

# The Natural of Justice in the Procurement of Land for General Interests in the National Development Framework

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**Abstract :** *The objective of the study was to find criteria of public interest to ensure fairness in the implementation of land acquisition for the public interest. To analyze and find legal protection for holders of land rights in the implementation of land acquisition for development in the public interest. This type of research is descriptive that describes the phenomenon about the objective of the implementation of land procurement for the public interest. and legal protection for holders of land rights in the implementation of land acquisition for development in the public interest. The approach used is normative by examining the legal principles and synchronization of vertical and horizontal bearing laws insofar as they relate to the procurement of land for the public interest.*

## Introduction

Land is the basic capital of development. There is hardly any development (sectoral) activity that does not require land. Therefore, the land plays a very important role, even determining the success or failure of a development. Development activities carried out both for the public and private interests always require the land as a container development. Currently, development continues to increase while the inventory of land has not changed. These circumstances have the potential to create conflicts because the public interest and the interests of individuals are "conflicting".<sup>i</sup>

Land as a gift of God Almighty has a very important function to build a just and prosperous Indonesian society. In relation thereto, the Basic Agrarian Law is a direct implementation of Article 33 Paragraph (3) of the 1945 Constitution, "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people" Is the embodiment of Indonesian aspiration in the renewal of the National Land Law. Agrarian Basic Law was born in response to the demands and needs of the nation of national legal instruments capable of regulating and providing legal guarantees and certainty of land

rights which is one means in an effort to achieve the goals and ideals of independence.<sup>ii</sup>

The Basic Agrarian Law (Law No. 5/1960) does not explain the definition of land acquisition and its implementation provisions which serve as a reference for the management of land administration in Indonesia, but in meeting the needs of land for development previously known as land acquisition for the benefit of the government is included in land acquisition activities for development for the public interest. Construction of public facilities requires the land as a container. The construction of such public facilities does not encounter any problems if the land supply is wide. At present it is very difficult to do development for public interest on state land. The facts show that development requires land, but on the other side the State land available to meet those needs is very limited, since the partially lands have been controlled / owned by the community with a right. In order for the development momentum to be maintained, especially the construction of various facilities for public interest that require the plot of land, the legal efforts of the government to obtain these lands in fulfilling the development, among others, is done through the approach of the liberation of rights and the revocation of rights.<sup>iii</sup>

Land acquisition is an act of government to acquire land in various development activities, especially for the public interest. In principle, land procurement is conducted by deliberation between parties requiring land and holders of land rights required for development activities.<sup>iv</sup> Land acquisition for public interest becomes the key word in development. The use of land must be adapted to the circumstances and nature of its rights, to the benefit of both the welfare and the happiness that it has and for the people and the State. But it does not mean that the interests of the individual will be pushed entirely by the public interest. The interests of the community and the interests of some legal principles such as: individuals must balance each other, to the end it

will achieve the ultimate goal: prosperity, justice and happiness for the people as a whole.<sup>v</sup>

Article 18 of the Basic Agrarian Law, stating "for the common good, including the interests of the nation and the State, and the common interest of the people, the rights to land may be repealed," the words "public interest and development" have become effective tools to legitimize the provision of land as wide- Extent by the State for investment purposes.<sup>vi</sup> Almost all development sectors require land, but limited availability causes the provision of land is not always easy to do. Especially in the understanding of the Indonesian Nation, the land has a strategic position for life and livelihood so that the termination of the "relationship" between the people with the land they master will cause permaslahan. As a result of this, every land acquisition activity almost always faces resistance/rejection from the people who control the land.<sup>vii</sup>

Development is a "Conditio sine qua non" for the State. No country has no development. Recognizing this condition, the Government seeks to find the right policy formulation so that in the implementation of land procurement can meet justice, provide optimal benefits and provide legal certainty<sup>viii</sup>. The constitutional basis for public procurement of land for public interest by the Government is stipulated in Article 33 paragraph (3) of the 1945 Constitution states: "The earth and the water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." This verse implies that it is the obligation of the State to seek for the earth, water and space which are laid in the power of the State to realize the welfare of the Indonesian people.

Furthermore, the mandate of Article 33 Paragraph (3) of the 1945 Constitution is described in Article 2 of the Basic Agrarian Law (BAL), which affirms that the Right to Master does not mean to possess. Article 2 of the Basic Agrarian Law states that the Mastering Right of the State authorizes:

- a. organize and organize the use, stockpiling and maintenance of the earth, water and aerospace;
- b. determine and regulate the legal relationships between persons and the earth, water and space; and
- c. determine and regulate the legal relationships between persons, and legal acts concerning the earth, water and space.

