



Research Article



Legal Protection in Land Acquisition for Public Interest: A Dilemma Between State Regulation and Social Welfare

Armalia Berlinda Irawan *¹, Rahayu Subekti ¹, Bobur Baxtishodovich Sobirov ²

¹ Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

² Samarkand Branch of Tashkent State University of Economics, Samarkand, Uzbekistan

* Correspondence: irawanarmalia@gmail.com

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Abstract: The development of infrastructure for the general interest in Indonesia continues to be encouraged by the Government to improve the general well-being, but it has to deal with public ownership by acquiring land for such development. This study determines the forms of legal protection for landowners affected by land acquisition. The study uses normative legal research, which compares legal issues in two countries, Indonesia and the Netherlands. This research is descriptive, using statute, conceptual, and case approaches. The results of this study show that legal protection for landowners affected by land acquisition in Indonesia, based on some cases in the investigated judgment, needs to protect and provide legal certainty for landowners fully. The case is based on unilaterally granting compensation, and the court has not filed a lawsuit for such compensation. The courts in Indonesia, in settling the land acquisition damages dispute, are more subject to existing rules that do not look at the situation on the ground. The implementation of the acquisition process carried out by the Evaluation Team must comply with the procedures in the land acquisition regulations. Secondly, legal protection for landowners affected by land acquisition in the Netherlands; based on several cases in the ruling under investigation, the Netherlands has provided legal protection in the form of high compensation for the cost of landowner losses. The Supreme Court is working hard for a reasonable outcome by providing high-value compensation. Both states have the same obstacle in implementing land acquisition: a dispute with landowners about compensation.

Keywords: Compensation; Land Acquisition; Legal Protection;



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INTRODUCTION

A country's development attempts to accelerate the country's economy and benefit all layers of society. Infrastructure development is one such form of development. The development of infrastructure for the general interests that the state continues to encourage requires land under state control, but the limited availability of state land becomes a problem for the state regarding the provision of land for the public interest.¹ The state engages in land acquisition activities to address land availability by acquiring community-owned land. Land acquisition has become a global concern because of the transformation of the land use system, which has a significant impact on the community's well-being.² Land acquisition is often seen as a prerequisite for infrastructure development that the state believes will bring long-term benefits in

¹ Qiuping Peng and Huaikang Zhou, 'Chinese Land Complex: Hometown Ties and Corporate Land Acquisition', *Land Use Policy*, 138.107030 (2024) <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.107030> .

² Vong Nanhthavong and others, 'Pathways to Human Well-Being in The Context of Land Acquisitions in Lao PDR', *Global Environmental Change*, 68 (2021), 102252 <https://doi.org/10.1016/j.gloenvcha.2021.102252>



terms of job creation and Gross Domestic Product growth.³ In this context, the regulatory framework of land acquisition law plays a crucial role in determining the effective and efficient implementation of this process, while also ensuring fairness and transparency.⁴

Land acquisition policies have been implemented in various countries, including Indonesia and the Netherlands. Indonesia and the Netherlands have in common that they have laws and regulations governing land acquisition to provide a legal framework for land acquisitions for the general interest. Both have almost identical land acquisition procedures. Land acquisition regulations in Indonesia are the Law No. 2 of 2012 on Land Procurement for Development for Public Interest and its implementing regulations aim to provide legal certainty in land acquisitions to prevent and minimize land procurement conflicts. Land policy is defined as a strategic instrument implemented by public authorities to manage land use and distribution.⁵ In the Netherlands, the provisions concerning land acquisition, the Dutch Acquisition Act of 1851, were intended to provide legal certainty and clarify the nature of such land acquisitions only for the public interest, have urgency and need and when damages have been determined in advance.

However, in practice, land acquisition in Indonesia presents a more complex set of problems compared to those in the Netherlands.⁶ Due to overlapping central and regional regulations and differences in interpretation, Indonesian land acquisition regulations are complex and difficult to implement, leading to legal uncertainty and impeding land acquisitions. Corruption practices in Indonesia, such as abuse of authority, bribery, misuse of compensation funds, and lack of transparency in land acquisition, are also serious problems. Furthermore, due to ownership uncertainty, land conflict between indigenous peoples and the government frequently becomes an obstacle to land acquisition in Indonesia.⁷ A land conflict is a conflict between two or more parties who have different interests in ownership, income, confiscation, transfer, or compensation for land.⁸ According to a report by the Agrarian Reformation Consortium (KPA), in 2023 there were at least 241 cases of agricultural conflict in Indonesia. The conflict covers an area of 638,2 thousand hectares, and affects 135,6 thousand families. Apart from the size of the area, the biggest agrarian conflict in

³ Rebecca Meckelburg and Agung Wardana, 'The Political Economy of Land Acquisition for Development in The Public Interest: The Case of Indonesia', *Land Use Policy*, 137.1 (2024), 107017 <https://doi.org/10.1016/j.landusepol.2023.107017>

⁴ Ian Edward Hamonangan Butar Butar and others, 'Proses Pengadaan Tanah Untuk Kepentingan Umum Menurut Undang-Undang No. 2 Tahun 2012', *Jurnal Ilmiah Tanah Untuk Karya Mahasiswa*, 3.1 (2023), 236–59 <https://doi.org/https://doi.org/10.54066/jikma-itb.v1i3.328>

⁵ Tuulia Puustinen, Pauliina Krigsholm, and Heidi Falkenbach, 'Land Policy Conflict Profiles for Different Densification Types: A Literature-Based Approach', *Land Use Policy*, 123.October (2022), 106405 <https://doi.org/10.1016/j.landusepol.2022.106405>

⁶ Yesi Nurmantiyas Sari, Rizal Nugroho, and Al Khanif, 'Land Acquisition for Public Interests: A Review from the Human Rights Context', *Indonesian Journal of Law and Society*, 1.1 (2020), 23–36 <https://doi.org/10.19184/ijls.v1i1.16757>

⁷ Rofi Wahanisa and others, 'Problems of Disputes/Conflicts over Land Acquisition towards Development for Public Interest in Indonesia', *International Journal of Criminology and Sociology*, 10.024 (2021), 320–25 <https://doi.org/10.6000/1929-4409.2021.10.39>

⁸ Ahsan Shafi and others, 'A Game Theory Approach to Land Acquisition Conflicts in Pakistan', *Land Use Policy*, 132.106802 (2023) <https://doi.org/https://doi.org/10.1016/j.landusepol.2023.106802>



2023 is related to infrastructure sectors, such as toll roads, power plants, and the capital of Indonesia.

