

Juridical Review of Land Acquisition for Public Interest Based on Law Number 2 of 2012 concerning Land Acquisition for Public Interest

Andhyka Muchtar¹, Akhmad Yani², Muh Nasir²
Program Pascasarjana, Sekolah Tinggi Ilmu Hukum Painan

Article Info

Article history:

Received : 06 March 2024

Publish : 13 March 2024

Keywords:

Land Acquisition

Public Interest

Abstract

Regulations on Land Acquisition for development in the public interest are regulated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest and its Implementing Regulations are regulated by Presidential Regulations and Regulations of the Head of the National Land Agency of the Republic of Indonesia. Land acquisition for development in the public interest is carried out through several stages, namely planning, preparation, implementation and delivery of results. Implementation of land acquisition also often intersects with fundamental legal issues such as human rights, the principle of justice, the principle of balance between the interests of the state and the interests of society both in terms of individual or group. This article was written using the method normative legal research. In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norm.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](https://creativecommons.org/licenses/by-sa/4.0/)



Corresponding Author:

Andhyka Muchtar

Program Pascasarjana, Sekolah Tinggi Ilmu Hukum Painan

andhykamuch@gmail.com

1. INTRODUCTION

In essence, national law recognizes and respects land rights owned by the community, and provides guarantees of legal certainty by establishing and enforcing Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as Law No. 5 of 1960).

Land is a basic needs of human life because land provides many benefits for human life. One of the benefits of land for humans is a place to live. As mandated in Article 33 paragraph (3) of the 1945 [1]. Establishment of Law no. 5 of 1960 is to realize the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates that

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Based on Article 6 of Law no. 5 of 1960 regulates that

"All land rights have a social function."

This provision is the basis that a person's ownership of land must by law be relinquished if at any time the land they own is to be converted and/or developed in order to carry out social functions. This is the starting point for the government in carrying out land acquisition other than Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, provided that the land acquisition is carried out according to the procedures as regulated in the Law.

Land procurement is a series of activities to provide land by means of compensation. There are also those who argue that the meaning of land procurement is any activity to obtain land by providing compensation to those entitled to the land. The procedure that must be followed is by releasing or handing over land rights. The definition of releasing or handing over land rights is the activity of releasing the legal relationship between the holder of land rights and the land they control by providing compensation on the basis of

deliberation. Based on this understanding, in carrying out land acquisition for public purposes, it is necessary to carry out an activity which is essentially carried out through deliberation with the land owner to release the legal relationship between him and the land he controls [2].

In agrarian societies, the relationship between humans and land is religiomagical-cosmic, namely the relationship between humans and land that emphasizes collective control [3]. Procurement of land for development in the public interest is a demand that cannot be avoided by any government. The more advanced society becomes, the more land is needed for public (lay) purposes. As a consequence of living in a state and society, if individual (private) property rights conflict with the public interest, then the public interest must take precedence [4]. However, the state must continue to respect the rights of its citizens if it does not want to be said to be violating human rights.

As for land acquisition, according to Maria S.W. Sumardjono explained the meaning of land procurement, namely that land procurement is an act of the government to obtain land for various development activities, especially for the public interest, where in principle land procurement is carried out by means of deliberation between parties who need the land and land rights holders and land rights holders who The land is needed for development activities (Sumarjono, 2008).

According to Budi Harsosno, land acquisition is a legal act in the form of releasing the legal relationship that previously existed between the right holder and the land needed, by providing compensation in the form of money, facilities or other things, through deliberation to reach an agreement between the land owner and the party who needs it[5]

Land acquisition is an act of the government in order to obtain land for various development purposes, especially for the public interest. In principle, land procurement is carried out by means of deliberation between the parties who need the land and the land rights holders whose land is needed for development activities (Sumardjono, 2008). This shows that the land acquisition process is not simple, because it is directly related to the rights of certain parties (the community) to land.

Furthermore, in 2012 the government enacted Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In Article 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, in this law the term land acquisition is:

"The activity of providing land by providing adequate and fair compensation to the entitled parties."

In the general explanation of Law no. 2 of 2012 stated that one of the development efforts within the national development framework carried out by the government is development for the public interest. Development for the public interest requires land whose procurement is carried out by prioritizing the principles contained in the 1945 Constitution of the Republic of Indonesia and national land law, including the principles of humanity, justice, benefit, certainty, openness, agreement, participation, prosperity, sustainability and harmony in accordance with national and state values.

