

# Compensation for Damaged Land: Comparative Study between Indonesia and Japan

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**Abstract.** Indonesia and Japan regulate compensation for damaged land differently, especially in land expropriation process. This article aims to compare compensation concept of damaged land in Indonesia and Japan to get better understanding of the differences, similarities, and consequences. Using qualitative descriptive approach, rules and regulations that apply in Indonesia and Japan are compared. Land acquisition for development for the public interest is regulated by Law Number 2 of 2012. In land expropriation, the state provides appropriate compensation for the parties involved. In context of land acquisition, there is no compensation for damaged land. Law Number 24 of 2007 concerning Disaster Management mandates the government to oversee disaster management that accommodate compensation for damaged land due to natural disaster. In Japan, land expropriation will not happen unless landowners are appropriately compensated. Regarding compensation value, Japan has superior regulations compared to Indonesia. Japan uses consensus to determine compensation while Indonesia uses single value determined by public appraisal. However, Indonesia has special regulations for damaged land. Therefore, if damaged land is used for the public interest, landowners will not receive compensation through land acquisition procedures but rather through disaster management procedures.

**Keywords:** Land Acquisition, Compensation, Damaged Land, Compensation Money

## 1 Introduction

Throughout their lives, human cannot separate themselves from their dependence on the land. From birth to death, land continues to be an essential part of life, which is why it is considered as basic human need. On the one hand, national development, especially the development of various facilities for public purposes, requires a substantial plot of land [1]. On the other hand, all land is bound to their respective land rights. Without land, the development will merely stay as plan [2]. Thus, land acquisition for public interest requires proper regulations, observation of its impact on the public, and ensuring legal fulfilment of land rights. Besides having economic value, land also possesses social functions [3].

In Indonesia, land acquisition for development purposes is regulated by Law Number 2 of 2012 concerning Land Acquisition for the Implementation of Development for Public Interest (Land Acquisition Law). The types of land used for the public interest are regulated in Section 10 of the Land Acquisition Law and expanded in Law Number 11 of 2020 concerning Job Creation Chapter VIII.

These laws are expected able to guarantee the implementation of land acquisition for the development of public interests while still prioritizing the value of humanity, democracy, and justice. Appropriate compensation is provided for land acquisition for the development of public interests, as regulated in Land Acquisition Law which states that “Compensation is a proper and fair payment to landowners in the land acquisition process” [4].

As the population increase, demand for land, such as for a place to settle and grow as well as for development, also increase. However, land continuously decreases due to natural occurrences such as land abrasion that makes land acquisition more challenging [5]. Abrasion is natural disasters that can make landowners lose their privilege to control, to use, or to take benefit from their partially or completely damaged land. Abrasion commonly occurs on coastal or riverside area caused by destructive waves and currents triggered by disruption of natural balance [6]. Law Number 5 of 1960 regarding Basic Agrarian Regulations (Basic Agrarian Law) states that land rights are nullified if the land is damaged. In land acquisition for the public interest, compensation cannot be given to the owner if the land was damaged as based on this law; the land rights are no longer exist.

Land damaged due to natural phenomenon is occurred beyond landowner control. This similar natural disasters that destroy land such as landslides, flash floods, earthquakes that cause liquefaction, tsunamis and so on. Law Number 24 of 2007 concerning Disaster Management states that the government oversees disaster management process. As mandated by fourth *Alinea* of the Preamble of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the Government protects the entire nation and all citizens of Indonesia, and so on. Disaster management is an inseparable part of national development, considering that Indonesia is located near the confluence of various tectonic plates that is prone to seismic and volcanic disasters. In implementing disaster management, the state can take over ownership rights over an object, including land and then designate the area or place of settlement as a prohibited area that unsuitable for human habitation.