Table 1 Area of Agrarian Conflict by Sector 2023

No	Sector	Total
1	Infrastructure	243.755 hectare
2	Mining	127.525 hectare
3	Plantation	124.545 hectare
4	Forestry	77.487 hectare
5	Property	64.119 hectare
6	Coastal and Marine	428 hectare
7	Fasilitas Militer	328 hectare

Source : Agrarian Reform Consortium 2023

In the KPA 2023 report, the causes of the land conflict are largely due to land acquisition processes and compensation for losses. The lack of clear communication of policies and procedures to the affected communities often renders land acquisition processes less transparent and vulnerable to abuse practices. Involving landowners in land acquisitions can facilitate transparent land acquisition.⁹ In addition to data from the KPA, land conflicts resulting from land acquisition in the public interest, especially about fair and fair compensation, are constantly recurring. The common problem is the inconsistency between what the state gives and what the affected society expects.¹⁰ Land conflicts resulting from land acquisition are also reflected in the following decisions: Firstly, Decision No. 112/Pdt.G/2021/PN.KIn. This decision contains a complaint concerning an objection against the Appraisal Team to the amount of damages for the Solo-Yogyakarta Tol Road construction site in Klaten District.

The assessment of the amount of damage still needs to be implemented. Therefore, determining the damages amount is unilateral, leading to an unfair outcome, as the land affected by Street Tol Solo-Yogyakarta is crucial to the community's economy. This unilateral assessment of damages not only leads to an unfair outcome but also has a detrimental impact on society. Secondly, Decision No. 623/Pdt.G/2015/PN.Jkt.Cell containing a lawsuit concerning land acquisition for the construction of Depok-Antasari Road. During the land acquisition process, the Head of the Office of the National Agriculture Agency of the City of South Jakarta Administration made an unwritten, unilateral announcement regarding the compensation for the land loss. Such a unilateral assessment of damages is detrimental to society because it is too low and does not consider historical, strategic, and economic values or human values of justice.

Third, Decision No. 38/Pdt.G/2018/PN.Cbi. This decision contains a lawsuit concerning land acquisition for the construction of Cimanggis-Cibitung I. Road Tol.

⁹ Kwabena Mintah and others, 'Blockchain on Stool Land Acquisition: Lessons From Ghana for Strengthening Land Tenure Security Other Than Titling', *Land Use Policy*, 109.105635 (2021) <https://doi.org/https://doi.org/10.1016/j.landusepol.2021.105635>

¹⁰ Vikram Patil and others, 'Money, Land or Self-Employment? Understanding Preference Heterogeneity in Landowners' Choices for Compensation Under Land Acquisition in India', *Land Use Policy*, 97.104802 (2020) <https://doi.org/https://doi.org/10.1016/j.landusepol.2020.104802>



The compensation for such losses feels unworthy and does not satisfy a sense of justice, leaving individual landowners feeling neglected and undervalued. Fourthly, Decision No. 30/Pdt.G/2020/PN.Plw. The decision contains a lawsuit concerning the procurement of land for constructing the Pillar Tower Transmission Network Stretch-Base Kerinci. The landowner disputes the compensation amount for the loss of his land, citing the possibility of assessing additional losses from the remaining land. The deal failed to reach an agreement, and the landlord eventually sued in state court. However, the request failed. Fifth, Decision No. 40/G/2019/PTUN.PDG. The decision contains a lawsuit concerning land procurement for the construction of the Road Tol Padang-Sicincin. The landowner experiences pain as the expropriation process sets the compensation amount for his land unilaterally, without his involvement. The judgments suggest that implementing landowners' rights in land acquisition for the public interest is still pending, leaving individual landowners feeling powerless and unheard.

The land acquisition process in the Netherlands is distinct and characterized by high levels of transparency and public participation. In the Netherlands, people are not just informed but actively involved in the decision-making process. They have the right to express their views and participate in negotiations related to compensation. The Netherlands also boasts a robust legal framework that protects individual property rights. Landowners have clear rights protected through transparent legal processes, providing legal protection to those affected by land acquisition in the public interest. Even in compensation disputes, the system in the Netherlands ensures that landowners receive adequate and fair compensation. This process is overseen by national courts, with the Dutch Supreme Court playing a pivotal role. For example, in the case of land acquisition for the construction of the national rail network, the land acquisition must take over the land of Castle Park in Elsloo, and there is a dispute over compensation for the land acquired. In addition, land acquisition cases also occurred because of the city construction in the City of Rotterdam. Landowners judge the compensation in the law as too small and inconsistent with the market.

In general, compensation for land acquisition is a critical process, especially regarding land rights and land ownership benefits.¹¹ Land acquisition for the public interest can also negatively impact the livelihoods of the affected people. Based on this, adequate and equitable compensation payments to the land rights holders serve to minimize the impact of land acquisitions on the living conditions of affected communities and compensate for the loss of livelihood.¹² Empirical research in many countries shows that the compensation granted to affected landowners needs to be increased to rebuild their livelihoods after the acquisition. Banerjee and Van Eerd found that in Indonesia, the compensation and resettlement aid given to the affected population did not sufficiently cover their losses, allowing them to buy alternative

¹¹ Yang Shen, Lei Gan, and Shaojun Chen, 'Gender Impact Assessment of Land Acquisition Compensation for Sustainable Environmental Management of Wuxikou Hydropower Projects', *Journal of Geochemical Exploration*, 257.107357 (2024)

<https://doi.org/https://doi.org/10.1016/j.gexplo.2023.107357>

¹² Franklin N. Mabe and others, 'The Nexus Between Land Acquisition and Household Livelihoods in The Northern Region of Ghana', *Land Use Policy*, 85 (2019), 357–67
<https://doi.org/https://doi.org/10.1016/j.landusepol.2019.03.043>



land and maintain the humidity standard.¹³ At least, four stakeholders are involved in the land acquisition process: government, private, public, and affected parties. The position of affected parties as landowners is below, indicating its weakness. This position differs from the government's above position by its authority under the rule of law.¹⁴ The lack of compensation is a violation of ownership so its existence is less protected.¹⁵

