wealth and resources (article 1).⁸

The Declaration of the Right to Development is a historic milestone in recognizing the right to development as a human right, which also includes what is currently known as the Human Rights Based Approach as a framework for fulfilling the right to development.⁹ The mainstreaming of development based on a human rights approach continued at the Second World Conference on Human Rights in Vienna which resulted in the 1993 Vienna Declaration and Program of Action. In this declaration it was agreed that the link between development rights and the right to the environment is equally important to be fulfilled fairly, both for the generation who live and for the future, exist when the development program is implemented or for generations that do not exist or will come. The term ‘sustainable development’, which was first introduced by the United Nations Commission a year after the Declaration on the Right to Development was adopted in the Vienna Declaration. In the concept of Sustainable Development, development must be carried out without compromising the ability of future generations to meet their own needs. Justice in development gets a broader meaning, not only about eliminating the gap between the rich and the poor in a country, not only about eliminating the gap between North and South or between countries, but also ensuring that development can be enjoyed by all generations, both in present and future.¹⁰

In the Indonesian context, the Declaration of the Right to Development contains appropriate provisions to respond to developments that deprive people’s rights. One of which is sovereignty over all natural wealth and resources. It means not only natural wealth and resources controlled by the community cannot be taken away, but they have the right to determine what or how the natural wealth and resources will be used. In many cases the government decides unilaterally in exploring and exploiting natural resources in Indonesia, like mountains or lands around community areas or community-owned rice fields. Another relevant provision relating to this case is “the human person is the central subject of development and should be the active participant and beneficiary of the right to

⁸ UN Human Rights Office of The High Commissioner. Development and Human Rights. United Nations. <https://www.ohchr.org/en/development/development-and-human-rights>.

⁹ Ibid.

¹⁰ World Conference on Human Rights. (1993). Vienna Declaration and Programme of Action. United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>

development". In fact, development leaves people and is oriented towards infrastructure development that is not only not needed by the community but also reduces quality of human life. The relevance of the Declaration of the Right to Development to the conditions of Indonesia, for example, is also found in provisions of "equal opportunity access to basic resources, education, health services, food, housing, employment and a fair distribution of income".¹¹

Development should guarantee people's rights, not deprive people's rights. The government must also open up as much space as possible for the community to participate in the development agenda, starting from planning, implementation, to evaluation. Access to information must be opened as widely as possible. Communities can express objections or disapproval of development plans when they do not agree. This kind of development uses a rights-based approach paradigm, where the community is given ample space and opportunity to participate, contribute, and enjoy the results of development in all aspects that support the fulfillment of human rights¹².

The current development strategy is still using a needs-based approach. This approach only meets short-term targets, which often creates further problems. In this approach, communities are placed more as an object of development, not as a subject of development. Communities are not given the opportunity to participate and contribute to designing what kind of development they want to do, whereas such development is not necessarily in accordance with the needs of the community¹³. The needs-based approach is the root of the problem that resulted in violation of the community's right to development. The two cases below illustrate the tension between the two approaches as communities in these cases become the object of development.

According to the Head of the River Basin Center (BBWS) Serayu Opak, Bener Dam in Purworejo Regency will provide various benefits for the community. Among other things are the water supply for irrigated paddy fields for 13,589 Ha of existing irrigation areas and 1,110 Ha of new irrigation areas. Another projected benefit of the Bener Dam is to be constructed as the source of fulfilling raw water for the community, around 1,500 liters/second. The Bener Dam is also useful for generating electricity for Purworejo Regency of around 6 MegaWatt, reducing the potential flooding for Purworejo Regency and Kulonprogo Regency with a flood reduction value of 8.73 million m³, as well as the potential for developing tourism which can boost the local economy.¹⁴

¹¹ UN General Assembly. (1986). Declaration on the Rights to Development. Resolution 41/128. United Nations. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>.

¹² Komnas HAM. (2013). Human-Rights-Based Development: A Guideline.

¹³ Ibid.

¹⁴ Humas PPID SO. (2022). Pembangunan Bendungan Bener Berikan Banyak Manfaat Bagi Masyarakat. SDA PU. <https://sda.pu.go.id/balai/bbwsserayuopak/pembangunan-bendungan-bener-berikan-banyak-manfaat-bagi-masyarakat>

However, the government's claim that the construction of the Bener Dam was for the public interest was denied by the Executive Director of Wahana Lingkungan Hidup (WALHI) Yogyakarta and Yogyakarta Legal Aid who revealed that the main function of the Bener Dam would be to supply water at the New Yogyakarta International Airport (NYIA) Kulonprogo. Referring to the Bener Dam Environmental Impact Analysis (Amdal) document, almost half of the Bener Dam water flow will be used for NYIA needs in Kulonprogo which is also an operational National Strategic Project.¹⁵

The aforementioned condition was disclosed by Modista Tandi Ayu, Head of Implementation Division of the Serayu Opak River Basin Center (BBWS). She stated that one of the functions of this dam is to meet the water needs of the new airport that is being built in Kulon Progo, New Yogyakarta International Airport (NYIA).¹⁶ NYIA is a National Strategic Project, whose implementation is carried out by arbitrarily evicting the agricultural land of the Kulonprogo community. Thus, the side function of Bener Dam that waters NYIA is a result of the need based approach from the governmental perspective where the benefits are not directly received by the public.

In 2011, the Indonesian government targeted North Sulawesi for the expansion of the tourism industry. It was proposed to increase foreign exchange and nationwide economic development as well to multiply international tourists to the region.¹⁷ The plan was then established as the national strategic tourism area (KSPN) which consisted of 50 areas around Indonesia.¹⁸ Afterward, Jokowi's Administration prioritized ten KSPN including the Manado-Likupang-Bitung area, to be designated as the so-called 'New Bali' areas, the new foundation of income for the country from the tourism related business.