Procurement of land is then regulated by Presidential Regulation No. 36 of 2005 which was then amended by Presidential Regulation No. 65 of 2006. Until now Indonesia does not have a law that regulates specifically on Land Procurement. Head of National Land Agency (BPN), land acquisition is regulated in Regulation of Head of National Land Agency Number 3 Year 2007 concerning Provisions of Presidential Regulation Number 36

Year 2005 on Land Procurement for Development Implementation for Public Interest as amended by Presidential Regulation Number 65 Year 2006 concerning Amendment to Presidential Regulation Nomor 36 Year 2005 on Land Procurement for Implementation of Development for Public Interest.

## Discussion

### Values of Justice On Land Procurement For Public Interest

Land acquisition for public purposes often can not run smoothly. One of them is because the holder of the land is reluctant to relinquish the land, generally because he feels his rights are not protected, especially his right to get compensation worthy, so than it is to realize the values of justice then there needs to be some eating among others that is:

(a) Deliberation Mechanism, is the principle of mutual listening to reach a unanimous agreement reflecting the values of democracy. Deliberation is a means by which the state is to prove the good faith of the state in respecting the property rights of the people guaranteed by the constitution in article 28 H paragraph (4) "private property can not be arbitrarily seized by anyone". It is the protection provided by the constitution that becomes the capital in the procurement of land that reflects the noble value of the deliberation to avoid the act of violation of the rights of the right-holders. In the mechanism of deliberation needs to be based on the principles of land procurement that reflects the value of justice, in the form of the principle of respect for the rights of land owned by the people who are part of respect for the rights of the citizens so that the procurement of land is done based on the aspect of public interest without heeding rule of law as well as the principle of togetherness by involving the right holders of the land to sit together in determining the amount of land compensation.

(b) Disadvantages Mechanism, The issue of compensation is the most complicated central issue of its handling of government land acquisition by utilizing rights lands. In every procurement of land for the sake of development there is almost always a sense of dissatisfaction, in addition to being powerless, among the people whose land rights are affected by the project. Forms of Losses as provided for in Law Number 2 Year 2012 in the form of, Money, Land replacement, Resettlement, Share Ownership, and Other Shapes approved by the parties concerned.

In the absence of agreement on the form and / or amount of compensation pursuant to Land Acquisition Law no. 2 year 2012, the Eligible Party may file an objection to the local district court

within a period of no more than 14 (fourteen) working days after the indemnification agreement. The district court shall decide the form and / or amount of compensation in not later than 30 (thirty) working days from the receipt of the objection. Any party who objected to the decision of the district court within a maximum period of 14 (fourteen) working days may file an appeal to the Supreme Court of the Republic of Indonesia. The Supreme Court is obliged to give a decision within 30 (thirty) working days from the receipt of the appeal. The decision of the Supreme Court / Supreme Court that has obtained legal force remains the basis of the payment of compensation to the party who objected.

In every procurement of land for the sake of development there is almost always a sense of dissatisfaction, in addition to being powerless, among the people whose land rights are affected by the project. The issue of compensation is the most complicated central issue of its handling of government land acquisition by utilizing rights lands. In many developing countries there is an alternative index that can be used as a guide to determine the amount of compensation. In Brazil, a factor of estimated value for tax purposes, location, land status (preserved), market value over the past five years from other comparable land titles becomes a consideration for determining the amount of compensation. It seems often forgotten that the interpretation of the principle of the social function of the right to land, in addition to the meaning that the right to the land must be used in accordance with the nature and purpose of its right, so that it is beneficial to the holder of rights and to society, also means that there must be a balance between individual interests and interests general, and that such individual interests are recognized and respected in the context of the exercise of the interests of society as a whole. In relation to the issue of compensation, it appears that defining a balance between private and public interest is not easy. Indemnity as an attempt to realize respect for the rights and personal interests that have been sacrificed for the common good can be called fair if it does not make someone becomes richer, or otherwise, becomes poorer than it was. Compensation in land acquisition law has nothing to do with wanprestasi or unlawful acts. The compensation in the land acquisition law is a compensation for the loss of the holder of the land right who has lost his / her right to his / her land because it is released for public interest.

Indemnification Indemnity shall be granted to every person entitled to the principle of *nemo plus juris*, that is, the holder of the land right, the owner of the building or any existing property and attached to the land. Indemnification is the absolute right of the holders of land rights that relinquish

their land for the common good. there is no authority on the state to take the land without any compensation. Indonesia is not a communist-ideological state that allows seizure of land without compensation. The seizure of land is only possible for the lands of the proceeds of crime.

