

## Legal Protection for Land Rights Holders in Land Acquisition for Development in the Public Interest

**Ali Sam'un<sup>1\*</sup>, Tamaulina Sembiring<sup>2\*</sup>, Ismaidar<sup>3</sup>**

*Master of Law, Universitas Pembangunan Panca Budi, Medan, North Sumatra*

E-Mail : [alisamunharahap12345@gmail.com](mailto:alisamunharahap12345@gmail.com), [ismaidar@gmail.com](mailto:ismaidar@gmail.com),

[tamaulinasembiring@gmail.com](mailto:tamaulinasembiring@gmail.com)

### Abstract

Indonesia as a developing country needs infrastructure development in order to improve the welfare of the Indonesian people through this development. Every development activity carried out by the Government certainly cannot be separated from the need for land as a forum for its activities. The need for land has consequences for the use of land by land rights holders related to land acquisition for the implementation of development for the public interest. The increase in development activities has the consequence that more land is needed and later can cause problems in the land sector. The need for land that will be used by the government for development purposes must not harm the rights of land owners. Therefore, to regulate this, it is necessary to have a legal regulation that can provide legal protection to land rights holders. This research is descriptive analysis and normative law, namely describing all symptoms and facts and analyzing existing problems as well as research that uses secondary data sources or data obtained through legal literature materials. Judging from the approach, this research is the starting point of the problem by looking at the reality that occurs in the field and relating it to the applicable laws and regulations. This study uses a normative juridical approach, which is an approach by conducting an assessment and analysis of Legal Protection for Land Rights Holders in Land Acquisition for Development for the Public Interest. In order to provide maximum legal protection to land rights holders in the procurement of land for the public interest, the government should play an active role in its implementation to supervise parties who need land. The existence of the government in this case is very necessary so that in the implementation of land procurement carried out by agencies that need land is not done arbitrarily by taking rights to land owned by the community without providing fair and appropriate compensation.

### Keywords:

*Legal Protection, Land Rights, Development, Public Interest.*

## INTRODUCTION

Indonesia as a developing country needs infrastructure development in order to improve the welfare of the Indonesian people through this development. National development is a reflection of the will and rights of the Indonesian people, which is carried out continuously in order to improve the welfare and prosperity of its people in a fair and equitable manner, as well as develop people's lives towards the settlement of a democratic state based on Pancasila. In order to realize a just and prosperous society, the government makes a general plan regarding the supply, allocation and use of agrarian resources for development purposes in order to achieve the greatest prosperity of the people. With this general plan, the use of land can be carried out in a guided and orderly manner so that it can bring great benefits to the state and the people. Every development activity carried out by the Government certainly cannot be separated from the need for land as a forum for its activities. This is because in general development activities are carried out on the ground. The need for land has consequences for the use of land by land rights holders related to land acquisition for the implementation of development for the public interest. Constitutionally, Article 33 paragraph (3) of the 1945 Constitution, states that: "The earth, water, and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". This underlies the right to control from the State contained in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, known as the Basic Agrarian Law (UUPA). It is affirmed in Article 2 paragraph (2) of the UUPA, namely: "On the basis of the provisions in Article 33 paragraph (3) of the Constitution and other matters As referred to in Article 1, the earth, water, and space, including the natural resources contained therein, are at the highest level controlled by the State, as the organization of the power of all the people".

Land is a type of fixed object that has a very important position in people's lives. Moreover, during the modernization era, all trajectories began to be spurred, the role of land was increasingly prominent. In turn, the value of land becomes more and more sharply experienced by urban communities whose growth rate is getting more rapid, so that the need for land becomes more complicated and scarce.<sup>1</sup> Land and development are an inseparable unit. In addition, land also has a social function, in the sense that land owned by a person does not only function for the owner of the right, but also for the Indonesian nation as a whole. As a consequence, the use of the land is not only guided by the interests of the right holders, but must also remember and pay attention to the interests of the community. Therefore, it can be said that land has a dual function, namely as a *social asset* and a *capital asset*. As a *social asset*, land is a means of binding social unity among Indonesian people for life and livelihood, while as a *capital asset*, land is a capital factor in development. As a *social asset* and *capital asset*, both are a unit, on which there are humans as its inhabitants and the content of natural resources in it.

The increase in development activities has the consequence that more land is needed and later can cause problems in the land sector. Not only that, the rapid development process in our country has not only forced land prices in various places to soar but has also created an atmosphere where land has become an "economic commodity" that has a very high value so that it is likely that further development will experience difficulties in pursuing the growth rate of land prices. Land prices will continue to soar, so that land is no longer a social value for its owners, but has become an economic value. In the end, the importance of land for land rights holders has a great influence on the implementation of development. Therefore, there is a need for a policy in land acquisition for development. This is pursued by land acquisition institutions whose regulations are contained in laws

and regulations, namely Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest amended by Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest and the Law on Land Acquisition for the Implementation of Development for the Public Interest and the Law on Land Acquisition for the Implementation of Development for the Public Interest Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Statute Book 1960 – 104 or also known as the Basic Agrarian Law / UUPA). The existence of regulations regarding land acquisition is the legal basis for the government to obtain land for the implementation of development for the public interest and is a guarantee for land rights holders to get proper compensation, so as to provide better survival from the level of socio-economic life before being affected by land acquisition.

Compensation is a proper and fair compensation to the right party in the land acquisition process. The party with the right is the party that controls or owns the object of land acquisition. Eligible compensation for land rights holders is aimed at respecting the rights of land holders who are ready to relinquish or surrender their land rights to the state. The arrangements related to land acquisition have changed several times. These changes are intended to better respect and guarantee the rights of land rights holders. In the practice of land acquisition for the public interest, if there is no agreement on compensation, it can be carried out with consignment (custody of compensation in court).

