



Compensation for land rights holders according to the land acquisition law

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Abstract

The aspect of compensation is very crucial in land acquisition for development for the public interest. The Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (PTBPKU Law) is "drowned" by the many cases of land disputes that are so complex. The regulations regarding land acquisition contained in the PTBPKU Law are indeed correct, but when viewed in terms of substance, they still leave several separate notes. Several things need to be studied more deeply, primarily related to the basic concept of acquiring land rights for the public interest and compensation assessment. This paper aims to provide legal protection for land rights holders who reject the amount of payment in the PTBPKU Law and compare it with the latest regulation of land acquisition, namely the Job Creation Act. The writing method used is a normative juridical method using the Statute Approach and the Comparative Approach. The PTBPKU Law, as amended by the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, has not been able to fully protect the holders of land rights affected by land acquisition for development in the public interest. Regulators should pay more attention to matters relating to compensation for land rights holders.

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1. Introduction

Land and all the natural resources in it become the primary human need for humans to fulfill their life needs, starting from birth to death. (Kamal, 2021) The land has a unique characteristic and position for the Indonesian people. These special characteristics and functions can be seen in the personality of the Indonesian people who pay homage to the word land as the Motherland, the Land of Pusaka, and the Land of Spilled Blood.

The land has a function as a social asset and a capital asset. The land is seen as a social asset because it is a means of binding social unity among the community for their life. Capital assets can be interpreted as land being a factor for implementing development. Regarding the function of land as a capital asset, it can be said that land has a vital role in infrastructure development in Indonesia, which is carried out through land acquisition. In the infrastructure sector, land acquisition for the public interest is significant to pay attention to. (Joesoef, 2021) Land acquisition is carried out to meet land needs for development in the public interest. The land used for land acquisition is community-owned. This was done because of the limited state-owned land to develop. (Dewi, 2017) The implementation of development for the public interest using land owned by the community is carried out by the government because the state has the State Controlling Rights, which is contained in Article 2 paragraph (2) of the Law of the Republic of Indonesia Number 5 of 1960 concerning the Basic Law of Agrarian Regulations (from now on referred to as UUPA). The Right to Control the State contained in Article 2 paragraph (2) of the UUPA is a concept that exists in the organization of power from the people for the people. The basic idea of the state's right of control also includes the state's authority to regulate, manage, and supervise the management of land that will be used as much as possible for the prosperity of the people.

The state uses community-owned land to develop for the public interest based on the social functions of the land contained in Article 6 of the BAL. Related to the social part of the land held in Article 6 of the UUPA, it can be said that although the relationship between humans and land is eternal (the rights of the Indonesian people are contained in Article 1 of the UUPA), it does not mean that land owners are allowed to ignore the public interest. The public interest, in this case, can be seen in the context of land acquisition for development for the public good.

In addition to the context of the social function of land and state control rights, the government holds land acquisition for development in the public interest based on Article 18 of the UUPA, which emphasizes that the state can revoke land rights for the public good. (Kotalewala, 2020) The public interest, in this case, includes the interests of the nation, the state, and the interests of the general public. The revocation of land rights by the form must be accompanied by appropriate compensation. Based on this, it can be said that the cancellation of land rights can be applied as long as it fulfills the conditions imposed. There must be adequate compensation and replace the land by the value, benefits, and ability of the replacement land.

Land procurement became known after Presidential Decree Number 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest. The term Land Procurement is also used in Presidential Regulation of the Republic of Indonesia Number 36 of 2005, Presidential Regulation of the Republic of Indonesia Number 65 of 2006, Law of the Republic of Indonesia Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (from now on referred to as PTBPKU Law), and Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Procurement of Land for De-

velopment in the Public Interest. (Enggartiaso, 2021)

Many interpretations relate to the meaning of the public interest, which is used as the basis for land acquisition activities. (Lumanauw, 2020) The existence of the PTBPKU Law is “drowned” by the many complex land dispute cases. The regulations regarding land acquisition contained in the PTBPKU Law are indeed correct, but when viewed in terms of substance, they still leave several separate notes. Several things need to be studied more deeply, primarily related to the basic concept of acquiring land rights for the public interest and compensation assessment.

