

# 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)

Jamaluddin Sungsang<sup>1</sup>, Zudan Arief Fakrulloh<sup>2</sup>, Evita Isretno Israhadi<sup>3</sup>  
{jamaluddinsungsang@gmail.com<sup>1</sup>, cclsis@yahoo.com<sup>2</sup>, evita\_isretno@borobudur.ac.id<sup>3</sup>}

Universitas Borobudur, Indonesia

**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

## 1 Introduction

The Republic of Indonesia's 1945 Constitution specifies, in section 3 of Article 33, that the earth, water, and regular assets contained in that are heavily influenced by the state and utilized to serve individuals. Article 2 passage 1 of Regulation Number 5 of 1960 Concerning Essential Guidelines on Agrarian Standards (contracted as UUPA) elaborates on this provision, which states 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."

The reason for section 1 of Article 2 of the BAL is to give the State position to control the immediate organization of the State over land possessed by a characteristic or legitimate individual or an expansion in free land that isn't claimed by a characteristic or lawful individual. Article 2 paragraph 2 of the LoGA regulates the state's authority to regulate and administer

allotments as well as land ownership. The concept that the state "controls" rather than "owns" the relationship between the state and land is upheld in the LoGA.[1] The state, as a powerful organization made up of all the people, has the authority to regulate land ownership and control by providing proof of rights and acknowledging previous rights to the land in relation to the LoGA, which was established on the basis of customary law. The LoGA contains a regulation regarding the social function of land, to be specific Article 6 of the LoGA, which specifies that all land privileges have a social capability. The presence of land privileges and the acknowledgment of land freedoms don't reject the main role of land guideline, which is for the best flourishing individuals.

The social capability of land as a living space for all individuals expects it to have the option to find some kind of harmony between individual, social, and state interests. The vehicle of land is firmly connected to the improvement of framework in the public interest. so that land and exercises connected with advancement can't be isolated from each other. As expressed in the fourth section of the 1945 Constitution, land procurement for the benefit of all exists to understand the government assistance and flourishing individuals' lives and turned into the Indonesian country's presence impact. The Republic of Indonesia[2] has several stages for acquiring land for public development, including the planning, preparation, implementation, and delivery stages. The objections of the entitled parties and affected communities to the Governor's location determination frequently impede progress during the preparation stage.[3]

In point of fact, expectations do not always match reality. In practice, it is impossible to separate the land acquisition process from community issues. 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 idea of state control ought not be completed in outright terms yet ought to be focused on the best flourishing individuals while as yet focusing on the harmony between convenience, equity, supportability, and impressive skill. This present circumstance frequently causes struggle between the public authority and the local area. 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.

Socialization, area assurance, and settlement on the area of the advancement plan are steps in the public counsel process for land securing for improvement. The legitimate party and the impacted local area are engaged with public meeting, which happens at the area of the advancement plan or one more settled upon area. According to Law Number 2 of 2012, public consultation must take place within 60 (sixty) working days. If parties object to the location of the development plan, a public consultation with the opposing party must take place within 30 (thirty) working days. Increasing public participation necessitates public consultation.

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,[4] 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.[5]

## **2 Method**

The study is descriptive and employs both a conceptual and statutory approach, both of which make use of existing legal doctrines, as well as legislation and regulations.

As indicated by Regulation No. 2 of 2012 Concerning Area Obtainment for Improvement in the Public Interest, research information is a unit of data ashore securing for foundation advancement. Accordingly, the accompanying information were utilized by the specialist to address every one of the inquiries presented in this review:

- a. Primary lawful materials are definitive legitimate materials that have authority. The Essential Regulation, Regulation Number 2 of 2012 concerning Area Acquisition for Improvement in the Public Interest, Regulation Number 25 of 2004 concerning Public Turn of events, Regulation Number 5 of 1960 concerning Central -Agrarian Principles, Law Number 30 of 1999 concerning Arbitration and Dispute Resolution, and Government Regulation Number 19 of 2021 are the primary legal materials in this investigation.[6].
- b. Legal materials that make sense of essential legitimate materials are alluded to as optional lawful materials. The books, articles, diaries, and papers that talk about land procurement comprise auxiliary lawful materials.
- c. Tertiary lawful materials, which are well-qualified feelings that give clarifications to auxiliary and tertiary legitimate materials.