The principles of land acquisition as stated in the general explanation of Law no. 2 of 2012 must be in accordance with the values contained in Pancasila. In other words, the implementation of land acquisition in Indonesia must not leave the Pancasila corridor. This is to ensure justice for each party. Furthermore, apart from development that is in accordance with the values confirmed in Pancasila and the 1945 Constitution of the Republic of Indonesia, all other regulations governing land acquisition must also be carried out for development in the public interest or the interests of all Indonesian people.

Land acquisition for various purposes often gives rise to conflicts or problems in its implementation, this is caused by the gap between *das Sollen* as stated in the applicable

laws and regulations, and *das Sein* in the form of the reality that occurs in the field (Sumardjono, 2008)

Conflicts often occur, especially regarding compensation for losses. In principle, providing compensation as an effort to realize respect for the rights and interests of individuals who have been sacrificed for the public interest must be carried out appropriately and fairly. However, in reality, compensation is often provided arbitrarily without proper calculation as regulated in the Legislative Regulations. And it is not uncommon for this compensation to be accompanied by coercion which makes the party who has lost their land rights unable to accept it, even though it does not meet their expectations and is unable to return or rebuild a new, better life for them..

2. RESEARCH METHOD

This research is a type of normative legal research, namely legal research carried out by examining library materials or secondary data [6]. Normative legal research is also called doctrinal legal research [7]. In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate (Amiruddin, 2006). This research is intended to examine land acquisition for development in the public interest, where to examine these problems the law is used as a building system of norms which includes legal principles, norms, rules of statutory regulations, as well as doctrines (teachings). This kind of research is a special characteristic of normative research.

3. RESULT AND DISCUSSION

Land acquisition activities involve the interests of two parties in Maria [8] opinion, the two parties in question are government agencies that need the land and the community whose land is needed for development activities. Because land as a basic human need is an embodiment of economic, social and cultural rights, land acquisition must be carried out through a process that ensures that there is no "imposition of the will" of one party on another party. Bearing in mind that people must give up their land for development activities, it must be guaranteed that their socio-economic welfare will not become worse than the original situation, at least it must be equivalent to the situation before the land was used by other parties, therefore land acquisition must be carried out in accordance with the principles - the following principles

1. Humanitarian principle, namely that land acquisition must provide protection and respect human rights, the dignity and worth of every citizen and resident of Indonesia in a proportional manner.
2. The principle of agreement, namely that all land procurement activities are carried out based on an agreement between the party who requires the land and the holder of the land rights. Physical development activities can only be carried out if an agreement has been reached between the parties and compensation has been submitted.
3. Principle of Benefit: Land acquisition is expected to have a positive impact on those who need the land, the affected communities and the wider community. The benefits from the results of development activities must be felt by society as a whole.
4. The principle of justice, the affected community is given compensation that can restore their socio-economic condition, at least equivalent to the original condition, taking into account losses from physical and non-physical factors.

5. Principle of Certainty, Land procurement is carried out according to procedures regulated by statutory regulations, so that the parties know their respective rights and obligations.
6. Principle of Openness, in the land acquisition process, affected communities have the right to obtain information about the project and its impacts, compensation policy, development schedule, resettlement plans and replacement locations (if any), and the community's right to submit their objections.
7. The principle of participation/participation, the participation of all stakeholders in each stage of land acquisition (planning, implementation, evaluation) is necessary to create a sense of ownership and minimize community rejection of the activities concerned.
8. Principle of Equality, this principle is intended to place the position of the party who needs the land and the affected party on an equal footing in the land acquisition process. Minimization of impacts and continuity of socio-economic welfare. The negative impact of land acquisition should be minimized as far as possible, accompanied by efforts to improve the standard of living of the affected communities so that their socio-economic activities do not experience setbacks.
9. The principle of welfare is that land procurement for development can provide additional value for the continuity of life of the entitled parties and society at large.
10. The principle of sustainability is that development activities can take place continuously and sustainably to achieve the expected goals [8].

Based on Law Number 2 of 2012 Article 3 concerning Land Acquisition for Public Interest, land procurement for public interest aims to provide land for development implementation in order to improve the welfare and prosperity of the nation, state and society, while still guaranteeing the legal interests of the entitled parties. The party who needs the land must be able to provide welfare for the owner of the land they will acquire. Moreover, at this time, its economic value tends to increase, because the land area remains constant while the need for land for both public and private development purposes is increasing.