The many interpretations regarding the substance contained in the PTBPKU Law often trigger disputes or conflicts during the implementation of land acquisition, and there must be a dispute resolution. Land dispute resolution must be carried out to find the history and root causes, formulate a strategic policy in dispute resolution, and resolve land disputes, conflicts, and cases, especially during land acquisition. (Ernanda, 2021)

Conflicts that often occur among the community regarding land acquisition are about compensation. The land acquisition must be made using deliberation when referring to national land law. Based on this conception, the community will relinquish their land rights voluntarily with appropriate compensation. (Gerson, 2020) If the considerations fail and the location of land acquisition cannot be moved, then efforts to revoke land rights by the Law of the Republic of Indonesia

Number 20 of 1961 concerning Revocation of Rights to Land and Objects on it. However, it seems that in practice, the community’s rejection of the amount of compensation and other problems with the PTBPKU Law takes a shortcut, which can bring losses to parties whose land is affected by the land implementation for land acquisition development in the public interest.

Based on these rights, the PTBPKU Law is considered unable to provide legal certainty; The author wants to study further “Legal Protection Regarding the Provision of Compensation for Land Rights Holders for Land Acquisition for Development in the Public Interest.” The author will examine the legal protection for land rights holders who reject the amount of compensation in the PTBPKU Law and compare it with the latest regulation of land acquisition, namely the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Job Creation Law).

As a supporter of this writing, there are many writings related to Land Procurement for Development in the Public Interest, but each has different characteristics. Based on an article written by Priyo Katon Prasetyo, Rosie Villanova Christine, and Sudibyanung in the journal *Bhumi*, the substance raised was the implementation that should be expectedly applied to the procurement procedure, and secondly, discussing the reality that occurred in the field. (Prasetyo, 2020) Therefore, this research will specifically examine the analysis of the Land Procurement Law in providing compensation to the holders of Land Rights.

Table 1. The Effect of Legal Substance on the Implementation of Land Procurement for Public Interest

No.	Statement	Frequency	Percentage (%)
1.	Influential	21	70,00
2.	Less Influential	7	23,33
3.	No Influence	2	6,66
	Amount	30	100

Source: (Abu, 2020)

2. Methods

The method used in this writing is normative juridical, using the Statute Approach and Comparative Approach writing approaches, namely the approach used in legal research that is carried out by reviewing a statutory regulation related to the central theme of the study, then comparing it with the legislation the other as a comparison material regarding the law about the main piece of the research, namely Legal Protection Regarding the Provision of Compensation for Land Rights Holders for Land Acquisition for Development in the Public Interest.

3. Results and Discussion

3.1. Analysis of compensation for land rights holders for land acquisition for development in the public interest based on the PTBPKU Law

Land acquisition is acquiring one's land by using a method or compensation related to the land release. The land release can be in the form of vacant land, land with buildings, plants, and other objects on the ground. (Nail, 2020) The existence of PTBPKU Law was "drowned" by several complex land disputes. There are several substances from the PTBPKU Law that require further study.

PTBPKU Law is compiled by regulators because there is a specific goal to be achieved. This law was compiled because several things have not been covered by the Presidential Regulation of the Republic of Indonesia Number 36 of 2005, which has been amended by the Presidential Regulation of the Republic of Indonesia Number 65 of 2006. Things that have not been covered by the Presidential Regulation of the Republic of Indonesia Number 36 of 2005 and The President of the Republic of Indonesia Number 65 of 2006 regarding the handling of the main obstacles in development

for the public interest, especially regarding land acquisition. Based on this, the PTBPKU Law was issued to overcome problems and ensure the smooth process of land acquisition.

As with previous regulations, PTBPKU Law uses deliberation as the first step to procure a land acquisition for development in the public interest. It's just that the use of the word deliberation in PTBPKU Law uses another term, namely "Public Consultation." Like deliberation, this public consultation is a process for dialogue between the government and citizens and interested parties to reach an agreement on the design of land acquisition for the public interest. The government carries out this activity by observing the affected parties and communities in locations where development is in the public interest. If the residents or communities involved are unable to attend to carry out the public consultation, the interested parties can make a power of attorney.

The results of the agreement obtained from the effects of public consultations between the government and the community and interested parties will be submitted to the governor as an application for location determination by the relevant agencies. The period required by the governor to determine the location is 14 (fourteen) working days. The period of resolution of this location is from the receipt of the application for determination by the relevant agency that requires land for development in the public interest.