Semarang-Demak Sea Wall Highway Project is part of Trans Java highway project located in northern coastal area of Java Island. Trans Java highway will connect Semarang with Surabaya on the northern route. Apart from being transportation network that will connect several centres of economic activities to spur growth, this project is expected to be an alternative solution to seawater abrasion problem that has submerged residential buildings in the area. There is challenges faced regarding damaged land during land acquisition process for the construction of this project, which has created a sense of urgency of further regulate damaged land by the government. Most of the sea wall highway tracts will be built on residential areas that are subject to abrasion and are inundated by seawater. Should landowners of damaged land not be entitled to compensation from the State in accordance with the Land Acquisition Law or should they, in accordance with the Disaster Management Law? This question should not have existed if there were clear regulations regarding damaged land or the stipulation of seawater abrasion as a natural disaster followed by the expropriation of all objects by the state with appropriate compensation for landowners.

Empirical research conducted in many countries show that amount of compensation for affected landowners after expropriation is often insufficient to rebuild their properties. Banerjee and Van Eerd found that compensation and resettlement assistance provided to affected landowners in Cambodia, Indonesia, Nigeria, Sri Lanka, and Philippines were insufficient to cover their losses, purchase alternative land, and maintain acceptable living standards. In China, a survey of 476 expropriation cases conducted by Keliang et al. revealed that 65.5% of affected farmers were dissatisfied with the amount of compensation [7].

## **2 Research Methodology**

This article aims to compare compensation concept of damaged land using qualitative descriptive approach by comparative study between the Indonesian and Japanese laws. Primary and secondary data were obtained by conducting literature review and case study.

## **3 Discussion**

### **3.1 Land Law System in Indonesia**

Indonesia has laid the political foundations for the National Agrarian law, as referred to Section 33 Paragraph (3) of the 1945 Constitution: “The land, water, and natural resources contained therein are the rights of the state and used to its fullest extent for the prosperity of the people”. The word “rights” does not mean ownership, but at the highest level, the statement “giving authority to the highest authority” refers to the state [8]. The state ensures, administers, and controls the legal ties between humans and land, water, and skies. As the highest form of authority, the state has authority to control and organize the use, supply, and maintenance of land, water, and skies. In this case, the Agrarian Law must be intended for the happiness, welfare, and prosperity of Indonesians based on *Pancasila* (the Five Basic Principles of the Republic of Indonesia) as the state philosophy [9].

Based on this authority, the state is obliged to regulate the provision, allocation, and use of land, water, and skies to fullest extent by considering the principles of justice, certainty, and benefits. The land is natural resource with a relatively fixed amount and unlikely to increase. Therefore, regulation and land use control are needed so land conversions can be controlled, especially those which can have a detrimental impact on the community [9].

### **3.2 Natural Disasters and Damaged Land in Indonesia**

Many people have registered their land but they lost their land due to abrasion, which voids their land rights according to the Basic Agrarian Law. Land rights are private rights, providing authority to right holders that can be an individual, a group or a legal entity. In practice, even after obtaining a certificate, the right to control, to use, or to take benefit from their land can still be void if the land was lost to abrasion [10].

Should the state eliminate legal relations between citizens and their land? It is to be carried out properly through clear and firm legal protection institutions that ultimately realize the aspiration of ensuring the welfare and prosperity of the people. Every individual has the right to obtain recognition of guarantees, receive protection, and legal treatment as fair as possible, receive equal treatment before the law, and obtain legal certainty [11]. This is regulated in Section 3 Paragraph (2) of Law Number 39 of 1999 concerning Human Rights. The Basic Agrarian Law voids the rights of damaged land, causing legal uncertainty to those whose lands were damaged due to a disaster such as abrasion.

Section 1 point 1 of Law Number 24 of 2007 concerning Disaster Management defines disaster as a series of events that disrupt life and livelihoods of the public, is caused either by natural or non-natural factors, including humans themselves, causing loss, damage, psychological impact, and casualties. Does land simply disappear without legal certainty? Land

registration aims to provide the public with legal certainty through land registration certificates, creating a feeling of security in individuals [12].