The scholars have done some research on land acquisition. For example, a study by Rebecca Meckelburg and Agung Wardana (2024), showing the Indonesian government during Jokowi's presidency has redefined the meaning and scope of 'public interest' in the context of land administration in Indonesia, resulting in an escalation of social conflicts and disputes over the right to use and access land. Another study, for example, conducted in Ghana by Austin Dzuwornu Ablo and Vincent Kofi Asamoah (2018), showed the impact of land acquisition for the gas processing plant in Atuabo on the livelihoods of affected farmers. Moreover, Muhammad Akib (2023) showed a comparison of the constitutional norms that regulate land acquisition for the general interest and compared it with the five states whose constitutions were compared, only that Indonesia did not explicitly regulate the land acquisitions for the common interest in its constitution. Russia, America, and China explicitly regulate land acquisition for the public interest in their respective constitutions. However, the regulation of land acquisition for the public interest is not without its challenges. South Africa, for instance, regulates this aspect both explicitly and in detail in its constitution.

Further research from Bhagwan Chowdhry (2022) delves into the funds required for land acquisition for infrastructure projects, which often necessitate large sums. The result is a significant amount of fraud due to the untransparent process, leading to unfair compensation. Another research by Eddie C. M. and Haijun Bao (2013) focused on policy strategies to address legal land acquisition conflicts and illegal land conversion. This article has established three models that explain how conflict develops and describes the logic and strategy of conflict between local governments and farmers, highlighting the complex nature of these issues. Based on the explanation above, it is necessary to discuss the issue further to explore new formulas to solve the problems that arise in the existing land law system, in particular, the compensation and reappraisal of losses caused by organizational errors and the minimum legal protection to communities whose land is affected by development for the general interest. This research is necessary for exploring more complex legal protection for landowners whose lands are affected by land acquisition for the development of general interest, considering the current situation in Indonesia and the Netherlands.

¹³ Embun Sari and others, 'Comparison of Land Law Systems: A Study on Compensation Arrangements and Reappraisal of Land Acquisition for Public Interest between Indonesia and Malaysia', *International Journal of Criminology and Sociology*, 10.19 (2021), 872–80 <https://doi.org/10.6000/1929-4409.2021.10.103>

¹⁴ Muhammad Akib and others, 'Constitutionalism in Land Acquisition for Public Interest: A Comparison Between Indonesia, Russia and Several Other Countries.', *Russian Law Journal*, 11.5s (2023), 249–55 <https://doi.org/10.52783/rlj.v11i5s.932>

¹⁵ Eddie C. M. Hui and Haijun Bao, 'The Logic Behind Conflicts in Land Acquisitions in Contemporary China: A Framework Based Upon Game Theory', *Land Use Policy*, 30.1 (2013), 373–80 <https://doi.org/https://doi.org/10.1016/j.landusepol.2012.04.001>



METHOD

This study uses normative legal research, providing a descriptive explanation through a legal framework focusing on implementing land acquisition and the compensation model for damages resulting from such land acquisitions. Law No. 2 of 2012 on Land Procurement for Development for Public Interest and the Dutch Acquisition Act of 1851 are among such laws. Furthermore, this article uses a conceptual approach to human rights and justice to obtain a model of legal protection for landowners affected by land acquisition. In addition, this article compares the rules of land acquisition and compensation in Indonesia and the Netherlands. It uses a case-based approach to show the conditions existing for land acquisitions in both countries.

RESULT AND DISCUSSION

Legal Protection of Land Acquisition for Public Interest in Indonesia

Land acquisition for the public interest aims to provide land for development that concerns the interests of the nation, state, and society by not neglecting the interests of landowners and not causing setbacks in the lives of landowners for the release of their land rights through the provision of adequate and fair compensation to landowners.¹⁶ However, the implementation does not always run smoothly and often encounters problems such as inadequate compensation given to landowners because often the losses experienced by landowners exceed the compensation received. These problems are reflected in 5 court decisions.

First, land acquisition for the construction of the Solo-Yogyakarta Toll Road in Pepe Village, Ngawen Subdistrict, Klaten Regency is organized based on the provisions of Law No. 2 of 2012 which consists of 4 stages. At the planning and preparation stage, the agency requiring land makes a land acquisition planning document in Klaten Regency consisting of the aims and objectives of the development plan for the public interest to be submitted to the Governor of Central Java and within 5 days after receipt of the planning document, a Land Acquisition Committee is formed. Furthermore, the determination of the location of toll road construction is contained in the Decree of the Governor of Central Java concerning the Extension of the Determination of the Location of Land Acquisition for the Construction of the Solo-Yogyakarta Toll Road in Klaten Regency.

At the implementation and submission stage, the Land Acquisition Committee formed Task Force A and Task Force B which were responsible for conducting an inventory and identification of control, ownership, use, and utilization of land objects which were then submitted by the Klaten Regency National Land Agency to the Appraisal Team at the General Appraisal Services Office to conduct an assessment of compensation for land objects owned by communities affected by the construction of the Solo-Yogyakarta Toll Road. The next process is a deliberation to determine and determine the form of compensation, for the entitled parties who agree with the compensation value must sign the minutes of approval and submit their land certificates for legality verification and validation. After the process is complete, the

¹⁶ Luh Nyoman Diah Sri Prabandari, I. W. Arthanaya, and Luh Putu Suryani, 'Pemberian Ganti Rugi Terhadap Pengadaan Tanah Oleh Pemerintah Untuk Kepentingan Umum', *Jurnal Analogi Hukum*, 3.1 (2021), 1-5 <https://doi.org/10.22225/ah.3.1.2021.1-5>



Commitment Making Officer orders payment of the loss to the State Asset Management Agency, if the funds are ready, the State Asset Management Agency will write to the Klaten Regency National Land Agency to provide compensation to the entitled party coupled with the release of land rights by the landowner by signing a Release of Rights Letter.

Based on the decision of the Klaten District Court Number: 112/Pdt.G/2021/PN/Kln and the results of interviews with the Head of Pepe Village, Ngawen District, which is one of the locations for toll road construction, it was found that in land acquisition in Pepe Village, several landowners were intimidated to immediately release their land rights through the signing of a compensation agreement. This is not in accordance with Article 2 letter (f) of Law No. 2 Year 2012 which states that the implementation of land acquisition for the public interest is carried out based on the principle of agreement, meaning that there needs to be an agreement from both parties without coercion and intervention from other parties. So that the implementation of land acquisition in Klaten Regency, especially in Pepe Village, Ngawen District, does not provide legal protection and does not fulfill the principle of justice for land rights holders.