The period of public consultation on the development plan carried out between government agencies and residents affected by their land rights to carry out development is 60 (sixty) working days. If, after 60 (sixty) days of public consultation, the community cannot accept or reject the development plan, another public consultation will be held regarding the development plan. The period required for the re-public consultation is 30 (thirty) working days.

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After repeated public consultations, if the community still cannot accept or object to the planned development location, the agency that will carry out the construction must report this to the governor. Based on the report from the agency, the governor will form a team to review the public's objections to the development plan.

The next step is after the team formed by the governor reviews the objection; the team will get results in the form of a recommendation on whether to accept or reject the complaint about the construction site plan. The period required for the response to the acceptance or rejection of the location determination is 14 (fourteen) working days as of the receipt of the objection request by the Governor. Based on the recommendation letter made by the team, the Governor will issue a letter of acceptance or rejection of objections regarding the planned development location.

If the contents of the recommendations made by the team are rejected, the Governor will determine the location of the construction. On the other hand, if the contents of the recommendation letter produced by the group are received, the Governor will notify the agency that will carry out the construction to propose the location of the development plan in another place. If, after the Governor has determined the area, there are still people who object to the determination of the development location; there are still legal remedies that the community can take. The legal effort is to file a lawsuit through the State Administrative Court (PTUN) with a maximum period of 30 (thirty) working days from the receipt of the case. People who still object to the results of the decision issued by the Administrative Court may file an appeal to the Supreme Court within a maximum of 14 (fourteen) days. The conclusion from the Supreme Court as the result of the cassation, which already has permanent legal force, will be the basis for continuing to carry out land acquisition or not.

In general, the majority of people object to the provision of adequate compensation. Regarding the determination of compensation, PTBPKU Law regulates the issue of compensation. The decision of payment regarding the implementation of development for the public interest will be carried out through deliberation by the local city/district land office with the right party. Through this deliberation, the amount of compensation and other forms of payment will be determined and accepted by the entitled party.

If there is no agreement between the parties and the land office, legal remedies can be taken by filing an objection at the local District Court. This objection is filed in the District Court 14 (fourteen) days after determining compensation. The District Court will then decide regarding the complaint to choose the payment within 30 (thirty) working days from the receipt of the objection.

Parties who still object to the decision of the local District Court may file an appeal to the Supreme Court. The time allotted to file a cassation to the Supreme Court is within 30 (thirty) days from the receipt of the cassation request. The decision of the Supreme Court on the appeal for the objection to the determination of the amount of compensation that has obtained permanent legal force will later be used as the basis for determining compensation for the party who has filed an objection.

Parties who still object to the decision of the local District Court may file an appeal to the Supreme Court. The time allotted to file a cassation to the Supreme Court is within 30 (thirty) days from the receipt of the cassation request. The decision of the Supreme Court on the appeal for the objection to the determination of the amount of compensation that has obtained permanent legal force will later be used as the basis for determining compensation for the party who has filed an objection.

The party who rejects the amount of compensation during the deliberation process, the results of the District Court's decision, and the Cassation Decision at the Supreme Court, the government will deposit the compensation money in the District Court, which is referred to as a "consignment."

Based on the description of the land acquisition mechanism described above, it can be seen that the period for carrying out the process is approximately 2 (two) years. For investors, the protracted land acquisition process will delay activities. The postponement of activities will also impact very high costs and other risks in its implementation. However, this seems to be answered by the existence of Law Number 2 of 2012.

Legal certainty is so important. No less critical than legal certainty is the quality of the land acquisition process, particularly efforts to obtain agreements with parties affected by their land rights for the development. (Sugiharto, 2015) Deliberations conducted by the agency with related parties (the community) must be carried out voluntarily, without pressure and coercion. Therefore, the government must submit related legal remedies that can be taken by the parties who object to the deliberation results. This is related to transparency. Transparency must be carried out by agencies that will carry out development for the public interest based on and referring to the Law of the Republic of Indonesia Number 14 of 2008 concerning Openness of Public Information.