## **3 Result and Discussion**

### **a. Provisions on Land Procurement for Development in the Public Interest**

The Republic of Indonesia's Constitution, Article 33, paragraph 3, states as follows: "Earth and water and the natural resources contained therein are controlled by the state and used for

the greatest prosperity of the people." The presence of this article is an achievement for the state to understand the standards of civil rights and financial equity for every single Indonesian individual. The defendability of the state to deal with every regular asset, both on the planet and in space, plays legitimized the part of the state in dealing with the substance of public normal abundance to be utilized however much as could reasonably be expected as open utilities and public administrations for the more extensive local area.[7]

The order of Regulation No. 67 presents state authority over the earth, water, and regular assets. Article 2 passage 1 of Regulation No. 5 of 1960, which laid out the Fundamental Guidelines on Agrarian Standards, expresses that the state is the association of force for all individuals and holds control over earth, water, and space. Everybody is conceded land endlessly privileges to the interests of the local area overall with the death of the quo regulation. As for legitimacy of opportunities to typical interests, it is communicated in article 6 of the LoGA, explicitly "all land honors have a social capacity." considering the LoGA's arrangements in Article 18 with respect to the connection of social capabilities to land freedoms, in particular:

"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."

This article serves as the primary source of legitimacy for the government when it wants to conduct land procurement in the public interest. It is also the fundamental foundation upon which the state can realize the use of land for the greatest benefit of the people. 8] Land procurement is the process of acquiring land in exchange for a fair and adequate payment to the entitled party.

Legally, the arrangements for acquiring land are governed by Law No. 2 of 2012 concerning Area Obtainment for Improvement in the Public Interest, in which the rule of land securing should satisfy the standards of humankind, equity, benefit, assurance, transparency, arrangement, cooperation, government assistance, manageability, and amicability. It is intended to reduce the state's determination to recognize land rights owned by each individual and ensure that the land acquisition process is fair for the benefit of all. Water and natural resources as regulated by the phrase "controlled by the state" cannot be interpreted as the sole owner of each land right as in civil law due to the dominance of state provisions in regulating everything on earth. The utilization of Indonesia's natural resources is instead regulated by the state.[9]

Regulation Number 2 of 2012, which manages Land Acquisition for Advancement in the Public Interest, and executing guidelines, Unofficial law Number 19 of 2021, give a more inside and out clarification of the phases of land obtaining, which incorporate preparation, readiness, execution, and accommodation of results as follows:

#### **i. Planning Stage**

As per the arrangements of Regulation No. 12 of 2012 Concerning Area Obtainment for Improvement in the Public Interest, all organizations that require land for improvement in the public interest are expected to set up a land procurement plan record alluding to:

- 1) Spatial arrangement; and
- 2) Development needs recorded in:
  - Medium-term improvement plans;
  - The brilliant course of action; and additionally
  - Government/organizations work designs that require land.

In addition, the clarification of Article 4 paragraph (2) of Government Regulation Number 19 of 2021, which expresses that land procurement should include the service or office that completes government undertakings in the land area to get an outline of the land securing

process, is utilized in the arrangement of the previously mentioned land obtaining arranging archive. area, region, condition of the land, assessed execution time, and expenses for buying land In any event, Article 5 expresses that the arranging report contains:[10]

- 1) The aims and objectives of development;
- 2) The suitability of space utilization activities;
- 3) National/regional development priorities;
- 4) Location of land;
- 5) The required land area;
- 6) General description of land status;
- 7) Estimated time for land acquisition implementation;
- 8) Estimated period for land acquisition implementation;
- 9) Estimated land value;
- 10) Budget plan; and
- 11) Indemnity preferences

The preceding land acquisition planning document is governed by Presidential Regulation Number 71 of 2012, Elucidation of Article 6 paragraph (1), which states: A feasibility study, which includes, is used to plan land acquisition:

- 1) Socio-financial overview;
- 2) Feasibility of the area;
- 3) Analysis of advancement expenses and advantages for the district and the local area;
- 4) Estimated land esteem;
- 5) Environmental and social effects that might emerge because of land procurement and advancement; and
- 6) Other investigations are required.