Moreover, the government developed a number of infrastructures to promote the tourism industry and other businesses in the region. Since 2014, the government has been building a Special Economic Zone (KEK) in Likupang and Bitung. It was projected to attract investment in various industries according to each zone's purpose. In Likupang, an up to 200 ha of coastal area was set as the main site of the tourism industry (KSPN) in the region.¹⁹ Meanwhile, fishery, agro, and logistic trade were based in a more than 500 ha area in Bitung City.²⁰ On the other hand, the North Sulawesi Province Government also developed its

¹⁵ CNN Indonesia. (2022). Walhi: Kepentingan Utama Bendungan Bener Suplai Kebutuhan Bandara NYIA. <https://www.cnnindonesia.com/nasional/20220211104353-20-757906/walhi-kepentingan-utama-bendungan-bener-suplai-kebutuhan-bandara-nyia>.

¹⁶ Nuswontoro. (2018). Bendungan Bener Bakal jadi Pemasok Air Bandara Baru Jogja (Bagian 3). Mongabay. <https://www.mongabay.co.id/2018/09/25/bendungan-bener-bakal-jadi-pemasok-air-bandara-baru-jogja-bagian-3/>

¹⁷ BPIW. (2020). Lima KSPN Super Prioritas Dikembangkan Melalui Perencanaan Secara Terpadu. BPIW PU. <https://bpiw.pu.go.id/article/detail/lima-kspn-super-prioritas-dikembangkan-melalui-perencanaan-secara-terpadu>

¹⁸ Pemerintah RI. (2011). Peraturan Pemerintah tentang Rencana Induk Kepariwisata Nasional Tahun 2010-2015. No. 50.

¹⁹ Dewan Nasional Kawasan Ekonomi Khusus. KEK Likupang. <https://kek.go.id/kawasan/KEK-Likupang>

²⁰ Dewan Nasional Kawasan Ekonomi Khusus. KEK Bitung. <https://kek.go.id/kawasan/KEK-Bitung>

own project with a similar eagerness. It designed a coastal reclamation in Manado City to serve the needs of spaces for tourism-related business establishments.

At this point, the Manado-Bitung Toll Road was designated to provide connectivity between Manado, Likupang, and Bitung City, the most vital tourism industry areas in North Sulawesi. That one PSN facilitates a rapid mobilization along a 40 kilometers long area to secure the business' operation. The road starts from Manado City, across the junction toward the Likupang Special Economic Zone in North Minahasa Regency, and exits in the Bitung Special Economic Zone (KEK).

Despite its projected economic benefits to the country and the region, the ambitious tourism industry was planned against the marginalized group's rights. It does not guarantee the procurement of human rights due to its highly motivated economic desires. The project facilitates capital investors to run their large business by providing access to the resources. In fact, it disregards affected society in those areas, in particular the fishermen, farmers, and indigenous people to take benefits from the resources. In the process, the policy maker did not involve the affected society in its making. As a result, they become vulnerable to experiencing rights' violation which would emerge around the project implementation.

In Likupang, the Special Economic Zone for the tourism industry had impeded the local fisherman of Paputungan Village's access to the sea. They were forced to go around the area from their village to reach the sea since their boat mooring was closed in order to construct the main site of a resort in the area. It costs them to spend more money for the motorcycle's gasoline they need to take them to the recently built but further boat mooring. Similarly, the fisherman community in Manado also encountered problems in conducting fishery. Besides heavier financial challenges, the fishermen in Manado faced a threat to their safety when a heavy rain or coastal storm happened. Since the coast turned into rocks and covered with concrete as part of the coastal reclamation, the frequent hazards could cause damage to the fishermen's boats and boat mooring as well.

On the other hand, the government decides on the Manado coastal reclamation itself without consent from the Bantik indigenous community. In fact, the Bantik community has managed a part of Manado coast as a traditional heritage for years. In Bitung, as we will discuss further in this paper, the toll-road determination did not only ignore the Danowudu indigenous community's participation, it also devastated the Aer Ujang sacred site as well as corrupted its water sources.

After all, the tourism industry project threatens the marginalized groups rights to development. The project was not established in respect to the community's rights but only for economic development. Hence, the project was issued without participation of the communities whose interest the most.

Moreover, it could endorse a further right's violation to marginalized groups, especially those who are affected the most.

C. Violation Against Indigenous People's Rights and Its Participation

One of the community groups that receive special attention in the fulfillment of their rights is the indigenous peoples group. The Constitution recognizes this in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "the state recognizes customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in Constitution." In Article 6 of the Human Rights Law, the protection of the differences, needs and cultural identity of indigenous peoples includes rights to customary land.

Indigenous peoples also have the right to maintain, control, protect and develop their cultural heritage and customary traditions. With regard to their lands and resources, indigenous peoples are also entitled to determine their own development plans, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources. Furthermore, states shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impacts".²¹

IV. OUTSTANDING CASES

This section describes the two aforementioned cases which are the main topic in this paper, namely the Wadas Case and the Bitung Case. The following segment will provide further information on how the PSN be implemented in those areas, including the actions taken by the state actor to enforce the policy, and how the community response and on what grounds they resist. Furthermore, the description will raise findings about human rights issues that particularly emerge in each case, how the rights be violated, who is responsible, and who is affected the most.

A. Wadas Case

The Wadas case began on June 7, 2018 when the Governor of Central Java Ganjar Pranowo issued Decree Number 590/41 of 2018 concerning Approval for Determination of Land Acquisition Locations for the Construction of the Bener Dam in Purworejo District and Wonosobo District, Central Java Province. The letter was extended on July 5, 2020 through issuance of the Decree of the

²¹ Ibid.

Governor of Central Java Number 539/29 of 2020 concerning the Extension of the Determination of Land Procurement Locations for the Construction of the Bener Dam in Purworejo and Wonosobo Regencies, Central Java Province. In the decree, Wadas Village is included in the object of the construction of the Bener Dam, whereas previously the community had rejected the plan to build this dam. The construction plan of the Bener Dam has been started since 2013 when the Environmental Impact Assessment was prepared and continued with soil sampling activity in Wadas Village.