PTBPKU Law is considered fair for people who have lost their land if the community can feel a better life and does not experience a decreased quality of life after the person concerned loses his land. This also shows that development in the public interest is part of implementing the national economy. The articles in the PTBPKU Law must reflect the balance between the benefits of development for investors and the community's welfare. This is by the principle of togetherness and

fair efficiency according to Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. (Sugiharto, 2015) There are several notes in Law Number 2012 and its implementation, including the following:

A. Compensation

As has been explained in the previous elaboration, the issue of compensation is critical in the development process. The party that receives compensation in land acquisition for the public interest is called the entitled party. (Suardi, 2020) The problem stems from the compensation paradigm, which tends to mean that the voters of the land rights have suffered losses before the release of their land rights for development in the public interest. Compensation is deemed more appropriate to be applied in land acquisition activities.

The view of compensation, when viewed further, is not identical to the process of people's losses, which can lead to a decrease in the quality of life. At the same time, compensation is synonymous with the victim. (Limbong, 2013) At the same time, implementing land development does not require the presence of a victim. Even in land acquisition, there should be no victims who focus on one interest. The existence of the term compensation means that in this case, the regulator has assumed that there will be victims during the implementation of land acquisition for development in the public interest.

Compensation can be interpreted as giving money to the holder of land rights after relinquishing ownership of land rights to the State. The provision of payment itself must be based on the open market value plus other losses, including everything on the land. The amount paid is not only for the land taken but also for the losses from the acquisition. (Limbong, 2013) The essential thing in the compensation is to place the land owners affected by land acquisition in the same position as

before their land was affected by development for the public interest. So it can be said that the quality of life of the land owner should not decrease and should be improved for the better.

The next thing to consider is, what is the ideal size of compensation like? Owners of land or buildings have the right to obtain payment for lost ground and other property rights, the value of purpose or profits from expropriation actions, damage to social, cultural, and psychological cohesion, depreciation of land values, and expenses such as displacement, travel, lost income and others. Etc. In Indonesia, related regulations and implementation of compensation in the land acquisition are only focused on the value of economic calculations (manifested in the form of physical payment). This is reinforced by the PTBPKU Law, which does not mention compensation for non-physical loss or damage.

B. Violating Legal Principles

Several policies adopted by PTBPKU Law raise various questions. This is related to the basic concept and compensation to the community. Based on the conception of national land law, as described in the previous discussion, the implementation of land acquisition must be carried out based on deliberation between agencies requiring land and parties with interests. This means showing that the party whose land is affected by the development and releases the land voluntarily will receive appropriate compensation from the State (Sugiharto, 2015). Suppose all efforts have been made regarding objection settlement and determination of location. In that case, while the site cannot be moved and development for the public interest must still be carried out, the revocation of Land Rights can be carried out based on Law of the Republic of Indonesia Number 20 of 1961 concerning Revocation of Rights to Land and Objects. Things that are on it. This is done based on Article 18 of the UUPA.

PTBPKU Law is still taking shortcuts regarding public objections and objections related to the determination of compensation. When there is a refusal and all legal efforts have been made, the Law on Land Procurement does not revoke land rights. Still, it directly carries out a consignment, which is none other than depositing compensation money in the District Court. Even in an emergency or urgent situation, development for the public interest can still be carried out based on the location determination by the Governor.

Before the enactment of the PTBPKU Law, the provisions governing the revocation of land rights for the public interest as regulated in the Presidential Decree of the Republic of Indonesia Number 55 of 1993, Presidential Regulation of the Republic of Indonesia Number 36 of 2005, and Presidential Regulation of the Republic of Indonesia Number 65 of 2006 still apply this Law. Law of the Republic of Indonesia Number 20 of 1961 concerning Revocation of Rights to Land and Objects on it as a last resort for land acquisition, namely revocation of land rights (Arhan, 2021). This is done if the methods of transferring ownership and relinquishing rights are not achieved.

The procurement of land rights for implementing development in the public interest, carried out by transferring rights, relinquishing rights, and transferring land rights, cannot be achieved through deliberation. In that case, the legal system should not be sacrificed (Sugiharto, 2015). Thus, the government no longer needs to issue a Government Regulation instead of a Law regarding the revocation of rights to land and objects on it. This can be done. After all, there are rules regarding the cancellation of land rights as contained in the Law of the Republic of Indonesia Number 20 of 1961 concerning the Revocation of Rights to Land and Objects on it. (Hodidjah, 2020)

