

Original Article

Land Procurement for Infrastructure Projects under the Job Creation Law

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Abstract

Indonesia has enacted a regulation on land acquisition for public purposes through the Job Creation Law, aiming to accelerate infrastructure development. However, a critical question arises as to whether the law effectively ensures justice for the affected communities. This study aims to analyze the legal implications of the Job Creation Law on land procurement for infrastructure projects, with a particular focus on its ability to balance public interest and individual rights. Employing normative legal research, this study is based on the analysis of secondary data, including primary, secondary, and tertiary legal materials. The findings reveal that while the regulation provides a legal framework for land acquisition with compensation mechanisms, it often leads to disputes between the government and affected communities due to conflicting interests. Furthermore, several challenges hinder the implementation of land acquisition, such as incomplete planning documents, inadequate permits, and inconsistencies in development plans. In conclusion, although the law promotes development, its implementation must be improved to better ensure fairness, legal certainty, and public justice.

Keywords: Indonesia; Land Acquisition; Public interest; Soil;

Introduction

Land is a fundamental and essential component of human life, so that humans are continually in contact with it when carrying out their daily tasks. Given the centrality of land to human life, land will continue to serve as the basis for many people's lives and livelihoods. Therefore, this question is answered by agricultural law. Agrarian Law acts as the primary guideline for land-related matters.¹ Agrarian law governs all rights or control over the land, water, space, and its natural resources. In general, the Basic Agrarian Law Number 5 of 1960 governs Agrarian Law in Indonesia. Since the implementation of the Basic Agrarian Law, the Agrarian Laws of the Dutch East Indies, including Eigendom Rights, are no longer valid.² Historically, before the primary Agrarian Law was enacted in Indonesia. In Indonesia, agrarian law is still governed by laws inherited from the Dutch East Indies government, such as Agrarisch wet 1870 and Agrarisch Belsuit. In 1948, three years after Indonesia achieved independence, the Yogyakarta Agrarian Committee was established. Following this, Presidential Decree No. 1 of 1956 was drafted, which established the Ministry of Agrarian Affairs.³

¹Muchamad Ali Safa'at, 'The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations', *Constitutional Review*, 8.1 (2022), 113–50 <<https://doi.org/10.31078/consrev815>>.

²Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 1–13 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>>.

³Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 55–65 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.27>>.



Agrarian law can encompass the earth (land), sea, and space (natural wealth contained therein). In Indonesia, agrarian law might encompass land law, fisheries law, mining law, plantation law, and agricultural law. The primary purpose of the Basic Agrarian Law Number 5 of 1960 is to produce legal certainty or a legal cover for the maximum advantage of the Indonesian people and the state in the utilization of agrarian wealth.⁴ Reviewing the Basic Agrarian Law reveals that it recognizes the rights of Indigenous Law Communities to manage and utilize Customary Land. Recognition of the Indigenous Law Community was absent from the Agrarian Law inherited by the Dutch East Indies Government, resulting in a legal dichotomy between Colonial Government Law and Customary Law at that time (unwritten).⁵

Implementation of agrarian law is based on the fundamental principles of the Agrarian Law. The UUPA's guiding idea is outlined in Articles 1 through 15. These include the principle of nationality, the principle of power, the principle of national interest, the principle of social function, the principle of nationality, the principle of equality of rights, the principle of actively exploiting agricultural land by its owner, the principle of limiting land ownership, the principle of planned use, and the principle of customary law.⁶ The Basic Agrarian Law governs land registration as well. According to Article 19 paragraph (1) of the LoGA, the goal of land registration is to provide the community with legal certainty regarding their land rights. According to Article 9 of PP 24 of 1997, the objectives are land parcels having ownership rights, use rights, building rights, use rights, land management rights, waqf land, land ownership rights over apartments, mortgage rights, and state land.⁷

Land acquisition is a type of government or state authority for the purpose of fulfilling the public's interests in the use of land, such as for the development of public facilities and infrastructure.⁸ In this instance, the regional government is statutorily allowed and entitled to regulate and manage its own regional government matters in accordance with the principles of regional autonomy, particularly in terms of land acquisition for the execution of development in the public good. The application of the authority granted to each local government must be consistent with the program of the central government.⁹