On September 4, 2017, the environmental permit was issued and disseminated through banners posted in other villages, as well as requests for suggestions and responses from the communities, exclude Wadas Village²². On March 8, 2018, an environmental permit was issued and announced, but Wadas Village was included as one of the villages affected by the project and the land will be acquired²³. In the preparation process of the Environmental Impact Assessment (AMDAL), Wadas Village community was not involved at all. On 27 March 2018, the initiator of the Serayu Opak River Basin Center (BBWS) held a socialization on land acquisition. The construction of the Bener Dam was only started in May 2019 due to land acquisition problems.

The height of the dam building reaches 169 meters and is the highest in Indonesia, while the building area is 400 hectares. Apart from Wadas, there are seven other affected villages in Purworejo District, namely Guntur, Kedungloteng, Bener, Karang Sari, Nglaris, Limbangan, and Kemiri village. Meanwhile in Wonosobo three villages will be affected, namely Burat, Gadingrejo, and Bener²⁴.

1. The Reason of the Villagers' Rejection

The villagers of Wadas Village rejected the government plan to build this dam. Approximately 95% of the people of Wadas Village are working as farmers who are very dependent on land. On the land they now own, various plants such as durian, rubber, sugar palm, spices, tubers, perennials and various other plants have grown and become the main sources of income. Andesite stones that will be mined in Wadas Village will be used as materials for the construction of the Bener Dam, Purworejo. The dredging of land in Wadas village will cause the loss of people's livelihoods, food sources that supply the province of Central Java, springs as a source of life for the community, the community's culture and their land as well as landslides and floods that threaten Wadas Village.

²² LBH Yogyakarta. (2019). Paradoks Pembangunan Bendungan Purworejo.

<https://lbhyogyakarta.org/2019/02/25/paradoks-pembangunan-bendungan-purworejo>.

²³ Ibid.

²⁴ Nuswantoro. (2018). Warga Wadas Tolak Pengerukan Bukit Untuk Proyek Bendungan Bener. Mongabay. <https://www.mongabay.co.id/2018/04/23/warga-wadas-tolak-pengerukan-bukit-untuk-proyek-bendungan-bener/>

The Wadas farmers also depend on the abundance of natural products for their livelihood. The women and men weave besek - a covered squared basket of plaited bamboo, process palm sugar, do farming, cultivate durian, cubeb, coconut, and raise livestock. The loss of springs due to andesite mining also endangers the lives of farmers (Wadon Wadas). If water is lost, Wadon Wadas cannot carry out religious activities like worship and purification, and housework activities²⁵.

The community commits to maintain the ecosystem of Wadas Village especially agricultural land, therefore the community who are the members of the local organization, Gempadewa, expressly refuse. In addition, the community believes that even if the government provides compensation over land acquisition, the system will have a negative impact on the community. The community will become consumptive after receiving the compensation; the money they receive will not be able to sustain their lives in the long term. As a result, the community will fall into poverty. This makes a lot of sense because the majority of Wadas Village community do not have a good entrepreneurial skill. The majority, especially those affected are in the non-productive age category²⁶.

2. The Community's Resistance

The Wadas Villager' rejection of the Bener Dam development plan has been carried out since the socialization stage related to land acquisition for the construction of the Bener Dam on 27 March 2018 which was held by the Central River Basin - Serayu Opak (BBWS-SO). At that time, Wadas residents simultaneously walked out of the socialization forum.

During the Public Consultation on April 26 2018, the villagers protested and unfurled banners of rejection because the public consultation mechanism was far from deliberation to reach consensus. Wadas villagers were actually asked to sign a letter under the pretext of "name matching" but it turned out that the letter was changed to a public consultation approval letter. In this case, there has been a form of fraud committed by the proponent in the land acquisition process²⁷.

On November 23, 2020, representatives of the Wadas Village Community who rejected the mining of the andesite mining in Wadas Village reported their case to the Indonesian Ombudsman Representative of Central Java for maladministration committed by the Governor of Central Java on the issuance of the Decree on the Extension of the Permit for Determination of the Location for the Construction of the Bener Dam.

²⁵ LBH Yogyakarta. (2021). Wadon Wadas Menagih Janji Tolak Keras Pembangunan Batuan Adesit di Desa Wadas. <https://lbhyogyakarta.org/2021/04/08/wadon-wadas-menagih-janji-ke-bbws-serayu-opak/>

²⁶ LBH Yogyakarta. (2019). Loc.cit.

²⁷ LBH Yogyakarta. (2021). Keberatan dan Penolakan Warga Wadas Atas Adanya Rencana Pelaksanaan Inventarisasi dan Identifikasi Subjek dan Objek Pengadaan Tanah di Desa Wadas. <https://lbhyogyakarta.org/2021/02/11/keberatan-dan-penolakan-warga-wadas-atas-adanya-rencana-pelaksanaan-inventarisasi-dan-identifikasi-subjek-dan-objek-pengadaan-tanah-di-desa-wadas>

On February 11, 2021, Gempadewa, the community organization sent a representative to submit a letter of objection and rejection of the planned implementation of the inventory and identification of the subject and object of land acquisition in Wadas Village, Bener District, Purworejo District, because the community continue to reject the plan for the Andesite stones mining in Wadas Village. The submission of this objection letter is a form of the community's commitment to preserving nature and the environment. The community's demands are: asking the government to abolish Wadas Village as the object of the Andesite Mining location in Wadas Village and cancel the plan for the implementation of the inventory and identification of subjects and objects of land acquisition in Wadas Village, Bener District, Purworejo Regency.

March 4, 2021, women who are the members of Wadon Wadas held a hearing with the Head of the Purworejo Police at the Purworejo Resort Police Office (Polres) demanding law enforcement officials and stakeholders to respect the Wadas community who reject the andesite mining plan in Wadas Village. In addition, Wadon Wadas reminded the police that law enforcement must be enforced to fulfill a sense of justice for the community, not as a tool to silence the community because of differences in views. They argue that Wadas Village community is struggling to protect their environment based on the provision stated in Article 66 of Law Number 32 of 2009 concerning Protection and Management of the Environment: "Everyone who fights for the right to a good and healthy environment shall not be prosecuted based on criminal and civil lawsuits".

