

Legal Protection For The Public Regarding The Amount of Compensation In Land Acquisition Activities For Development In The Public Interest

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ABSTRACT

This study discusses the legal protection for communities regarding the amount of compensation in land acquisition activities for public interest development, emphasizing the principle of proportional compensation. It asserts that compensation should align with the value of the land and must be adequate, ensuring that land rights holders who relinquish their land do not experience social or economic decline. According to Articles 17 and 18 of Presidential Regulation No. 36 of 2005, if there is a dispute over the compensation amount, land rights holders have the right to submit objections to the Regent/Mayor, Governor, or Minister of Home Affairs, along with an explanation and reasons for the objection. The process of determining compensation should begin with deliberations, ensuring a fair and balanced resolution. This study concludes that the mechanism for providing compensation must prioritize deliberation, taking into account various factors, including social, cultural, legal, humanitarian, economic, and political aspects. These considerations ensure that the compensation process is not only fair and equitable but also respects the rights and dignity of the affected landholders, contributing to social harmony and public trust in the land acquisition process. This research provides valuable insights for policymakers and stakeholders involved in land acquisition for public development projects, ensuring that legal protections are in place to safeguard the interests of affected communities.

Keywords: legal protection; land acquisition for public purposes; compensation for losses

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INTRODUCTION

Since Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, as has been amended several times, most recently by Presidential Regulation Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest which was later revoked and replaced by Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest jo Government Regulation Number 39 of 2023 concerning the Revision of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, the deliberations carried out are related to the form of compensation, not about the amount of compensation (Yusrizal, 2017). Although the community has the right to refuse, in the end they can't help but accept the amount of compensation given. By looking at the above background, the following problem formulation can be taken: first, how to protect the law to the community regarding the amount of compensation in land acquisition activities for development in the public interest, second, How to determine the amount of compensation in land acquisition for development in the public interest. This study aims to find out the legal

protection to the community related to the amount of compensation, and the inhibiting factors and how to determine the amount of compensation in land acquisition for development for the public interest (Sangalang, 2012).

Land acquisition for development in the public interest remains a contentious issue, particularly concerning compensation. While regulations exist to ensure fair treatment, challenges persist in their implementation. One key issue is the lack of community involvement in determining compensation amounts (Kamal, 2021). Although affected individuals are given the right to express their opinions, their input often does not influence the final decision. The authority to determine compensation remains largely in the hands of the government and appraisal bodies, leading to dissatisfaction among landowners (Simanjuntak, 2015).

Another challenge is the inconsistency in land valuation methods. The government appoints independent appraisers to assess land value, but variations in assessment standards can lead to disparities in compensation. Some landowners may receive lower compensation than expected due to undervaluation, while others may benefit from overvaluation. This inconsistency raises concerns about the transparency and fairness of the land acquisition process (Prabandari, Arthanaya, & Suryani, 2021).

Additionally, the procedural aspects of land acquisition often create legal uncertainties. Many communities face difficulties in proving land ownership due to incomplete documentation or unclear land titles. This situation particularly affects indigenous communities and rural landowners, who may have occupied land for generations without formal legal recognition. As a result, they are vulnerable to receiving inadequate compensation or losing their land without proper redress (Suryatika, Suryawan, & Arthanaya, 2020).

Social resistance to land acquisition projects is another crucial factor. When communities perceive that compensation is inadequate, tensions escalate, leading to protests and prolonged negotiations. This resistance can delay development projects, increase costs, and create distrust between the government and affected communities. In some cases, unresolved disputes over compensation have led to legal battles that further complicate the land acquisition process (Tamo, Waongan, & Roeroe, 2022).

Moreover, the legal framework surrounding land acquisition continues to evolve, creating uncertainty for both the government and landowners. Frequent amendments to regulations, such as those seen in the transition from Presidential Regulation Number 71 of 2012 to Government Regulation Number 39 of 2023, indicate ongoing efforts to improve the system. However, these changes also require continuous legal adaptation and awareness among stakeholders to ensure compliance and equitable outcomes (Kasenda, 2017).

In light of these challenges, there is a pressing need for clearer, more consistent policies that balance public interest with the rights of affected landowners. Strengthening legal protections, improving transparency in valuation processes, and increasing community engagement can help mitigate conflicts and ensure fair compensation in land acquisition for development projects (Candra & Yustika, 2020).

According to Candra & Yustika (2020), land acquisition for public development purposes must consider the balance between the interests of the state and the rights of landowners, ensuring that compensation is fair and just. They emphasize the importance of transparency in the compensation process and the need for public participation. Similarly, Lubis & Lubis (2011) argue that fair compensation for land acquisition is a fundamental aspect of legal protection for landowners, particularly in ensuring that displaced individuals are not adversely affected socially or economically by the process.

