The Concept of Compensation for Land Rights in Land Procurement for Public Interests

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The need for land for development in the public interest is carried out by acquiring land where most of the land belongs to residents and the community because state land is insufficient for development. As a result, land acquisition for development in the public interest has spread to community-owned land; in fact, the community feels their life and social life are disrupted by land acquisition if the Compensation received by the community is insufficient. If this is not heeded, problems will arise, as we usually read in the mass media, where conflicts occur between the government and the people affected by the land acquisition itself; inevitably, the people will do anything to defend what they believe is their right. With conflicts that never ended between the people and the government, the government decided to issue Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The government hopes that issuing this law will expedite infrastructure development for the public interest and protect landowners. This research uses a socio-legal approach because socio-legal is part of interdisciplinary legal research that considers aspects of people's lives such as social, economic, moral, customs, religion, culture, and customs so that socio-legal data solves problems following existing developments in society. In granting Compensation for land acquisition for public purposes, several rights must be considered which are expected to worsen the condition and standard of living of the people whose land was acquired. It should be considered so that their quality of life will improve, and efforts should be made to provide Compensation in a form that does not change the pattern of people's lives by relocating settlements to appropriate locations. Settlements that can be seen as a world unto itself where its citizens determine their identity feel like social beings and are safe.

Keywords: Compensation, Development, Land Acquisition

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INTRODUCTION

Land is a significant factor in the life of a society, especially in Indonesian society, where most of the population depends on land for their livelihood (Abela dkk., 2020). Since birth, land has been a basic need for various needs, including housing (Wagner, 2020), agricultural business, social activities (Oberoi dkk., 2019), and others. In line with the opinion of Benhard Limbong, who stated that land for human life has a significant meaning (Fuchs & Whelton, 2020) because most of their lives depend on the land.

The need for land for development in the public interest is carried out by acquiring land where most of the land belongs to residents and the community because state land is insufficient for development (Li dkk., 2020). As a result, land acquisition for development in the public interest has spread to community-owned land; in fact, the community feels their life and social life are disrupted by land acquisition if the Compensation received by the community is insufficient (Gao dkk., 2020). If this is not heeded, problems will arise, as we can read in the mass media, where conflicts occur between the government and the people affected by the land acquisition itself; inevitably, the people will do anything to defend what they believe is their right.

Conflicts of interest over land rights will continue to increase in the future, partly due to its application to the people (Naumann & Rudolph, 2020), land acquisition mechanisms that do not provide access to community members to participate in decision-making and especially those related to determining the form of Compensation. For people whose land will be used for development (Lacerda-Júnior dkk., 2019), the relinquishment of their land rights to the government will bring consequences both economically and socially (Williamson dkk., 2019), especially if the land is the only piece of land as a place to live and for a source of livelihood. Therefore, the relinquishment of land rights for development purposes for the public interest must be based on humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony.

Legal arrangements relating to land acquisition for public purposes and all other related regulations have undergone a development process from time to time. Some land acquisition regulations are considered unable to support the interests of land rights holders, so it is urgently needed to have legal rules that are equivalent to laws to become a solid legal umbrella. With the OCS conflicts that never ended between the people and the government, the government decided to sue Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The government hopes that issuing this law will expedite infrastructure development for the public interest and protect landowners.

RESEARCH METHODOLOGY

Legal research is finding legal rules (O’Sullivan dkk., 2019), principles, and doctrines to answer legal issues (Yermolenko dkk., 2022). Legal research is conducted
to produce arguments (Chan dkk., 2020), theories, or new concepts as a guide in solving problems.

This type of socio-legal research (socio-legal) is a legal research supporter whose role is crucial in the current era. Esmi Warasih stated that socio-legal could better meet the needs of researchers because socio-legal is part of interdisciplinary legal research that considers aspects of people's lives such as social, economic, moral, customs, religious, cultural, and customs so that socio-legal data solve problems following developments in society.

RESULT AND DISCUSSION

As an organization of power, the state has the authority to regulate the allotment and use of land in its territory (Baah dkk., 2020). Constitutionally, it is included in the conception of the state's right to control Article 33 paragraph (3) of the 1945 Constitution, which reads 'Earthz (Franklin dkk., 2020), water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people' (Kourula dkk., 2019). From these provisions, it can be seen that the use of land, water, and natural resources contained therein by the state is used for the prosperity of the people (Thyavihalli Girijappa dkk., 2019). One of the authorities granted by law to the government as state administrators is to procure land for development for the public interest (Alami dkk., 2022). As stated by Sri Winarsi in her Dissertation, the regulatory authority in the land sector is the authority of the state; in this case, the law is enforced for the people that the person concerned is the owner of the land, therefore entitled to protection (Sklenarova dkk., 2020). The government also gets attribution authority to conduct land acquisition for public interest from Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest and Law Number 32 of 2004 concerning Regional Government.