Second, land acquisition for the construction of Tapak Tower Transmission Network Rengat-Pangkalan Kerinci. At the planning and preparation stage, PT PLN as the agency that needs land submits a land acquisition planning document for the construction of Tread Tower Rengat-Pangkalan Kerinci to the Governor of Riau Province. In the planning process, the Socialization of Land Acquisition of Tread Tower Rengat-Pangkalan Kerinci was held in 2017. Based on the results of inventory and identification conducted with the Head Kerinci Village, it is known that one of the landowners registered in the inventory of the Tread Tower construction is Johan with a land area of 256 m² under the Transmission Network crossing with a land area of 4.029 m². In conducting an assessment of compensation and compensation for transmission networks on land, plants and buildings in the construction of Tread Tower, PT PLN assigned the Public Appraisal Services Office to conduct a land compensation assessment for Tread Tower and transmission networks of land, buildings and plants.

The results of the assessment of the land compensation value for the construction of the Tread Tower owned by Johan by the Public Appraisal Services Office amounted to more than IDR41 million; and the amount of compensation for the transmission network amounted to less than IDR100 million. Based on this assessment, PT PLN invited the owners of land rights under Tread Tower T21 to attend the socialization of compensation for land, buildings and plants under the transmission network. During the socialization, Johan expressed his objection to the construction of Tread Tower; and in 2020 Johan submitted a response letter to the construction of Tread Tower which contained changes in the compensation value desired by Johan. For the objections and requests for changes in value, two price determination deliberations have been held according to the assessment of the Public Appraisal Service Office mediated by the Riau High Prosecutor's Office.

Based on the decision of the Pelalawan District Court Number: 30/Pdt.G/2020/PN.Plw indicates that the land acquisition process for the construction



of the Tower Tread Rengat-Pangkalan Kerinci has not fulfilled the principles of legal protection and justice. Because, based on the provision, the assessment of the amount of compensation by the appraisal team is carried out against other losses that can be assessed. However, the appraisal team did not assess other assessable losses in the form of the remaining 36.000 m² of land owned by Johan. This caused material loss to the landowner because the construction of the tower site resulted in a decrease in the economic value of the land, so that the land compensation assessment did not meet the criteria of feasible and fair as mandated in the land acquisition law.

Third, land acquisition for the construction of the Padang-Sicincin Toll Road in Decision Number: 40/G/2019/PTUN.PDG which is the construction of the 30.4 km National Strategic Project session I. This development began in 2017 by the The Ministry of Public Works and Housing-Directorate General of Highways to improve infrastructure facilities and provide convenience for the community to be more effective and efficient in traveling. This development was started in 2017 by the Directorate General of Highways to improve infrastructure facilities and provide convenience for the community to be more effective and efficient in traveling. The implementation of land acquisition for toll road construction is the responsibility of the National Land Agency of Pariaman Regency. Based on the determination of the location of the Padang-Sicincin Toll Road construction through the Decree of the Governor of West Sumatra, there are 129 points of development locations, one of which is land owned by PT Padang Industrial Park with a development project area of 35.982 m².

At the inventory and identification stage, not a few affected communities objected to the results of these stages because the community felt that they did not match the results of the measurement of land area for toll road construction by Padang Pariaman Regency National Land Agency officers. The assessment of land compensation in the construction of this toll road is carried out by the Appraisal Team, namely the MBPRU Public Appraisal Services Office. The results of the compensation assessment were submitted to the community through the compensation determination deliberation in 2018. PT Padang Industrial Park disagrees with the results of the compensation assessment for its land, according to PT Padang Industrial Park, the appropriate compensation value for its land covering an area of 35.982 m² is in accordance with the Tax Object Sales Value of Rp335.000/m² with a total more than IDR12 billion, while the compensation value issued by the National Land Agency is only less than IDR Rp2.4 billion.

Although there is still rejection of the compensation value, as reported by data from the National Land Agency of Padang Pariaman Regency in 2019, there are 9 parcels of land for which compensation has been paid, 95 parcels of land for which compensation is being deposited at the Pariaman District Court (consignment), but most landowners have not taken the compensation money because they do not agree with the compensation value given. 3 parcels of land for which compensation will be paid and 22 parcels of land for which compensation will be deposited at the Padang Pariaman Court. For land parcels that receive compensation, at the time of giving compensation money accompanied by the release of the object of land acquisition in front of the Head of the Pariaman Regency Land Office. The implementation of consignment as stated in Law No. 2 of 2012 does not provide legal protection for



land rights holders in disputes with the government due to the elimination of land rights and the land has the status of being controlled by the state, resulting in invalid proof of land rights for landowners who demand justice to fulfill their rights.

Fourth, land acquisition for the construction of Cimanggis-Cibitung I Toll Road. At the planning and preparation stage, the Directorate General of Highways prepared a land acquisition planning document for the construction of Cimanggis-Cibitung I Toll Road to be submitted to the Governor of West Java. Subsequently, the West Java Governor issued West Java Governor Decree on the Determination of Location for the Construction of Cimanggis-Cibitung I Toll Road, which then in 2015 changed the regulatory basis for land acquisition at the construction site so that the Governor again issued West Java Governor in 2014. After the issuance of the location determination permit, the agency that needs the land conducts socialization related to the Cimanggis-Cibitung I Toll Road construction plan. At the implementation and final handover stage, the Land Acquisition Commitment Making Officer handed over the land acquisition implementation to the National Land Agency of West Java Regional Office. Furthermore, the Head of the West Java National Land Agency formed a land acquisition committee which then formed Task Force A and Task Force B to complete the inventory and identification tasks as the basis for the compensation assessment. The results of the calculation of compensation are submitted to the entitled parties in deliberations to determine and determine the form of compensation.

If the landowner does not agree with the compensation value as stated in Decree Number: 38/Pdt.G/2018/PN. Cbi, because the appraisal team did not consider other losses that can be assessed as stipulated in Law No. 2 of 2012. These losses are in the form of business needs which include relocation and strengthening of facilities, utilities, and infrastructure at the Bridge Factory and other factories in the PT Bukaka Industrial Estate which of course require large costs. Whereas the provisions require that in the implementation of land acquisition, the legal interests of land rights owners must be guaranteed. Thus, the implementation of compensation assessment as stated in the Land Acquisition Law does not provide legal protection and justice for land rights holders.

