

**ANALYSIS OF LAND DISPUTES ARISING FROM LAND  
PROCUREMENT ACTIVITIES IN THE DEVELOPMENT OF PUBLIC  
FACILITIES AND INFRASTRUCTURE**

**(Review of Law Number 2 of 2012 concerning Land Acquisition)**

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**ABSTRACT**

*Land as a living space with all the people has a social function that must be able to maintain a balance between individual interests, social interests, and the interests of the state. Infrastructure development in the frame of public interest is closely related to land as the medium. So that land and development activities are a unit that cannot be separated from each other. The consequences of this have implications for the existence of land procurement for the public interest (land procurement for public interest) in realizing the welfare of the lives of its citizens who are just and prosperous equally as the goal of being an Indonesian state as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia. The study shows the implementation of land acquisition that is not by applicable legal procedures, the occurrence of maladministration and implementation errors such as lack of socialization, not involving all land rights holders, and there is no dialogue process between the parties before determining the location of the development, compensation that does not accommodate all non-physical needs of society. This error caused a dispute in the infrastructure development process because it was not by the mandate of Law Number 12 of 2012 concerning Land Procurement for Development in the Public Interest.*

**Keywords: Land Disputes, Legal Rules, Public Facilities**



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**INTRODUCTION**

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit of the people. This provision is then elaborated in Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (abbreviated as UUPA), which stipulates that:

"Based on the provisions of Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water and space, including natural resources therein, are at the highest level controlled by the state, as an organization of power for the entire people."

Article 2(1) of the BAL is intended to give the State the power to regulate the direct administration of the State over land owned by a natural or legal person or free land not owned by a natural or legal person increase. The authority of the state in regulating and administering allotments as well as regulating land ownership is regulated in Article 2 paragraph (2) of the LoGA. Control by the State in the LoGA adheres to the concept that the state "controls" and does not "own" the relationship between the state and land (Syarif, 2014). The state as a powerful organization of all the people has the authority to regulate land ownership and control through the provision of proof of rights and recognition of old rights to the land concerning the LoGA which was established based on customary law. The existence of land rights and the recognition of land rights do not exclude the primary purpose of land regulation, namely for the greatest prosperity of the people so that in the LoGA there is a regulation regarding the social function of land, namely Article 6 of the LoGA which stipulates that all land rights have a social function.

Land as a living space with all the people has a social function that must be able to maintain a balance between individual interests, social interests, and the interests of the state. Infrastructure development in the frame of public interest is closely related to land as the medium. So that land and development activities are a unit that cannot be separated from each other. The result of this is the existence of land acquisition for the common good, as stated in the 4th paragraph of the 1945 Constitution, to realize the welfare and prosperity of the life of the people and become the Indonesian nation's existence effect. The Republic of Indonesia (Syarif, 2014). Land procurement for development in the public interest is carried out through several stages, namely the planning, preparation, implementation, and delivery stages. In the preparation stage, it is often hampered by the objections of the entitled parties and the affected communities objecting to the location determination issued by the Governor (Irfan, 2019).

In reality, expectations are not always in line with reality. Implementatively, the land acquisition process cannot be separated from the problems that occur in the community. Where the paradigm is created, land acquisition is always associated with negative connotations in the form of land evictions and even land grabs carried out by the government without regard to the sense of justice for the community which triggers a conflict between the community and the government.

Government actions in the process of land acquisition for infrastructure development are always associated with state control over natural wealth, including land. The concept of state control should not be carried out in absolute terms but should be aimed at the greatest prosperity of the people while still paying attention to the balance between expediency, justice, sustainability, and professionalism. This situation often causes conflict between the government and the community (Wicaksono & Purbawa, 2018). According to the local government, one of the

disputes occurred over a toll road construction project, which was strongly opposed by Demak residents due to inadequate compensation and public hearings by the local government. According to the community, the development preparation team has never invited, invited, or provided space for the affected community (social participation) to participate in the technical plan for the development preparation.