The organization that requires land within the boundaries of the land area then submits the planning document to the Governor.

## **ii. Preparation phase**

Groundwork for the securing of land As per Article 9 of Official Guideline Number 71 of 2012 Concerning the Execution of Land Obtainment for Improvement in the Public Interest, the Lead representative is committed to frame a readiness group inside five (five) working long stretches of getting the arranging record for the procurement of land. The group has been authoritatively acknowledged and incorporates:

- 1) Regent/Mayor;
- 2) related Provincial Apparatus;
- 3) Agencies that administer affairs in the land sector; and
- 4) Other related agencies.

The Lead representative lays out a secretariat for the planning of land procurement inside the common secretariat to make it simpler for the preliminary group to complete its liabilities. Furthermore, as expressed in Article 10 of the Official Guideline Concerning the Execution of Land Acquisition for Improvement in the Public Interest, the obligations of the preliminary group are:

- 1) Implement development plan notification  
The notice of the improvement plan should be endorsed by the top of the arrangement group and disclosed at the area of the advancement plan no later than 20 (twenty) working days after the development of the preliminary group, as per Article 11 of Official Guideline Number 71 of 2015. When referring to

paragraphs (2) and (3) of Article 13, the notification can be made directly through socialization, correspondence, or letters, as well as indirectly through print 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.

- 2) 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:[11]
  - Land privileges holders;
  - The board freedoms holders
  - Nadzir for waqf land;
  - Proprietors of free land having a place with custom;
  - Native people groups
  - Parties who control state land with sincere intentions;
  - Proprietors of structures, plants, or different items connected with land.

What's more, a course of public meeting was completed, which, as per Article 1 point (8) of Regulation Number 2 of 2012 Concerning Area Obtainment for Improvement in the Public Interest, is a course of exchange or thought between parties keen on deciding the arranging area of land securing for improvement. In light of a legitimate concern for the general population. The option to take part in thought in regards to the area of the land for securing is allowed to the land proprietor or ruler during the underlying system of land procurement. The landowners are as of now mindful of and even partake during the time spent deciding the area of advancement in the public interest thanks to these arrangements.[12]

After the quo Law was enacted, land owners' rights were more respected by including them in public consultations. Preceding the establishment of Regulation Number 2 of 2012, the area of land for improvement of public interest was resolved singularly by the public authority without including the proprietor or holder of land freedoms. A course of dialogical correspondence or pondering between closely involved individuals to arrive at a comprehension and understanding in arranging land securing for improvement in the public interest is alluded to as open meeting in Article 1 of Regulation Number 2 of 2012 concerning Area Obtainment for Advancement in the Public Interest. As per Article 19 of Regulation Number 2 of 2012, public counsels are completed at the area of the improvement plan of interest to give lawful conviction. Public interviews are likewise done with the support of the entitled party and the impacted local area. public or an assigned area.

A delegate with a legal authority from and for the benefit of the party qualified for the area of the improvement plan can likewise work with cooperation by the entitled party. The

arrangement's minutes detail the agreement came to during the public conference. Article 20 of Regulation No. 2 of 2012 specifies that public counsel on improvement plans should happen inside sixty (60) working days. the fighting party no later than 30 (thirty) working days. Moreover, the office that requires land reports to the neighborhood lead representative to frame a group to direct a concentrate on the issue with the building site plan if there are still gatherings who object to the arranged improvement area during the public meeting.[11]

- 1) The team referred to in article 21, paragraph (3) is a provincial secretary or an official appointed as chairman and concurrently a member.
- 2) Head of the Provincial Office of the Public Land Organization as secretary and simultaneously part.
- 3) Agencies that handle affairs in the field of regional development planning as members.
- 4) Head of the Local Office of the Service of Regulation and Common liberties as a part.
- 5) The regent/mayor or an official appointed as a member and
- 6) Academics as members.