Fifth, land acquisition for the construction of the Depok-Antasari Toll Road is carried out in accordance with Law No. 2 of 2012. At the planning and preparation stage, the Directorate General of Highways submitted a planning document for land acquisition for the public interest of the construction of the Depok-Antasari Toll Road to the Governor of West Java. Then the Governor of West Java issued the Decree of the Governor of West Java on the Renewal of Land Acquisition Period for the Construction of Depok-Antasari Toll Road. At the implementation stage, the Director General of Highways submitted a letter from the Directorate General of Highways addressed to the Head of the Regional Office of the National Land Agency of West Java Province regarding the implementation of land acquisition for the construction of Toll Roads in West Java Province, one of which is located in Setu Village, Ciganjur Village, Jagakarsa District. The land acquisition process for the construction of the toll road was delegated by the Head of the West Java Provincial BPN Regional Office to the Head of the Bekasi City Land Office and the Head of the Depok City Land Office who would later become the Head of the Land Acquisition Executive Agency through



Decree of the Head of the West Java Provincial BPN Regional Office 2015. In July 2015, the land acquisition executor conducted an inventory and identification in Setu Village without first coordinating with the local community. August 2015, land rights owners were invited by the Land Acquisition Committee through invitation letter regarding data verification of land rights owners and a compensation meeting for the affected land. Payment of compensation in the form of money to the entitled parties was accompanied by the handover of land certificates to which they were entitled.

Based on the decision, assessment of compensation does not pay attention to the loss of productive plants of landowners on their land and other forms of losses that can be assessed in the form of relocation of business premises of landowners affected by toll road projects, and losses on the remaining land. Meanwhile, Article 33 of Law No. 2 of 2012 has stated that the assessment of the amount of compensation is carried out on land, space above and below the ground, buildings, plants, objects related to land, and other forms of loss that can be assessed. Based on this, the amount of compensation value does not meet the criteria of reasonable and feasible because it is not given the rights of landowners, so that the implementation of land acquisition for the construction of the Depok-Antasari Toll Road is not in accordance with the principles of justice and does not provide legal protection for the human rights of landowners.

Thus, the implementation of land acquisition for the public interest has not been fully implemented as stipulated in the land acquisition law because the rights of landowners have not been fulfilled. Therefore, it is necessary to strengthen legal protection for affected communities to ensure that their rights are respected and given the opportunity to voice their interests in decision-making. This avoids the lack of legal protection for landowners over their land property rights, increasing the risk of expropriation without adequate compensation.¹⁷ Strengthening legal protections will also protect landowners from abuse of power by authorities so that their rights are not violated. Appropriate legal and institutional frameworks will provide strong legal protection that will provide legal certainty to landowners about their rights and reduce land conflicts that will arise in the future.¹⁸

Article 18 of Act No. 5 of 1960 states that the right to land may be withdrawn for the public interest through adequate and fair compensation per the methods laid down in the law. According to the Law No. 2 of 2012 states that land acquisition is the activity of land provision through the fair and fair payment of damages to the entitled party. This article reaffirms that in the case of the withdrawal of land rights for the general interest, the government is obliged to provide adequate compensation to the rightsholder. Compensation may be granted in the form of money,

¹⁷ Jorge A. Rincón Barajas, Christoph Kubitzka, and Jann Lay, 'Large-Scale Acquisitions of Communal Land in The Global South: Assessing The Risks and Formulating Policy Recommendations', *Land Use Policy*, 139, September 2023 (2024), 1–19 <https://doi.org/10.1016/j.landusepol.2024.107054>

¹⁸ Genesis Tambang Yengoh and others, 'Factors of Vulnerability: How Large-Scale Land Acquisitions Take Advantage of Local and National Weaknesses in Sierra Leone', *Land Use Policy*, 50 (2016), 238–340 <https://doi.org/https://doi.org/10.1016/j.landusepol.2015.09.028>



replacement land, resettlement, ownership of shares, and other forms agreed upon by both parties.¹⁹

Land acquisition executors give compensation priority in the form of money, as regulated the Government of the Republic of Indonesia Regulations No. 19 of 2021.²⁰ It regulates the granting of money as a form of compensation in rupiah fractions carried out by the agency needing land on approval of the head of the Land Procurement Commission or an official appointed for such purposes. This validation process is carried out within a maximum period of 5 days from the date of the establishment of the notice of the event in the form of a compensation agreement. The granting of compensation in the form of damages is accompanied by the release of the entitled party within a maximum of 17 days after the validation results have been submitted to the Land Procurement Commission. However, in some instances, compensation may be made for more than 17 days in the following circumstances: limited budget available; the party entitled to compensation is not present at the time of the planned payment phase; and issues related to security, political, economic, social and cultural, or other technical issues. Compensation not only takes into account physical losses but also the presence of non-physical losses that can be measured in terms of the money suffered by landowners as a result of the acquisition of their land for the development of public interest, such as losses due to loss of employment, emotional losses (solatium),²¹ Article 35 of Law No. 2 of 2012 explains that if residues of land affected by the exemption cannot be reused in accordance with its provisions, the landowner may claim compensation for the damage to the land in full.²²

Based on an analysis of five court rulings that have been enforced, the five rulings agreed to use the money as compensation for land acquisition for development in the public interest. According to Aristotle, compensation should provide a balance between what one gets and what one should get. Distributive justice can be understood as granting landowner rights based on what has been previously owned. The government must improve the well-being of the people. Compensation is a form of legal protection to protect affected communities who suffer loss due to others so that communities that suffer the loss can enjoy their rights. However, in its implementation, the compensation is not comparable to the losses suffered by the landlord, so legal protection for landlords has not been achieved.