Tenure rights over land contain a series of authorities (Lambert dkk., 2019), obligations, or prohibitions for the holder of said land title to do something with the land in question (Bahel dkk., 2022). Tenure rights over land can be interpreted as legal institutions if not linked to land and particular subjects. New land tenure rights are concrete legal relations ('subjective recht') if they have been linked to specific land and certain subjects as the rights holders.

In the provisions of Article 2 of Law Number 32 of 2004 concerning Regional Government, it is determined that the Regional Government exercises the rights (Chia dkk., 2020), authorities, and obligations of the region to regulate and manage government affairs on its own according to the principle of broadest autonomy and co-administration duties in order to improve people's welfare, public services (Ozturk dkk., 2020), and regional competitiveness (Parker & Grote, 2022). The state or government agency has the authority in terms of carrying out a land acquisition for the Implementation of development for the public interest based on the provisions of Article 6 of Law Number 2 of 2012 concerning Land Acquisition for Development for
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The government carries out land acquisition for public interests. In granting Compensation for land acquisition for public purposes (Liu dkk., 2019), several rights must be considered which are expected to worsen the condition and standard of living of the people whose land was acquired. It should be considered so that their quality of life will improve, and efforts should be made to provide Compensation in a form that does not change the pattern of people's lives by relocating settlements to appropriate locations (Cronin dkk., 2018). Settlements can be seen as a separate world where residents determine their identity feel like social beings, and are safe.

As part of the national agrarian law (Silva Bezerra dkk., 2022), land acquisition regulations must refer to the objectives of the national agrarian law with the principle of a balance between private and public interests (Giordano, 2020). Any land right owned by a person cannot be justified if the land is to be used or not used solely for his interests (White dkk., 2023), but he must also pay attention to the public interest. This Provision does not mean that private interests will be pushed at all by public interests (Bogoviz dkk., 2019). Public and private interests must balance each other so that, in the end, the goal of prosperity (Telekalo, N. & Melnyk; M., 2020), justice, and happiness for the people as a whole will be achieved.

Several laws and regulations have been issued to become the juridical basis for land acquisition for public purposes. Namely, Law Number 2 of 2012 has implementing regulations, Presidential Regulation Number 71 of 2012, which has been reviewed and refined several times, namely Presidential Regulation Number 40 of 2012. Two thousand fourteen concerning amendments to Presidential Regulation Number 71 of 2012, Presidential Regulation Number 99 of 2014 concerning the Second Amendment to Presidential Regulation Number 71 of 2012, Presidential Regulation Number 30 of 2015 concerning the Third Amendment to Presidential Regulation Number 71 of 2012. Then the last amendment is Presidential Regulation Number 148 of 2015, Concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012.

Furthermore, as an implementation of Article 111 paragraph (2) of Presidential Regulation Number 71 of 2012 as last amended by Presidential Regulation 148 of 2015, Regulation of the Head of National Land Agency Number 5 of 2012 concerning Technical Instructions for Implementing Land Acquisition has also been issued, which was amended lastly by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 22 Know: Humanity, Justice, Benefit, Certainty, Openness, Deal, Participation, Welfare, Sustainability, Alignment.

Land acquisition for the public interest is carried out through the planning, preparation, Implementation, and delivery of results regulated in Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest and its implementing regulations.

Planning for land acquisition for public purposes is made by the Agency that requires the land. Planning for land acquisition is based on the Regional Spatial Plan
and development priorities listed in the Medium Term Development Plan, Strategic Plan, and Work Plan of the Government of the Agency concerned.

In Article 15 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, land acquisition planning for the public interest is prepared in the form of a land acquisition planning document, which at least contains: The purpose and objectives of the development plan, Conformity with the Regional Spatial Plan and the National and Regional Plans, Layout of the land, Required land area. Estimated time of Implementation of land acquisition, Estimated timeframe for construction implementation, estimated land value; And Budgeting plan.

The Land Acquisition Plan is prepared in the form of a land acquisition planning document contained in Article 5 paragraph (1) of Presidential Regulation Number 148 of 2015 concerning Keemoat Amendments to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, namely the land acquisition planning document prepared based on a feasibility study and determined by the Agency that requires land that at least contains: the purpose and objectives of the development plan, compliance with the Regional Spatial Planning and Development Priorities, location of the land, required land area, general description of the land status, estimates of the Implementation of land acquisition, estimated period of construction implementation, estimation of land value, budget plan.