In other words, the existence of this consignment does not give the land right holder any choice other than to release or surrender the land right. Normatively, consignment is allowed, then how to protect the law for land rights holders and the legal consequences for government agencies as parties who need land. There are times in reality, the practice of land acquisition is still found in the neglect of the rights of land rights holders, especially for minorities and small people. They experience a reduction in welfare due to the release or transfer of their land rights for the benefit of those who need land, in this case, the Government. Automatically, this has certainly violated the principles of Human Rights that are expressly recognized by the constitution in relation to the principle of proper survival.

## **PROBLEM FORMULATION**

Based on the background of the problem, the author formulates the problem to be discussed as follows:

1. What are the Regulations, Procedures and Authority of the Government in Land Acquisition for the Public Interest?
2. How is the Legal Protection for Land Rights Holders in Land Acquisition for Development in the Public Interest?

## **LITERATUR REVIEW**

### **Land Acquisition**

The term "land acquisition" was first known juridically since the issuance of Presidential Decree (Keppres) Number 55 of 1993 concerning Land Acquisition for the Implementation of Development in the Public Interest. Land Acquisition is any activity to obtain land by providing compensation to those who are entitled to the land. In Presidential Regulation Number 36 of 2005 as a replacement for the Presidential Decree above, it is stated 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 or with the revocation of land rights. Then Presidential Decree Number 65 of 2006 changes the definition of land acquisition for each activity to obtain land by providing compensation to those who release or hand over land, buildings, plants, and objects related to land.

Finally, Article 1 number 2 of Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest states that land acquisition is the activity of providing land by providing decent and fair compensation to the entitled party. The party with the right is the party that controls or owns the object of land acquisition. Land Acquisition Objects are land, aboveground and underground spaces, buildings and plants, objects related to land, or others that can be assessed.

### **Basics in Land Acquisition**

The legal principles of land acquisition are a system of legal rules with fundamental assessment rules, which are called legal principles. The idea of legal principles as fundamental rules in a legal system can also be found in the opinion of Paul Scholtern who elaborates on legal principles, as he said: The basic thoughts contained in and in the respective legal system are formulated in the rules of the laws and regulations and the decisions of judges concerning individual provisions and decisions can be seen as an explanation. This understanding shows that legal principles are also about legal principles in the form of behavioral principles, but it should be noted that legal principles must be seen as a strong or weak form of meta rules. Furthermore, the legal structure of land acquisition will be understood more completely if it adheres to the conception of national land law. The conception of land law begins with customary law in the form of a religious communalism conception that assures individual land ownership, with personal land rights, as well as containing elements of togetherness.

### **Compensation in Land Acquisition**

According to the terminology, what is meant by compensation is money given as compensation for losses or compensation. As the legal basis, namely Article 1 number 11 of Presidential Decree Number 36 of 2005, it is stated: Compensation is compensation for losses both physical and or non-physical as a result of the acquisition of land, buildings, plants, and or other objects related to land that can provide better survival from the level of socio-economic life before being affected by land acquisition. The issue of compensation is the most important thing in the land acquisition process. Compensation is the provision of compensation for losses suffered by land rights holders due to the transfer of these rights. Article 1 of Law Number 2 of 2012 states that compensation is a proper and fair compensation to the entitled party in the land acquisition process. The determination of the amount of compensation value per plot of land is carried out by the Chief Executive of Land Acquisition based on the results of the assessment of appraiser services or public appraisers. Compensation is given to the entitled party based on the results of the assessment determined in the deliberation on the determination of compensation and/or the decision of the District Court/Supreme Court.

### **Authority of Local Governments in Land Acquisition for the Public Interest**

The meaning of the term authority according to terminology comes from the root word authority which is interpreted as authority, the right and power to do something.<sup>2</sup> For this reason, authority can be understood as a right to exercise authority owned by officials or institutions according to applicable regulations. Thus, authority also concerns the competence of legal acts that can be carried out according to formal rules. Furthermore, it is said that authority is a formal power owned by an official or institution. Formal power refers to administrative executive power, namely: Authority which usually consists of several authorities is power over a certain group of people or power over a certain field of government (or field of affairs) that is round.

### **Procedures for Land Acquisition for the Public Interest**

The Governor together with the Agencies that need land announce the determination of the development location for the public interest. The announcement is intended to inform the public that construction will be carried out in the public interest at the location. The determination of the development location for the public interest for the Entitled Party can only transfer the rights to its land to the Agency that needs land through the Land Institution, then based on the determination of the development location for the public interest, the Agency that needs land proposes the implementation of Land Acquisition to the Land Institution. In principle, land acquisition is carried out by the Land Institution, which in its implementation can participate or coordinate with the provincial government or district/city government. The implementation of Land Acquisition as referred to above includes Inventory and Identification of Land Ownership, Ownership, Use, and Utilization; Compensation Assessment; Deliberation on the Determination of Compensation; Provision of Compensation; and Agency Land Release.

### **Compensation Assessment**

Article 31 of Law Number 2 of 2012 concerning land acquisition for development in the public interest states that, the Land Institution determines the Appraiser in accordance with the provisions of laws and regulations. Then the land institution announced. Appraisers who have been appointed to carry out the assessment of Land Acquisition Objects. The appraiser who has been determined must be responsible for the assessment that has been carried out.<sup>3</sup> Violations of the Assessor's obligations to the assessment that has been carried out may be subject to administrative and/or criminal sanctions. In Article 35 of Law Number 2 of 2012, it is stated that if in the case of a certain land plot affected by land acquisition there is a residue that can no longer be used in accordance with its designation and use, the entitled party can request a complete replacement of the land plot. What is meant by "no longer functional" is a plot of land that can no longer be used in accordance with its original designation and use, for example, a residential house that is divided so that some of it cannot be used as a residential house. In this regard, the party who controls/owns the land can request compensation for the whole thing.