In Article 1 point 6 of Law Number 2 of 2012 it is determined that the Public Interest is the interest of the nation, state and society which must be realized by the government and used for the greatest prosperity of the people. Oloan Sitorus and Dayat Limbong stated that, "in the concept of public interest, 3 (three) things must be fulfilled, namely the appropriation element, the benefit element, the element of who can carry it out and the nature of development for the public interest [9].

The stages of land acquisition are stated explicitly in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest and its implementing regulations have been changed several times, the latest being Presidential Decree Number 148 of 2015 as the fourth amendment to Presidential Decree Number 71 of 2012, stages In land acquisition, it starts from planning, preparation, implementation and delivery of results which are described as follows:

1. Land Acquisition Planning Stage

Land acquisition planning is carried out by each agency that requires land for development in the public interest based on the Regional Spatial Plan and prioritizing or prioritizing development contained in the Medium Term Development Plan, Strategic Plan, Government Work Plan of the Agency concerned. The land acquisition planning in question must be prepared jointly by the agency that requires the land together with the relevant technical agency or can be assisted by a professional agency appointed by the agency that requires the land in the form of a planning document which contains the following :

- A. The aims and objectives of the development plan are to explain the aims and objectives of development for the public interest so that the public or parties with rights understand what the land they own will be used for and the benefits of the development.
 - B. Conformity with the Regional Spatial Plan (RTRW) and the National and Regional Development Plan, meaning that development planning must be in accordance with the Regional Spatial Plan so that agencies that need land for public purposes can prioritize areas included in the Regional Spatial Plan in area to be built.
 - C. The location of the land includes administrative areas such as the name of the village, sub-district, sub-district, province.
 - D. The area of land required describes how much land the agency will need in the development planning process.
 - E. General description of land status, which includes a description of initial data regarding control and ownership of land.
 - F. Estimated time for land acquisition implementation describes the estimated time required for each stage of Land Acquisition implementation.
 - G. The estimated time period for development implementation outlines the estimated time required to carry out development.
 - H. Estimated land value, which contains the estimated compensation value for Land Acquisition objects which includes land, above-ground and underground space, buildings, plants, objects related to land, and/or other losses that can be assessed.
 - I. The budgeting plan contains the amount of funds, sources of funds, and details of the allocation of funds for planning, preparation, implementation, delivery of results, administration and management and socialization.
2. Land Acquisition Preparation Stage

In land procurement, there are several stages that are carried out so that the implementation of land acquisition runs in accordance with applicable laws and regulations. The first stage carried out includes.

A. Development Planning Notification

This planning notification is based on Presidential Decree Number 71 of 2012 Article 11 concerning the Implementation of Land Acquisition for Development in the Public Interest, notification of development planning is carried out by the preparation team which is then conveyed to the community residing at the development location, either directly or indirectly, directly by :

1.) Socialization

Socialization or face-to-face in preparation for land acquisition is carried out based on article 13 of Presidential Decree Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, socialization is conveyed through invitations to the community, on the development location plan through the sub-district head/village head within a period of no later than 3 (three) working days before the meeting is held, the results of the socialization implementation are stated in the form of meeting minutes signed by the Head of the Preparation Team or an appointed official.

2.) Face to face

Face-to-face activities are the same as socialization activities, namely that the community is given an invitation in advance through the subdistrict head/village head no later than 3 (three) working days before the meeting is held, the results of the socialization implementation are stated in the form of meeting minutes signed by the Head of the Preparation Team or the official in charge appointed.

3.) Letter of Notification

The notification letter referred to is based on Article 14 of Presidential Regulation Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, submitted to the community on the development location plan through the sub-district head/village head within a period of 3 (three) working days from the signing of the notification letter. Proof of delivery of notification by letter is made in the form of a receipt from sub-district/village officials or other names, notification can also be made indirectly through print media or electronic media, carried out through local and national daily newspapers or through a website (website) of at least 1 (one) publication on a working day.

B. Initial data collection on the location of the development plan

Preliminary data collection on development plan locations includes initial data collection activities on Entitled Parties and the Objects of the Entitled Party in question include:

- 1.) Land Rights Holder/Owner
- 2.) Management Rights Holder
- 3.) Nadzir
- 4.) Owner of former customary land
- 5.) The party who controls state land in good faith.
- 6.) Holder of basic control over land, and/or owner of buildings, plants or other objects related to land.