On April 24, 2021, Wadas villagers held a peaceful demonstration along the village road. At noon at around 11.00 WIB, a group of police officers drove a car and brought full weapons into the area to conduct socialization and determine the mining area. The situation turned chaotic. The apparatus committed acts of violence against residents, including women, by forcibly pulling, hitting, and stepping on them. The police also forcibly pulled, beat, and kicked an advocate of LBH Yogyakarta. 11 people have been criminalized after that.

3. Litigation

The community's struggle against the development is not only carried out by doing a non-litigation process, but also litigation through filing a lawsuit to the Semarang Administrative Court. The community filed an administrative case against the Governor as the issuance of the Central Java Governor Decree Number 590/20/2021 concerning Renewal of Determination of Land Acquisition Locations for Bener Dam construction in Purworejo District and Wonosobo District, Central Java Province dated 7 June 2021. In essence, the reason for the lawsuit is because the Governor's Decree is flawed procedures and substance defects in the issuance process.

The Plaintiff considered that the issuance of the Location Determination Permit (IPL) was not in accordance with the procedure because: (i) the Renewal IPL issuance did not reprocess the remaining land that had not been completed and was not officially announced to the Wadas residents; (ii) IPL is also not in accordance with the Regional Spatial Plan (RTRW) for the Purworejo area. It means that the issuance of the IPL does not pay attention to community rights, disaster aspects, and protection of springs.

IPL is also considered to be defective in substance because: (i) The period of permit for determining the location is regulated in Presidential Regulation Number 58 of 2017 concerning Amendments to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation. In addition, the IPL which is a National Strategic Project has not yet adjusted to the new rules; (ii) There is manipulation (iii) Andesite Mining Excludes Development for Public Interest; (iv) Andesite Mining of more than 500 thousand cubic meters must have its own Environmental Impact Assessment. Another substantive matter, the issuance of IPL is contradicted to the principles of human rights, in particular the right to a good and healthy environment, the right to information, the right to participate in development, and other rights both in the civil and political rights groups, as well as economic, social and cultural rights.

On August 30, 2021, the Semarang Administrative Court officially decided cases registered under Number: 68/G/PU/2021/PTUN.SMG. In their statement, the panel of judges rejected the Plaintiffs' claims and sentenced the Plaintiffs to pay court fees of Rp. 480,000.- (four hundred and eighty thousand rupiahs). The residents filed an appeal against this court decision.

B. The Manado-Bitung Toll Road Construction Case

Aer Ujang is a spring located in Girian Village, Bitung City. There are eleven shower points that come out of the rock cliffs that make up the Aer Ujang site. The rock cliff is located in a valley in the Danowudu customary forest area. The area of Aer Ujang is 1.7 ha.

The Tonsea people (one of the Minahasa tribe's children) discovered the spring that came out of the rock cliffs when they cleared new land for settlement in the early 20th century. Because the springs look like torrential rainwater, the site is called Aer Ujang.

Aer Ujang is also a Minahasa traditional site. Since the establishment of the Danowudu Traditional Village in 1908, which is a collection of villages of the Tonsea indigenous people in the region, Aer Ujang has been considered a traditional site. The forest area that surrounds the Aer Ujang spring is also considered a customary forest that is sacred from generation to generation.

At the beginning of the establishment of the Danowudu Traditional Village, the maintenance of the Danowudu Traditional Forest area including the Aer Ujang site was entrusted to a traditional leader named Arnoldus Pinasang. In

order to prevent other cultivators from destroying the forest, Arnoldus Pinasang registered the land he protects including the Aer Ujang spring area into the Land Ownership Register, with an area of approximately 49,000 m².

In 1953, Arnoldus Pinasang donated a part of the land registered in the Land Ownership Registry, verbally to the Danowudu Indigenous Village Community. Since then, the Danowudu Traditional Village community has maintained the customary forest area including the spring site within it. After the division of village boundaries, most of the customary forest lands are included in the Girian Village area. Some of them, including the spring site, are included in the Danowudu Village area.

In 1969, the Municipal Waterworks (PDAM) began to manage the Aer Ujang spring to supply clean water for the residents of Bitung (at that time it was still part of Minahasa Regency). Management is carried out after receiving the blessing of the Danowudu Traditional Village community. At that time, the water source produced by Aer Ujang was able to supply clean water needs for more than 1100 households in Bitung City.

The management of the Aer Ujang spring is provided with a compensation of 5 cents/m³ to the Danowudu Traditional Village community as custodians of the customary forest. At this time, through the Decree of the Mayor of Bitung Number: 188.45/HKM/SK/53/2013, the compensation fund provided by the Bitung City Government is Rp. 7,500,000 per month.

In 1975, Bitung became an Administrative City so that all villages changed their status to villages including Danowudu Village which became Danowudu Village. Because the Village Register was burned when Danowudu Village was burned by the National Army (TNI) during the Upheaval of the Universal People (PERMESTA) rebellion in the late 1950s, in 1981 a re-measurement of the land belonging to the Danowudu Traditional Village community was held. The land area of Aer Ujang measured is 17,526 m² which is then registered in the Danowudu Village Land Ownership Register in Register Number: 330, Folio: 83.

In 1984, the status of the Danowudu Traditional Village was changed into the Negeri Adat Danowudu. Its leadership is divided into administrative matters, which are held by the Danowudu Village Head. Meanwhile, the customary affairs including the management of indigenous peoples' assets are handed over to the customary stakeholders.

1. Bitung Toll Road in the National Strategic Project

In the Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects (PSN), there are 6 PSN development plans in North Sulawesi. One of them is the construction of the 39 km Manado-Bitung Toll Road.

The construction of the Manado-Bitung toll road began in 2017 with the Ministry of Public Works and Housing (PUPR) through the Toll Road Regulatory Agency in charge of the project. This Rp 5.12 trillion project is carried out under a cooperation funding scheme between the government and business entities²⁸.