### **Deliberation on Determination of Compensation**

The Land Institution conducts deliberations with the Entitled Party within a maximum of 30 (thirty) working days from the time the assessment results from the appraiser are submitted to the Land Institution to determine the form and/or amount of Compensation based on the results of the Compensation assessment. The results of the agreement in the deliberations are the basis for granting Compensation to the Entitled Party contained in the minutes of the agreement. In the event that there is no agreement regarding the form and/or amount of Indemnity, the Entitled Party may submit an objection to the local District Court within a maximum of 14 (fourteen) working days after the deliberation on the determination of Indemnity. The district court shall decide the form and/or amount of the Compensation within a maximum of 30 (thirty) working days from the receipt of the objection. As a consideration in deciding the decision on the amount of Damages, interested parties can present expert witnesses in the field of assessment to be heard as a comparison of the Compensation assessment.

### **Agency Land Release**

The release of Land Acquisition Objects for the Public Interest owned by the government is carried out based on the provisions of laws and regulations that regulate the management of state/regional property. Meanwhile, the Release of Land Acquisition Objects for the Public Interest controlled by the government or controlled / owned by State-Owned Enterprises/Regional-Owned



Enterprises is carried out based on Law Number 2 of 2012 for the Release of Land Acquisition Objects is all carried out by officials who are given the delegation of authority for it. Regarding Compensation for Land Acquisition Objects as referred to in letters a and c is given in the form of land and/or buildings or relocations. Compensation for the object of Land Acquisition as referred to in letter b can be given in the form of: money, replacement land, resettlement, share ownership or other forms agreed by both parties. The value of Compensation given in the form of land or buildings or relocation or in the form of money, replacement land, resettlement, share ownership or other forms agreed by both parties and is based on the assessment of Compensation assessed by the appraiser at the time of the announcement of the determination of the development site for the public interest.

### **Determination of the Form and Amount of Land Rights Compensation**

Respect and appreciation for land rights taken in land acquisition for the implementation of development for the public interest is manifested in the provision of compensation. The form and amount of compensation is an important element, because it is related to the survival of land rights holders. In reality, the most complicated thing in land acquisition is determining the amount of compensation, let alone the form of compensation in the form of money. The concept of compensation in land acquisition for the public interest is formulated in Article 1 number 11 of Presidential Regulation Number 36 of 2005, namely compensation for losses both physical and/or non-physical as a result of land acquisition given to those who have land, buildings, plants, and/or other objects related to land, which can provide better survival from the level of socio-economic life before being affected land acquisition. When associated with the basis for the formation of Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006, as contained in the "remembering" consideration, the use of the term compensation in land acquisition is inappropriate.

### **Custody of Monetary Damages to the District Court**

In Presidential Regulation No. 3 of 2005 and amended by Presidential Regulation No. 65 of 2006, it is regulated regarding the deposit of monetary damages to the district court in Article 10, namely in the event of development activities in the public interest that cannot be transferred or technically moved in spatial planning to another place or location, deliberations shall be carried out within a maximum period of 120 (one hundred and twenty) calendar days from the date of the first invitation and if after the deliberation as intended in paragraph (1) no agreement is reached, the Land Acquisition Committee shall determine the form and amount of compensation as intended in article 13 letter a and entrust monetary compensation to the District Court whose jurisdiction includes the location of the land concerned. Then if there is an ownership dispute after the determination of compensation as intended in paragraph (1), the Land Acquisition Committee shall entrust monetary compensation to the District Court whose jurisdiction includes the location of the land concerned.

## **RESEARCH METHODS**

Method is a way of working or a working technique to be able to understand the object that is the object of the science in question. Meanwhile, research is a scientific work that aims to reveal the truth systematically, methodologically and consistently. So that the research method is a method or path or process of examination or investigation that uses logical – analytical (logical) reasoning and theories, based on postulates – postulates, formulas and theories of a certain science (or several branches of science) to test the truth (verify) a hypothesis or theory about certain legal phenomena or events. Legal research is a scientific activity based on certain methods, systematics and thinking that aims to study one or several certain legal phenomena by analyzing them, except that there is also an in-depth examination of the legal facts to then try to solve the problems that arise in the symptoms concerned.

## RESEARCH RESULTS

### **Laws and Regulations Policy – Invitation to Land Acquisition for the Public Interest**

Based on Law Number 2 of 2012 Article 1, land acquisition is the activity of providing land by providing decent and fair compensation to the right party. The party with the right is the party that controls or owns the object of land acquisition such as: land, aboveground and underground spaces, buildings, plants, objects related to land, or others that can be assessed. Land rights are land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and other rights that will be stipulated by law. The public interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people. The right to manage is the right of control from the state whose authority to implement it is partially delegated to its holder. Meanwhile, the release of rights is the activity of severing legal relations from the party entitled to the state through the Land Institution. Compensation is a proper and fair replacement to the party entitled in the land acquisition process. Land acquisition for the benefit is carried out based on the following principles: Humanity; Justice; Benefits; Certainty; Openness; Deal; Participation; Welfare; Sustainability; and Alignment. Land procurement for the public interest aims to provide land for the implementation of development to improve the welfare and prosperity of the nation, state, and community while still ensuring the legal interests of the entitled parties.

According to Law Number 2 of 2012 Article 4, there are 2 (two) main land acquisition points, namely:

- 1) The Government and/or Regional Government guarantees the availability of land for the Public Interest.
- 2) The Government and/or Regional Government guarantees the availability of funding for the Public Interest.

The entitled party is obliged to release its land at the time of the implementation of land acquisition for the public interest after the provision of compensation or based on a court decision that has obtained permanent legal force.

Land acquisition for the benefit is organized by the government. Land acquisition for the public interest is carried out in accordance with:

- a) Regional spatial plan;
- b) National/regional development plans;
- c) Strategic plan; and
- d) The work plan of each agency that needs land.

Land acquisition for the public interest is carried out through planning by involving all stakeholders and stakeholders.<sup>4</sup> The party that has the right and the party who controls the object of land acquisition for the public interest must comply with the provisions of this Law. 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. Land acquisition for the public interest is carried out by providing appropriate and fair compensation.