The urgency of this research arises from the ongoing challenges faced by communities affected by land acquisition for public purposes, particularly in determining fair

compensation. With ongoing land development projects such as toll roads and public infrastructure, it is crucial to evaluate how compensation is determined and ensure it adequately addresses the economic and social needs of affected communities. Understanding how legal mechanisms, such as the ability to file objections to compensation decisions, can be better implemented is vital for promoting justice and minimizing conflict during land acquisition processes.

While numerous studies have discussed the legal framework for land acquisition, there is a limited focus on how the mechanisms of compensation determination can be improved, particularly in ensuring that compensation reflects not just the market value of the land, but also the socio-economic impact on the affected communities. Existing research often overlooks the role of community involvement in the compensation process, and there is insufficient exploration of the procedural aspects of how objections to compensation decisions can be effectively handled.

This research introduces a novel approach by examining the compensation process in land acquisition through the lens of community involvement and legal recourse. It highlights the need for deliberation and transparency in the determination of compensation, as well as the effective use of objection mechanisms as a tool for ensuring fair compensation. By combining legal analysis with a practical understanding of the socio-economic impact of land acquisition, this study provides a fresh perspective on balancing state and community interests in development projects.

The primary objective of this research is to assess the legal protection mechanisms available to communities in land acquisition processes and how compensation amounts are determined. The study aims to propose improvements to the compensation determination process, ensuring it is fair, transparent, and responsive to the needs of landowners. The benefits of this research include providing actionable recommendations for policymakers to improve legal protections and compensation processes, fostering a more equitable approach to land acquisition that promotes sustainable development while protecting community rights.

METHOD

The research method used in this study is a normative research method supported by empirical research that uses various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to legal protection as a source of research material. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or in the form of legal discovery efforts that are tailored to a particular case (Ibrahim, 2006).

RESULTS AND DISCUSSION

Legal Protection to the Community Regarding the Amount of Compensation in Land Acquisition Activities for Development in the Public Interest

Land is a part of people's lives and even part of honor. The dynamics of development have resulted in the need for land increasing while the land supply has not changed, this has resulted in soaring land prices and also causing crimes in the land sector, such as the emergence of fake certificates and asphalt, corruption and so on. The land issue is very vulnerable because it is not only a matter of ownership and the enforcement of the law but also spreads into a political problem (Suandra, 1991).

The implementation of land acquisition often intersects with basic legal issues, such as human rights, the principle of justice, the principle of balance between the interests of the state and the interests of the community, both individually and in groups. Land procurement for public interest development in development is included in the criteria for public interest

development (Rohaedi, Insan, & Zumaro, 2019). Counseling and socialization have been carried out by the Regency Regional Government to the community whose land will be used for development. Deliberation on compensation has been carried out, where no agreement has been reached on the value of compensation to be given, because the government proposes 2 (two) times the NJOP, but the community asks for 5 (five) times the NJOP. Compensation will be received in the form of money and there has been no discussion about compensation in other forms, especially for rice fields (agricultural land). Land acquisition carried out in the construction of toll roads refers to Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest states that, land acquisition is any activity to obtain land by providing compensation to those who release or hand over land, buildings, plants, and objects related to land. Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest.

Respect for individual rights is generally recognized in the 1945 Constitution of the Republic of Indonesia, as stated in Article 28 H paragraph (4) that "everyone has the right to have personal property rights and such property rights shall not be taken arbitrarily by anyone". The existence of this principle means that land owned by a person in accordance with national land law is protected from interference from other parties. Likewise, a person's land must not be arbitrarily and unlawfully seized, including by the ruler (Sumardjono, 2008).

National land laws provide legal protection to those who have land rights. The ownership and use of land by anyone and for any purpose must be based on the rights to land provided by the national land law. The ownership and use of land based on rights is protected by law against disturbances from any party, both by fellow members of the community and by the authorities, if the disturbances have no legal basis. This principle is very important to understand because it contains the principle of respect for land rights (Hutagalung & Sujadi, 2011).

Legal protection for land rights holders implies that land rights holders have the right to have their rights protected related to land procurement carried out by government agencies that need land. There are two types of legal protection for the people, namely preventive legal protection and repressive legal protection. In preventive legal protection, the people are given the opportunity to submit their objections (inspraak) or opinions before a government decision gets a definitive form. So that the purpose of preventive legal protection is to prevent disputes while repressive legal protection aims to resolve disputes. Preventive legal protection is very meaningful for government actions based on freedom of action because with preventive legal protection, the government is encouraged to be cautious in making decisions based on discretion. Legal protection is an illustration of the function of law where the law can provide justice, order, certainty, usefulness, peace, and tranquility for all human interests in society.