Governments in various countries play a role in supporting their citizens whose residences or places of business have been rendered unusable due to salinization or flooding, the disappearance of coastal lands and riverbanks, or land shifts. The government is expected to not only rehouse those affected but also be able to rebuild communities. For example, various national, bilateral, international, and non-governmental programs were carried out for recovery, reconstruction, and reform of development in countries affected by Hurricane Mitch namely Honduras, Nicaragua, El Salvador, Guatemala, and Belize [13]. Another example is the 2011 Tohoku tsunami disaster management where the Japanese government carried out reconstruction in various fields, including infrastructure design, transportation, land use management, urban design, relocation, as well as economic and industrial prospects [14].

In Indonesia, the government has frequently relocated and compensated those who have lost their land and homes due to disasters, as was the case with the tsunami in the Nanggroe Aceh Darussalam Province and Nias Islands on 6 December 2004. Post-disaster community recovery is regulated in Section 5 of Government Regulation Number 2 of 2007, ensuring that landowners whose lands, registered or not, have been damaged receive replacement land or compensation through rehabilitation and reconstruction according to the regional government or the Rehabilitation and Reconstruction Agency.

The Sidoarjo mudflow is the result of an erupting mud volcano at the Lapindo Brantas Inc. drilling location in Sidoarjo, East Java. The first eruption occurred on May 29, 2006, which lasted for several months causing inundation of residential, agricultural, and industrial areas in the three surrounding sub-districts, as well as affecting economic activity in East Java. The National Mudflow Disaster Management Team in Sidoarjo was formed through Presidential Decree No. 13 of 2006. The decree states that the team was formed to save residents around the disaster site, maintain basic infrastructure, and solve the mudflow problem with minimal environmental risk.

In 2010 after the eruption of Mount Merapi, as many as 3,612 people living in danger zones were permanently relocated to permanent residences in Pagerjurang, Giriharjo Neighborhood, and Kepuharjo Village in Cangkringan Subdistrict. The first eruption of Mount Sinabung occurred on August 10, 2010, and has not stopped, causing the government to relocate locals, especially those within a 0–3-kilometer radius from Sinabung as it is considered as a highly dangerous area. During the first phase, 370 families from Sukameriah and Bekerah villages were relocated to housing in Siosar Village, Merek Subdistrict.

The tsunami earthquake and liquefaction that occurred in Palu, Sulawesi destroyed and even sank several residential areas including Petobo Village, the housing complex in Balaroa Village, some parts of Sidera Village, and Jono Oge Village in Sigi District. The government ordered residents of the Palu Koro fault line and adjacent locations to relocate to the previously prepared 320 hectare-area located approximately 20 km from the initial location, as it is prone to disasters.

### **3.3 Compensation for Damaged Land in Indonesia**

In the concept of the relationship between humans and land, Indonesian philosophy places the individual and society as an inseparable unit (duality). An individual's need for land is considered part of community needs, showing that the relationship is not merely individualistic, but rather collective while still providing place and respect for individual rights [15]. For many

people, land is a necessity in realizing human rights. Land is not merely a commodity but an essential element for the realization of human rights [16].

With human rights to land in mind, if the state needs land for the public interest, including the interests of the state as well as the common interests of the public, land rights can be revoked by providing appropriate compensation. Furthermore, it is regulated in the Land Acquisition Law by carrying out a compensation appraisal on a plot of land that produces a single monetary value. Further discussions are conducted only to determine the form of compensation.

In the case of the Sea Wall in Semarang-Demak, the community is unable to prevent their land from being damaged and submerged caused by abrasion, which is a natural phenomenon that occurs out of control of the landowners. Following the Basic Agrarian Law, a plot of land must be registered for termination to be considered as damaged land. In addition, according to the Disaster Management Law, the termination of land rights must be compensated accordingly if caused by force majeure (disasters), changes in the landscape beyond human control, and related to the realization of human rights where the state should be present to provide compensation or relocation to affected communities. Examples of these are actions of the state towards those affected by the tsunami, earthquake, and liquefaction.

