

The Legal Nature of Land Acquisition for Development for Public Interest in Indonesia

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ABSTRACT

The research objectives were to analyze, *first* the legal nature of land acquisition for development for the public interest in Indonesia; *secondly*, to analyze the meaning of land procurement for development in the public interest in the laws and regulations in Indonesia; and *thirdly*, to analyze the synchronization of land acquisition arrangements for development in the public interest in the legislation in Indonesia. This type of research is doctrinal legal research or *normative legal research (normative legal research)*. Based on the study, on the legal material of this research, it is concluded that (a) the law of land acquisition for development for the public interest in Indonesia, has 3 (three essences, namely the *first is an* imperative essence (2) an indicative nature, and (3) an optical nature; *second* the meaning of public interest in land acquisition for development in the public interest in the laws and regulations in Indonesia is the literal meaning contained in statutory regulations covering the interests of the people, the interests of the people, the interests of the community, the interests of the nation and the interests of the state; and the *three* procurement arrangements. There is the synchronization of land for development for the public interest in the laws of Indonesia, both vertically and horizontally.

KEYWORDS: Land Acquisition; Development; Public interest

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I. INTRODUCTION

Development that is carried out or carried out or carried out by the Government of the Republic of Indonesia inland areas, one of the aspects that also supports and is very decisive is **Land**.^[1]

The provisions of Article 33 paragraph (3) of the 1945 Constitution essentially cover the land, as referred to in:

1. Republic of Indonesia Law Number 5 of 1960 concerning Basic Basic Agrarian Regulations (State Gazette of the Republic of Indonesia of 1960 Number 104; Supplement to State Gazette of the Republic of Indonesia Number 2043).
2. Law of the Republic of Indonesia Number 12 of 1985 concerning Land and Building Tax (State Gazette of the Republic of Indonesia of 1985 Number 68; Supplement to State Gazette of the Republic of Indonesia Number 3312) as amended by Law of the Republic of Indonesia Number 12 of 1994 concerning Amendments to Law of the Republic of Indonesia Number 12 of 1985 concerning Land and Building Tax Land and Building Tax (State Gazette of the Republic of Indonesia of 1994 Number 62; Supplement to the State Gazette of the Republic of Indonesia Number 3569)
3. Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2012 Number 22; Supplement to State Gazette of the Republic of Indonesia Number 5280)
4. RI Predisen Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2012 Number 125), as has been amended several times, most recently by Regulation of the Republic of Indonesia President Number 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 2012 Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2015 Number 366).

Referring to the above Prevailing Laws and Regulations, what is meant by earth **island, space above ground and underground**. To realize a just, prosperous, and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development, and for the implementation of development, including development for the public interest, land acquisition is required^[2].

Land Acquisition is the activity of providing land by giving appropriate and fair compensation to entitled parties,^[3] while land acquisition for public purposes is aimed at providing land for the implementation

of development to improve the welfare and prosperity of the nation, state and society while ensuring the interests of law entitled Parties.^[4] Land acquisition for development for a public interest, if it is related to the entitled parties, is called land acquisition, while for parties entitled to land, it is sometimes referred to as relinquishing rights.^[5] The

Government (Central Government or Local Government) which organizes land acquisition for development for the public interest through land acquisition.^[6] Implementation of Land Acquisition for Public Interest by the Government is obliged to pay attention to the balance of development interests and the interests of the community, land acquisition for the Public Interest is carried out by providing compensation which is appropriate, fair and just.^[7]

Implementation of Land Acquisition for Development for Public Interest, as regulated in Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, arrangements for the Implementation of Land Acquisition for Development for Public Interest are regulated in the form of a Presidential Regulation.^[8]

Referring to the provisions of Article 59 of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, the President of the Republic of Indonesia has stipulated Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia Year 2012 Number 125), as has been amended several times, respectively:

1. Regulation of the Republic of Indonesia President Number 40 of 2014 concerning Amendments to Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2014 Number 94)
2. Republic of Indonesia Predisen Regulation Number 99 of 2014 concerning Second Amendment to Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2014 Number 223)
3. Regulation of the Republic of Indonesia President Number 30 of 2015 concerning Second Amendment to Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2015 Number 55)
4. RI Presidential Regulation 148 of 2015 concerning the Fourth Amendment to Presidential Regulation Number 71 of 2012 Implementation of Land Acquisition for Development for Public Interest (State Gazette of the Republic of Indonesia of 2015 Number 366).