In accordance with Law No. 12 of 2012 pertaining to the second amendment of Law No. 32 of 2004. (State Gazette of the Republic of Indonesia of 2012 Number 59; Supplement to the State Gazette of the Republic of Indonesia Number 4844). The legal standards established in Act No. 12 of 2008 become a reference for all local government apparatuses in relation to land acquisition projects in the public good. The acquisition of land in the public interest might lead to conflicts between the community and the government. This is because the disputing parties have competing interests. Additionally, property acquisition was hampered by insufficient planning documents, difficult permissions, problematic construction plans, etc.¹⁰

The Employment Copyright Act is one of the efforts taken by the government to improve land acquisition techniques and procedures in Indonesia. This is due to the fact that the land

⁴Sri Wahyuni, Dian Luthviati, and Muhhamd Hayat, 'The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen', *Bestuur*, 10.1 (2022), 12–21.

⁵Awaludin Marwan and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <<https://doi.org/https://doi.org/10.20961/bestuur.v10i1.59143>>.

⁶Towards Good Governance, 'Reduce Corruption in Public Procurement: The Effort Towards Good Governance', *Bestuur*, 10.1 (2022), 33–42.

⁷Anom Wahyu Asmorojati and others, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *Bestuur*, 10.1 (2022), 43 <<https://doi.org/10.20961/bestuur.v10i1.60179>>.

⁸Nabiyla Risfa Izzati, Mas Muhammad, and Gibran Sesunan, "'Misclassified Partnership" and the Impact of Legal Loophole on Workers', *Bestuur*, 10.1 (2022), 57–67.

⁹Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68–83 <<https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>>.

¹⁰Ridwansyah and Orsantinutsakul.



acquisition system in Indonesia still faces numerous barriers, particularly in terms of the bureaucracy, which is still complex.¹¹ The Job Creation Act is anticipated to be capable of mitigating or resolving these issues, hence promoting the development of national facilities and infrastructure in the public benefit.¹² The Land Acquisition for the Public Interest Law (Law No. 11 of 2020) enacted by the Job Creation Law (Law No. 11 of 2020) modifies a number of prior regulations. Particular changes concern the addition of development types for the public interest, the extension of the time period for determining the location, the Custody of Compensation, and the acceleration of land acquisition related to national strategic projects, such as the completion of forest area status, the acceleration of land acquisition related to village treasury land, land waqf, and land assets.¹³

Particularly, Article 34 of the Job Creation Law modifies the regulations relating compensation value. Chapter VIII, Article 123 of the Job Creation Law, which adds several regulations regarding the addition of development types for the public interest, the addition of the time period for determining the location, the safekeeping of compensation, and efforts to expedite land acquisition for national strategic projects.¹⁴ In this academic work, the author will discuss an expanded definition of land purchase in Indonesia as well as its legal foundation. In addition to examining land acquisition, the author investigates the execution of land acquisition following the passage of Law No. 11 of 2020 about Job Creation.

Results and Discussions

Land acquisition is the process of acquiring land by offering suitable and reasonable pay. Previously, land acquisition in Indonesia was carried out by the government and local governments by revoking land rights, particularly in the implementation of public-interest projects.¹⁵ Providing a comprehension of the public interest is not a simple task. In addition to being extremely sensitive due to the subjectivity of the evaluation, it is also difficult to comprehend.¹⁶

Therefore, if it is not explicitly regulated, it may give rise to different interpretations, which will have an effect on legal uncertainty and are susceptible to arbitrary measures by connected officials. Since 1961, the acquisition of land for the public interest has been governed by Law no. 20 of 1961, followed by government policy through PMDN (Domestic Investment) no. 15 of 1975, and then repealed and replaced by Presidential Decree no. 55 of 1993 on Land Acquisition for the Public Interest. Nonetheless, the establishment and execution of these regulations continue to cause tension in the community. This necessitates a revision of Presidential Decree No. 55 of 1993, which is also linked to Regional Government Law No. 22 of 1999 and Financial Balance between the Central and Regional Governments Law No. 25 of 1999.¹⁷

¹¹ Abdul Kadir Jaelani, 'The Standardization of Halal Tourism Management in West Nusa Tenggara', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20.2 (2021), 74–87.

¹² Syahlan Syahlan, 'Effective and Efficient Synchronization in Harmonization of Regulations Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.7>>.

¹³ Redi Res, 'Implementation of Parate Executie Object of Liability', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.6>>.

