

## **Waiver of Rights for Parties Objecting to Compensation in Land Acquisition for Public Interest**

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### **Abstract**

*The transfer of land rights held by individuals to the state as the result of land acquisition for development in the public interest often gives problems in its implementation. One of those is the issue of the amount and form of compensation for the entitled parties. Specifically, this study discusses the procedure for submitting objections by the people communities and affected agencies as parties entitled to receive compensation due to land acquisition and questions the guarantee of justice and the realization of legal certainty in land acquisition's implementation. This study uses a normative juridical method. Based on the research, it can be concluded that in the event of an objection regarding the amount and form of compensation, the entitled party can file an objection lawsuit with the district court and file a cassation appeal to the Supreme Court against the district court's decision. Then, if the entitled party rejects the compensation after a cash payment offer has been made, the agency requiring the land can deposit the compensation money with the district court as consignment*

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## **1. INTRODUCTION**

Land is a vital human need. Buildings are built on it, essentially one of the three basic human needs, along with food and clothing. Furthermore, land is used by humans as a medium for growing food sources, which are then used to sustain their lives. Therefore, ownership of land means that a person has the right to occupy, use, and benefit from whatever they can obtain from that land.

In Indonesia, everything concerning land and individual ownership of land is regulated by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The UUPA represents one of the Indonesian government's major efforts to regulate land in Indonesia after a long period of continuing to use regulations left over from the Dutch East Indies government. One of the land rights that exists and is regulated in the UUPA is the right to own land. Article 20 of the UUPA states that the right to own land is hereditary, the strongest and most complete, and is not limited by time. The only thing that limits the right to own land is the rights of others. This is in line with Article 6 of the UUPA, which states that all land rights have a social function. The implementation of this function is often linked to the public interest, which, as a result, the right to own land, which is a form of land right, can be revoked. The revocation of a person's property rights is carried out by the state in the interests of the nation and state by providing appropriate compensation.

In principle, the revocation of land rights for the public interest must balance individual interests and public interests. However, before that, the community as holders of land rights have several rights that must be fulfilled, namely the right to obtain information on the

implementation of land acquisition plans for the public interest, the right to file a lawsuit objecting to the determination of the location of development, and the right to receive fair and appropriate compensation. After going through various processes to reach an agreement on the amount of compensation between the rights owner and the state, the land is then released using a deed of release of rights.

Given the lengthy process of transferring individual ownership rights to the state, it's not surprising that numerous objections have been raised by the parties involved during its implementation. These objections arise from the process of notifying the community of the development plan, determining the location, and finally, the process of providing compensation. This is considered reasonable because, as previously explained regarding the balance of interests, the process of transferring land rights to the state must also ensure fairness and legal certainty.

Regarding the balance of interests, if the rights holder feels an imbalance in the implementation of land acquisition, Law Number 2 of 2012 concerning Land Acquisition for Public Interest (Land Acquisition Law) allows the rights holder to file an objection lawsuit. Objections to the determination of the development location are filed with the local Administrative Court and objections to the amount of compensation are filed with the local District Court. If there are still parties who object, both can be appealed to the Supreme Court. The Supreme Court's decision, which has obtained permanent legal force, then becomes the basis for whether or not the land acquisition will continue and the basis for payment of compensation to the rights holder. The problem is that when the Supreme Court's decision is deemed to be detrimental to the rights holder, it is often ignored, and ultimately, the rights holder must give in and accept the determination of the development location and the amount of compensation that has been determined.

