

# Law Renewal on the Process of Leftover Land Compensation in Land Acquisition for Construction in Public Necessity

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**Abstract.** Procuring people's land in the context of land acquisition for the public necessity is part of the state's right to control land, is a rational consequence of the social function of land. This study aims to analyze the legal reform of compensation for leftover land as a result of the relinquishment of land rights, when the government or parties who will use the land do not use the land, and the land owner has the right to request compensation for the remaining land as regulated in Law Number 12 Year 2011 concerning Land Acquisition for Construction in the Public necessity in connection with Government Regulation Number 19 of 2021 concerning the Implementation of Land Procurement for Construction in the Public necessity. The research method used is normative juridical, by analyzing the legal norms of compensation for remaining land in accordance with state objectives through state control rights over land based on considerations of economic value and social value. The results of the study indicate that legal certainty and justice in the replacement of the remaining land in the process of relinquishing land rights are still biased because the biggest problem is that there is no agreement from the holders of land rights either in the technical release of their rights, the technical compensation for the remaining land compensation, the amount of compensation, and premature completion of the legal relationship between the subject of the land owner and the object of the land, both the released land and access to the remaining land. The author's recommendation is to restore natural rights to owned land by prioritizing Indonesian culture through deliberation for consensus in the form of balanced deliberation between all parties by maximizing the state's right to control the state which is public in nature as well as the existence of technical instructions outlining standards for assessing the form and amount of compensation for the remaining land by taking into account the land function.

Keywords: compensation; leftover land; land acquisition; state control rights

## 1 Introduction

The accomplishment of civil rights and flourishing for the Indonesian public is the objective of the state's all in all correct to control land, which underscores that land or land privileges ought not be an instrument of state power, gatherings, or people to coerce and persecute others.

Because of the profound connection among individuals and the plots of land they own, it frequently makes issues during the time spent seizing land for the public need. The issue of land procurement, land securing, repudiation of privileges or anything the name is consistently includes two things that should be adjusted in its situation, to be specific the necessities of the

"public authority" and the necessities of the "local area". These two components must both comprehend and execute the appropriate arrangements in regards to land obtaining exercises. Questions will happen in the event that the gatherings don't notice these principles.

The ongoing development in Indonesia certainly requires the availability of land, most of which are already owned by the residents. The implication of the existence of development necessities is that the ruler uses his power to suppress the weak so that this is included in the category of not achieving the value of social justice because of the weak enforcement of natural human rights to land.

The course of land securing for development and for the public need additionally includes the presence of extra land which is important for the stages and cycle of executing land procurement. Extra land is important for a plot of land where just part or a tad bit of the land is utilized in land procurement exercises. The issue of extra land is centered around the execution of pay which is normatively managed in Article 35 of Regulation Number 2 of 2012 concerning Area Acquisition for Development in the Public need related to Article 71 of Unofficial law Number 19 of 2021 concerning Execution of Land Obtainment for Development in the Public need.

Leftover land is also referred to as land that is not included in the Right of Way (ROW) trace category or also called Road-Owned Area (Damija / DMJ), so that it results in the non-functioning of the land in accordance with its designation, according to its original use and designation, or it cannot be reused as productive land. With regard to the remaining land, the land owner can seek a replacement application to the government or the executor of land acquisition activities so that the land can be acquired at the same time as his/her own. However, with regard to land acquisition, especially leftover land, technical problems are often encountered in the field.

With the background of the problem, the writer is required in analyzing the "Legal Renewal on The Process of Leftover Land Compensation in Land Acquisition for Construction in Public Necessity".

## **2 Problem Formulation**

The formulation of the problem in this study is: How is the law renewal toward the process of compensation for leftover land in land acquisition for construction for the public necessity?

## **3 Law Renewal**

### **3.1 The Concept of State Controlling Rights Over Land Over Land**

The idea took on by the UUPA in the connection between the state and land bundles is that the state controls the land, not possesses the land, this is unique in relation to the idea of domein verklaring during the Dutch provincial time frame which characterized the state as the proprietor of the land. The state is an association at the most elevated level that has the position to manage the assignment, use, use, arrangement, and upkeep of earth, water and space, as summed up in Article 33 passage (3) of the 1945 Constitution [1].

The principle of the state's right to control over land emphasizes that in the context of allocating and utilizing land, ensuring the order and prosperity of the Indonesian people over

land is the responsibility of the state so that it can avoid extortion activities and exploitation of land (preventing exploitation de l'Homme por l'Homme) in Indonesian country [2].

The task of the state in land acquisition activities is a public sphere that gives the authority to make policies, process, manage and organize and provide supervision that is summarized in the main points of land acquisition, by ensuring that land acquisition is carried out with planning that involves all stakeholders, and based on balance between the necessities of the people and development, and most importantly land acquisition is carried out by providing compensation that fulfills a sense of justice and deserves acceptance by the community.