The Indonesian government still has different interpretations of compensation money and land prices. Some define compensation differing from the price of land. Because the government regulates and grants land rights, then if a plot of land is needed again by the government enough to be paid with compensation money is not the price of the land. So the amount of money compensation by itself is lower than the price of land. The government needs to change its perspective on the nature of compensation. The compensation paid as compensation for land acquisition should be able to compensate the losses suffered by the people due to the disposal of their rights.

There are a number of principles that must be considered in the provision of compensation, among others:

1) The principle of good faith The procurement of land for public interest must be based on good faith in determining the amount of compensation so that no party is harmed.

2) The principle of equity The compensation must bring about mutual prosperity. Compensation is provided in accordance with the rights of owners of the land. Payment of compensation should not be generalized between those who already have a rights base with those without a pedestal right even if located in the same location.

3) The principle of propriety The value of the indemnity shall be reasonable and appropriate on the basis of the real value of the land and / or all its derivatives. The price based on the real value does not have to be the same as the general price considering the general price can be the price of paper. Conversely, the price of the land can also be a higher price.

4) Principle of legal certainty The provisions on land compensation shall be governed by specific laws governing them. The law must contain its legal sanctions, both final and non-final, so that it is always up to fairness and justice.

5) Welfare Principle This principle desires protection against those who relinquish the land from the economic side.

Unlike the previous land acquisition law, in Law No. 2 of 2012 there is no basis for determining compensation based on the Tax Object Selling Value and land valuation variables. The valuation of land prices is entirely submitted to the Land Appraiser. Under the provisions of Article 1 point 11, the meaning of Land Appraisers is: Land Appraiser, hereinafter referred to as an Appraiser, is an individual who conducts independent and

professional appraisal which has been granted license of assessment practice from the Minister of Finance and has obtained a license from the Land Agency to calculate the value / price of land procurement object. Based on the provisions of Article 34 paragraph (3) the value of compensation based on the appraisal result of the appraiser becomes the basis for deliberation determination. The payment of fair and adequate compensation for land procurement is a manifestation of the principle of respect for land rights. The balance between the public interest and the individual's interest depends on the comparative aspect of the value of the compensation provided for by the loss suffered by the holder of the land rights.

Technically the form of compensation is more detailed regulated in Presidential Regulation no. 71 of 2012 on the Procurement of Land for Development for the Public Interest. Forms of damages include money, replacement land, resettlement. Share ownership or other form approved by both parties. Replace losses in the form of money are given in the form of rupiah currency. The compensation shall be made no later than 7 working days after the determination of the compensation form by the land acquisition implementer. Replacement of losses in the form of replacement land as referred to in Article 74 paragraph 1 letter b shall be granted by the agency which conquered the land through the Land Acquisition Officer. The Provision of Indemnity as referred to in paragraph 1 shall be conducted by the agency requiring the land after receiving a written request from the Chairman of Land Acquisition. The replacement land referred to in paragraph 1 shall be provided for and on behalf of the Eligible party. The implementation of the provision of replacement land as referred to in paragraph 3 shall be no later than 6 months after the determination of the compensation form by the Land Acquisition Procurement. Replacement of losses in the form of resettlement as referred to in Article 74 paragraph 1 huruf c is given by the Agencies that require land through the Land Acquisition Procurement. The implementation of the provision of resettlement as referred to in paragraph 3 shall be no later than 1 year. 71 Year 2012 for the determination of Replacement of Losses by Land Acquisition Officer. Replacement of losses in the form of ownership of shares as referred to in Article 74 paragraph 1 letter d is granted by State-Owned Enterprises in the form of public companies and received special assignment from the Government. The provision of compensation in other forms agreed by both parties may be a combination of 2 or more forms of Indemnification as referred to in Article 74 paragraph 1 letter a to letter d. Replacement of damages shall not be granted to the disposal of the right of Land Procurement Object

owned / controlled by the Government / State-Owned Enterprises / Regional Government-Owned Enterprises, except: Land Acquisition Objects which have been established by buildings that are actively used for the administration of government duties; Land Procurement Objects owned / controlled by State-Owned Enterprises / State-Owned Enterprises / Regional-Owned Enterprises and / or Objects of Land Cash Land. Stages of Land Acquisition Procurement The process of land procurement is described in Article 27 of Law Number 2 Year 2012 paragraph (1) which reads as follows that based on the determination of development sites for the Public Interest as referred to in Article 26 paragraph (1), the agencies requiring the land submit pelaksanaan Procurement Land to the Land Institution. In the explanation of Article 27 paragraph (1) it is explained that land acquisition is principally implemented by the Land Agency, which in its implementation may involve or coordinate with the district / city government. Implementation of land acquisition is described in Article 27 paragraph (2) whose process includes stages: inventory and identification of land ownership, ownership, use and utilization; appraisal of damages; deliberation meeting of indemnification; provision of Indemnification; and soil releases. In Paragraph (3) of the same article it is explained that after the establishment of the construction site for the Public Interest as referred to in Article 26 paragraph (1), the entitled Party may only transfer the right to its land to the agency requiring the land through the Land Affairs Institution. Furthermore, in paragraph (4) explains the transfer of rights as referred to in paragraph (3) shall be done by providing Replacement of Losses whose value is determined when the value of the announcement of location determination.