Previous research that was used as a reference in writing this research is research entitled *Legal Certainty Regarding Compensation for Land Acquisition for the Construction of the Cisumdawu Toll Road*, " written by Shelin Nabila Wibowo, Yani Pujiwati, and Betty Rubiyati. The study addresses the inconsistencies often found in regulations regarding land acquisition for public interest, thus creating legal uncertainty. The subsequent study is entitled *Analysis of Compensation Determination in Land Acquisition for Public Development (Study at the Simalungun Regency Land Office)*, written by Hotmaria Sariani Silalahi, Triono Eddy, and Dayat Limbong. In their research, the authors focused on the land acquisition process and the role of the National Land Agency (BPN) in it. Finally, the research, entitled *Study on the Implementation of Consignment in Land Procurement for Public Interest at the Boyolali District Court* written by Nonik Eka Salsabila and Harjono. This study discusses the implementation of consignment as a form of compensation in land acquisition for public purposes. The aforementioned studies do not explicitly discuss the procedures or mechanisms for relinquishing land rights for parties who object to compensation in land acquisition for public purposes.

This research was conducted using a normative juridical method. Research using the normative juridical method is research conducted by studying various types of legal materials, starting from primary and secondary legal materials regarding applicable written legal norms. The primary legal materials used in this research consist of laws and regulations governing the implementation of land acquisition for the public interest and court decisions regarding objections to the amount of compensation in the implementation. Meanwhile, the secondary legal materials used are research results, scientific papers, and theses.

This type of research is descriptive and analytical, aiming to provide a comprehensive overview of the relinquishment of rights for land owners who object to the stipulated

compensation amount. This research also examines the guarantee of fairness and legal certainty in the compensation award process.

## 2. RESEARCH METHODS

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues. Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions.

The type of approach used in this research is the Conceptual Approach through a doctrinal perspective and the Legislative Approach, namely, analyzing laws and regulations that have a correlation and legal relationship to the problem being studied. The author's data collection method uses a literature study related to the object and cites references including Legislation, Journals, Books, Articles and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts, and theories, as well as an understanding of the results of the analysis itself.

## 3. RESEARCH RESULTS AND DISCUSSION

### 3.1. Procedures for Filing a Lawsuit Objecting to the Amount of Compensation

The Land Acquisition Law defines land acquisition as an activity of providing land by providing fair and appropriate compensation to parties who have rights to the land being compensated. As stated in the UUPA regarding the social function of land, the Land Acquisition Law embodies this function in the main and main objective of land acquisition, namely the provision of land for development implementation, which in the future is expected to be useful for the welfare and prosperity of the nation, state, and society. Therefore, land acquisition for the public interest must not be carried out arbitrarily and without a plan but must be carried out in accordance with the regional spatial plan (RTRW), national/regional development plans, strategic plans, and work plans of each agency that requires the land.

The public interest referred to in the Land Acquisition Law has its own definition and limitations. The public interest is defined as the government's obligation to realize the interests of the nation, state, and society. The public interest must not be misused for personal or group gain, but must be utilized to the greatest possible extent for the prosperity of the people. Article 10 of the Land Acquisition Law, as amended by Law Number 6 of 2023 concerning the Ratification of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law), outlines the use of land for public interest in development:

- a. Land and national security;
- b. Transportation facilities and infrastructure;
- c. Waters;
- d. Electricity and telecommunications;
- e. Oil, gas, and geothermal;
- f. Public facilities;
- g. Government facilities and infrastructure;
- h. Educational infrastructure;
- i. Industrial area; and
- j. other special areas.

To achieve the final result of land acquisition, namely the establishment of places or facilities and infrastructure as described above, the government must go through several stages in its implementation, namely planning, preparation, implementation, and delivery of results. The implementation of each stage involves the government as the organizer, agencies as the parties requiring the land, and the community and agencies that own the land rights as parties entitled to receive compensation. The involvement of these three components in land acquisition is mandatory, especially active community participation. In order to achieve land acquisition activities based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony.