The Manado-Bitung toll road is divided into two sections. Section 1 of the 14 km Manado-Sukur-Airmadidi toll road is being worked on by the Ministry of PUPR, while Section 2 is being worked on by PT Jasa Marga, namely the 25 km Airmadidi-Danowudu-Bitung toll road. Overall, this project has reached 77.61 percent completion and land acquisition has reached 99.23 percent²⁹.

The presence of the Manado-Bitung toll road is projected to connect several national strategic projects in North Sulawesi. These include the Bitung Special Economic Zone (KEK) project, the Bitung international port, and the Manado-Gorontalo non-toll road³⁰. In addition, there is the Manado-Likupang-Bitung area which is included in the super-priority list for the development of national tourism strategic areas by the Indonesian central government³¹.

2. Conflict - Adverse Compensation

Information about the construction of the toll road was first discovered by the community living around Aer Ujang in 2012. Initially, about 200 people from Girian Village received two socializations from the National Land Agency (BPN) Minahasa Utara. During the socialization, the community were informed that the determination of the location of the toll road would pass through the Girian Permai Housing Center in Girian District. For this reason, the community is advised not to build houses in that location. At that time, people who received the socialization received the toll road construction plan with compensation for the people whose houses were affected by land acquisition.

In 2015, the location of the toll road was suddenly shifted to the north almost 100 m from the previous location without the community's consent. The determination of the new location crosses a plot of land controlled by about 130 people in Girian Village. The new location also crosses the Danowudu Indigenous Forest area.

In 2016, 130 landowners affected by toll road locations held consultations with the Land Acquisition Committee. During the deliberation, residents rejected the price offered by the developer, which was Rp. 58,000 per meter. That also includes the contents of the house building. In addition, the people also did not

²⁸ KPPIP. (2019). Jalan Tol Manado-Bitung. <https://kppip.go.id/proyek-prioritas/jalan-jembatan/jalan-tol-manado-bitung/>

²⁹ Nur Fitriatus Shalihah. (2019). Baru Diresmikan, Ini 5 Fakta Jalan Tol Manado-Bitung. Kompas. <https://www.kompas.com/tren/read/2020/10/02/073000465/baru-diresmikan-ini-5-fakta-jalan-tol-manado-bitung>

³⁰ Presiden RI. (2020). Peraturan Presiden tentang Proyek Strategis Nasional. No. 109.

³¹ BPIW. Ibid.

receive evidence of detailed building values in the appraisal document from the committee.

Between 2017 and 2018, the people affected by land acquisition organized themselves for resistance. They had time to lobby the Presidential Staff Office in Jakarta. In this effort, the community represented by 12 people were met with the toll road appraisal team. However, during the meeting, the community regretted that the appraisal team could not explain the details of the value of the existing building to the committee. KSP promised the community to assign delegates to visit the location and review the toll road construction.

The people also conduct the hearing at the Bitung City Regional House of Representative (DPRD). In the hearing, the Commitment Making Officer for the land acquisition of the Bitung City toll road was also present. However, the meeting did not provide certainty on the demands of the community. The realization of KSP envoys was also not met with the people. While at the Mayor's Office, the community were prevented from attending meetings with KSP delegates and were not allowed to enter the mayor's office.

After a series of rejections, some people whose land was affected by the toll road land acquisition finally agreed to a compensation price of Rp 475,000 per square meter. The amount received does not include the contents of the building. However, they have not yet received information on the appraisal value that they demand to be disclosed to the affected community. There are still around 50 other landowners who still refuse compensation for land acquisition until now.

3. Community's Resistance

After going through a series of consolidations, civil society consisting of local residents, environmental activists, human rights activists, Danowudu indigenous people, and students in Bitung City joined the Aer Ujang Alliance on November 27, 2020.

Previously, the resistances were already conducted by the Danowudu elders since the toll-road plan formulation. As the construction began and was followed up by its harm impact, the wider communities in Bitung City commenced to react with fierce hostility. They form themselves into a collective movement to oppose the toll-road project.

The movement was initiated in 2019 by a group of youth aged 20's from Bitung City, especially those who settled in the district where Aer Ujang site is located. They were originally an activist at 'River School' ('Sekolah Sungai'), a cultural organization which consisted of local artists, environmentalists, journalists, and student activists whose origin was from Bitung City. They frequently orchestrated a discussion on topics around local culture and environment sustainability respectively. From this activity, they started to have insight into toll-road issues. At first, they communicated with Danowudu elders

to merge resistance. Furthermore, they involved public lawyers from LBH Manado to join the movement. Afterward, the communities join themselves into a series of meetings facilitated by activists from River School. Finally, in November 2020, they established Aer Ujang Alliance as a unified organization to advocate for Aer Ujang site as well for the protection of the environment and local culture respectively.

The objective of the consolidation is to provide critical education to the community and strengthen the people's movement in Bitung City. In the future, the Aer Ujang Alliance will become the main forum to protect and preserve the traditional site of the Aer Ujang spring.

4. Threats to the Aer Ujang Traditional Site

The location of the toll road that crosses the Girian District has been shifted 200 m from the previous location. At the new location, the toll road crosses the Danowudu customary forest, including the Aer Ujang spring area. This triggered rejection from the Danowudu Indigenous People.

On July 10 2018, a dialogue was held between the toll road land acquisition committee, Jasa Marga, BPN Minut, PP Presisi, toll road development companies, and the Bitung Police with the Danowudu customary stakeholders. Knowing that there was a shift in the location of the toll road that crossed the customary forest area, the customary stakeholders expressed their rejection of the toll road and asked for the location of the toll road to be shifted from the customary forest area.

The committee stated that since 2012 the location determination had gone through a public meeting attended by the community and the government. In fact, during the public meeting called socialization, the Danowudu indigenous people were never involved. At first, the indigenous people did not question the location of the toll road because it was still outside the customary forest area. However, indigenous peoples began to resist following the 2015 shift across the Danowudu customary forest area.

The refusal of the indigenous peoples was ignored by the government and developers. Because the government has decided the project as the national strategic project and has been endorsed by the local government. After the meeting, the developer started to work on the toll road by clearing customary forest land. The felling of trees in the Danowudu customary forest area only stopped in December 2018. Land clearing stopped after the Danowudu indigenous people and the people around Bitung City staged a protest at the location of customary forest land clearing on 23 December 2018.