Ownership of land as meant by control of state land can be proven by:

- 1.) Certificate of land rights that have expired
- 2.) Land lease letter.
- 3.) Decree on recipients of land reform land objects.
- 4.) Permit to cultivate/clear land.
- 5.) Letter of appointment/purchase of replacement land plot.
- 6.) Basic holder of authority over land, for parties who have evidence issued by an authorized official that proves the existence of the authority in question.
- 7.) Owner of buildings, plants or other objects related to land: Individuals, legal entities, social bodies, religious bodies or government agencies who have evidence issued by an authorized official that proves their control over buildings, plants or other objects related to land.

The owner of the land in question can be proven by:

- 1.) Building construction permit and physical evidence of the building
- 2.) Statement of Physical Control; or
- 3.) Proof of bill or payment for electricity, telephone or drinking water company, within 1 (one) month.

Proof of ownership or control can be done with other evidence in the form of a written statement from the person concerned and reliable information from at least 2 (two) witnesses from the local community who have no family relationship with the person concerned up to the second degree, either in vertical or horizontal, which states that the person concerned is the true owner or control of the plot of land.

The results of the initial data collection on development plan locations as intended are outlined in the form of a temporary list of development plan locations signed by the Head of the Preparation Team. The temporary list of development plan locations as intended, is used as material for implementing Public Consultation on development plans.

C. Determination of Development Location

In Article 41 of Law Number 71 of 2012 concerning the implementation of Land Acquisition for Public Use, the determination of development locations is carried out by the Governor based on agreement with the parties who have the right or objections from parties who object are rejected. This determination is valid for a period of 2 (two) years and can be extended for 1 (one) year. After the construction location has been determined, the Governor together with the agency that requires the land will make an announcement containing the number and date of the location determination, a map of the location to be built, the aims and objectives of the development, the location and area of the land required, the period for implementing the land acquisition and the construction period. Announcement of location determination shall be made no later than 3 (three) working days after the construction location determination is issued. Announcements made at sub-district/village offices or sub-district offices and/or district/city offices are made within a period of 14 (fourteen) working days and announcements of location determination made in print media are made through local daily newspapers at least 1 (one)) publication times on weekdays. Then via electronic media, this is done through the website of the provincial government or agency that requires land.

D. Land Acquisition Implementation Stage

At this stage, the implementation of land acquisition includes inventory and identification activities, assessment of compensation, deliberations on determining compensation, and provision of compensation.

1.) Inventory and Identification

When a development plan is accepted by the community, land identification and inventory is carried out which includes activities for designating boundaries, measuring plots and building layout, etc (Sumardjono, 2008). Inventory and identification activities are handled by a Task Force which was formed within 2 (two) working days of the formation of the Land Acquisition Implementer based on Article 54 of Presidential Decree Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development in the Public Interest

2.) Assessment of compensation

Criteria for determining land value along with factors that influence land prices; In addition to the estimated value of buildings, plants and other objects related to the land, however, it would also be appropriate to consider the existence of non-physical (immaterial) factors that can be taken into consideration in determining the compensation value, especially if the land acquisition process takes a long time. quite a long time²⁰. Because of that, based on Article 63 paragraph (1) and paragraph (2) Presidential Regulation Number 71 of 2012 determines that:

"(1) Determination of the amount of compensation value is carried out by the Chief Executive of Land Acquisition based on the results of the appraisal service or public appraiser. (2) Appraisal or Public Appraiser Services as referred to in paragraph (1) are provided and determined by the Chief Executive of Land Procurement."

Therefore, based on this article, the determination of the amount of compensation for land, building and plant procurement objects is carried out by the Chair of the Land Procurement Committee based on the results of a public appraisal called an appraisal which has been determined and held by the Chair of the Land Procurement Committee. Based on Article 65 paragraph (1) of

Presidential Regulation Number 71 of 2012, the appraiser is tasked with assessing the amount of Compensation per parcel of land, including:

- (1) Land;
- (2) above ground and underground space;
- (3) buildings;
- (4) plants;
- (5) objects related to land; and/or
- (6) other losses that can be assessed

3.) Deliberation to determine compensation

Deliberations are carried out together with the agencies that require land, in deliberations. The deliberations held are led by the Chief Executive of Land Acquisition or an appointed official. Deliberations must be based on the principle of equality between the deliberating parties and carried out without pressure of any kind, whether verbal or non-verbal in the form of atmosphere or pressure actions in various gradations, whether occurring in the meeting or outside the meeting (Sumardjono, 2009).