### **3.4 Compensation for Damaged Land in Japan**

The train of thought and law of Japan continue to move steadily toward the West. The latest legal actions are often brought to court and the popular Japanese press are now paying more attention to laws, prosecutions, and economic and political relations with the West. Showing remarkable economic and industrial progress, Varley noted, "The Japanese continue to uphold their cultural heritage. They are the gulf that still separates the East and West in this modern era" [17].

Japanese Civil Law regarding property law is based on Roman Law. Section 29 of the Japanese Constitution expresses the basic rights of Japanese citizens concerning property, including the right to own property is inviolable; in accordance with the public welfare, property rights must be determined by law; and private property may be seized for public use based on fair compensation. The definition and scope of property rights in Japan are further codified in the Civil Code. Japanese Property Law (*zaisan ho*) has remained unchanged since the adoption of the original Civil Code in 1896, save for facing modern trends and keeping up with increased urbanization [18].

The Japanese civil law system respects individual property rights, rejects fragmentation, and avoids sharing of ownership [19]. In 1951, The Land Expropriation Law (LEL) was enacted under Paragraph 3 of Section 29 of the Japanese Constitution as a general law on compulsory land acquisition for general purposes. LEL regulates the requirements, procedures, and impacts of expropriation and use of land, and decisions related to the public interest under the authority of the Ministry of Land, Infrastructure, and Transport. These procedures ensure a quick and simple process of land acquisition.

If necessary, public consultation will be held. The government or parties who need land will only acquire by force if more than 80% people are agree or after 3 years from the initial announcement, whichever occurs first. This must be announced to all parties involved [20].

The role of compensation consultant or appraiser is crucial in determining amount or form of compensation. If landowners are not satisfied with the proposed compensation, they can appeal to the minister. Such appeal can also be submitted directly to the court, provided the matter is limited to the amount of compensation. In recent years, Japan's Supreme Court issued

eight expropriations in five cases and made two important decisions regarding compensation [21].

Negotiations between parties involve strict legal procedures and all property decisions have to be made by all landowners and must reach a consensus. Since 1966, the construction of the New Tokyo International Airport in Narita, Japan has received negative and extreme reactions from landowners who oppose its development. Farmers were involved in violent protests, and some of them even lost their lives. Apart from farmers and landowners, students and political parties formed the Sanrizuka Shibayama Union against the Airport (Sanrizuka-Shibayama Rengo Kūkō Hantai Dōmei) [22]. Strong protest and resistance continued until 2003. Almost forty years later, the project was still underway but had come to a halt. This experience became a valuable lesson for the Japanese Cabinet; efforts to strategize and negotiate with landowners proved to be much more effective than forced evictions.

Compensation for damaged land due to disasters has not been regulated in Japan. There is no structured compensation program for disaster victims in general, no specific program, or law that provides more than token compensation to earthquake or tsunami victims, and no compulsory insurance (and often none at all) for those living in disaster-prone areas [23].

### 3.5 Comparison of Damaged Land Compensation in Indonesia and Japan

The term “law comparison” (not “comparative law”) does not compare civil law, criminal law, constitutional law, and so on with one another [24], but rather one legal system with another. Law is compared based on two understandings that are unmistakable that they never need to be mentioned at all. The first is that law, as understood in the West, is a harbinger of civilization. The second understanding is that the most dominant civilization in Europe (which has extended to America, due to emigration and previous European settlements). Simply put, in the early twentieth century, civilization was viewed primarily as Western, white and Christian [25]. Law comparisons include improvements to international law: it is useful in historical and philosophical legal research; it is essential to better understand and correct national laws; and, it enhances understanding of outsiders, thus contributes to the creation of favourable development of international relations [25].

Kamba in Peter De Cruz [17] stated that there are three stages involved in the comparison process; 1) Description phase: describing the norms, concepts, and institutions of the related system; 2) Identification phase: showing the differences and similarities of the systems being compared and; 3) Explanation phase: explaining the similarities and differences between systems, concepts, or institutions. The differences, similarities, and consequence comparison in compensation for damaged land in Indonesia and Japan are shown in Table 1, Table 2, and Table 3, respectively.