In 2019, the Adat Functionary of Danowudu filed a lawsuit against four people at the Bitung District Court. The lawsuit is based on the illegal actions of the four people who made a certificate of ownership of the Aer Ujang land area of 17,000 m². As a result, the developer paid compensation for the land

acquisition of the Danowudu customary forest to the four people. Therefore, the panel of judges at the Bitung District Court who examined the case stated that the lawsuit, which involved BPN, the District Government, and National Road Executive Agency (BPJN) as the parties, was unacceptable. Based on this decision, the indigenous people submitted a judicial review to the Supreme Court and it has not been decided until today.

The toll road works had stopped for almost two years. In March 2020, the Minister of PUPR, Basuki Hadimuljono, conducted a direct inspection of the Aer Ujang location. At that location, the Minister of PUPR stated to the community and indigenous people of Danowudu who were present at the location at the time, that the Ministry of PUPR would avoid environmental damage in building infrastructure. For this reason, the location of the Manado-Bitung toll road, especially Section 2B, must be shifted 200 m from the Aer Ujang spring.

Minister of PUPR, Basuki Hadimuljono stated, "I would not dare to put piles in the Aerujang spring area. We would better slide the stake. We will protect this spring. Let's take care of it together... Moreover, this is a spring, the source of life, no one can make it. The Ministry of PUPR does not only build infrastructure, but is also tasked with managing water resources in a sustainable manner."³²

The statement from the Minister of PUPR during his direct visit was not followed up by government officials and developers. On March 11, 2020, the Sulawesi I River Basin I, which is under the Directorate General of Water Resources of the Ministry of PUPR, issued a Letter Number: SA.02.03/BWSS-I/1103-02/2020 concerning Technical Recommendations for Permits to Use Water Resources as Media in Construction of a Customary Land Bridge (STA 30+500) on the Danowudu River on the Manado-Bitung Toll Road. Through the letter, the River Basin Center provides recommendations for the use of Aer Ujang water sources for the construction of concrete toll road bridges. In the letter given based on Jasa Marga's request since March 2018, there was no mention of the requirement for the distance from the concrete construction site to the spring as stated by the Minister of PUPR.

Based on this technical recommendation, on July 21, 2020, the Minister of PUPR through the Director General of Natural Resources issued the Decree of the Minister of PUPR Number: 1202/KPTS/M/2020 concerning the Granting of Permits for the Use of Water Resources. Based on the decision, PT Jasa Marga Manado Bitung was granted a permit to build the Manado Bitung toll road bridge STA 30+500 on the Danowudu River, Bitung City. The permitted piling construction site is as far as 25 m from the spring point. This distance is only added by 13 m from the previous design distance which was only 12 m from the spring.

³² BPJT PU. (2020). Jaga Ekosistem Mata Air Aer Ujang di Jalan Tol Manado-Bitung. PU. <https://bpjt.pu.go.id/berita/jaga-ekosistem-mata-air-aerujang-di-jalan-tol-manado-bitung>

In November 2020, the developer continued the construction of the toll road by only shifting the piles as far as 25 m from the spring point, and not shifting the location of the toll road by 200 m. In fact, at that time, a two meters wide road to the location of the Aer Ujang spring had been dredged with heavy equipment. The land clearing affected the community as they were unable to take water from the springs. This sparked public protests.

Not long after construction resumed, in November 2020, the indigenous people of Danowudu together with some people of Bitung City who were concerned with the preservation of Aer Ujang held a demonstration in front of the entrance to the Danowudu toll road. They demanded the cessation of heavy equipment operations in the Aer Ujang area, the construction of a permanent fence on the outer left side of the spring, as well as calls for shifting the toll road at least 200 meters from the Aer Ujang spring. The protest was met with a forcible dispersal by the Bitung Police. Several youths in Bitung city experienced repression, were pulled and pushed by the police.

5. Violation Against the Right to Water

The impact arising from the construction of toll roads in the spring area is the threat to the safety of Aer Ujang water source. Following the toll-road construction, several water pipes suffered leakages in the Girian District area. The Bitung City Water Company (PDAM) admitted that the toll-road construction affected rupture of water lines that flowed from the water tank and it caused the water pipes leakage. This accident led to the emergence of puddles around the water source area and attracted people, mostly kids, to play around the puddles.

The condition of Aer Ujang itself actually experienced a decline in production in recent years. In its letter to LBH Manado on March 26 in 2021, PDAM claimed that in the last five years there has been a decline in Aer Ujang's production. In line with it, the community said that at first, Aer Ujang was able to provide drinking water to 1100 households in Girian District, Ranowulu District, and its surroundings in Bitung City. Recently, the water source from Aer Ujang only supplies approximately 800 households.

Table 1
Numbers of Water Production of Aer Ujang in 2016-2020.

Year	Production
2016	426002.4 m3
2017	314496 m3
2018	391524.48 m3
2019	397699.2 m3
2020	342576 m3

Source: PDAM Duasaudara, Bitung City

In the aftermath, hundreds of households who lost access to Aer Ujang water source suffered difficulty to acquire water supply. Most of these households must purchase water from a free supplier for Rp 65 thousand per 1200 liters of water. They regularly purchase water once a week for three people per household. The duration of use is differ for each household. It could be longer or lesser according to their utilization. The exact time to gain supply of water depended on the supplying process and the availability of water from the supplier. They need to calculate water usage correctly to secure their water needs without delay of supply process. They also need to spend more time to complete the refilling process when the water is up. These are giving these households a more complex water access rather than acquiring supply directly from the Aer Ujang water source managed by the water authority. After all, households with many members will experience this complexity the most.