Land acquisition is in principle intended for the public interest, carried out with the principle of justice with respect for land rights that are cultivated in a balanced manner and carried out by deliberation (Lubis & Lubis, 2011). In this case, the government must act with the principle of prudence, namely in addition to the implementation of the development planned by the government, it should also be able to fulfill the sense of justice for the people whose land is affected by the project in the acquisition of land for the public interest as a form of community legal protection.

The form of compensation regulated in Article 36 of Law No. 2 of 2012 Jo. Article 74 of Presidential Regulation No. 71 of 2012 is in the form of: 1) Money; 2) Replacement soil; 3) Resettlement; 4) Share Ownership; 5) Other forms agreed by the parties concerned.

The form of compensation can stand alone or a combination of several forms of compensation in accordance with the value of compensation whose nominal value is equal to the value set by the appraiser. The form of compensation offered should not only be compensation for lost physical damages, but also must calculate non-physical compensation such as the restoration of the socio-economic condition of the community who was moved to

a new location. It is appropriate that the provision of compensation must not have an impact on the loss of land rights holders who have lost their rights, but rather have an impact on a better level of living or at least the same at the time before the development activities. Also, the principle of providing compensation must be balanced with the value of the land. The balance is that the compensation provided is a proper reward, or does not make the holder of the land right who gives up his land experience social deterioration or economic level.

Often in the process of acquiring land for the public interest, the community is seen as an object of development that must accept all government decisions, while any rejection or objection is conveyed through the court. However, as we know, the trial procession in court is a litigation process that requires minimal deliberation and discussion. In addition, usually the party who needs land is accompanied by a legal advisor, while not all members of the community have a deep understanding of the law.

However, the party with rights or holders of land rights is given legal protection if there is a disagreement in terms of the determination/amount of compensation. This is regulated in Article 75 of Government Regulation Number 39 of 2023. The Entitled Party may submit an objection to the local District Court within a maximum of 14 (fourteen) days after the minutes of the deliberation results are signed as referred to in Article 74 paragraph (3).

The District Court shall decide the form and/or amount of the Compensation within a maximum of 30 (thirty) days from the receipt of the objection. Parties who object to the District Court's decision as referred to in paragraph (2) within a maximum of 14 (fourteen) days may file an appeal to the Supreme Court. The Supreme Court is obliged to give a decision within a maximum of 30 (thirty) days from the receipt of the cassation application.

How to Determine the Amount of Compensation in Land Acquisition for Development in the Public Interest

Land procurement for the public interest is organized by the Government in accordance with: a. Regional Spatial Plan; b. National/Regional Development Plan; c. Strategic Plan; and d. Work Plan of each Agency that needs land. The implementation of land acquisition for the public interest pays attention to the balance between the interests of development and the interests of the community, carried out by providing appropriate and fair compensation.

Compensation is reimbursement in the form of money or other goods to someone who feels disadvantaged because his property was taken and used for the benefit of the public. Compensation is a proper and fair compensation to the right party in the land acquisition process. The assessment of compensation is carried out based on laws and regulations, the value of compensation assessed by the appraiser is the value at the time of the announcement of the determination of compensation. the land institution collects the assessment that has been determined for the assessment of the land acquisition object, the assessment carried out in the field of land includes: a. land; b. aboveground and underground spaces; c. buildings; d. plants; e. objects related to land; and/or f. other assessable losses.

The assessment of the amount of compensation is carried out by a Land Appraiser/Public Appraiser who has received a practice permit from the Minister of Finance. Public Appraiser is an Appraiser who has obtained permission from the Minister to provide services as stipulated in this Ministerial Regulation (Article 1 number 3 of the Regulation of the Minister of Finance Number 101/PMK.01/2014 concerning Public Appraisers). Services as referred to are Simple Property Valuation, Property Valuation and Business Valuation (Article 5 paragraph (1). Public Appraisers are members of a Public Appraiser Service Office (KJPP), which is a business entity with a permit from the Minister that acts as a forum for Public Appraisers in providing their services. In conducting assessments and providing written opinions, Public Appraisers are required to use the Indonesian Assessment Standards (SPI) and follow the ethical guidelines regulated in the Indonesian Appraiser Code of Ethics (KEPI) and the Indonesian Assessment

Guidelines (PPI) which are technical instructions from SPI in conducting an assessment of land acquisition for development for the public interest.