Where the government and land acquisition agencies carry out notification of initial development plans, initial data collection of construction sites, and public consultations.

**Land Acquisition Preparation**

In Article 16 - Article 26 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, agencies that require land with the provincial government based on land acquisition planning documents carry out:

**Notification of development plans**

Notification of the development plan is conveyed to the community on the planned development location for the Public Interest (Feng dkk., 2019), directly or indirectly (Adebayo & Akinsola, 2021, 2021). The Governor and the Agencies requiring the land shall announce the determination of the construction location for the public interest. The announcement will notify the public that construction will be done in the said location for the public interest.

**Preliminary data collection on the location of the development plan**

Preliminary data collection on the location of the development plan includes initial data collection activities of the entitled party and land acquisition objects. Initial data collection is carried out within 30 (thirty) working days from the notification of the construction plan. The results of the initial data collection on development sites are used as data for the Implementation of public consultations on development plans.

**Public consultation on development plans**

The land acquisition committee carries out public consultations to obtain agreement on the location of the development plan from the rightful party/land owner;
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the agreement is set out in the form of an agreement report. Then the Agency that requires land submits a determination of the application and location determination to the Governor. The Governor determines the location within 14 (fourteen) working days from receiving the application for determination by the Agency requiring land, following Article 19 of Law Number 2 of 2012, construction sites for public use.

**Implementation of Land Procurement**

The Implementation of land acquisition is carried out after determining the location of the 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 following Article 21 Paragraph 2 of Law Number 2 of 2012 includes:

- Investment and identification of control, ownership, use, and utilization of land. Investment and identification of control (Hoang dkk., 2021), ownership, use, and utilization of land includes the following activities: measuring and mapping plots by the plot of land and data collection of entitled parties and objects of land acquisition.

- Inventory and identification of control, ownership, use, and utilization of land shall be carried out within 30 (thirty) working days (Stark dkk., 2019). The inventory results and identification of control, ownership, use, and utilization of land must be announced at the village/kelurahan office, sub-district office, and the place where land acquisition is carried out within 14 (fourteen) working days at the latest.

- Ownership, use, and utilization of land must be announced gradually, partially, or whole (Spurk dkk., 2020). The announcement of the investment and identification results includes the subject of rights, area, location, and map of the land parcels of land acquisition objects. The Land Agency determines the result of the announcement or verification and repair and then becomes the basis for determining the party entitled to award compensation.

- The land acquisition committee carries out this task; in carrying out its duties, it is given some funds called operational costs, which are regulated in the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 72 of 2012 concerning Operational Costs and Supporting Costs. Implementation of Land Procurement for Development for Public Interest sourced from the Regional Income and Expenditure Budget and Regulation of the Minister of Finance of the Republic of Indonesia Number 13/PMK.02/2013 concerning Operational Costs and Supporting Costs for the Implementation of Land Acquisition for Development for Public Interest sourced from Budget Revenue and State Spending.

**Assessment of Compensation**

Assessment of Compensation: The Land Agency determines an appraiser based on Article 33 of Law Number 2 of 2012. The Appraiser appointed must be responsible for the assessment that has been carried out. Violation of the obligations of the Appraiser is subject to administrative and criminal sanctions following statutory provisions.

Assessment of the amount of Compensation by the Appraiser is carried out plot per plot of land, including land, above-ground and underground space, buildings, plants, objects related to land, and other losses that can be assessed.
The value of Compensation assessed by the Appraiser is the value at the time of the announcement of the determination of the location of the development in the public interest, and the amount of the value is submitted to the Land Agency with an official report. If specific land parcels affected by land acquisition have residue that can no longer be functioned following its designation and use, the party is entitled to request a total replacement for the land parcel. Compensation can be given in money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties.

Deliberation on the determination of Compensation: In a loyal deliberation, the participants express thoughts, opinions, or considerations to each other, and then a joint conclusion is born. If a deliberation results in a joint conclusion, then each participant is related to the conclusion and is morally and formally responsible for the decision. The Land Agency conducts deliberations with the entitled parties by 30 (thirty) working days after the appraisal results from the Appraiser are submitted to the Land Agency to determine the form or amount of Compensation based on the results of the compensation assessment. The results of the agreement in the deliberations become the basis for awarding Compensation to the entitled party, which is contained in the minutes of the agreement.

Suppose there is no agreement regarding the form or amount of Compensation. In that case, the party is entitled to submit an objection to the local district court by 14 (fourteen) working days after deliberation on the determination of Compensation. Deliberations were held to discuss the amount of Compensation. If the deliberations are successful, the land acquisition process will also be successful, and conversely, failure in deliberations will fail land acquisition, including land acquisition.