V. THE HUMAN RIGHTS SITUATION AT THE BENER DAM AND THE MANADO-BITUNG TOLL ROAD

After analyzing specific human rights violations in each case, this section will analyze the human rights situation at the Bener Dam and the Manado-Bitung Toll Road. The Bener Dam National Strategic Project and the Manado-Bitung Toll Road can in fact threaten environmental protection. Andesite stones to be mined in Wadas Village and the installation of toll road piles in Danowudu can decline the water quality. The impact on the agricultural land of the Wadas Village community will be in short supply of water. Meanwhile in Danowudu, consumers of drinking water managed from Aer Ujang will decrease their production and cut off the supply of drinking water to the community's housing. The decline in the quality of the environment can threaten the enjoyment of the right to life in the future for the Community of Wadas Village, Bitung and surrounding areas. Beside violation against right to water, right to food, and right to environment, some human rights violations also occurred in the case of Wadas and Bitung:

A. Violation on the Right to Security and Neglect of Protection of Human Rights Defenders

The resistance of Wadas Village and Bitung City Community during demonstrations have been responded to repressively by the police. In the community's protest against the installation of andesite mining stakes in Wadas Village, nine people were injured and 11 others were arbitrarily arrested. The same thing happened in Bitung. During a demonstration by the people of Bitung City and the Indigenous Peoples of the Danowudu Village in front of the

Danowudu toll gate, the police officers forcibly pulled the demonstrators, they were beaten and pushed roughly.

In addition, of the 11 people who were arrested by the police in Wadas Village, two of them were public lawyers from the Yogyakarta Legal Aid Institute who assisted the community during the action. They also experienced physical and mental violence from the police. This shows the state's neglect of protecting human rights defenders. In fact, human rights defenders are also one of the vulnerable groups that the state must protect from possible threats of violence³³.

The existence of soil dredging for andesite mining in Wadas Village can affect the soil which becomes vulnerable to landslides and floods during high-intensity rains. The impact is on the agricultural land of residents who can be affected by the disaster. The community are worried that this vulnerability can lead to crop failure and damage to farmers' crops.

This affects the agricultural land production of the Wadas Village Community. The results can supply the food needs of local people. With the continuation of andesite mining, the state has the potential to fail to fulfill its rights to a decent life. The state also takes actions that are contrary to its obligations in fulfilling the rights of citizens to a decent life through the Bener Dam national strategic project.

The state is obliged to implement at the national level a strategy to prevent discrimination in access to food resources. This includes guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology³⁴. Regarding land ownership, the state is also obliged to promote equal access to it, and promote agrarian reform to expand access for the poor and women³⁵.

Article 33 of the 1945 Constitution of the Republic of Indonesia states that "the earth, water, and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people." Regarding the phrase 'for the greatest prosperity of the people', the Constitutional Court's Decision Number 3/PUU-VIII/2010 provides an interpretation that the prosperity of the people as much as possible is a measure of state control without compromising individual or collective constitutional rights. The Court mentions that the benchmarks that can be used are:

- (i) the benefit of natural resources for the people,
- (ii) the level of distribution of the benefits of natural resources for the people,

³³ UN Human Rights Committee. (2018). General Comment Number 36: The Right to Life. UN Human Rights Committee, paragraph 23.

³⁴ UN Committee on Economic, Social and Cultural Rights. (1999). General Comment Number 12: The Right to Adequate Food, paragraph 26.

³⁵ Food and Agriculture Organization of the United Nations. (2004). The Voluntary Guidelines, guideline 8B.

- (iii) the level of people's participation in determining the benefits of natural resources, and
- (iv) respect for the rights of the people from generation to generation in utilizing natural resources.

The national strategic project of the Bener Dam and the Manado-Bitung Toll Road is counter-productive with the implementation of the state's obligation to fulfill land rights. Farmers who control agricultural land in Wadas and the Indigenous Peoples of the Danowudu Country in Bitung are threatened with losing their rights to control the land with the existence of this project.

It can be said that national strategic projects fail to meet the constitutional benchmark of 'people's prosperity' in controlling natural resources. Project development fails to provide equitable benefits and fails to open up equal participation for communities who control agricultural land and indigenous groups whose culture and rights must be respected for generations.

B. Violation Against the Right to Development

Based on case studies in Central Java and North Sulawesi, national strategic projects violate citizens' rights to development. State-directed development should be able to create conditions for the full fulfillment of human rights. Therefore, everyone has the right to participate in, contribute to, and enjoy economic, social, cultural and political development³⁶.

In fact, looking at the two cases above, various forms of human rights violations have occurred during the construction of these projects. Neither the Wadas community nor the Danowudu indigenous people can enjoy their human rights through andesite mining and toll roads.

The existence of development only benefits some people. Meanwhile, on the other hand, minority groups and vulnerable groups who experience rights violations fail to get protection from the state. In this case, the state failed to guarantee development that respects human rights.

Since it first appeared to the public in 2012, the plan for the construction of the Manado-Bitung Toll Road has never involved the Danowudu indigenous people. The change in development location in 2015 that crossed the Danowudu customary forest area totally excluded the indigenous people's participation. In a dialogue held between the Regional Government and the Land Office, the Danowudu Adat Functionary expressed their rejection of the construction of a toll road in the customary forest area. In fact, development is still being carried out in the customary forest areas and even crossing the Aer Ujang spring, which is a cultural site for indigenous peoples.

It can be seen that the state does not really respect the rights of indigenous peoples. Neglect of state obligations through national strategic projects can

³⁶ UN General Assembly. Loc.cit.

threaten the existence of culture, traditions, and the promotion of the Danowudu indigenous people through the natural resources they control as customary land.

C. Violation Against the Community's Right to Participate and Right to Information

Referring to the aforementioned analysis of both cases, the making of a Presidential Regulation as the legal basis for a national strategic project ignores community participation in its formulation. In addition, the development that has a huge impact on the community is not even made by the House of Representatives as a legislative body through a law product. Constitutionally, the community loses its sovereignty in determining the use of its natural resources. In the case of Central Java and North Sulawesi, it can be seen that the use of natural resources through national strategic projects cannot be by Wadas Village Community and the Danowudu Indigenous People. In fact, these projects threaten the fulfillment of other human rights for farmer groups and indigenous peoples. This also creates continuous agrarian conflicts and can thwart efforts to restructure land for all people, especially for farming communities and indigenous peoples.