¹⁴ Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.5>>.

¹⁵ Arifin Maruf, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807–12 <<https://doi.org/10.53955/jhcls.v1i1.4>>.

¹⁶ Iswantoro Iswantoro, 'Strategy and Management of Dispute Resolution , Land Conflicts at the Land Office of Sleman Regency', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 1–17.

¹⁷ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <<https://doi.org/10.53955/jhcls.v2i1.31>>.



A case of property purchase in the public interest as an illustration After the implementation of the UUCK, the Trans Sumatra toll road was constructed. The acquisition of land in the public interest for the construction of the Trans Sumatra toll road is not necessarily beneficial for the community. The construction of this toll road will impact numerous parts of people's lives. Reduced customary land is one of the negative effects of acquiring property for public use in order to construct the Trans Sumatra toll road.¹⁸ In relation to the construction of the Trans Sumatra toll road, at least 14,335.91 hectares (ha) of land have been acquired for the promotion of public interests. In the process of acquiring land for toll roads in the Bakauheni region, for instance, areas that are regarded to have the greatest impact on changes in land use and that were originally intended for productive communities undergo a shift in purpose. As a result of the construction of a toll road, several towns have been forced to relinquish land that was once productive.¹⁹

Additionally, the development of the Trans Sumatra toll road has an effect on the ecology in the vicinity of the toll road segment. This is because the building of a toll road with a length of up to 2,974 kilometers requires a vast amount of land. The water absorption capacity of land changed for the Trans Sumatra toll road will diminish, particularly for precipitation. The water catchment region, on the other hand, is an area that serves as an entry point for rainwater or ground water into the water saturation zone and forms a groundwater flow.²⁰

Legislation in the area of land acquisition for development in the public interest is a minor portion of the legal framework that a country employs to achieve its development objectives. Nevertheless, the legislation regarding land acquisition for development in the public interest is one of the most essential aspects of the law as a whole. Because of the law that can protect the rights of citizens on their land, rights may be granted, canceled, or released. Consequently, a country frequently modifies its land acquisition institutions in accordance with its development and requirements.²¹

In line with this, Eric Henry Supit asserted that the establishment of the rules and regulations governing land acquisition for development in the public interest is inevitably influenced by legal politics. Since Indonesia's independence, there have been numerous systems addressing land acquisition for development in the public interest. Changes were made to the arrangement in accordance with the legal and political framework described at the time of its inception. In Indonesia, Law Number 2 of 2012 pertaining to Land Procurement for Public Interest governs land acquisition for development in the public interest, with Presidential Regulation Number 71 of 2012 pertaining to Implementation of Land Procurement for Development in the Public Interest serving as the implementing rule. Nonetheless, after the implementation of Law No. 11 of 2020 about Job Creation on November 2, 2020, various additions and modifications have been made to a number of Land Procurement Law articles.²²

In accordance with the KPA statement, the Forum for the Environment (Walhi) evaluated the Job Creation Act's threat to environmental sustainability. In the Job Creation

¹⁸ Ridwansyah and Orsantinutsakul.

¹⁹ Emovwodo.

²⁰ Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>>.

²¹ Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>>.

²² Muhamad Hasan Muaziz, Andi Tri Haryono, and Abdul Kadir Jaelani, 'Analysis of Urban Agglomeration in Economic and Legal Perspectives (A Study on the Development of Industrial Agglomeration Areas in Semarang City)', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20.1 (2022), 1–22 <<https://doi.org/10.31941/pj.v20i1.1714>>.



Law, it is tacitly indicated that the difficulty of acquiring land is anticipated to be one of the impediments to investing in Indonesia. The Agrarian Reform Consortium (KPA) determined that the Job Creation Law has at least five major agrarian-related difficulties, three of which are related to changes in land acquisition in Indonesia. The three issues consist of: First, the Job Creation Law will exacerbate inequality in land tenure and agrarian conflicts in Indonesia; second, the Job Creation Law seeks to facilitate the confiscation, eviction, and relinquishment of land rights in the name of land acquisition for infrastructure and business purposes; and third, the Job Creation Law hastens the conversion of agricultural land in Indonesia.²³