Compensation for land acquisition objects is given directly to the entitled party. Compensation is given to the appropriate party based on the results of an assessment determined in the deliberations and decisions of the District Court/Supreme Court, which has obtained permanent legal force to the party submitting the objection. At the time of granting Compensation

**Submission of Land Procurement Results**

The land agency submits the results of land acquisition to the Agency that requires land after the Provision of Compensation to the entitled party, the relinquishment of rights has been carried out, and the award of Compensation has been deposited in the District Court.

Agencies that need land can start carrying out development activities after handing over the results of the Land Acquisition. Land procurement for public interest due to urgent circumstances due to natural disasters, war, widespread social conflict, and disease outbreaks can be immediately carried out after the development location has been determined for the public interest. Prior to determining the construction location for Public Interest, prior notification is given to the entitled party if there is an objection or lawsuit over the Implementation of Land Procurement. Agencies that require land can still carry out development activities.
Furthermore, the Implementation of the land acquisition process for the Implementation of development for the public interest, which is regulated in Presidential Regulation 71 of 2012 concerning the Implementation of Land Procurement for Development for Public Interests, is the authority of the Governor as the Provincial Government. In this case, the Governor can carry out his authority in preparing the land acquisition or delegate it to the Regent/Mayor.

As for the meaning of Compensation by Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest Article 1 paragraph 10, namely:

'compensation is a proper and fair compensation to the party entitled to the land acquisition process.'

In the deliberation process for determining Compensation, a form of Compensation will be agreed upon which will be agreed upon by the parties involved in the deliberation, both the executor of the land acquisition and the party entitled to it. Compensation can be given in the form of Money, Substitute land. Resettlement, Share ownership, or Other forms agreed upon by both parties.

This form of Compensation, independently or as a combination of several forms, is given by the value of Compensation, whose nominal value is the same as the value determined by the Appraiser. For more details, the following is an explanation of each type of form of Compensation in land acquisition for development in the public interest:

**Money.** Compensation in the form of money is regulated as follows: Compensation in the form of money is given in the form of rupiah. The Provision of Compensation in the form of money is carried out by the Agency that requires land based on the certificate of the head of the Land Procurement Executor or the appointed official, Validation from the head of the Land Procurement Executor or appointed official is carried out within a maximum of 3 (three) working days from the minutes of the agreement on the form of Compensation, Compensation is made within a maximum period of 7 (seven) working days from the determination of the form of Compensation by the Land Procurement Executor.

Regulation of the Head of BPN No. 5 of 2012 concerning Technical Guidelines for Implementation of Land Acquisition Article 26 paragraph 2 stipulates that the Provision of Compensation in the form of money is carried out through banking services or cash as agreed between the entitled party and the Agency requiring the land.

**Substitute Land.** The Provision of Compensation in the form of replacement land is regulated in Presidential Regulation No. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest as follows: Compensation in the form of replacement land is provided by the Agency that requires the land through the Land Procurement Executor, Compensation is made by the Agency that requires the land after receiving a written request from the Chief Executor of Land Procurement, Substitute land is given for and on behalf of the rightful party, Provision of replacement land is carried out through sale and purchase or other agreed methods in accordance with statutory provisions, Compensation is carried out simultaneously with the release
of rights by the rightful party without waiting for the availability of replacement land. During the process of providing replacement land, funds for providing replacement land are deposited with the bank by and on behalf of the Agency that requires the land. Implementation of the Provision of replacement land is carried out no later than 6 (six) months after the determination of the form of Compensation by the Executor of Land Procurement.

**Resettlement.** What is meant by resettlement is regulated in Law No. 2 of 2012 concerning Land Acquisition for Development for Public Interests Article 36 letter c is the process of providing replacement land to those entitled to another location following an agreement in the procurement process.

**CONCLUSION**

Based on the conclusion of the description above, it can be concluded that land acquisition for public interest in its Implementation carries out activities of relinquishing rights owned by the community; these rights are land ownership rights where the land is used for public purposes. Land acquisition is regulated in Presidential Decree No. 71 of 2012 concerning the Implementation of Land Acquisition for Development for Public Interest and the enactment of Law No. 2 of 2012 concerning Land Acquisition for Development for Public Interest so that these two regulations become the juridical basis for granting land acquisition compensation, as well as procedures in land acquisition which include preparing land acquisition, carrying out land acquisition, and handing over the results of land acquisition.

The value of Compensation, based on the results of the Appraiser, becomes the basis for deliberations on determining Compensation. So in connection with this matter, land acquisition in Compensation awarding deliberations must be based on social, economic, and religious aspects, considering the local government's capacity.

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