Public Consultation in land acquisition for development is carried out through several processes, namely socialization, location determination, and agreement on the location of the development plan. Public consultation is carried out by involving the rightful party with the affected community and is carried out at the location of the development plan or an agreed place. Public consultation as regulated in Law Number 2 of 2012 is carried out within a maximum of 60 (sixty) working days, and if there are parties who object to the location of the development plan, a public consultation with the objecting party will be held no later than 30 (thirty) working days. Public consultation is crucial to building public participation.

Transparency and accountability of government administration that refers to the law will be a prerequisite for public participation in its roles and responsibilities in determining the success of good governance. The synergy is based on the principles of equality, participation, transparency, accountability, and democratic mutual respect so that the development of a better governance system in the regions can be realized immediately. In addition, there is also the case of the construction of the Batang-Semarang Toll Road where in the acquisition of land, (Silalahi, Suhadi, & Anitasari, 2017) some people feel that the government has made unilateral decisions in paying compensation for land to residents. The cases above have caused public distrust of the government regarding land acquisition for infrastructure development.

On the other hand, conflicts over land in infrastructure development are not always caused by the government alone. In the process of land acquisition in infrastructure development, there is often no mutual consensus in the deliberation process (deadlock), where people tend not to want their homes to be used for infrastructure development for certain reasons. The infrastructure development will return to benefit the wider community. In addition, infrastructure development must continue to be carried out as part of national development to meet all public activities. Seen from the objectives of infrastructure development in national development, among others:

1. Achieve strong economic development that leads to positive economic growth.
2. Increase the income per capita of the community.
3. Structuring the economy
4. Increase job opportunities.
5. Equitable development. All of these goals will be achieved if they continue to pay attention to the principles of good national development planning (Iskandar, 2020).

## RESEARCH METHOD

The research is descriptive research with a statutory approach, namely an approach using legislation and regulations, and a conceptual approach that refers to the existing legal doctrines.

Research data is a unit of information on land acquisition for infrastructure development as stipulated in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest to answer research. Therefore, the data that the researcher uses to answer all the problems in this research are as follows:

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials include legislation, official records, or minutes in the making of legislation (Putra & Riwanto, 2018). In this research, the primary legal materials are the Basic Law, Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, Law Number 25 of 2004 concerning National Development, Law Number 5 of 1960 concerning Fundamental -Agrarian Principles, Law Number 30 of 1999 concerning Arbitration and Dispute Resolution and Government Regulation Number 19 of 2021.
- b. Secondary legal materials are legal materials that explain primary legal materials. Secondary legal materials are books related to research themes, articles, journals, and papers that discuss land acquisition.
- c. Tertiary legal materials, which are explanatory materials regarding tertiary and secondary legal materials, in the form of expert opinions.

## RESULT AND DISCUSSION

### Provisions on Land Procurement for Development in the Public Interest

The formulation of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia states that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The existence of this article is a milestone for the state to realize the principles of social justice and economic justice for all Indonesian people. The constitutionality of the state to manage all natural resources, both on earth and in space, has legitimized the role of the state in managing the content of national natural wealth to be used as much as possible as public utilities and public services for the wider community (Rahim et al., n.d.).

State power over the earth, water, and natural resources is attributed to the issuance of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles, in which Article 2 paragraph (1) affirms that the power related to earth, water and space lies in the hands of the state as the organization of power for all the people. With the enactment of the quo law, land rights are given to each and rights to the interests of the community at large. Regarding the legitimacy of rights to common interests, it is stated in article 6 of the LoGA, namely "all land rights have a social function." So that with the attachment of social functions to land rights, the provisions stated in Article 18 of the LoGA, namely:

"For the sake of the public interest, including the interests of the nation and the state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation and according to a method regulated by a State Regulation."

The existence of this article is the fundamental basis of the state in realizing the use of land for the greatest prosperity of the people and is also used as the main source of legitimacy for the government when it wants to carry out land procurement which is carried

out for the creation of the public interest (Rahim et al., n.d.). Land procurement is an activity to provide land by giving proper and fair compensation to the entitled party.