If during the Deliberation Activities there is a party who has the right to be unable to attend, then the Party who has the right to provide power of attorney to:

- (1) A person in an upward, downward or lateral relationship up to the second degree or husband/wife for parties entitled to individual status.
- (2) A person appointed in accordance with the provisions of the articles of association for a Party entitled to legal entity status.
- (3) Other entitled parties.

However, if the entitled Party has been properly invited and has not given power of attorney to another person, then the entitled Party is deemed to have received the amount of compensation determined by the Land Acquisition Executor. The results of the agreement in the deliberation become the basis for providing compensation to the Entitled Party which is stated in the minutes of the agreement.

Based on Article 36 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, compensation can be given from the Appraisal Team in the form of:

- (1) Money
- (2) Replacement land
- (3) Share ownership
- (4) Other forms agreed to by both parties.

The provision of compensation based on Article 76 of Presidential Regulation Number 71 of 2012 determines that:

“(1) Compensation in the form of money as intended in Article 74 paragraph (1) letter a, is given in rupiah currency.

(2) The provision of compensation in the form of money as intended in paragraph (1) is carried out by the agency requiring land based on validation from the Chief Executive of Land Procurement or an appointed official.

(3) The provision of Compensation as intended in paragraph (2) is carried out simultaneously with the release of rights by the Entitled Party. (4) The provision of Compensation as intended in paragraph (2) is carried out

no later than 7 (seven) working days from the determination of the form of Compensation by the Land Acquisition Executor.”

(4) The provision of Compensation as intended in paragraph (2) shall be made no later than 7 (seven) working days from the determination of the form of Compensation by the Land Acquisition Executor.”

Payment of compensation is made simultaneously with the release of the land acquisition object, and compensation in the form of rupiah is completed no later than 7 working days from the determination of the form of compensation by the land procurement committee. Article 76 paragraph (4) of Presidential Regulation Number 71 of 2012 was later changed to Article 76 paragraph (4) of Presidential Regulation Number 99 of 2014, which initially provided compensation for a maximum of 7 days, which was changed to a maximum of 14 days. In article 77 of Presidential Regulation Number 71 of 2012.

4. CONCLUSION

Land acquisition for development, especially in the context of building public interests, must be carried out based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, prosperity, sustainability and harmony. This is as regulated in the provisions of Article 2 of Law no. 2 of 2012. Among all the principles mandated, the principles of humanity and justice are the basic principles as the basis for the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. In addition, the provision of compensation due to land acquisition must be carried out based on deliberation to reach a consensus in order to create justice based on Pancasila so that it does not causing losses to parties who lose rights to their land.

5. BIBLIOGRAPHY

- [1] A. Muchtar, “Limitation of Land Tax Regulations as an Instrument for Land Tenure Management.,” *Adv. Soc. Sci. Educ. Humanit. Res.* 583. 85-90..
 - [2] A. Sutedi, “Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan.,” *Jakarta Sinar Graf.*
 - [3] J. 1 Salindeho, “Masalah Tanah dalam Pembangunan.,” *Jakarta Sinar Graf.*
 - [4] Mahfud, “Membangun Politik Hukum, Menegakkan Konstitusi. J,” *akarta : LP3ES.*, 2006.
 - [5] B. Harsono, “Hukum Agraria Indonesia.,” *Jakarta : Djambatan.*
 - [6] S. & S. M. Soekanto, “Penelitian Hukum Normatif.,” *Suatu Tinj. Singkat. Jakarta Rajawali Pers.*, 2003.
 - [7] N. et al. Qamar, “Metode Penelitian Hukum (Legal Research Methods).,” *Makassar CV. Soc. Polit. Genius*, 2017.
 - [8] M. S. W. Sumardjono, “Tanah: Dalam Perspektif Hak Ekonomi Sosial dan Budaya.,” *Jakarta: Kompas.*
 - [9] J. W. 2016 Muliawan, “Cara Mudah Pahami Pengadaan Tanah Untuk Pembangunan.,” *Yogyakarta Buku Litera .*, 2016.
- Peraturan Presiden (PERPRES) Nomor 71 Tahun 2012 Tentang Penyelenggaraan Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum
Undang-Undang Nomor 12 Tahun 2012 Tentang Pengadaan Tanah Untuk Kepentingan Umum