¹⁹ I Gusti Ayu Kade Harry Adhisukmawati, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'Fairness Aspects Of Compensation Arrangements In The Acquisition Of Land For Development For The Public Interest', *International Journal of Educational Research & Social Sciences*, 4.1 (2023), 186–94 <https://doi.org/10.51601/ijersc.v4i1.606>

²⁰ Bayu Nuraulia and Djauhari Djauhari, 'The Dispute Settlement over the Ownership of a Double Certificates in Cirebon District Land Office', *Jurnal Akta*, 6.3 (2019), 567 <https://doi.org/10.30659/akta.v6i3.5116>

²¹ Marcello De Maria, Elizabeth J Z Robinson, and Giacomo Zanello, 'Fair Compensation in Large-Scale Land Acquisitions: Fair or Fail?', *World Development*, 170 (2023), 106338 <https://doi.org/10.1016/j.worlddev.2023.106338>

²² Hendri Cahyono and Gunarto Gunarto, 'The Law Application of Land Procurement for Development in Public Interest', *Sultan Agung Notary Law Review*, 3.2 (2021), 635 <https://doi.org/10.30659/sanlar.3.2.515-525>



During the process of organizing land acquisition, obstacles are often encountered. In general, the obstacles that often occur are related to the provision of compensation. The existence of parties who disagree with the amount of compensation for land acquisition is the result of the determination of the compensation value carried out unilaterally by the Appraisal Team without going through a deliberation process with landowners. The provision of compensation for land acquisition often overrides aspects of justice for landowners, because it prioritizes aspects of certainty and aspects of benefits. This causes disputes to arise regarding the provision of compensation between landowners and land agencies or agencies that require land due to lack of agreement. Landowners think that the value of compensation determined is not enough to pay for the losses suffered, on the other hand the land agency or agency that requires land thinks that the value of compensation determined is fair and feasible. The existence of different perspectives from both parties causes the implementation of land acquisition for the public interest to not run smoothly as expected. In land acquisition for the construction of the Solo-Yogyakarta Toll Road in Klaten Regency, especially in Pepe Village, Ngawen Subdistrict, from a total of 13 parcels of land affected by land acquisition, there are still some who do not agree with the amount of compensation provided by the government so that they file objections to the Klaten District Court. Some of them chose to accept the amount of compensation by force because they were reluctant to file objections to the District Court because of the complicated process and some were intimidated as a result of an interview with the Head of Pepe Village, Ngawen District in 2023.

In the land acquisition process for the construction of the Tower Tread Rengat-Pangkalan Kerinci there is also still disagreement over the value of compensation provided by the government. One of the landowners who disagreed was Johan who filed an objection to the Pelalawan District Court because he rejected the amount of compensation that he felt did not meet the criteria of feasible and fair, especially because no valuation was made of the rest of his land which should be another loss that can be assessed. The same thing happened in the land acquisition process for the construction of the Padang-Sicincin Toll Road, the construction of the Cimanggis-Cibitung I Toll Road, and the construction of the Depok-Antasari Toll Road, where there were still several landowners who did not agree or objected to the compensation value provided by the government and filed objections to the authorized District Court.

In its course, obstacles that occur are also in the form of minimal participation in the implementation of land acquisition. In principle, the implementation of socialization is carried out by the Land Acquisition Committee or agencies that require land carried out before land acquisition activities take place and aims to provide an explanation and description of the aims and objectives of the development plan, the benefits of development, conformity with regional spatial plans, as well as development priorities, the area and location of the required land, the estimated period of land acquisition, a description of the status of the land, as well as an estimated budget plan and added value. In the Depok-Antasari Toll Road development project, precisely in 2012 before the socialization was carried out, the Initial Data Collection of the Development Plan Location was carried out which included identification and measurement and inventory of land.



It violates the Law No. 2 of 2012 which requires notification or socialization of development plans to parties entitled to land affected by land acquisition prior to the initial data collection of the location of the development plan. On the Compensation Price Deliberation in 2013, the team leader of the Land Acquisition Committee reported that the socialization had been conducted three times. Yet, the socialization activities were only conducted once in 2012 without considering the applicable socialization implementation provisions because the landowners who attended the socialization did not get complete and accurate information related to land acquisition for the construction of the Depok-Antasari Toll Road.

Another obstacle encountered during the land acquisition process is the non-implementation of the land acquisition stages as stated in the land acquisition regulations. In the implementation of land acquisition for the public interest in the construction of the Solo-Yogyakarta Toll Road in Klaten Regency, the construction of the Tread Tower Transmission Network Rengat-Pangkalan Kerinci, the construction of the Padang-Sicincin Toll Road, the construction of the Cimanggis-Cibitung I Toll Road, and the construction of the Depok-Antasari Toll Road did not go through the deliberation process as stipulated in the land acquisition regulations which resulted in the entitled parties not being able to participate in determining the amount of compensation value, so that it can be said that the implementation of deliberations is only a formality.²³

The amount of compensation has been determined unilaterally by the Appraisal Team appointed by the National Land Agency in each land acquisition area based on the calculation of market prices. Article 34 Paragraph (3) of Law No. 2 of 2012 states that the results of the assessment of compensation by the appraiser are used as the basis for deliberations in determining compensation. Looking at the provisions of Article 37 Paragraph (1) which states that based on the results of the assessment from the Appraisal Team, a deliberation is held between the Land Institution and the owner of the land rights to discuss the determination of the form and amount of compensation value with a maximum period of 30 working days starting from the submission of the assessment results by the Appraisal Team to the Land Institution. Based on the provisions of this article, the implementation of deliberations is not only to determine the form of compensation, but also to determine the amount of compensation value.

The absence of classification of the status of land acquisition objects is also an obstacle in land acquisition. Customary land is one of those affected by land acquisition for the construction of the Padang-Sicincin Toll Road. Based on West Sumatra Regional Regulation concerning Customary Land and its Utilization, it is explained about the classification of customary land based on its type and structure consisting of customary land of *nagari*, *kaum*, *suku*, and *rajo*. Nagari communal land is communal land that has natural resources and is mostly intended for the public interest whose power is held by *ninik mamak* or customary leaders. Customary land of the *kaum* is communal land that has a high heritage value based on hereditary

²³ Diwei Tang and others, 'Urban Expansion Simulation From The Perspective of Land Acquisition-Based on Bargaining Model and Ant Colony Pptimization', *Computers, Environment and Urban Systems*, 82.December 2019 (2020), 101504 <https://doi.org/10.1016/j.compenvurbsys.2020.101504>



property rights and the transfer of rights is based on the consent of the members of the *kaum*. Tribal communal land is communal land whose ownership is based on collective property rights that are managed and controlled by tribal members to fulfill life needs. In the implementation of land acquisition in Padang Pariaman Regency, problems arise regarding customary land where in the planning stage of land acquisition there is no clear classification of land status so that the subject of the land is also unclear. Furthermore, in the preparation stage, there has not been a community discussion stage involving all landowners due to the absence of a clear classification of land in the planning stage. Then in the implementation stage, there were obstacles in providing compensation due to unclear subjects of compensation recipients because there were still duplicate names of landowners, so that these problems hampered the implementation of land acquisition.