The achievement of the principles in land acquisition means the government's success in organizing land acquisition, which can be proven by obtaining land for the agencies that need it and providing fair and appropriate compensation to the entitled parties. Compensation in the Land Acquisition Law is defined as a fair and appropriate replacement for the entitled parties in the land acquisition process. In relation to the principle of justice, the Land Acquisition Law states that there is a guarantee of adequate compensation to the entitled parties so that the parties concerned have the opportunity to be able to live a better life. Based on this understanding, it can be concluded that in order to achieve the goal of a better life, the amount of compensation given as compensation to the entitled parties must at least be as large or equal to the land whose rights will be transferred to the state.

In the Land Acquisition Law, the compensation mechanism is included in the land acquisition implementation stage. After completing the public consultation stage for the development plan to reach agreement on the location of the planned development, attended by the entitled parties, managers, and users of state/regional property, a land inventory and identification are then conducted. This inventory and identification activity includes measuring and mapping each plot of land and collecting data on the entitled parties and the land acquisition object. The results of the inventory and identification will then serve as the basis for determining the entitled parties for compensation.

To determine the amount of compensation received by the entitled party, the land agency will appoint an appraiser who will assess each plot of land. The amount of compensation contained in the assessment results by the appraiser is final and binding and will be used as the basis for determining compensation, which can be in the form of money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties. To reach an agreement on the amount of compensation, the land agency holds discussions with the entitled party. If the entitled party agrees on the amount of compensation, then the results of the agreement become the basis for granting compensation.

On the other hand, if an agreement is not reached, then based on Article 38 of the Land Acquisition Law, the entitled party may file an objection to the local district court no later than 14 (fourteen) working days after the compensation determination deliberation. If there is still an objection even after the district court has issued a decision regarding the objection lawsuit, the entitled party within the same period of 14 (fourteen) working days may file an appeal to the Supreme Court. Conversely, if the entitled party rejects the amount of compensation and does not file an objection to the district court, the entitled party is deemed to have accepted the amount of compensation and will be given it according to the agreement.

The government, through land agencies, provides an opportunity for the public as parties affected by the implementation of land acquisition or as parties entitled to compensation to file objections regarding the amount of compensation they will receive. The objection is submitted to the local district court within 14 (fourteen) days. Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Depositing Compensation to the District Court in Land Acquisition for Public Interest (PERMA Pengajian Kebatan), as amended twice through PERMA Number 2 of 2021 and PERMA Number 2 of 2024, defines a day as a calendar day. This definition has a provision that if the last day falls on a holiday, the calculation will continue on the next working day. Parties entitled to submit a written objection to the district court or the objection applicant include:

- a. Land rights holder;
- b. Management rights holder;
- c. Vow for waqf land;
- d. Owners of land formerly owned by customary law;
- e. Customary law communities;
- f. Parties who control national land in good faith;
- g. The holder of the land ownership policy; and/or
- h. the owner of buildings, plants, or other things related to land.

Meanwhile, the party responding to an objection is the land agency itself, represented by the Head of the National Land Agency Regional Office at the Provincial level or the Head of the Regency/City Land Office, according to their respective hierarchy. However, in practice, other parties may sometimes emerge who can also be called as defendants or respondents to the objection due to their significant connections and roles in the process of determining and awarding compensation.

Furthermore, the objection submitted in writing must include the identity of the objection applicant, the identity of the objection respondent, information on the determination of the construction location, the implementation of the compensation determination deliberation, and the reasons for the objection to the amount of compensation. In addition to submitting these matters, the objection applicant must also attach preliminary evidence in the form of a photocopy of the objection applicant's identity and a photocopy of written evidence proving that the objection applicant is the party entitled to the land that is the object of land acquisition. After the files have been examined and received by the district court clerk, the objection applicant then pays a down payment on court costs.