Furthermore, in Article 17 paragraph (2) of Presidential Decree No.55 / Year 1993 states that in the case of land, buildings, plants or objects related to land owned jointly by several persons, whereas one or more of them can not be found , then the indemnity of those who can not be found is consigned to the local district court by a government agency requiring the land.

The consignment known in Keppres No.55 / Year 1993 is only for the purpose of delivering the agreed compensation, but the person concerned is not found. Based on the scope of Presidential Decree No.55 / Year 1993, it is clear that this land procurement regulation is only applicable to land procurement by government agencies for the public interest. Consignments can therefore only be applied for the payment of compensation for the procurement of land carried out by the Government Agency for the public interest, provided that there has been an agreement between the two parties:

who needs land and holders of land rights and owners of buildings, plants and / or objects -fits that are on the ground.

### **Legal Protection for Land Rights Holder in Implementation of Land Procurement for Development in the Public Interest**

Problems in the field of land law that have not been settled from time to time is the issue of land acquisition belonging to the community or the population for the implementation of the Government project development for the public interest. Issues of land acquisition, land acquisition, deprivation of land rights, or by any name always involve two interests that must be placed in a balanced way. The two interests are the interests of the Government and the interests of the people / landowners or land rights holders. These two parties, namely the rulers of the Government and the people shall both observe and obey the laws and regulations governing the consequences or effects of such acts / activities. The following is discussed on the legal basis of land acquisition in Indonesia, after independence. Problems in the field of land law that have not been settled from time to time is the issue of land acquisition belonging to the community or the population for the implementation of the Government project development for the public interest.

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Under Article 2 and also based on the General Elucidation of the First Score of the Basic Agrarian Law (UUPA), it gives immense power and a very broad will to the State to regulate. Allocation of agrarian resources. The existence of individual rights as well as collective rights (ulayat) depends on legal politics and the interests of the state. As a consequence of the right to control the state which is intended to be used for the greatest prosperity of the people, the State shall have the right to cancel or take the rights to land owned or controlled by the people by providing appropriate compensation and according to the provisions stipulated in the law, invite. Under Article 2 and also based on the General Elucidation of the First Score of the Basic Agrarian Law (UUPA), it gives immense power

and a very broad will to the State to regulate. Allocation of agrarian resources. The existence of individual rights as well as collective rights (ulayat) depends on legal politics and the interests of the state. As a consequence of the right to control the state which is intended to be used for the greatest prosperity of the people, the State shall have the right to cancel or take the rights to land owned or controlled by the people by providing appropriate compensation and according to the provisions stipulated in the law, invite.

Furthermore, the provision of Article 18 of the BAL states: "For the public interest, including the interests of the nation and the state and the common interest of the people, land rights may be repealed by compensating suitably and in the manner prescribed by law". Therefore, revocation of land rights is possible while meeting the conditions that have been determined namely; there shall be appropriate compensation or replacement with suitable land in terms of the value, benefits and abilities of replacement land, ie land disposed of in the public interest, and under the provisions of legislation.

### **Conclusion**

Based on the analysis of research data and the theories used as the reference described in the previous chapters, the following conclusions can be drawn:

1. The values of justice in the implementation of land acquisition for the public interest have not been fully able to realize equitable legal protection, by looking at the process of forming Law no. 2 of 2012 on the procurement of land for the public interest has not been fully able to realize the welfare for all the people of Indonesia.
2. Legal protection for holders of land rights in the implementation of land acquisition for development in the interests of a just Public can not be realized, although legislation has sought to accommodate the principle of legal protection for land acquisition for the public interest in some cases there are still problems. Law Number 20 of 1961 concerning the Revocation of Land and Property Rights thereof, as well as Law No. 2 of 2012 on Land Procurement for Development for the Public Interest, both provide legal protection and rights for rights holders. The rights of the right holder are well protected by rhetorically arranging various legal issues that will be undertaken and passed by the government if it removes or disposes of individual and group rights for the construction of public utilities. There are similarities and differences between legal principles and processes of land procurement for the construction of public utilities according to Law Number 20 of 1961 with

Law Number 2 Year 2012. The existence of similarities because actually these two rules of law are established in order to regulate the legal acts of the government in order to break the legal relationship between the holder of his rights with his land. The difference lies in the orientation and purpose of the activity

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