The duties and responsibilities of the Appraiser at KJPP in general in the assessment process are as follows: 1. Responsible for the results of the assessment or services provided; 2. Do not mix or contain personal interests in the results of the assessment, both in the present and in the future; 3. It is mandatory to improve their knowledge in the field of assessment; 4. Must sign the Appraiser's statement in the Assessment Report; 5. Providing the best service; and 6. It is forbidden to concurrently hold positions as state officials, leaders, members, employees in government institutions or other institutions established by a law or regulation.

Public Appraisers who are specifically given the authority to conduct assessments of land acquisition objects for development in the public interest are Land Appraisers. In addition to having to obtain an appraisal practice permit as a Public Appraiser from the Minister of Finance, Land Appraisers are also required to obtain a license from the Minister of Agrarian and Spatial Planning/Head of the National Land Agency. In land acquisition activities for the public interest, Land Assessor / Appraiser Services are held by agencies that need land and are determined by the head of land procurement. The appraiser is in charge of assessing the amount of compensation for each plot of land, including: a. land; b. Aboveground and Basement Rooms; c. buildings; d. plants; e. objects related to land; and/or f. other assessable losses.

The basis for the assessment used in the assessment of land acquisition objects for the public interest is the *Fair Replacement Value* as determined in SPI 204 of 2022 (Revised). Reasonable Replacement Value (NPW) is a value for the benefit of the owner based on equality with the Market Value of a property, taking into account extraordinary elements in the form of non-physical losses resulting from the expropriation of the right to the property. NPW can be generated from a combination of physical losses and non-physical losses on an assessment object. This combination can be described as the sum of the indication of the Market Value of the physical loss plus the indication of the value of the non-physical loss.

In PPI 04 of 2024 number 2.8, it is stated that the Assessment for compensation purposes includes: a) Compensation for physical (material) damage to land and/or buildings and/or plants and/or other objects related to land. b) Non-physical (immaterial) compensation consists of reimbursement for losses of relinquishment of rights from the landowner which will be given in the form of money (premium), as well as other losses that can be calculated including transaction costs, interest (compensation for the waiting period), loss of land remainder, and other types of losses declared and agreed upon by the assignor in the Scope of Assignment.

The assessment of Physical and Non-Physical damages based on PPI 04 of 2024 is as follows: a) The objects of assessment in determining physical losses include: 1. Land with designations such as agriculture, settlements, industry or commercial; 2. Aboveground and underground spaces; (see Right to Use Space on Land includes the right to the surface of the earth where the building foundation is located and the right to control the airspace as wide as the building and the right to own the building, and the Right to Use Underground Space includes the right to the surface of the earth which is the entrance/exit of the body of the earth and the right to build and use space in the body of the earth, as well as the right to own a building in the form of space in the body of the earth); 3. Buildings; can consist of residential, industrial, commercial buildings; 4. Plants; can consist of annual, horticultural, or perennial/annual crops; 5. Objects related to the soil; such as utilities and building complementary facilities. b) The object of assessment in determining non-physical losses that are assumed to be value forming includes: 1. Reimbursement for losses from the release of rights from the landowner which will be given a premium and measured in the form of money based on the provisions of the Laws and Regulations referred to in this PPI. This replacement can include matters related to: a. the potential for job loss or loss of business (income) including professional change by considering the condition of the owner, both individuals and business

entities or entities. b. Emotional loss (solatium), is an intangible loss associated with the expropriation of land used as a residence from the owner. c. Matters that have not been regulated (form of loss) in points a and b in can be determined based on the planning document. 2. Transaction compensation, which can include transfer expenses, emptying, taxes/BPHTB, PPAT and other needs that can be adjusted to the object of assessment. 3. Compensation for the waiting period, which is a certain amount of funds that is taken into account in lieu of the time difference between the date of assessment and the estimated date of payment of compensation. 4. Loss of residual land is a decrease in land value due to the taking of a part of the land plot. In the event that the remaining land can no longer be used in accordance with its designation, it can be considered as a replacement for the entire land plot. 5. Other physical damage, such as parts of the building that are cut due to land acquisition so that they require repair costs so that they can function as they should.

CONCLUSION

Legal protection to the community regarding the amount of compensation in land acquisition activities for development for the public interest must be based on the principle of providing compensation in balance with the value of the land. If there is a disagreement in terms of determining compensation, according to Article 75 of Government Regulation No. 39 of 2023, the entitled party can submit an objection to the local District Court within a maximum of 14 (fourteen) days after the minutes of the deliberation results are signed as referred to in Article 74 paragraph (3). The determination of the amount of compensation in the procurement of land for development for the public interest is carried out by the Land Appraiser/Appraiser. This is done to ensure that there is no conflict of interest in the assessment, so that no party is more likely to benefit any party.

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