Juridically, the arrangements related to land acquisition are regulated in Law no. 2 of 2012 concerning Land Procurement for Development in the Public Interest, in which the principle of land acquisition must fulfill the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony. It is intended so that the land acquisition process is carried out fairly for the greatest prosperity of the people and reduces the state's determination to recognize land rights owned by each individual. Since the dominance of state provisions in regulating everything on earth, water, and natural resources as regulated in the phrase "controlled by the state" cannot be interpreted as the sole owner of each land right as in civil law. Instead, the state acts as a regulator in the utilization of natural resources available in Indonesia (Upik, n.d.).

The stages of land acquisition are regulated in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest and implementing regulations that explain in more detail, namely Government Regulation Number 19 of 2021, in land acquisition consisting of planning, preparation, implementation, and submission of results as follows:

### 1. Planning Stage

All agencies that require land for development in the public interest, following the provisions contained in Law Number 12 of 2012 concerning Land Procurement for Development in the Public Interest, to prepare a land acquisition plan document referring to:

- a. Spatial plan; and
- b. Development priorities listed in:
  - Medium-term development plans;
  - The strategic plan; and/or
  - Government/agencies work plans that require land.

Furthermore, in the preparation of the above land acquisition planning document, it is carried out by the Elucidation of Article 4 paragraph (2) of Government Regulation Number 19 of 2021 which states that land acquisition must involve the ministry or agency that carries out government affairs in the land sector to obtain an overview of the land acquisition process. location, area, land status, estimated implementation period, and land acquisition costs. The planning document, according to Article 5 at least contains : (Wardani, n.d.)

- a. The aims and objectives of development;
- b. The suitability of space utilization activities;
- c. National/regional development priorities;
- d. Location of land;
- e. The required land area;
- f. General description of land status;
- g. Estimated time for land acquisition implementation;
- h. Estimated period for land acquisition implementation;
- i. Estimated land value;
- j. Budget plan; and
- k. Indemnity preferences

The above land acquisition planning document is under the provisions in the Elucidation of Article 6 paragraph (1) of Presidential Regulation Number 71 of 2012 which states that: “Land procurement is prepared based on a feasibility study which includes:

- a. Socio-economic survey;
- b. Feasibility of the location;
- c. Analysis of development costs and benefits for the region and the community;
- d. Estimated land value;
- e. Environmental and social impacts that may arise as a result of land acquisition and development; and
- f. Other studies are needed.

The planning document is then submitted by the agency that requires land to the Governor within the scope of the land area.

## 2. Preparation phase

Preparation of land acquisition, by the provisions contained in Article 9 of Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest, the Governor has the task of forming a preparation team within a maximum of 5 (days) working days from the land acquisition planning document. Officially accepted, the team consists of:

- a. Regent/Mayor;
- b. related Provincial Apparatus;
- c. Agencies that administer affairs in the land sector; and
- d. Other related agencies.

To facilitate the implementation of the tasks of the preparatory team, the Governor establishes a secretariat for the preparation of land acquisition which is domiciled in the provincial secretariat. Furthermore, the tasks of the preparatory team as stipulated in Article 10 of the Presidential Regulation concerning the Implementation of Land Procurement for Development in the Public Interest are:

- a. Implement development plan notification

Based on Article 11 of Presidential Regulation Number 71 of 2015 the notification of the development plan is signed by the head of the preparation team and notified to the public at the location of the development plan, no later than 20 (twenty) working days from the formation of the preparatory team. If referring to Article 13 paragraphs (2) and (3), the notification can be made directly either through socialization, face-to-face, and/or notification letters, as well as through indirect notifications through print media or electronic media. If socialization or face-to-face is carried out, it must be accompanied by an invitation sent to the community who has land rights within the scope of the development location plan through the village head or headman within a period of no later than 3 (three) working days before the meeting or socialization is carried out. After that, the results of the socialization or face-to-face meetings are signed by the chairman and members of the Preparatory Team. The government has implemented socialization of development plans in various infrastructure development programs for the public interest.