**Table 1.** Differences in land acquisition compensation in Indonesia and Japan

<b>Difference</b>	<b>Indonesia</b>	<b>Japan</b>
Legal Basis	Basic Agrarian Law, Land Acquisition Law, Law Number 11 of 2020	The 1951 Land Expropriation Law (LEL)
Land Acquisition Compensation	1. Compensation is a proper and fair replacement for the entitled parties in the land acquisition process.	1. There are special regulations governing compensation or losses. 2. Everything attached to the property.

	2. Land, space above and below ground, buildings, plants, and objects attached to the land, and other assessed losses.	3. The amount of compensation must be based on consensus
	3. With consideration, the remaining land can be compensated.	4. Land court exists.
	4. The land court does not exist.	
Damaged Land	Properly set	Not set

**Table 2.** Similarities in land acquisition compensation in Indonesia and Japan

<b>Similarity</b>	<b>Indonesia</b>	<b>Japan</b>
Legal System	Civil Law System	Civil Law System
Legal Basis	Regulate land acquisition compensation through law	Regulate land acquisition compensation through law
Land Acquisition Purpose	Public Interest	Public Interest
Constitution	All laws regarding land are based on the constitution	All laws regarding land are based on the constitution

**Table 3.** Consequences comparison in land acquisition compensation in Indonesia and Japan

<b>Consequence</b>	<b>Indonesia</b>	<b>Japan</b>
Legal Basis	Land acquisition is regulated in three laws, shows the complexity and development process.	More settled regulation.
Compensation	Adjust principle, compensation for all physical and non-physical lost base on public appraiser valuation but more potential to appeal.	Consensus principle, compensation just for materials attached to the property. Sometime consensus takes more times.
Appeal	Takes more times as general court has many cases.	Need less time.
Damaged Land	Making compensation becomes more complex to determine.	It is not part of compensation.

In Indonesia, legal basis of compensation in land acquisition consists three different laws, Basic Agrarian Law, Land Acquisition Law, and Law Number 11 of 2020 compare to single law in Japan. It seems that Japan has more settled law relating to land expropriation. Compensation for physical and non-physical lost are given to the landowner in Indonesia. This includes the remaining land that no longer can be used as prior the project. While in Japan, compensation just for everything attached to property that will be used as development of public interest. In Indonesia, adjust principles are carried out by public appraiser to determine the compensation. Japan uses public appraiser as well but consensus more dominant in the process. Land court in Japan makes appeal related with land acquisition finish relatively faster than in Indonesia. In Indonesia, similar appeal likely needs more times as general court already have many cases. Indonesia has better regulation relating to damaged land. Compensation is given to landowner who lost their land due to natural disaster.

## 4 Conclusions

In Indonesia, compensation for landowners can be given after the land has been fully acquired, in which the value of compensation is determined by public appraiser. According to the Basic Agrarian Law, damaged land cannot be compensated as its land rights are terminated. According to the Disaster Management Law, the government is responsible for overseeing disaster management, including determining disaster-prone areas as non-settlement areas by revoking or reducing part or all ownership rights and providing appropriate compensation.

In Japan, no land expropriation takes place unless compensation rights are granted to the landowner in exchange for the acquisition of land rights. The Japanese constitution is the underlying authority for fair compensation. For example, if certain laws allow acquisition without fair compensation, fair compensation will be declared constitutionally under Section 29 Paragraph 3 of the Japanese Constitution and the landowner can file a lawsuit to demand compensation under the said provision. However, if certain laws do contain provisions for fair compensation, the landowner should claim it under that provision as this is the manifestation of fair compensation under the constitutional provision of “in substance and procedure”. In Japan, no specific regulation is governing damaged land.

Regarding compensation value, Japan has superior regulations compared to Indonesia. In Japan, the amount of compensation related to land must be settled based on consensus while in Indonesia, the amount of compensation is a single value determined by an appraisal. However, for land damaged by disasters, Indonesia has special regulations while Japan does not. In Indonesia, if damaged land is used for the public interest, the landowner will not receive compensation through land acquisition procedures but rather through disaster management procedures.

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