Law Number 5 of 1960 concerning Basic Agrarian Principles or commonly referred to as the Basic Agrarian Law (UUPA) has emphasized that:

Based on the provisions in Article 33 paragraph (3) of the Basic Law as referred to in Article 1, earth, water and space, including the natural resources contained therein, are controlled by the state as an organization of power for all the people. The right to control from the state is the authority to:^[9]

- a. Regulate and administer the designation, use, supply and maintenance of the earth, water and space.
- b. Determine and regulate the legal relationships between people and earth, water and space.
- c. Determine and regulate legal relationships between people and legal actions concerning the earth, water, and space.

It should be understood that the authority that comes from the right to control from the state is used to achieve the greatest possible prosperity for the people, in the sense of happiness, prosperity and independence in society and an independent, sovereign, just and prosperous Indonesian constitutional state.

Land acquisition for the public interest in the form of release or relinquishment of land rights, compensation for land rights holders is given,^[10] however the components of determining the amount of compensation are not regulated in the Prevailing Laws either in Law Number 20 of 1961, Law Law Number 2 of 2012 Presidential Instruction Number 9 of 1973, and Presidential Regulation Number 71 of 2014 and its amendments.

Apart from the component of determining the amount of compensation, the mechanism for determining the amount of compensation and the method and form of compensation tends not to involve or pay attention to the interests of land rights holders.^[11]

Ideally, the Government as the policymaker regarding the acquisition or release of land rights for development in the public interest,^[12] (a) hears the opinions of land rights holders, (b) conducts negotiations and or consultations with land rights holders in the case of: Determination of components for determining compensation; Determination of the amount of compensation; Forms of compensation, and how to provide compensation

II. RESEARCH METHODS

The research approach used is a normative juridical approach, which is to describe or explain legal norms relevant to Land Acquisition for Development for Public Interest, using interpretation methods, especially grammatical interpretation, systematic interpretation, and historical interpretation. Grammatical interpretation is interpreting the words contained in the law following the rules of language or the rule of grammar law, systematic interpretation, namely interpreting the legal norm in law as part of the legislation, and historical interpretation, namely interpreting legal norms in terms of history.

III. DISCUSSION

The Legal Nature of Land Acquisition for Development for Public Interest in Indonesia.

Referring to the theoretical view, regarding the nature of law, as described in Chapter II of the Literature Review, point 8 that the essence of law is divided into 3 (three) categories, namely (a) the nature of the imperative as a rule; (b) its indicative nature as a means of fulfilling needs and (d) its optimal nature as a means of guaranteeing legal certainty and justice.

Concerning the Law on Land Acquisition for development for the public interest, as regulated in Law No. 2/2012 and Presidential Regulation No. 71/2012, the 3 (three) legal natures will be the focus of study or discussion.

1. The essence of imperative law.

The essence of Imperative law as an order is not always formulated in legal norms in the form of an **order**, but can be interpreted from the formulation of contents (articles or paragraphs) of statutory regulations - Invitations use grammatical interpreters, or systematic interpretations, and sociological interpretations.

The legal nature of imperative land acquisition for development for the public interest as a norm is contained in Law Number 2 of 2012, namely "The Government and/or Local Government **ensure the** availability of land for Public Interest. The Government and/or Local Governments guarantee the availability of funding for Public Interest.

The word guarantee is a verb and in the Big Indonesian Dictionary, contains 3 (three) meanings, namely:

- (1) **To bear** (regarding safety, sincerity, the truth of people, goods, property and so on) example the Government is obliged to **guarantee the** safety of life and property citizens;
- (2) Promising to fulfil **obligations** (paying debts, etc.) for example, I'm sure he would be willing to **guarantee** his wife's debt.
- (3) Providing the necessities of life, for example, a foundation that guarantees orphaned children.

Apart from using grammatical interpretation, the legal nature of land acquisition as an **order** can also be emphasized by using a systematic interpretation, namely by connecting the provisions of Article 4 paragraph (1) with Article 10 of Law of the Republic of Indonesia Number 2 of 2012, namely:

Land for Public Interest as referred to in Article 4 paragraph (1) is used for the construction of:

- a. national defence and security;
- b. public roads, toll roads, tunnels, railways, train stations, and rail operating facilities;
- c. reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures;
- d. ports, airports and terminals;
- e. oil, gas, and geothermal infrastructure;
- f. electricity generation, transmission, substation, grid and distribution;
- g. government telecommunication and information network;
- h. waste disposal and processing areas;
- i. government / local government hospitals;
- j. public safety facilities;
- k. government / local government public burial places;
- l. social facilities, public facilities, and public green open spaces;
- m. natural reserve and cultural heritage;
- n. government / regional / village government offices;
- o. arrangement of urban low-income settlements and/or land consolidation, as well as housing for low-income communities with lease status;
- p. educational infrastructure or government / regional government schools;
- q. government / local government sports infrastructure; and
- r. public markets and public parking lots.