Cases that have been registered and scheduled for trial will begin to be examined in a trial that generally must be attended by the applicant and the respondent. The Supreme Court Regulation on Filing Objections stipulates that an objection can be declared dismissed if the applicant, who has been properly and legally summoned, remains absent from the trial by the second day of the trial. Regarding the absence of the respondent, the trial will continue without the presence of respondent, who still has the obligation to provide evidence. Unlike typical trial examinations, the trial examination for filing an objection does not have stages of filing exceptions, counterclaims, interventions, replies, duplicates, or conclusions by the parties. The trial examination process is conducted in an open session and is carried out without being preceded by a mediation process between the two parties. The mediation process is replaced by peaceful efforts that will continue to be attempted by the judge throughout the course of the trial examination until the verdict is pronounced. If a peace agreement is reached during the examination process, the judge will issue a deed of peace.

The decision on the objection is rendered after the respondent's objection is read, the respondent's response to the objection, and the examination of the evidence. If the judge upholds the objection, the judge must determine the amount of compensation and order the respondent to pay the specified compensation and order the respondent to pay court costs. If the objection is rejected, the decision will include the rejection of the objection and the order for the applicant to pay court costs.

Against the district court decision that still has objections from either the applicant or the party entitled to compensation or from the defendant, the parties can file a legal remedy, namely a cassation request to the Supreme Court. This cassation request must be submitted no later than 14 (fourteen) days after the district court decision was issued. While the submission of the cassation memorandum is made no later than 7 (seven) days after the statement of cassation and the submission of the counter cassation memorandum is also made no later than 7 (seven) days after the submission of the cassation memorandum. Then, within a maximum of 30 (thirty) days from the registration of the cassation, the Supreme Court is obliged to decide on the cassation request. The cassation decision handed down by the Supreme Court is final and binding. In the case of an objection lawsuit, there is no legal remedy for judicial review. This makes the cassation decision the basis for carrying out the next stage in land acquisition, namely the provision of compensation and the release of rights from the entitled party to the state. The title and number of sub-chapters are adjusted to the needs to answer the problem formulation that has been presented in the problem background chapter, with the following writing provisions: using Times New Roman font size 12, ***bold***, 1.5 spacing, using Arabic numerals.

### **3.2. Release of Rights for Parties Who Object to the Amount of Severance Pay**

Article 41 of the Land Acquisition Law states that the obligation to relinquish rights by the entitled party is carried out simultaneously with the provision of compensation. The entitled party in receiving compensation must be responsible for the accuracy and validity of the evidence of control and ownership they receive. However, in reality, there are still many entitled parties who are unwilling to accept the amount of compensation that has been determined either through deliberation or based on the decision of the district court or the Supreme Court. In such cases, the land agency and/or agency requiring the land can entrust the compensation to the local district court.

The deposit of compensation in court is preceded by applying to deposit compensation with the court. The applicant, in this case, the agency requiring the land, is required to deposit the compensation into the court account when paying the down payment for court costs. The court clerk then records the deposit in the consignment journal, the court's auxiliary cash book, and the financial master book. The applicant's application must include the applicant's identity, the respondent's identity, the reasons for the deposit request, and the request for the deposit of compensation.

The process of depositing compensation in court is then continued with the submission of the application file to the chief justice, who then appoints a court bailiff and two witnesses to make a payment offer to the defendant at the defendant's residence. The payment offer is made directly to the defendant or to his attorney in the amount of compensation, and also notifies the consequences if the entitled party rejects the payment offer. If the entitled party subsequently states its willingness to accept the compensation, the applicant and the defendant will be summoned, and the applicant will be ordered to hand over the compensation to the defendant. Conversely, if the entitled party declares its refusal to the payment offer or the entitled party who previously stated its willingness to accept payment does not appear after being

summoned by the chief justice, the compensation will then be handled to be deposited in court.

To reach the stage of determining the deposit of compensation money in court, the court chairman will set a hearing date to determine that the entitled party refuses to accept the payment offer, and will then be deposited in court. In the determination hearing, the absence of the entitled party as the respondent does not affect the course of the trial and does not prevent the court from depositing the compensation money. If, at a later date the entitled party changes its mind and states its willingness to accept the contents of the decision, the compensation money is handed over to the entitled party by the court clerk in accordance with the contents of the decision. About the court decision regarding the deposit of compensation money, in theory, the district court has the authority to execute the land acquisition object.