Regulation Number 2 of 2012 concerning Area Obtainment for Improvement in the Public Interest orders that the arrangement of the Group is a type of expectation that in the event that in deciding the area of advancement there is no understanding between the land proprietor and the public authority, then, at that point, it tends to be supposed to be a hold group. The team in charge of conducting the objection study need not be assembled if the meal agreement contains no obstacles.

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 [11]

- 1) Provincial Secretary or an official appointed as chairman concurrently serving as a member;
- 2) Head of the Territorial Office of the Public Land Organization as secretary and simultaneously part;
- 3) Agencies that handle regional development planning as members;
- 4) Head of the Provincial Office of the Service of Regulation and Basic liberties as a part;
- 5) Regent/Mayor or officially appointed as a member; and
- 6) 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 proposals for acknowledgment or dismissal of protests endorsed by the top of the complaint concentrate on group to the Lead representative.

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. The agency that needs the land will either change where the development plan is located or cancel it if the Governor accepts the objection. The party with rights to the land or the affected community may file a lawsuit with the State Administrative Court if the objection is rejected by the Governor's decision regarding the location of the development plan.[13]

### **iii. Implementation Stage**

The public interest agency submits the implementation of land acquisition to the Land Agency at the implementation stage of determining the location of development. In accordance with Law No. 12 of 2012, the minister is in charge of carrying out the land acquisition process. The Top of the Territorial Office of the Public Land Organization (BPN) fills in as the Top of the Land Acquisition Leader. The stock and distinguishing proof of control, possession, use, and use of the land, the assessment of pay, the conversation of pay assurance, the arrangement of pay, and the arrival of organization land are parts of the land obtaining process. Management, ownership, use, and inventory of the land, including the following activities: collecting information from parties with land acquisition rights and purposes, surveying and mapping each parcel's fields. Based on the results of the Chief Executive of Land Procurement's appraisal of the services of an Appraiser or a Public Appraiser, the Top of the Land Acquisition Agent decides how much pay.

Inside 30 (thirty) working days after the top of the land acquirement leader gets the evaluation results from the Appraiser and the greeting is presented no later than 2 (two) working days before the date of the thought to decide remuneration, the land obtaining implementer should hold consultation with the entitled party and incorporate the organization that requires the land. The methodology of choosing compensation (pay system) in restoring the neighborhood, has achieved issues at the execution level. The public authority's utilization of an alternate cost standard while repaying impacted landowners is much of the time a block to the progress of the land securing process in light of the fact that the local area and the public authority have different cost ideal models.

The entitled party has the option to document a complaint with the neighborhood area court inside 14 (fourteen) working long stretches of marking the minutes of the aftereffects of the thought, and the locale court choice on the structure and additionally measure of remuneration should be made inside 30 (thirty) working long stretches of getting the protest in the event that there is no understanding in regards to these issues. The gatherings can document an enticement for the High Court inside 14 (fourteen) working days in the event that they keep on contradicting the locale court's choice; the High Court should pursue a choice inside 30 (thirty) working long stretches of getting the cassation demand.

The reason for the installment of remuneration to the party who documented a protest stays the legitimately restricting choice of the Region Court or the High Court. In light of the aftereffects of the appraisal still up in the air in the pondering and additionally court choice or the High Court, the party who has the right gets remuneration, which can appear as cash, substitution land, resettlement, share proprietorship, or different structures that have been endorsed by the two sides.[14]

The compensation based on the judge's decision is entrusted to the local District Court[14] if owners of land rights continue to refuse the structure or potentially measure of pay in light of the aftereffects of pondering or the choice of the Region Court or the High Court. Additionally, parties who decline the structure as well as measure of remuneration in light of the consequences of pondering and don't record an issue with the court will store the pay in the neighborhood Region Court. Likewise, parties who are qualified for get remuneration however whose whereabouts are obscure or who are the subject of a legal dispute, during the time spent proprietorship debate, dependent upon seizure by the equipped power, or act as security in the bank are qualified to have pay saved in court.