The provisions of Article 10 of Law of the Republic of Indonesia Number 2 of 2012 have been amended by Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation to:

- a. national defence and security;

- b. public roads, toll roads, tunnels, railways, railway stations and railway operating facilities;
- c. reservoirs, dams, weirs, irrigation, waterways and sanitation and other irrigation structures;
- d. ports, airports and terminals;
- e. oil, gas and geothermal infrastructure;
- f. electricity generators, transmissions, substations, networks, and/or distribution;
- g. government telecommunications and informatics networks;
- h. waste disposal and processing sites;
- i. Central Government or Regional Government hospitals;
- j. public safety facilities;
- k. Central Government or Local Government public cemeteries;
- l. social facilities, public facilities, and public green open spaces;
- m. nature reserves and cultural reserves;
- n. Central, Regional, or Village Government offices;
- o. arrangement of urban slum settlements and/or land consolidation and housing for low-income communities with a rental status including for the construction of public houses and special houses;
- p. educational infrastructure or schools of the Central Government or Local Government;
- q. Central Government or Regional Government sports infrastructure;
- r. public markets and public parking lots;
- s. Oil and Gas Upstream and Downstream Industrial Estates initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, or Regionally Owned Enterprises;
- t. Special Economic Zones that are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, or Regionally Owned Enterprises;
- u. Industrial estates that are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, or Regionally Owned Enterprises;
- v. Tourism areas that are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, or Regionally Owned Enterprises;
- w. Food Security areas that are initiated and/or controlled by the Central Government, Regional Government, State-Owned Enterprises, or Regionally Owned Enterprises; and
- x. a technology development area that is initiated and/or controlled by the Central Government, Local Government, State-Owned Enterprises, or Region-Owned Enterprises.

Another interpretation used to analyze the norms of the Government and/or Local Government to **guarantee the** availability of land for the Public Interest is the sociological interpretation^[13], namely by stating that development for the public interest is an order or obligation for the government to fulfil or fulfil the needs or needs. the interests of the community, nation and state, as contained in the dictum considering the Law of the Republic of Indonesia Number 2 of 2012, namely:

- a. that to create a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development;
- b. that to ensure the implementation of development for the public interest, the land must be procured by prioritizing the principles of humanity, democracy and justice.

Referring to the meaning of the word guarantee according to the Indonesian Language Dictionary and the provisions of Article 4 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2012, then by using grammatical interpretation, systematic interpretation and sociological interpretation, the word guarantee implies an order, so that it is stated that the Legal Essence of Land Acquisition for Development for the public interest is an order which is interpreted as an obligation for the government or local government to carry out land acquisition^[14].

Another order as the legal essence of land acquisition for development for the public interest is "the Government and/or Local Government to ensure the availability of funding for the Public Interest".

The purpose contained in Article 4 paragraph (2) of Law No. 2 of 2012, is that:

- a. The government complies with the provisions of Republic of Indonesia Law Number 2 of 2012, namely: "The Entitled Party is obliged to release his land at the time of the implementation of Land Acquisition for Public Interest after giving compensation or based on a court decision that has obtained permanent legal force.
..... Land Acquisition for Public Interest is carried out by giving compensation that is appropriate and fair.
- b. So that holders of land rights to be relinquished will receive legal certainty and justice to get compensation from the government, in the form of:
 - (a) money;
 - (b) Replacement land;
 - (c) Resettlement;