Land for the Public Interest as referred to in Article 4 paragraph (1) of Law Number 2 of 2012 is used for the development of

- a) National defense and security;
- b) Public roads, toll roads, tunnels, railway lines, railway stations, and railway operation facilities;
- c) Reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation buildings;
- d) Ports, airports, and terminals;

- e) Oil, gas, and geothermal infrastructure;
- f) Power generation, transmission, substations, grids, and distribution;
- g) Government telecommunication and informatics network;
- h) Landfills and waste processing;
- i) Government/Regional Government hospitals;
- j) Public safety facilities;
- k) Government/Regional Government public cemetery;
- l) Social facilities, public facilities, and public green open spaces;
- m) Nature reserves and cultural heritages;
- n) Government Office/Regional Government/Village;
- o) Urban slum settlement arrangement and/or land consolidation, as well as housing for low-income communities with rental status;
- p) Educational infrastructure or Government/Regional Government schools;
- q) Government/Regional Government sports infrastructure; and
- r) Public market and public parking lot.

Land Acquisition for the Public Interest as referred to in Article 10 of Law Number 2 of 2012 must be organized by the Government and the land is subsequently owned by the Government or Regional Government. In the event that the Agency that requires Land Acquisition for the Public Interest as referred to in Article 10 of Law Number 2 of 2012 is a State-Owned Enterprise, the land belongs to the State-Owned Enterprise. Article 10 letters b to r must be held by the Government and can cooperate with State-Owned Enterprises, Regional-Owned Enterprises, or Private Enterprises. In the case of national defense and security development as referred to in Law Number 2 of 2012 Article 10 letter a, the development is carried out in accordance with the provisions of laws and regulations. Land Acquisition for Benefit is organized through stages: planning, preparation, implementation and submission of results. In Law Number 2 of 2012 Article 14 Paragraph (1), agencies that need land make land acquisition plans for the public interest in accordance with the provisions of laws and regulations. Land acquisition planning for the public interest as referred to in Law Number 2 of 2012 Article 14 Paragraph (1), is based on the regional spatial plan and development priorities listed in the medium-term development plan, strategic plan, work plan of the government of the agency concerned.

Land acquisition planning for the public interest as referred to in Law Number 2 of 2012 Article 14 paragraph (1) is prepared in the form of a land acquisition planning document, which contains at least the following:

- a) The purpose and objectives of the development plan;
- b) Conformity with regional spatial plans and national and regional development plans;
- c) Land placement;
- d) The required land area;
- e) An overview of the status of the land;
- f) Estimated time for the implementation of land acquisition;
- g) Estimated period of development implementation;
- h) Estimated land value; and
- i) Budgeting plan.

Land acquisition planning documents are prepared based on feasibility studies carried out in accordance with the provisions of laws and regulations. Land acquisition planning documents are determined by agencies that require land and submitted to the provincial government.

Agencies that require land together with the provincial government based on land acquisition planning documents as intended in Law Number 2 of 2002 Article 15 carry out:

- a) Notification of development plans;
- b) Initial data collection of the location of the development plan; and



c) Public consultation of development plans.

Notification of the development plan is submitted to the community on the development location plan for the Public Interest, either directly or indirectly. The initial data collection of the location of the development plan as referred to in Article 16 letter b includes the initial data collection activities of the Entitled Party and the Object of Land Acquisition. Data collection as intended in paragraph (1) shall be carried out within a maximum of 30 (thirty) working days from the notification of the development plan. The results of the initial data collection of the location of the development plan as intended in paragraph (1) are used as data for the implementation of the Public Consultation of the development plan as intended in Clause 16 letter c. Public consultation on development plans is carried out to obtain agreement on the location of the development plan from the right parties. Public consultation is carried out by involving the right parties and affected communities and is carried out at the place of the public interest development plan or in an agreed place. The involvement of the right party can be carried out through a representative with a power of attorney from and by the party who has the right to the location of the development plan. The agreement is outlined in the form of a minutes of agreement. On the basis of an agreement, the agency that needs land submits an application for location determination to the Governor. The Governor shall determine the location within a maximum of 14 (fourteen) working days from the receipt of the application for determination by the Agency that requires land.

Public consultation of development plans as referred to in Article 19 shall be carried out within a maximum of 60 (sixty) working days. If up to a period of 60 (sixty) working days for the implementation of the Public Consultation on the development plan as intended in paragraph (1) there are parties who object to the development location plan, a re-Public Consultation shall be carried out with the objecting party no later than 30 (thirty) working days. If in the re-public consultation there are still parties who object to the development location plan, the agency that needs the land reports the objection to the local governor. The governor forms a team.

### **National Land Law Concept**

The UUPA as the implementation of Article 33 paragraph (3) of the 1945 Constitution in the regulation of land is based on the concept that all land is the land of the Indonesian nation as a gift of God Almighty, whose control is assigned to the state to achieve the greatest prosperity of the people. The right to control from the state as mentioned in Article 2 of the UUPA gives the authority to regulate and determine various aspects of land tenure which are considered as the government's task. Based on the provisions of Article 2 of the UUPA, the authority of the state as the power organization of the Indonesian nation to regulate and determine including land allocation planning, control and legal acts regarding land and land registration, the implementation of its legal provisions is basically carried out by the central government itself. If there is a delegation of authority, then the delegation is carried out in the context of deconcentration to central government officials in the regions or to local governments in the context of medebewind, not autonomy. The conception of national land law can be seen from the provisions of Article 5 of the UUPA that states that the agrarian law applicable to the earth, water and space is customary law, as long as it does not conflict with the interests of the nation and the state, which is based on the unity of the nation, with Indonesian socialism and with the regulations contained in this law and with other laws and regulations. Everything by heeding the elements that rely on religious law. The conception of national land law in the UUPA is basically the embodiment of Article 33 paragraph (3) of the 1945 Constitution. The provisions in Article 33 also show that the implementation of the regulation of the earth, water, and natural resources contained in it is the authority of the state and there is no provision in Article 33 that states that the authority is the authority exercised by the local government.