#### iv. Result Submission Stage

As per sections (1) and (4) of Article 112 of Official Guideline Number 148 of 2016, the Head of Land Acquisition Agent presents the land securing information alongside the aftereffects of the pay interaction to the organization that requires land. The authority report on the arrival of the object of land procurement should be given inside three (three) working days before the outcomes can be submitted. To begin the development process, agencies requiring land must register land acquisition objects.

## 4 Conclusion

Assuming control over government-possessed land for the development of public offices is known as land securing for advancement in the public interest. The planning, preparation, and implementation phases of the land acquisition involve the local government as the executor, the ministry that handles matters pertaining to the land sector, land rights holders, and affected communities. Arrangements for land securing are directed in Regulation Number 2 of 2012 concerning Area Acquisition for Advancement in the Public Interest and Official Guideline Number 71 of 2012 concerning Execution of Land Obtainment for Improvement in the Public Interest.

## References

- [1] Maria S.W. Sumarjono, *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Jakarta: Penerbit Buku Kompas, 2005.
- [2] Triana Rejekiningsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)," *Yustisia*, vol. 5, no. 2, p. 299, 2016.
- [3] Djoni Sumandi Gozali, *"Hukum Pengadaan Tanah di Indonesia"*. Bandung: PT Citra Aditya Bakti, 2019.
- [4] Abdillah Arief dan Muhammad Al-Jabbar Putra, "Perwujudan Prinsip Keadilan Dalam Land Acquisition Untuk Pembangunan Infrastruktur Melalui Penerapan Compulsory Rehabilitation and Resettlement," *Indones. Const. Law J.*, vol. 2, no. 1, 2018.
- [5] Suriyati Hasan, "Sistem Perencanaan Pembangunan Dalam Penataan Hukum Nasional," *Meraja J.*, vol. 1, no. 3, 2018.
- [6] Ronny Hanitijo Soemitro, *Metode Penelitian Hukum Jurimetri*. Jakarta: Penerbit Ghalia Indonesia, 1998.
- [7] Ni Luh Ariningsih Sari, "Konsep Hak Menguasai Negara Terhadap Tanah Dalam Hukum Tanah (Undang-Undang Pengadaan Tanah) dan Konstitusi," *J. Ganec Swara*, vol. 5, no. 1, 2021.
- [8] Ujang Bahar, "Permasalahan Pembayaran Ganti Rugi Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum," *J. Huk. dan Pembang.*, no. 204, 2008.
- [9] Upik Hamidah, "Pengaturan Hukum Pengelolaan Sumber Daya Air Di Kota Bandar Lampung," *J. Cita Huk.*, vol. 3, no. 2, p. 313, 2015.
- [10] "Republik Indonesia, Peraturan Presiden Nomor 71 Tahun 2015 tentang Penyelenggaraan Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum, LN. 29 TLN. 6631."
- [11] dan N. Z. Edi Rohaedi, Isep H. Insan, "Mekanisme Pengadaan Tanah Untuk Kepentingan Umum," *Pakuan Law Rev.*, vol. 5, no. 1, 2018.
- [12] Iskandar, *Pembebasan Tanah Untuk Pembangunan Kepentingan Umum*. Jakarta: Permata Aksara, 2015.
- [13] Y. Eko Haryanto, ""Penyelesaian Sengketa Penetapan Ganti Rugi Tanah Untuk Pembangunan

Jalur Kereta Cepat Jakarta Bandung di Kabupaten Karawang,” *Pakuan Law Rev.*, vol. 6, no. 2, 2020.

- [14] Aartje Tehupeiory, *Putusan Pengadilan Pada Kasus Konsinyasi dalam Pengadaan Tanah Untuk Kepentingan Umum*. Jakarta: UKI Press, 2018.