Compensation can also be secured in the district court for land acquisition objects that are currently the subject of a court dispute, whose ownership is still in dispute, subject to a seizure by an authorized official, or that are used as collateral at a bank. In these circumstances, compensation can only be collected after a legally binding decision has been rendered, after the seizure has been lifted, and after the bank's approval has been obtained.

After going through the process of determining the deposit of compensation money in the district court, ownership of the land acquisition object is fully transferred to the state. This results in the termination of the land rights of the entitled party, and any evidence demonstrating those rights must be declared invalid. With the termination of the entitled party's land rights, the land subject to the land acquisition then changes status to state land. The release of land rights also means that the agency requiring the land does not obtain the land through a sale and purchase transaction, but rather through a process of providing compensation.

The stages of releasing rights to the land acquisition object are carried out before the head of the land office by the entitled party, which must be preceded by making a statement of release of rights before a notary. The release of rights to the land acquisition object must be recorded in a report on the release of rights to the land acquisition object. If an agreement is reached regarding the amount of compensation during the deliberations to determine compensation or the party entitled to receive the decision of the district court and/or the Supreme Court or accepts the offer of compensation payment, the entitled party has the following obligations:

- a. signing a statement of release/assignment of land rights;
- b. to transfer land, buildings, and/or plants and other things related to land;
- c. sign a statement that the entitled party is absolutely responsible for the truth and validity of the evidence of control or ownership of the land object;
- d. signing the release of rights notice; and
- e. Submit a photocopy of your identity card or your attorney's ID.

Meanwhile, if no agreement is reached, it is continued by submitting an objection to the district court and an appeal to the Supreme Court, and an offer of compensation payment has been made by the court clerk but the entitled party still states its rejection, then by depositing the compensation money in the district court, the entitled party has released the rights of the object of land acquisition. The release of rights in such cases confirms that the agency requiring the land has performed its duties in the land acquisition process, namely, providing fair and appropriate compensation. Regarding whether or not compensation is received by the entitled party, the agency requiring the land has made efforts to fulfill the performance.

### 3.3. Guarantee of Justice and Legal Certainty in the Provision of Compensation

The next question is how to ensure justice and legal certainty for all parties involved, especially those entitled to it. According to several legal experts, such as Gustav Radbruch, Sudikno Mertokusumo, Bagir Manan, and Maria S. W. Sumardjono, the most fundamental aspect of legal certainty is the existence of laws, enshrined in statutory regulations. Sudikno thinks that legal certainty must guarantee the implementation of the law, the obtaining of rights for those who are entitled, and the implementation of a court decision.

This aligns with the goals the Indonesian government seeks to achieve through the Land Acquisition Law. Regulations created to replace outdated regulations that no longer align with societal dynamics and developments are an effort to achieve legal certainty. Consequently, various implementing regulations, from government regulations, ministerial regulations, to Supreme Court regulations, must adhere to the existing regulations to avoid regulatory ambiguity and multiple interpretations that could lead to a lack of legal certainty.

If legal certainty is inherently linked to the existence of statutory regulations, then it can be said that the implementation of land acquisition for the public interest has guaranteed legal certainty for the parties involved. This is evidenced by the existence of various laws and regulations governing it, starting from the Land Acquisition Law as the main law, Government Regulation No. 19 of 2021 as the implementing regulation of the law, to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 19 of 2021 as the implementing regulation of government regulations, and Supreme Court Regulation No. 3 of 2016 as the technical regulation for filing objections to the district court. However, despite being characteristic of positive regulations, legal certainty also means the enforceability of a court decision that has obtained permanent legal force. In terms of providing compensation to the entitled parties, there are still many inconsistent applications, which means that there are certain parties who do not comply with the court's ruling, as well as the judge's failure to assess and consider the position of the entitled party. In addition, there must be strengthening in the role of notaries as public officials who are authorized to make deeds related to land to guarantee legal certainty for the parties, especially in the stage of releasing land rights.