However, in Article 18 of the 1945 Constitution, the concept of government administration shows the direction of empowering local participation which emphasizes the shift of government



power to the regions called regional autonomy through the process of decentralization. Local governments exercise the widest possible autonomy, except for government affairs that are determined by law as central government affairs. The government's authority in regulating the land sector grows and is rooted in the mandate of Article 33 paragraph (3) of the 1945 Constitution which affirms that: "The earth, water, and natural resources contained therein are controlled by the State for use for the greatest prosperity of the people." The provisions of the article contain the meaning that the state or government is the ruler, regulator, and manager, and is able to have the authority to distribute land rights to the people for the greatest prosperity of the people. The authority possessed by the State over the management of the earth, natural resources which in reality is carried out by the government, both the central government and local governments through policy *making* (*policy making*) is based on the philosophical values of Pancasila, such as: Godship, humanity, justice, welfare. One of the areas of government that must be implemented by districts/cities in the context of regional autonomy according to Article 11 paragraph (2) of Law Number 22 of 1999 concerning Regional Government is the land sector. The provisions of Article 11 paragraph (2) of Law Number 22 of 1999 do not have to be digested that the authority in the land sector is in the district/city as a whole. The authority located in the district/city of the city is limited to land that is locality and not national. The right to control the state means not to own, but the right to control land gives the authority to regulate and organize, allocate, use, supply and maintain the earth, water, and space, as well as uphold the rights to land both owned by the people, as well as customary land rights or customary land rights. The state power that a person already has with a right is limited by the content of that right, that is, to what extent the state gives power to the one who has it to exercise his right until that is the limit of state power. The rights of the Indonesian people to land are the mother of other rights of control over land, which implies that all other rights of control over land are derived from the rights of the Indonesian people to land and that the existence of any rights of ownership, the rights in question do not negate the existence of the rights of the Indonesian people over land.

### **The Nature of Public Interest in Land Acquisition**

Land acquisition activities carried out by parties who need land for land rights of other parties are known as land acquisition. Based on its importance, land acquisition is divided into 2 (two) types, of which the first is land acquisition for the public interest. Parties that need land in land acquisition for the public interest are agencies, namely state institutions, ministries, non-ministerial government institutions, provincial governments, regency/city governments, and state-owned enterprises. Then the second is land acquisition for the benefit of private companies. The party that needs land in the acquisition of land for the benefit of private companies is a limited liability company. According to the provisions of Article 1 number 2 of Law Number 2 of 2012, what is meant by land acquisition is: "Activities of providing land by providing decent and fair compensation to the entitled party". The provisions in the article have quite firmly regulated that parties who will need land must provide compensation to the owner of the land. This means that there is an element of justice for the landowner so that in the end it can guarantee the landowner to maintain his life. Based on the definition of land acquisition according to Law Number 12 of 2012 mentioned above, it can be concluded that with the enactment of the new law in land procurement, there is no longer a term for revocation of land rights. Therefore, in land acquisition activities for the benefit there are no longer elements of coercion of the will to revoke land rights to land needed in the implementation of development for the public interest. Development in the public interest is one of the bases for the government to legitimize in order to carry out land procurement, because the government needs land to realize development in all fields and it turns out that in practice in the field the availability of land is increasingly limited, as a result of which land acquisition becomes hampered and physical development cannot be carried out according to the schedule that has been set, so that in such a situation the government will suffer losses It is very large because the project to be built is delayed in operation.



The limited availability of land cannot be construed that land is no longer available, but in the field the land that will be needed by the government has been controlled or owned by various legal entities, both private and public such as government asset land, forest area land, and lands that have been owned or controlled by the community. Land acquisition for development for the public interest is one of the manifestations of the social function of land rights, where land acquisition activities are seen as the first step in the implementation of equitable development to improve the welfare of the community itself. Land acquisition for the public interest can only be carried out on the basis of the consent of the land right holder regarding the basis and form of compensation given to the land right holder itself, and because it is an act of the government to acquire land, in principle land acquisition is carried out by means of deliberation between the party who needs the land and the holder of the land right whose land is needed for development activities for the public interest.

The definition of public interest according to the provisions of Article 1 number 6 of Law Number 2 of 2012 is as: "The interests of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people". Development for the public interest based on the law is limited to development activities carried out and subsequently owned by the government and used for the welfare of the community and not for profit. Law Number 2 of 2012, in addition to providing a list of activities that are included in the scope of public interest, also provides criteria related to the public interest, namely the interests of the nation, state and society. In addition, it is mentioned about the criteria for its implementation (namely the government or local government) and the purpose of the activity is for the greatest prosperity for the community.

### **Legal Basis of Land Acquisition**

Laws and regulations that regulate the acquisition of land for development for the public interest, of course, are based on certain legal politics in their formation. There have been various arrangements regarding the acquisition of land for development for the public interest since Indonesia's independence. The arrangement has undergone changes in accordance with the legal political framework outlined in its formation. Land acquisition by local governments can be carried out in several ways, including: through the relinquishment of land rights; revocation of land rights or sale/exchange for land acquisition on a scale of not more than one hectare. The legal basis: Law Number 2 of 2012 concerning Land Procurement whose implementation refers to Presidential Decree Number 36 of 2005 and Presidential Regulation Number 65 of 2006 as well as the Regulation of the Head of the National Land Agency in 2007. Meanwhile, it is more specifically regulated that land acquisition for the public interest can be pursued through sale/exchange, in accordance with Presidential Decree Number 36 of 2005 and the Regulation of the Head of BPN in 2007. Both are the concrete foundation in their implementation in the field. Regulations on legal regulation regarding land acquisition for the public interest in Indonesia have undergone a process of development since the unification of the UUPA. It began with the promulgation of Law Number 20 of 1961 which regulates the revocation of rights to land and objects on it. The existence of Law Number 20 of 1961 is a mandate from Article 18 of the UUPA to immediately issue a law on the revocation of land rights. The use of Law Number 20 of 1961 is carried out if the land in question is necessary to carry out the public interest, and it is not possible to use other land, while in the deliberations that are carried out do not succeed in reaching an agreement, then the land can be forcibly taken, in the sense that it does not require the consent of the right holder.