Against the obstacles that arise in the process of land acquisition for the public interest as mentioned above, efforts are needed to resolve them such as filing objections to the court institution. Based on the Law No. 2 of 2012, if there is no agreement regarding the form and / or amount of compensation, then the entitled party can file an objection to compensation through the local district court with a period of 14 working days after the deliberation of determining compensation. Furthermore, the district court is obliged to process the objection within 30 working days from the time the objection is received. If the party filing the objection is not satisfied with the decision of the district court, it may file a cassation to the Supreme Court within a maximum period of 14 working days from the receipt of the court decision. The Supreme Court is obliged to give a decision within 30 working days from the receipt of the cassation request. The Supreme Court decision that has permanent legal force is the basis for the payment of compensation to the entitled party.

Another effort that can be made to overcome obstacles to land acquisition is the deposit of compensation for land acquisition through a court institution. Based on the provisions of Article 42 paragraph (1) of Law No. 2 of 2012, it states that if the entitled party does not agree and rejects the form and / or amount of compensation according to the results of deliberations and does not file an objection to the district court and the entitled party does not agree and reject the form and / or amount of compensation based on a district court decision or Supreme Court decision, then the compensation is deposited with the local district court. Deposits of compensation in the district court can also be made if the entitled party is not present and does not provide power of attorney even though it has been properly invited. Consignment will be carried out on land acquisition objects that have the following criteria²⁴, the object of land acquisition becomes the object of a case in court; its ownership is still disputed; confiscation of the object of land acquisition is placed by the authorized official; and the object of land acquisition becomes bank collateral or other debts. In

²⁴ Meckelburg and Wardana.



addition, the importance of clear and accessible procedures for communities to register and document their land rights.²⁵

The solution given to the above problems is the determination of fair and adequate compensation criteria explicitly stated in the land acquisition regulations in accordance with human rights, the existence of standardized instruments and standards in laws and regulations related to the criteria for assessing fair and adequate compensation by the Appraisal Team. In addition, the government and agencies that need land are expected to play an active role in approaching people affected by land acquisition who still object to the amount of compensation so that later land rights owners can release their land voluntarily without intimidation.

Legal Protection of Land Acquisition for Public Interest in the Netherlands

In the Netherlands, acquisitions are permitted with a differentiated approach based on the nature of the purpose of the acquisition. Under the provisions of the law, the acquisition includes the acquisition of 1) roads, bridges, roadsides, ditches, and canals 2) drinking water or waste companies; 3) surface mineral extraction; 4) implementation of spatial planning, people's housing, public order, and enforcement of the Land Law; and 5) land reorganization. Article 14 of the Dutch Constitution states that the acquisition can, in principle, be carried out only in the public interest and if compensation has been assured in advance. However, compensation does not need to be first asserted in an emergency. In its implementation, there is also a problem in the Netherlands concerning landowners who need to consent to their land being acquired. The main issue of this dispute is the element of compensation. Here are some of those cases.

First, land acquisition for the development of the national rail network. For the construction, the government acquired land at the castle garden in Elsloo. The castle and the surrounding gardens are decorated with shallow flowers. Because only the land is to be taken over and not the castle itself, the acquisition will require the closure of a new mortgage with a higher interest rate. The owner argues that the difference between the current and future interest rates should be compensated. The Acquisition Act of 1851 is evident in this respect; only two elements are compensated under the Act: the value of the property acquired and the reduction of the remaining property. The loss due to having to renew the right of holding on the property due to the acquisition is not borne by either of the two elements because it can be qualified as additional damage.²⁶

The landowners affected by the acquisition argues that the Constitution requires 'full compensation' in the case of acquisition. However, the Dutch courts, even the Supreme Court, have no authority to examine formal laws such as the 1851 Dutch Acquisition Act, and its provisions are contrary to the Netherlands constitution. Without such legal obstacles, the Supreme Court did not exclude the possibility of the damages clause in the Acquisition Act being contrary to the provisions. By doing so,

²⁵ Laura Notess and others, 'Community Land Formalization and Company Land Acquisition Procedures: A Review of 33 Procedures in 15 Countries', *Land Use Policy*, 110, February 2020 (2021), 104461 <https://doi.org/10.1016/j.landusepol.2020.104461>

²⁶ Jacques Sluysmans, 'The Principle of Full Compensation under Dutch Expropriation Law', *European Property Law Journal*, 8.2 (2019), 161–71 <https://doi.org/10.1515/eplj-2019-0010>



the Supreme Court violates the prohibition to test a formal law against the Constitution. The Supreme Court is doing the opposite, showing that the Constitution guarantees total compensation. According to the Supreme Court, all losses caused by the land acquisition process must be compensated. So, the Supreme Court interpreted in the judgment the Acquisition Act by the Constitution and explicitly regulated, in this case, concerning the previous low-interest rate and the new high-interest rate after the acquisition must indeed be compensated.

The Supreme Court's ruling was a stumbling point in the evolution of the right to total compensation and the introduction of primary rights principles concerning compensation in land acquisition cases. It is a court that can include new elements of compensation when unexpected circumstances arise. In the case of such a decision, there is an amendment to the Act concerning the acquisition, which adds the clause that "in the event of a transaction, damages shall be reimbursed in full and shall replace all damages caused by the execution of the transaction." The codification of the basis of total compensation in Article 40 indicates that the Dutch Supreme Court prioritizes legal certainty and protection for landowners affected by land acquisition.