After the enactment of the Job Creation Act, there are still violations of justice principles in the implementation of land acquisition regulations, one of the three concerns expressed by the KPA. Land purchase frequently violates the principle of fairness because the District Court is tasked with hearing cases involving persons who deny the form and amount of compensation. This will facilitate the process of community land eviction. Inasmuch as the principle of justice in abandoning community-owned land rights has been derived from the concept of land acquisition, i.e., the act of supplying land by compensating the entitled party in a fair manner. In the clarification of Article 2 letter b of Law No. 2 of 2012, it has been stated that justice is the provision of a guarantee of adequate recompense to parties who are entitled to the land acquisition process so that they can live a better life.²⁴

In this instance, what is meant by justice in land acquisition for the public interest is that it can improve the socioeconomic conditions of the landowner who receives compensation and is at least equivalent to the situation before the land acquisition was carried out, and that the party in need of land obtains land in accordance with the plan and designation and receives protection. The formulation of law and justice in the form of rights and duties must reflect the justice received and experienced by the parties.²⁵

Due to the disparity between *das Sollen*, as specified in the appropriate laws and regulations, and *das Sein*, the actualities that occur on the ground, the acquisition of land for diverse purposes frequently results in implementation conflicts or challenges. Disputes are common, particularly around compensation. The distribution of compensation as an endeavor to respect the rights and interests of persons whose rights and interests have been sacrificed for the public interest must, in principle, be carried out in a proper and equitable manner.²⁶ In the process of land acquisition, compensation is a just and reasonable remuneration for the Entitled Party. The notion of compensation is that the landowner is entitled to a just payment. The criterion for valuation is fair replacement value. Compensatory payments may be made in the form of cash, replacement land, resettlement, or ownership shares, or in any other manner agreed upon by both parties.²⁷

²³ Alba Martínez-López and others, 'Environmental Assessment Model for Scrubbers versus Alternative Mitigation Systems for Feeder Vessels in Liner Shipping', *Journal of Environmental Management*, 321.August (2022) <<https://doi.org/10.1016/j.jenvman.2022.115954>>.

²⁴ Zach Raff and Dietrich Earnhart, 'Employment and Environmental Protection: The Role of Regulatory Stringency', *Journal of Environmental Management*, 321.April (2022), 115896 <<https://doi.org/10.1016/j.jenvman.2022.115896>>.

²⁵ Stephen Nyabire Akanyange and others, 'A Holistic Assessment of Microplastic Ubiquitousness: Pathway for Source Identification in the Environment', *Sustainable Production and Consumption*, 33 (2022), 113–45 <<https://doi.org/10.1016/j.spc.2022.06.020>>.

²⁶ Wayan G. Santika and others, 'Implications of the Sustainable Development Goals on National Energy Demand: The Case of Indonesia', *Energy*, 196 (2020) <<https://doi.org/10.1016/j.energy.2020.117100>>.

²⁷ Sitti Rahma Ma'Mun, Adam Loch, and Michael D. Young, 'Sustainable Irrigation in Indonesia: A Case Study of Southeast Sulawesi Province', *Land Use Policy*, 111.October 2019 (2021), 105707 <<https://doi.org/10.1016/j.landusepol.2021.105707>>.



Conclusion

Based on the description presented in the previous section, the following conclusion may be derived from this paper: First, Land Acquisition is the process of acquiring land by the payment of suitable and reasonable price. Law Number 2 of 2012 pertaining to Land Procurement for Development in the Public Interest and Law Number 11 of 2020 pertaining to Job Creation govern land acquisition regulations in Indonesia. And the most recent land purchase requirements may be found in Government Regulation of the Republic of Indonesia Number 19 of 2021 Concerning Implementation of Land Procurement for Development in the Public Interest, which serves as the Job Creation Act's implementing regulations. Second, in Indonesia, Law Number 2 of 2012 regarding Land Procurement for Public Interest governs land acquisition for development in the public interest, with Presidential Regulation Number 71 of 2012 regarding Implementation of Land Procurement for Development in the Public Interest serving as the implementing rule. Nonetheless, after the implementation of Law No. 11 of 2020 about Job Creation on November 2, 2020, various additions and modifications have been made to a number of Land Procurement Law articles. Thirdly, the acquisition of land in the public interest can result in conflicts between the community and the government. This is because the disputing parties have competing interests. Additionally, property acquisition was hampered by insufficient planning documents, difficult permissions, problematic construction plans.

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