Moreover, the land to be mined for andesite stone and land for which toll roads will be built, a permit has been issued without participation of the communities. Besides, the community has not been informed about the project plan that affected their land and environment. In the Bener Dam project, the Governor of Central Java, Ganjar Pranowo extended the Location Determination Permit for andesite mining in Wadas Village in June 2021. In fact, the expired permit has been rejected by Wadas Community since 2018. After that, the River Basin Center Serayu Opak wants to install stakes at the andesite mining site in the midst of extending the permit which is still being rejected by the Community.

The same thing happened to the Manado-Bitung Toll Road project. In fact, the Minister of Public Works and Public Housing, Basuki Hadimuljono visited the Aer Ujang location and expressed his rejection of the construction of the toll road in the spring area. In fact, the Sulawesi I River Basin Center under the Ministry of PUPR issued a Technical Recommendation on the Use of Water Resources for the construction of toll roads to PT. Jasa Marga Manado Bitung as the developer. This recommendation was then strengthened by a decision to grant a permit by the Minister of PUPR himself in July 2020. The granting of the permit did not involve the participation of the people, especially indigenous peoples, who rejected the construction of toll roads. The reason is clear, the development crosses customary forest areas and spring sites that have been guarded for generations by the Danowudu indigenous people.

In fact, in the Danowudu customary forest area, the Toll Road Land Acquisition Committee made compensation with several residents who claimed to be the owners of the land in the customary forest area which became the

location for the construction of the toll road. In fact, customary forest areas are collectively controlled by indigenous peoples for generations and do not belong to individuals. In this case, the Toll Road Land Acquisition Committee formed by the Bitung City Government ignores the land acquisition procedure that respects the existence of indigenous peoples.

Third, after issuing permits from the Governor of Central Java and the Minister of PUPR, the Serayu Opak River Basin continued to install stakes at andesite mining sites. Likewise, Jasa Marga and PP Presisi as toll road developers continue to build piles and toll road bodies in customary forest areas. Both activities were immediately rejected by the community. Wadas people closed the road access to the mining site. This triggered clashes between the people and dozens of Central Java Police officers who were escorting officials from the Serayu Opak River Basin which led to arrests and violent actions by the police.

In Bitung, indigenous people demonstrated at the Aer Ujang site. Their action was blocked by Bitung Police officers who allowed the dredging of the land at the spring location to continue to be carried out by heavy equipment belonging to the developer.

D. Violation Against Freedom of Expression

The Wadas Community and the Danowudu Indigenous People both held demonstrations to reject national strategic projects in their area. Wadas community held a demonstration by occupying the access road to the andesite mining site. In Bitung, indigenous people took action in front of the Danowudu toll gate. Both actions were met with repressive action by the police.

Responding to the demonstration, both the Central Java Police and the Bitung Police took actions on the grounds of preventing the spread of Covid-19. In fact, the number of police officers deployed by the Central Java Regional Police and Bitung Police was quite large and created a jostling situation, which could lead to the spread of Covid-19. Meanwhile, the people protested applying health protocols and not crowding each other.

The Central Java Police and the Bitung Police took actions that violated the rules in silencing people's freedom of expression. The officials reasoned that the demonstration held by the Wadas Community and the Danowudu indigenous community was an act of expressing opinions in public without a permit. This reason has no legal basis and is contrary to the obligations of government officials under the laws and regulations.

Based on the Law on Freedom of Expression of Opinions in Public, it is enough for the public to notify the police of the planned demonstration that will be held. The aim is that the police can protect the participants of the action and the public interest. Upon the notification, the police officers are obliged to issue

a receipt of the notification³⁷. The latter was then interpreted arbitrarily by the Central Java Police and the Bitung Police as a permit from the police to allow or not conduct demonstrations.

The reasons used by the Central Java Police and the Bitung Police show that there are intentions to silence citizens' freedom of expression. In particular, against demonstrations against government projects. In this case, the police put themselves more in protecting the government than protecting the community in exercising their human rights.

VI. CONCLUSION

In the Bener Dam case and the Manado-Bitung Toll Road Case, the President and the Ministry of Public Housing and People's Works, with the support of Central Java Governor and North Sulawesi Governor implemented a National Strategic Project without a prior consultation with the communities. On account of this, the projects were carried out without information and community participation. When the government insisted on manifesting the project in the two locations, the community resisted in various ways, from verbal refusals, hearings, to large demonstrations. However, all of these community actions were ignored by the government. Even though minor developments were made in regards to the point of development locations, overall, the government continued to build in both locations with the community's resistance.

The cases exhibited many violations on human rights; the right to information, the right to participation, the right to water, the right to a healthy environment, the right to food, the right not to be arbitrarily arrested, the right of indigenous peoples, and the right to development, the right to freedom of expression, and the right to security. Those human rights violation were carried out through various forms, such as neglecting community participation, community criminalization, violence against the community who refuse on the construction of the Bener dam and the Bitung-Manado Toll Road, disbanding demonstrations, using violence against community who are expressing their opinions, intimidating Wadas community, and being forced to receive compensation. These further acts of abuse were conducted separately in both regions by the executive branches which are Major of Bitung City, River Basin Centre of Java and Sulawesi, and North Sulawesi Highway Department. Moreover, the law enforcement also took actions of violation, in this case the Regional Police of Central Java and Bitung Police Department.

The government's argument that the construction of the Bener Dam is for the public interest (public need-based approach) is invalid when it is known that the construction of the Bener Dam is actually to support the needs of other national strategic projects. The two cases show that the community does not have the right to decline development plans that are projected to take place in their

³⁷ Pemerintah RI. (1998). Undang-Undang Kemerdekaan Menyampaikan Pendapat Di Muka Umum. No. 9.

area, nor do they have the right to receive information and participation. The communities are not the subject of the developments. When people refuse these developments, intimidation and criminalization are the answer. Likewise, the Administrative Court of Central Java - in this situation representing the judicial branch as a state actor - sided with the government which upheld the law and human rights violations in the Bener Dam case through a court decision it issued.

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