Then in 1975 the government issued Regulation of the Minister of Home Affairs (PMDN) Number 15 of 1975 concerning Provisions Regarding Land Acquisition Procedures. The existence of this Regulation of the Minister of Home Affairs has been debated since the beginning because juridically it does not have the power of executory law to be imposed on the community, as a result of which the land acquisition carried out by eviction is null and void and the community members who are exempted can claim compensation through the Civil Court.

Since the existence of the Regulation of the Minister of Home Affairs Number 15 of 1975 became a controversy in land acquisition activities for the public interest, the government subsequently revoked the Regulation of the Minister of Home Affairs Number 15 of 1975 and subsequently issued Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest, but with the growth of development increasing rapidly, The existence of Presidential Decree No. 55 of 1993 was considered unable to properly accommodate land acquisition for the public interest at that time, so in the end the President issued Presidential Decree No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest. Furthermore, some of the provisions of the articles in Presidential Regulation Number 36 of 2005 were revised with the issuance of Presidential Regulation Number 65 of 2006.

If analyzed, Presidential Regulation Number 36 of 2005 is contrary to Law Number 10 of 2004. This Presidential Regulation is not based on laws or Government Regulations on land acquisition. Supposedly, this provision is in the form of a law because in substance it concerns human rights (HAM). This will get a very varied reaction from the community regarding human rights issues, in this case regarding individual property rights to land. On June 5, 2006, Presidential Regulation No. 36 of 2005 was amended by Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest. Presidential Regulation No. 36 of 2005 is implemented by the Regulation of the Head of the National Land Agency No. 3 of 2007.

Furthermore, because it is considered that the provisions in Presidential Regulation Number 65 of 2006 are not able to accommodate the interests of the landowner in the implementation of land acquisition for the public interest, so in such a situation there is a need for a strong legal instrument in the form of a law. Therefore, to meet these demands, then after a long time journey, on January 14, 2012, Indonesia has a law that specifically regulates land acquisition with the issuance of Law Number 2 of 2012. The government hopes that the issuance of the law will become a strong legal foundation to facilitate the implementation of infrastructure development for the public interest. Since the birth of Law Number 2 of 2012, the government has also issued several implementing regulations, namely:

- 1) Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest.
- 2) Presidential Regulation Number 99 of 2014 concerning the Second Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest
- 3) Presidential Regulation Number 30 of 2015 concerning the Third Amendment to Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest.
- 4) 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 in the Public Interest
- 5) Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Instructions for the Implementation of Land Acquisition.
- 6) Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 6 of 2015 concerning Amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition.

Based on the Right to Control the State as affirmed in Article 33 paragraph (3) of the 1945 Constitution, the government can acquire land. Article 28 H paragraph (4) of the 1945 Constitution Second Amendment states that: "every person who has the right to have personal property rights and



such property rights shall not be arbitrarily taken over by anyone". Then Article 28 J paragraph (2) of the 1945 Constitution on the Second Amendment affirms that, "in exercising their rights and freedoms, every person is obliged to submit to the restrictions established by law with the sole intention of ensuring recognition and respect for the rights and freedoms of others and to meet fair demands in accordance with moral considerations, religious values, security, and legal order in a democratic society".

Article 6 of the UUPA, Article 18 of the UUPA and Law Number 20 of 1961, the regulations for the implementation of successive or juridical foundations used in land acquisition are:

1. Regulation of the Minister of Home Affairs Number 15/1975 concerning Provisions Regarding Land Acquisition Procedures.
2. Regulation of the Minister of Home Affairs Number 2/1976 concerning the Use of Land Acquisition Procedures for the Benefit of the Government for Land Acquisition by Private Parties.
3. Regulation of the Minister of Home Affairs Number 2/1985 concerning Procedures for Land Acquisition for Development Projects in the District Area. The above three regulations are repealed by:
4. Presidential Decree No. 55/1993 concerning Land Acquisition for the Implementation of Development for the Public Interest. This Presidential Decree has also been revoked.
5. Presidential Decree No. 36/2005 concerning Land Acquisition for the Implementation of Development for the Public Interest This Presidential Regulation repeals Presidential Decree No. 55/1993.
6. Presidential Decree No. 65/2006 concerning Land Acquisition for the Implementation of Development for the Public Interest This Presidential Regulation repeals Presidential Decree No. 36/2005.
7. Regulation of the Head of BPN Number 3 of 2007 concerning Technical Guidelines for Land Acquisition for the Implementation of Development in the Public Interest
8. Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest.
9. Government Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest.
10. Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition for Development in the Public Interest.

The conception of national land law is taken from customary law, which is in the form of a religious communalistic conception that allows individual land ownership, with personal land rights, as well as containing elements of togetherness. As stated in Article 6 of the UUPA that, "land rights have a social function, then in the explanation of UUPA II.4 it is explained: The right to any land that exists in a person cannot be justified, that his land will be used (or not used) solely for his personal interests, especially if it causes harm to the community. The use of land must be adjusted to its circumstances and the nature of its rights, so that it is beneficial to the happiness and welfare that it has as well as to benefit the community and the state. Looking at the explanation of the UUPA, according to the rules of Agrarian law, the land has a function for the interests of individuals and the public interest. All land rights have a social function, meaning not only property rights but all land rights referred to in Article 16 of the UUPA. In connection with this, Article 6 should all agrarian "rights" have a social function. In this case, not only land but agrarian rights other than land which includes the earth, water, space and natural resources contained in it have a social function. The legal basis of the social function is based on article 33 paragraph 3 of the 1945 Constitution which states that the earth, water and natural resources contained in it are controlled by the state and used to the greatest extent for the prosperity of the people, "Looking at the article, the land owned by a person not only has a social function and is intended for the owner, but must also be beneficial to the



Indonesian nation as a whole and vice versa every land is needed for the public interest, then the owner must voluntarily give up his land.