Meanwhile, justice is frequently mentioned in many articles in various regulations governing land acquisition for public purposes. Justice itself is one of the principles in the implementation of land acquisition, which guarantees a better life for the entitled party through the provision of appropriate compensation. Based on this explanation, a replacement, in this case compensation for the entitled party, can be said to be fair when the entitled party obtains a better life through said compensation. Furthermore, if the entitled party is unable to obtain a better life, can the provision of compensation for land acquisition be considered unfair? This question certainly cannot be answered simply by...*of* or *no* because the discussion of justice, especially legal justice, is much deeper than the causal relationship as described previously.

Thomas Aquinas divides justice into two types, general justice and special justice. General justice is justice according to what is contained in laws and regulations, the implementation of which must be in the public interest. Meanwhile, special justice, as justice based on equality and balance or proportionality, is divided into three types: distributive justice, cumulative justice, and vindictive justice.

Legal philosopher John Rawls argues that justice is a measure that should be given to achieve balance between various interests. In justice, according to John Rawls, there

are two major principles, The first is the principle of maximum balance. Through this principle, everyone has the same right to fundamental freedoms that are indistinguishable from one another. Rawls emphasizes this principle, believing that if everyone has these equal rights, justice will be achieved. However, in social life, despite having the same basic rights, economic and social inequalities still occur. This leads Rawls to his second principle of justice, which also consists of two principles: difference and equality of opportunity. These two principles will ensure the achievement of the desired balance. The principle of equal opportunity will provide equal opportunities for everyone, while the principle of difference provides different rights and obligations, but still in a proportional order.

In relation to land acquisition for public purposes, both theories of justice can be applied to the stage of providing compensation to entitled parties. This is evident in the involvement of the community and affected agencies as entitled parties in every stage of the land acquisition process. This also applies to the most crucial stage, determining the amount of compensation. To achieve justice, entitled parties are given the right to file an objection lawsuit in the district court and appeal to the Supreme Court. Filing this lawsuit provides a way for entitled parties to receive legal advice from judges who adhere to neutrality in carrying out their duties. Although in reality, many judges reject objections in their decisions, at least through the examination process in court, entitled parties can understand the basis for determining the amount of compensation.

#### 4. CONCLUSION

To meet the ever-increasing demand for land over time, the government is organizing land acquisition for the public interest by providing fair and equitable compensation to entitled parties. The provision of compensation to entitled parties begins with a deliberation to determine compensation attended by the community and affected agencies, as entitled parties and agencies requiring the land. If the entitled parties disagree and object to the results of the deliberation to determine compensation, the entitled parties can file an objection lawsuit with the district court. A cassation appeal can be filed with the Supreme Court if any party objects. The Supreme Court's decision, which has permanent legal force, will serve as the basis for the implementation of compensation to entitled parties. If the entitled parties refuse to provide compensation, the agency requiring the land can deposit the compensation money with the district court.

To achieve justice and ensure legal certainty in the implementation of land acquisition, the government has undertaken various efforts, including issuing the Land Acquisition Law as the main regulation and various implementing regulations that can guarantee legal certainty in the implementation of land acquisition. Meanwhile, to achieve justice, the government, through land institutions, is trying to reach an agreement on the amount of compensation for entitled parties. Furthermore, providing an opportunity for entitled parties to fight for their rights through objection lawsuits in the district court is also one way to achieve the justice aspired to in the Land Acquisition Law.

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Supreme Court Regulation Number 2 of 2024 concerning the Second Amendment to Supreme Court Regulation Number 3 of 2016 concerning Procedures for Submitting Objections and Depositing Compensation to the District Court in Land Acquisition for Public Interest (State Gazette of 2024 Number 827).