Second, the acquisition of land for the construction of the centre of Rotterdam. The acquisition took over the building rented by The White Horse, a Spanish cultural and chess association. According to article 41 of the Acquisition Act, the tenant of a building that is not for residential or business purposes is entitled to a fixed amount of compensation equal to twice the annual rental. However, the owner of the building does not agree with the amount of such compensation. The tenant considers the compensation value too low for the actual damage caused by the acquisition, such as higher rental costs for the new location.²⁷

As mentioned in the Netherlands, it may not conduct a constitutional test against formal law. However, directly binding treaties, such as the European Convention on Human Rights, can be used to test formal law. Article 1 of Protocol I to the Convention protects property but stipulates that compensation shall accompany acquisition. Against this background, the Supreme Court ruled that Article 41 should be deleted when compensation remains inadequate. To bear all losses directly and inevitably caused by such acquisition, since in such a situation, article 41 violates the right to compensation guaranteed by Article 1 of Protocol I to the European Convention. The court stated that the legislator intended to uphold the principles of total compensation by introducing fixed compensation to tenants but had mistakenly assumed that such compensation would not result in unfair results. Therefore, The Supreme Court ignored the codified rules on fixed compensation because their application would be contrary to the conditions in Article 1 of Protocol I.

Once again, one can easily criticize the validity of the Supreme Court's reasoning. The European Court of Human Rights has argued that Article 1 of the First Protocol requires 'full compensation' in acquisition cases. However, with this 'full reparation,' the Court of Justice understands something entirely different from the acquisition concept—total compensation as defined and developed by the Dutch Supreme Court. Full reparation, according to the High Court, is compensation for all losses directly

²⁷ Sluysmans.



and indeed caused by the takeover. In contrast, the Court considers that compensation is full reparations. (already) 'full' whenever the value (market) of the property taken has been compensated is a much narrower approach.

Giving landowners compensation at the right price by the standards of acquisition law is very important. Under Dutch law, the amount of compensation is equal to the property's market value. In the case of acquisition, according to Dutch acquisition laws, the market value must be replaced with compensation for other financial losses suffered by landowners. The land buyer explains that the official appraiser estimates the market value, thus representing the actual objective market value. The acquisition law provides guidelines for granting damages to landowners. Damage compensation is the principle that landowners must be returned to the same economic position as before the acquisition. In other words, landowners should not suffer any loss or profit from such acquisition. The buyer considers this principle of compensation as the fairest way to acquire public land.²⁸

Compensation granted to landowners may extend to third parties whom the land acquisition may injure. The Dutch Acquisition Act does not lay down rules on determining the actual value of compensation granted to landowners. Regarding the legitimacy of land use decisions, such decisions have been allocated to public authorities such as the government, parliament, and courts.²⁹ The Supreme Court has affirmed that the judge in the case of acquisition is not only obliged to determine the compensation independently but also to choose the method of assessment appropriate to the case. The two most used methods are the comparative method, which looks at new usage values, and the residual method, which reduces development costs.

Giving money as compensation to landowners is sometimes an adequate way to compensate them, although financial compensation is a critical element of land acquisition compensation in the Netherlands. The satisfaction of landowners with the sale of their land to the government is not only sometimes related to the amount of compensation received but also to the conditions under which the property is sold and the possibility of repairing the new situation after the acquisition. To provide fair compensation to landowners affected by land acquisition, financial and non-financial compensation is required, which may include the cost of transferring goods, repairing new property, and replacing affected facilities. Furthermore, compensation for damages may replace land of the same or equivalent value as the land taken by the government or the agency needing the land. The Netherlands seeks to actively involve the public in the land acquisition decision-making process so landowners can express their interests and participate in negotiations on compensation. In general, the participation of affected communities in land acquisition is essential to support the

²⁸ R. Van Marwijk, 'Perceived (In) Justice of Public Land Acquisition', *Journal of Agricultural and Environmental Ethics*, 29.2 (2016), 167–84 <https://doi.org/10.1007/s10806-015-9594-3>

²⁹ Feie J. Herkes and Stavros Zouridis, 'The Legitimacy of Land Use Decisions by Public Authorities in the Netherlands: Results From A Survey Experiment', *Land Use Policy*, 134. December 2022 (2023), 106928 <https://doi.org/10.1016/j.landusepol.2023.106928>



success of development in the public interest to ensure that affected populations receive decent and fair compensation.³⁰

Similarly, in Indonesia, obstacles to implementing land acquisition for the public interest in the Netherlands stem from disputes with landowners regarding compensation. However, in its settlement, the Netherlands favors the interests of landowners, as seen in the decisions contained in this study, in both cases in Indonesia and the Netherlands. The courts in Indonesia, in settling the conflict over land acquisition compensation, are more subject to existing rules that do not look at the situation that occurs on the ground. Implementing the procurement process carried out by the Appraisal Team needs to comply with the procedures in the land acquisition regulations. In the Netherlands, the Supreme Court that decides on land acquisition considers the losses of landowners. The Supreme Court is working hard to achieve what is considered a reasonable outcome by providing compensation with a high value. So far, the Netherlands, from such cases, has provided legal protection to landowners.

CONCLUSION

Based on the discussion that has been mentioned, it can be concluded, first, legal protection for landowners affected by land acquisition in Indonesia, based on some cases in the judgment investigated, did not fully protect, and provide legal certainty for landowners. The case is based on unilaterally granting compensation, and the court has not filed a lawsuit for such compensation. The courts in Indonesia, in settling the conflict over land acquisition compensation, are more subject to existing rules that do not look at the situation that occurs on the ground. Implementing the procurement process carried out by the Appraisal Team needs to comply with the procedures in the land acquisition regulations. The obstacles in the implementation of land acquisition in Indonesia are the non-compliance of compensation values, the failure to carry out the process of land acquisition according to the procedures, such as dismissal, and the absence of classification of the status of the property. Secondly, legal protection for landowners affected by land acquisition in the Netherlands; based on several cases in the judgment being investigated, the Netherlands has provided legal protection in the form of high compensation by the price of landowner losses. The Supreme Court is working hard to achieve what is considered a reasonable outcome by providing compensation with a high value. The obstacle in implementing land acquisition in the Netherlands is a dispute over the value of compensation, and the landowner doubts that the government will allocate land acquisition for the development of public interest.

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³⁰ Austin Dziwornu Ablo and Vincent Kofi Asamoah, 'Local Participation, Institutions and Land Acquisition for Energy Infrastructure: The Case of The Atuabo Gas Project in Ghana', *Energy Research & Social Science*, 41 (2018), 191–98 <https://doi.org/https://doi.org/10.1016/j.erss.2018.03.022>



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