### **3.2 The Concept of Leftover Land and the Compensation Process in Land Acquisition Activities**

The Land Procurement Law, especially in article 35 regulates the remaining land that cannot be used again. The Elucidation of Article 35 explains that leftover land is part or parcel of land that will not or cannot be used for its original function when it is owned by the land owner, for example initially functioning as a residence, but because part of the land is used for land acquisition activities, it cannot be re-used as a residence. Thus, normatively, the land owner can ask for compensation for the entire plot of land.

The implementing regulations of the Land Procurement Law regarding leftover land are regulated in Article 67 of the President of the Republic of Indonesia Number 71 of 2012 which basically regulates and explains in general about the remaining land that can be compensated, only to the extent of whether the remaining land can still be utilized again or not, it does not specify in detail any criteria for the remaining land that can be granted or requested for compensation.

Basically, there are 3 (three) criteria that can determine that the remaining land parcel can no longer function, namely [3]:

#### 1) Criteria for land utilization

This criterion must be reviewed from the allotment of land parcels before and after land acquisition activities. For example, on the land there is a building as a place to live, and after land acquisition activities, for example for the construction of a toll road, are needed and only part of the land and buildings are needed, the remaining land cannot be used as a residential house.

#### 2) Criteria for the shape of the land

The form of land prior to land acquisition activities usually changes because land acquisition has been carried out, this form of land has a correlation with the economic value of the land. An example is on agricultural land, if the remaining land is initially rectangular in shape with an area of 1000x2000m<sup>2</sup>, then then decreases with the remaining area of 100x500m<sup>2</sup>, it can still be used as agricultural land, but it will affect the economic value of the land because the owner will find it difficult to function the land and it is also difficult if you have to sell the land.

#### 3) Criteria for access to leftover land

Regarding access to the remaining land, it is reviewed from before and after land acquisition activities. For example, if a land owner is affected by partial land acquisition, and the remaining unused land is in the interior which automatically loses access to it, the land acquisition operator or the government is obliged to compensate for this.

The concept given by Article 70 PP Number 21 of 2021 regarding leftover land, which basically stipulates that the remaining land area is under one hundred square meters (100 m<sup>2</sup>), the land owner can apply for compensation, and for land above one hundred square meters (100 m<sup>2</sup>) can also ask for compensation but it must be based on a study by the land procurement executive committee and the agency that requires the land as well as other required parties.

### **3.3 Law Renewal in the Concept of Compensation Process for Land Procurement for Public Necessity**

By searching the concept of leftover land and the compensation process based on applicable regulations, the author criticizes the process of compensation for remaining land that requires a study, where the study does not involve land owners / land rights holders from the beginning of the land acquisition process as a whole due to the lack of detailed arrangements. from the Land Procurement Law as well as from its implementing regulations.

The study on compensation for leftover land has major consequences for the implementing committee for land acquisition related to the obligation to identify, verify and provide final results regarding the application for compensation for leftover land submitted by the land owner can be given according to the provisions and agreements. The consequence is that the final result of compensation, for example in the form of money, determines the amount of financial expenditure by the state, even though the one who pays it is the agency that has the right or necessities in the land acquisition.

This explanation is considered to be a heavy burden for the land acquisition operator, especially because the assessment of the compensation has not been based on complete and clear standards. Several questions will arise, for example, what kind of plot of land is categorized as unusable like the plot of land in its original state? How and what are the benchmarks? Because without clear benchmarks in a technical regulation, land acquisition implementers in the process of determining compensation will refuse to identify and verify the remaining land for which compensation is proposed by the land owner concerned.

Returning to the request for compensation for land acquisition activities, from the side of the land owner/individual right holder, the meaning of natural rights over land with property rights is very meaningful, because seeing how the land owner proceeds to own his land, there is a very high historical value and creates a strong inner relationship. There is a strong relationship between the subject of the land owner and the object of the land. It is not a simple matter when in the process of public consultation to determine the location and the amount of compensation, the land owner does not just base on the economic value of the land, but its historical value. Even when it is replaced with an amount of money, what needs to be considered is that the deliberation process must go through consensus and be attended by all holders of land rights without exception. Difficult? It does seem difficult, but it's difficult at the beginning, it's okay as long as it's a preventive measure so that it can minimize land conflicts. This comprehensive deliberation does not only discuss the form of compensation in the form of money, but also compensation for example by relocating houses or buildings. It must be based on a feasibility study of the new location, whether it is close to the sources of life that are needed by humans, such as water sources, drainage, health centers, education centers and others which are called basic needs.

Another thing as the basis for agrarian reform in land acquisition is that the conception of public facilities/public necessity is not only attached to the form of the facilities, but rather to the proper function of the public facilities themselves. For example, a road is not only attached to the width of the existing road but for its function to run properly, it is necessary to have a road commensurate with the building. You can imagine if there is a building built right on the side of the existing road. It will be very dangerous for both road users and building owners. Likewise, if the building is built on the road commensurate. The next question is that so far the compensation for land is only on existing roads or up to the equivalent of buildings? because the function of public facilities is related to the zone around the public facilities. Therefore, it would be unfair if the compensation only reached the existing public facilities. And the next question is to achieve the maximum function of public facilities, do you always have to sacrifice the function/benefit of the land owned by the land owner affected by the development project?