The national land law regulated in the UUPA, where in the general explanation of the second point it is stated that the state or government is not a subject who has property rights (*eigenaar*), nor can it be the subject of buying and selling with other parties for its own interests. In other words, the state is only given the right to control and regulate in the interests of the welfare of the people as a whole (public interest). In the opinion of Ali Ahmad Chomzah, it is said that:

Decision-making by the government at every level of government to obtain land rights must always be based on the need for land in carrying out government functions in order to achieve the goals of the state as formulated in the fourth paragraph of the preamble to the 1945 Constitution, which is to protect the entire Indonesian nation and all Indonesian bloodshed, and to promote the general welfare, educate the life of the nation.

The nature and form of the public interest above can still be diverged in its interpretation or in its operation, so it is very important in this paper to discuss the characteristics that apply so that public interest activities are really for the public interest, and can be clearly distinguished from interests that are not in the public interest. In other words, the most principled things will be discussed so that an activity is really for the public interest. There are 3 (three) principles that can be drawn, so that an activity is truly in the public interest, namely:

- 1) The activity is completely owned by the government: It contains a restriction that public interest activities are not owned by individuals or the private sector. In other words, the private sector and individuals cannot have the types of public interest activities that require the acquisition of land rights or the state.
- 2) Related development activities carried out by the government: Providing a restriction that the process of implementing and managing an activity for the public interest can only be played by the government.
- 3) Not seeking profit: Limiting the function of an activity for the public interest so that it is completely different from private interests that aim to seek profit so that it is qualified that activities for the public interest should not seek profit at all.

Land acquisition for the implementation of development in the public interest can only be carried out if the determination of the development plan for the public interest is in accordance with and based on the General Plan of Regional Spatial Planning that has been determined in advance. The acquisition of land rights is carried out by paying attention to the role of land in human life, as well as respect for legitimate land rights.

### **Legal Protection of Land Rights Holders in Land Acquisition for the Public Interest.**

It is also mentioned that 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. Legal protection is a universal concept of a state of law. Legal protection is provided if there is a violation or action that is contrary to the law carried out by the government, both the actions of the ruler who violates the law and the community that must be paid attention to. The meaning in the word legal protection is an effort to provide protected rights in accordance with the obligations that must be performed. The

purpose of the UUPA will actually strengthen the position of individuals in relation to their communities and other members of society, namely by providing written legal regulations and providing proof of land ownership, through the implementation of land registration.

In the practice of land acquisition for the implementation of development for the public interest, compensation for buildings, plants, and other objects related to land does not encounter many obstacles in determining the amount. However, the problem that often arises is regarding the determination of the amount of compensation for land rights. Between land rights holders and government agencies that need land, it is often difficult to reach an agreement in deliberations on the amount of compensation. Therefore, the most important element lies in how the deliberations are so that an agreement is reached so that no party is harmed. Deliberations are carried out with family and no one is concerned about any party. According to Hasanudin, the deliberations carried out by the parties involved are really deliberations and not directions (let alone coercion), so that the process of listening to each other with an attitude of accepting each other's opinions and desires based on voluntariness between the parties to the deliberations can be carried out properly.

The national land law provides legal protection to land rights holders that the use and supervision of land by anyone and for any purpose must be based on land rights provided by the national land law. The control and use of land is protected by law against disturbances by any party, both fellow members of the community and the authorities, if the disturbances are not based on legal basis. In other words, when land is legally controlled by the right holder, if it is necessary for development, it must be preceded by prior deliberation. Legal protection in land acquisition for the public interest, broadly speaking, can be interpreted as respect for individual rights to land. This is related to the consequences of the state's recognition of a person's land or a customary law community, so the state is obliged to guarantee legal certainty of the right to the land so that it is easier for a person to defend his rights against interference from other parties. Land rights holders are given legal protection against disagreements in terms of determining compensation, this is regulated in Articles 17 and 18 of Presidential Regulation Number 36 of 2005. Land rights holders can submit objections to the Regent/Mayor or Governor or Minister of Home Affairs accompanied by an explanation and reasons for objection. The Regent/Mayor or Governor or Minister of Home Affairs after hearing and studying the opinions and wishes of the land rights holder as well as the consideration of the land acquisition committee may confirm or amend the decision of the land acquisition committee regarding the form and/or amount of compensation to be given. If the land right holder does not accept the settlement efforts mentioned above, then a settlement proposal can be submitted by means of revocation of land rights based on Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects thereon. From the description above, land rights holders can only object to the amount of compensation, not to land rights that will be used for the public interest. Consequently, land rights holders have no other choice but to relinquish or surrender land rights.

When compared to several provisions that regulate land acquisition for the public interest previously, namely the Regulation of the Minister of Home Affairs Number 15 of 1975, the Regulation of the Minister of Home Affairs Number 2 of 1976, and the Regulation of the Minister of Home Affairs Number 2 of 1985, where in the content and spirit of the legal regulations basically pay attention to the public interest and the interests of the parties. The impression that the law does not provide enough legal protection to landowners, who generally consist of small people, is caused by its implementation that is not in accordance with the spirit and content of the regulations and laws.

The implementation of land acquisition needs to pay attention to several principles (principles) as implied in the laws and regulations and related provisions that govern them, consisting of:

- a) The possession and use of land by anyone and for any purpose must have a basis of rights.
- b) All land rights directly or indirectly come from the rights of the nation.