- b. Conduct initial data collection on the location of the land acquisition plan
- Initial data collection at the location of the land acquisition plan is an initial data collection activity for parties who have rights and data collection on land acquisition objects with Hamlet/village officials by the provisions of Article 18 paragraphs (1) and (2) of Law Number 2 of 2012 no later than 30 working days from the notification of the development plan. Parties who have rights in Article 17 of Presidential Regulation Number 71 of 2012 consist of: (Edi Rohaedi, Isep H. Insan, 2018)
- 1) Land rights holders;
  - 2) Management rights holders
  - 3) Nadzir for waqf land;
  - 4) Owners of free land belonging to custom;
  - 5) Indigenous peoples
  - 6) Parties who control state land in good faith;
  - 7) Owners of buildings, plants, or other objects related to land.

Furthermore, a public consultation process was carried out which according to Article 1 point (8) of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest is a process of dialogue or deliberation between interested parties to reach an agreement in the form of determining the planning location of land acquisition for development. in the public interest. During the initial process of land acquisition, the land owner or ruler is given the right to be involved in deliberation to determine the location of the land for land acquisition. Based on these provisions, the landowners already know and even participate in the process of determining the location of development for the public interest (Iskandar Syah, 2015).

Before the enactment of Law Number 2 of 2012, the determination of the location of land for development of public interest was determined unilaterally by the government without involving the owner or holder of land rights, after the enactment of the quo Law the rights of land owners were more respected by involving them in public consultations. According to Article 1 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, Public Consultation is a process of dialogical communication or deliberation between interested parties to reach an understanding and agreement in planning land acquisition for development in the public interest. To obtain legal certainty, in Article 19 of Law Number 2 of 2012 public consultations are carried out to obtain an agreement on the location of the development plan from the entitled party, public consultation is also carried out by involving the entitled party and the affected community and carried out at the location of the development plan of interest. public or an agreed place.

Involvement by the entitled party can also be carried out through a representative with a power of attorney from and by the party entitled to the location of the development plan. The agreement in the public consultation is stated in the minutes of the agreement. In Article 20 of Law Number 2 of 2012 Public consultation on development plans is carried out no later than 60 (sixty) working days. the objecting party no later than 30 (thirty) working days. And if during the re-public consultation, there are still parties who object to the planned development location, the agency that requires land reports to the local governor

to form a team to conduct a study on the objection to the construction site plan..(Edi Rohaedi, Isep H. Insan, 2018)

- a. The team referred to in article 21, paragraph (3) is a provincial secretary or an official appointed as chairman and concurrently a member.
- b. Head of the Regional Office of the National Land Agency as secretary and concurrently member.
- c. Agencies that handle affairs in the field of regional development planning as members.
- d. Head of the Regional Office of the Ministry of Law and Human Rights as a member.
- e. The regent/mayor or an official appointed as a member and
- f. Academics as members.

Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest mandates that the formation of the Team is a form of anticipation that if in determining the location of development there is no agreement between the land owner and the government, then it can be said to be a reserve team. If in this agreement there are no obstacles in the meal agreement, the team in charge of conducting the objection study does not have to be formed.

If the public consultation is repeated and there are still parties who do not agree or reject the determination of the development location. The Governor by Article 21 paragraph (2) of Law Number 2 of 2012 will form a team tasked with conducting a study on objections to the construction site plan. The team as referred to in Article 21 paragraph (2) consists of (Rohaedi, Insan, & Zumaro, 2019).

- a. Provincial Secretary or an official appointed as chairman concurrently serving as a member;
- b. Head of the Regional Office of the National Land Agency as secretary and concurrently member;
- c. Agencies that handle regional development planning as members;
- d. Head of the Regional Office of the Ministry of Law and Human Rights as a member;
- e. Regent/Mayor or officially appointed as a member; and
- f. Academics as members.

The tasks of the objection study team consist of 1) Inventory of problems that are the reasons for objecting to the determination of the location; 2) Holding a meeting or clarification with the objecting party; 3) A review of the reasons for the objection and a feasibility assessment for consideration; 4) Make recommendations for acceptance or rejection of objections signed by the head of the objection study team to the Governor.