Because again the land as a resource to meet human needs. This means that if the economic function of the land is lost due to its size being insignificant, will it be a consideration in deciding compensation? according to the author yes. Therefore, this is what PP Number 19 of 2021 should fulfill, it should return or replace properly the function of the remaining land that has lost its economic function.

AP. Parlindungan in his book explains that a person whose land rights are revoked is at least not poorer or poorer because the compensation money he received has been used up, as much as possible that person is in an economic condition that is at least the same as the previous condition when his land rights had not been relinquished. even better if it gets better. So that appropriate and reasonable compensation allows the person to buy a new place to live or build a house to continue his life [4].

In line with what was formulated by Boedi Harsono, that to land owners who have surrendered their land either by agreement or through a process of revocation of rights, it is obligatory to be given appropriate compensation or compensation so as not to reduce their social level and economic condition [5]. The provision of compensation, especially compensation for the remaining land in land acquisition activities, must be a preventive measure and as an anticipation of the birth of poverty, not as a cause of the emergence of new poverty. So that the amount of compensation given to the land owner must go through an agreed process that is adjusted to the conditions and needs of each.

The hypothesis involved by the creator in legitimate issues with respect to remuneration for extra land in land securing exercises is the hypothesis of equity as communicated by John Rawls. The proportion of equity in land securing is entirely recorded in the meaning of land obtaining itself, which is expressed in article 1 number 2 of the Land Acquisition Regulation which affirms that the action of giving area is to give appropriate and fair remuneration to the legitimate party or land proprietor. Fair here implies identical to the circumstance before an individual's property freedoms are renounced by having their territory privileges repudiated, as such the significance of fair is supposed to reestablish the financial and social states of the party qualified for pay, in particular the land proprietor, essentially equivalent to the circumstance before the denial/discharge. freedoms to their property. The definition of equity according to the law is expressed as freedoms and commitments that can be acknowledged, settled upon and the advantages are felt by the gatherings.

John Rawls gives the view that in order to achieve justice, there are two elements of justice that must be met at once, namely substantive justice (justice) and procedural justice (fairness). The meaning of substantive justice is justice that can actually be received and felt by a person or parties in this case the land owner, while procedural justice emphasizes the rights and

obligations that are used as the basis in the legal corridor. The meaning above can lead to the conclusion that a law will be fair if both kinds of justice are achieved.

If it is related to the process of compensation for the remaining land in land acquisition activities, on the one hand, the process of providing compensation that is real, acceptable and beneficial to the land owner must be achieved, so that substantive justice is also achieved. And on the other hand, procedural justice will be achieved if the process is oriented to justice that has been formulated by applicable law.

The process of giving compensation for leftover land based on the applicable legal rules, according to the author, does not reflect the birth of the principle of justice that was initiated by John Rawls, because there is no clear standard regarding the procedure for calculating and the concept of compensation for leftover land which does not only cover land area, but also related to social and economic aspects.

## **4 Conclusion and Recommendation**

### **4.1 Conclusion**

The state through the option to control the state ought to unbiasedly and procedurally do the course of land procurement for the public need through the method involved with giving up land privileges. Preventive endeavors should be brought on a mission to limit land clashes through endeavors to change the lawful culture in Indonesia, in particular getting back to consultation for agreement with the standards of transparency and equilibrium during the time spent deciding remuneration for outstanding area in land obtaining for the public need. On the off chance that this pondering is completed appropriately founded on the heart, all things considered, it will as of now not be a pay, however the importance is remuneration for benefit, in light of the fact that the land proprietor benefits from the land securing process with a definitive objective of expanding government assistance and success as per the command of Article 33 passage (3) 1945 Constitution.

The social function of land can still be realized through a feasibility study on land acquisition activities and the economic value of relinquishing land rights can be implemented through an agreement on compensation for profit where the parties including the holder of land rights have an equal position with other parties with the replacement process having an equal value. not lower than the value of the land and or buildings on and above it, including the calculation of the residual value of the land from the beginning of the land acquisition activity, not only considering the area of the land, but also taking into account the consideration of the economic value of the lost land function of the remaining land.

### **4.2 Recommendations**

The recommendations that the author can give are as follows:

- 1) For policy makers, they should review the legal rules regarding land acquisition for the public necessity through the relinquishment of land rights, especially the compensation process by fully involving the civil rights of the land rights holders through a deliberation process for consensus which is carried out comprehensively and there are instructions clear technical criteria regarding the benchmark for determining compensation for leftover land from the point of view of the function of the land.

- 2) The holder of land rights should use and utilize their land as well as possible and have the openness to understand that individual lands are actually land belonging to the Indonesian people while still adhering to the social function of the land.
- 3) For the National Land Agency, they should maximize the quality of land services both manually and digitally through an effective computerized land data system and be a wise intermediary between land owners and those who need land for the public necessity without any conflict of necessities due to heavy alignments. in the implementation of land acquisition.

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