- c) The way to acquire land that has been owned by a person/legal entity must be through an agreement between the parties concerned and
- d) In compelling circumstances, it means that another way is taken so that the president has the authority to revoke rights, without the consent of the subject of rights according to Law Number 20 of 1961.

The existence of Law Number 2 of 2012 emphasizes more on the form of legal protection for land rights owners in legal reforms related to land acquisition in the implementation of development for the public interest. The provisions regarding legal protection in the legal rules addressed to land rights owners are clearly contained in article after article that regulates them. Law is essentially the protection of human interests. In order for human interests to be protected, the law must be implemented and enforced. In enforcing the law, according to Sudikno Mertokusumo, there are 3 (three) elements that must be considered, namely: legal certainty (*rechtssicherheit*), usefulness (*zweckmassigkeit*) and justice (*gerechtigkeit*). The existence of legal certainty is a judicial protection against arbitrary actions, which means that a person will be able to obtain something expected under certain circumstances. The community expects legal certainty, because with legal certainty, the community will be more orderly.

In general, the 1945 Constitution has provided protection for land rights as stipulated in Article 28 letter h paragraph 4, which states that:

"Everyone has the right to have personal property rights and these property rights should not be taken arbitrarily and must be balanced with compensation for damages".

Especially for legal protection to landowners in land acquisition activities for the public interest is the obligation to provide appropriate compensation for landowners. The provisions in Article 33 of Law Number 2 of 2012, have determined that the assessment of the amount of compensation value is carried out by an appraiser who will assess each plot of land, which includes:

- a) Soil;
- b) Aboveground and underground spaces;
- c) Building;
- d) Plant;
- e) Objects related to soil; and/or
- f) Other assessable losses

The provisions of Article 33, which expressly regulates the basis and method of assessing the amount of compensation in land acquisition for the public interest, are considered to be much more advanced when compared to the compensation provisions regulated in Presidential Regulation Number 65 of 2006, where the determination of compensation in the Presidential Regulation is only determined for land, buildings, plants and other objects related to land. The existence of demands for proper and fair compensation should be understood because there is a social impact that will be felt by the community. Therefore, with proper and fair compensation, the community will be used to start rebuilding their lives in a new place. Ideally, in the process of acquiring land for public interest development, the expected goal is that the development interests can run without having to harm or cause a decrease in the living standards of the landowners and owners of the rights to the land or objects on it, after the exemption process is carried out. Therefore, the existence of compensation is a form of legal protection given to landowners if there are objects that have economic value in the upper and lower spaces to be able to claim compensation. Then another form of legal protection in land acquisition for the public interest is the provision of opportunities to conduct deliberations between land owners and parties who need land. The purpose of holding a deliberation is to determine and determine the amount of compensation given to the landowner.

In addition, the regulation regarding the guarantee of certainty and legal protection of land rights is regulated in several laws and regulations, namely:

- a) Article 19 paragraph (2) letter c, Article 23 paragraph (2) and Article 38 paragraph (2) of the UUPA, which states that certificates are a strong tool of proof.
- b) In the general explanation of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that:  
"In order to provide legal certainty to land rights holders in this Government Regulation, an affirmation is given regarding the power of proof of certificates, which is stated as a strong evidentiary tool by the UUPA". For this reason, a provision is given that as long as it has not been proven otherwise, the physical data and juridical data included in the application must be accepted as correct data, both in daily legal acts and in disputes in court.
- c) Then in the explanation of Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration it states that:  
"A certificate is a strong proof of rights, in the sense that as long as it cannot be proven otherwise, the physical data and juridical data contained in it must be accepted as correct data".

Other legal rules related to legal protection for landowners are contained in Law Number 39 of 1999 concerning Human Rights, namely:

- a) Article 36 paragraphs 1 and 2 concerning property rights (including land) as a human right and a guarantee of the absence of arbitrary expropriation of property rights by anyone.
- b) Article 37 paragraph 1 concerning the condition of revoking property rights is in the public interest, with the provision of compensation and must be based on the law.

The existence of legal protection for land rights holders in the procurement of land for the public interest is expected to provide a sense of justice for the community affected by development, so that the community can continue to be guaranteed their lives. In addition, legal protection is respect for the rights to land owned by a person in accordance with national land laws.

## **A. Conclusion**

Based on the explanation in the previous chapter, conclusions can be drawn in the form of:

1. Legal protection in land acquisition for the public interest, broadly speaking, can be interpreted as respect for individual rights to land. Regarding the legal protection provided, in general, the 1945 Constitution has provided protection for land rights as stipulated in Article 28 letter h paragraph 4, which states that: "Everyone has the right to have personal property rights and such property rights must not be taken arbitrarily and must be balanced with compensation for damages".
2. Law Number 12 of 2012 has provided legal protection to land owners/rights holders, namely in the form of providing appropriate compensation based on the assessment of the appraiser appointed by the land acquisition committee.
3. Another form of legal protection and respect for land rights in land acquisition for the public interest is by conducting deliberations with land owners to determine and determine the value of compensation given to land owners.
4. Other arrangements regarding the guarantee of certainty and legal protection of land rights are regulated in several laws and regulations, namely regulated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 38 paragraph (2) of the UUPA, then in the general explanation of Government Regulation Number 24 of 1997, as well as in the explanation of Article 32 paragraph (1), and finally Law Number 39 of 1999, as stipulated in Article 36 paragraphs (1) and (2), and Article 37 paragraph (1) have provided legal protection to landowners.

## **B. Suggestion**

The suggestion that the author wants to convey is that in order to provide maximum legal protection to land rights holders in land acquisition for the public interest, the government should play an active role in its implementation to supervise those who need land. The existence of the government in this case is very necessary so that in the implementation of land procurement carried out by agencies that need land, it is not done arbitrarily by taking rights to land owned by the community without providing fair and proper compensation.

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