Based on the description above, it can be said that the implementation of the PTBPKU Law has violated the principle of "consensus consen-

sus” as part of the legal system in the procurement and revocation of land rights for the implementation of development in the public interest. Therefore, it is essential to have a firm attitude to end legal deviations in land acquisition to implement development for the public good. The firmness of this attitude can be implemented with the following options. (Sugiharto, 2012)

First, the PTBPKU Law must be perfected, amended, or replaced with a new law, which means that it must return to the existing legal system regarding the acquisition of land rights and revocation of land rights, namely land acquisition carried out through “consensus consensus” by both parties. The parties are concerned. If consensus deliberation fails, efforts must be made to revoke land rights as contained in the Law of the Republic of Indonesia Number 20 of 1961 concerning Revocation of Rights to Land and Objects. Compensation money can be deposited if 1). If the right holder is not found or his whereabouts are unknown; 2). The object of land acquisition is the object of a case in the District Court; 3). Land in dispute; 4). Placed confiscation of guarantees; and 5). They are guaranteed a mortgage. These five things must be carried out with the parties’ knowledge so that there is no misunderstanding between the government and the parties concerned.

Second, the PTBPKU Law can be maintained as long as the Law of the Republic of Indonesia Number 20 of 1961 concerning Revocation of Rights to Land and Objects on it is no longer valid or replaced by Law concerning the revocation of rights to land and objects contained therein. This puts forward the principle of deliberation, consensus, fairness, and agreement between the two parties concerned and can provide legal certainty.

Third, the issuance of a new law that regulates the procurement of land rights for the public interest whose material contents include: 1). procurement of land rights using transfer of rights (such as buying and selling, grants, exchange, and

others); 2). Release/Submission of Land Rights; 3). The revocation of rights to land and objects is based on deliberation and consensus, and appropriate compensation is based on both parties’ agreement. It is based on justice and legal certainty.

Each of these improvement options is indeed quite risky. Still, when viewed from the perspective of development goals for the welfare of the people who are just and with legal certainty in the procurement of land rights for the public interest, it is necessary to have the courage to make legal changes in the new Law.

3.2. Analysis of compensation for land rights holders for land acquisition for development in the public interest based on the Job Creation Law

In efforts to realize and provide convenience and smoothness related to land acquisition for development in the public interest, the copyright law changes, deletes, and stipulates new arrangements for several provisions that the PTBPKU Law has regulated. This means that the Job Creation Law has changed some of the requirements of the PTBPKU Law.

PTBPKU Law stipulates that agencies that require land to carry out development for the public interest must involve the Ministry/agencies related to the land sector. The implementation of the action for the public interest must be arranged based on the Regional Spatial Plan (RTRW) and the development priorities of the Government/institution concerned. (Hoiru, 2020) Deliberations in the Job Creation Law are called public consultations and also include changes through changes in Article 18 of the Job Creation Law.

Regarding the provision of compensation, the Job Creation Law still uses the term compensation. This term is still relatively the same as used in PTBPKU Law. There are changes related to the substance of the compensation as contained in

Articles 34, 36, 42, and 46 of the Job Creation Law. This means that it shows that the regulators still maintain the compensation paradigm, which can be translated as victims' existence.

Regarding the provision of compensation, this Job Creation Law still views physical balance, and the ideal ratio should be when the regulator considers the variable of calculating the value of payment that is good when viewed from physical and non-physical variables. Material settlement is when the government views the loss regarding the presence of land, buildings, and plants. Land and structures can be valued at market prices, while plants are considered based on projected productive values. Non-physical compensation can be viewed from various points of view, namely philosophically and sociologically. The philosophical aspect is that the provision of payment must be by justice, welfare, and human rights. This is contained in Pancasila, Article 33 of the 1945 Constitution, and interest. The sociological aspect views compensation from the element of professional transfer, being uprooted from the community, and adapting to a new environment. This must be considered based on the sociology of law.

Job Creation Law also still uses consignment as a last resort if the parties do not agree and reject the compensation provided by the state, even though legal efforts have been made by the parties, such as filing a lawsuit to the District Court and an appeal to the Supreme Court of the Republic of Indonesia.

4. Conclusion

The PTBPKU Law, as amended by the Job Creation Law has not been able to fully protect the holders of land rights affected by land acquisition for development in the public interest. This can be seen from the terms of compensation deemed inappropriate and consignment as a final solution related to legal remedies taken by parties who object to the amount of payment provided by the state.

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