Based on the recommendation from the review team of the objection to the planned development location, by Article 41 of Presidential Regulation Number 71 of 2012 the Governor issues a letter regarding whether or not the objection to the construction site is accepted. If the Governor decides to accept the objection, the agency requiring the land will cancel the development plan or move the location of the development plan. If the Governor's determination on the location of the development plan rejects the objection, the party who has



rights to the land or the affected community can file a lawsuit with the State Administrative Court.(Y. Eko Haryanto, 2020).

### 3. Implementation Stage

At the implementation stage of determining the location of development for the public interest, the agency that requires land submits the implementation of land acquisition to the Land Agency. The implementation of land acquisition is carried out by the minister based on Law Number 12 of 2012 and is carried out by the Head of the Regional Office of the National Land Agency (BPN) as the Head of the Land Procurement Executive. The implementation of land acquisition includes inventory and identification of control, ownership, use, and utilization of land, assessment of compensation, deliberation on compensation determination, provision of compensation, and release of agency land. Inventory and identification of land management, ownership, use and use, including the following activities: Surveying and mapping the fields of each parcel and collecting data from parties with land acquisition rights and purposes. The determination of the amount of compensation is carried out by the Head of the Land Procurement Executor based on the results of the appraisal of the services of an Appraiser or a Public Appraiser determined by the Chief Executive of Land Procurement.

At the deliberation on the determination of compensation, the land acquisition implementer shall carry out deliberation with the entitled party by involving the agency that requires the land within 30 (thirty) working days after the results of the appraisal from the Appraiser are received by the head of the land procurement executive and the invitation is submitted no later than 2 (two) working days before the date of the deliberation to determine compensation. The policy of determining compensation (compensation policy) in restoring the community's rights, has resulted in problems at the implementation level. The difference in the price paradigm between the community and the government is often an obstacle to the success of the land acquisition process where the government in providing compensation for the affected land tends not to use the price standard that should be.

If there is no agreement regarding the form and/or amount of compensation, by the provisions of the legislation, the entitled party may file an objection to the local district court within a maximum period of 14 (fourteen) working days after signing the minutes of the results of the deliberation, and the district court decision on the form and/or amount of compensation within a maximum period of 30 (thirty) working days from the receipt of the objection. If there are still parties who object to the decision of the district court, within a maximum period of 14 (fourteen) working days they can file an appeal to the Supreme Court, and the Supreme Court is obliged to give a decision within 30 (thirty) working days from the receipt of the cassation request.

The decision of the District Court or the Supreme Court which has obtained legal force remains the basis for the payment of compensation to the party who filed an objection. Compensation is given to the party who has the right based on the results of the assessment determined in the deliberation and/or court decision or the Supreme Court and principle is handed over directly to the entitled party, in the form of money, replacement land, resettlement, share ownership, or other forms approved by both sides .

If there are still owners of land rights who refuse the form and/or amount of compensation based on the results of deliberation or the decision of the District Court or the Supreme Court, then the compensation based on the judge's decision is entrusted

to the local District Court (Tehupeiory, 2018). Likewise, for parties who refuse the form and/or amount of compensation based on the results of deliberation and do not file an objection to the court, the compensation will be deposited in the local District Court. In addition, the deposit of compensation in court is also carried out for parties entitled to receive compensation whose whereabouts are unknown, or the object of land acquisition for which compensation will be given, is being the object of a court case, is in the process of ownership dispute, is placed for confiscation by the competent authority or as collateral in the bank.

#### 4. Result Submi

After the compensation process is complete, referring to Article 112 paragraphs (1) and (4) of Presidential Regulation Number 148 of 2016, the Head of Land Procurement Executor submits the results of land acquisition to the agency that requires land with land acquisition data. Submission of results is carried out no later than 3 (three) working days after the issuance of the official report on the release of the object of land acquisition. Agencies requiring land must register land acquisition objects to start the development process.

### CONCLUSION

Land acquisition for development in the public interest is taking over land carried out by the government for public facilities construction. The land acquisition consists of the planning, preparation, and implementation stages involving the local government as the executor of land acquisition, the ministry that carries out affairs in the land sector, land rights owners, and affected communities. Provisions for land acquisition are regulated in Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest and Presidential Regulation Number 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest.

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