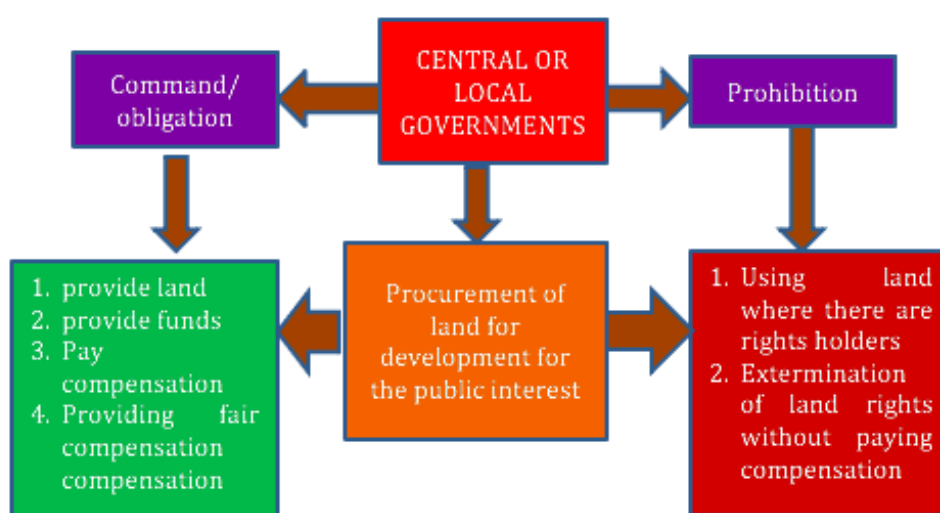
- (d) Share ownership, or
- (e) Other forms agreed by both parties.

Land acquisition for development in the public interest carried out by the government or local government is an order in the Republic of Indonesia Law Number 2 of 2012, theoretically, it also contains the meaning of **prohibition** as a contrarian form of perint^[15], if so then the law of land acquisition for development for the public interest of the government or local government it is prohibited to:

1. carry out development for the public interest of land which is encumbered with rights, without relinquishing the rights to the land;
2. to relinquish land rights without giving compensation.

Orders and prohibitions against the government or local government in the context of land acquisition for development in the public interest can be simply seen in the following diagram:

Diagram 1: The Nature of Imperative Law as Orders and Prohibitions on Land Acquisition for Development for Public Interest.



To fulfil the Imperative Nature of Land Acquisition for Development for Public Interest, concerning the obligations and prohibitions for the government or local government in implementing land acquisition for development for the public interest, the government and local governments must pay attention to (1) the legal principle of land acquisition for development for the benefit of general, and (b) legal principles of land acquisition for development in the public interest.

Legal principles that are relevant to the imperative nature of land acquisition laws for development in the public interest are called *imperative law principles*^[16], namely principles that provide direction to the government or regional governments in the implementation of land acquisition for development for the public interest.

The imperative principle as regulated in Article 2 of Law of the Republic of Indonesia Number 2 of 2012, namely:

- a. What is meant by "humanitarian principle" is that land acquisition must provide protection and respect for the human rights, dignity and dignity of every citizen and population of Indonesia proportionally.
- b. What is meant by "principle of justice" is the guarantee of appropriate compensation to the Entitled Party in the Land Acquisition process so that they have the opportunity to lead a better life.
- c. What is meant by "principle of benefit" is that the results of Land Acquisition can provide broad benefits for the interests of the community, nation and state.
- d. The term "principle of certainty" means providing legal certainty for the availability of deep land. the process of Land Acquisition for development and providing guarantees to the Eligible Party to obtain appropriate compensation.
- e. What is meant by "principle of openness" is that Land Acquisition for development is carried out by providing access to the public to obtain information related to Land Acquisition.
- f. What is meant by "principle of agreement" is that the Land Acquisition process is carried out by deliberation of the parties without coercion to obtain a mutual agreement.

- g. What is meant by "principle of participation" is supported in the implementation of land acquisition through community participation, either directly or indirectly, from planning to development activities.
- h. What is meant by "principle of welfare" is that land acquisition for development can provide added value for the survival of the Entitled Party and society at large.
- i. What is meant by "principle of sustainability" is that development activities can take place continuously, continuously, to achieve the expected goals.
- j. What is meant by "principle of harmony" is that land acquisition for development can be balanced and in line with the interests of the community and the state.

For governments and local governments that carry out a land acquisition for development for the public interest, apart from having to refer to the imperative legal principle as regulated in Article 2 of the Republic of Indonesia Law Number 2 of 2012, it must also refer to the principle of exercising rights as an order or obligation.

What the researchers mean by the imperative principle of relinquishment of rights^[17] includes:

- a. Principle of Agreement.
Relinquishment of rights based on agreement principles directs the government that all land acquisition activities, especially in the form of relinquishing rights to land and all legal aspects, such as issues of compensation prices, forms of compensation, resettlement, socio-economic conditions and others must be based on agreement principles. between parties requiring land and holders of land rights. The agreement is based on the conformity of the will of the two parties without any element of coercion, fraud and is carried out based on good faith.
- b. Principle of Justice.
The release of rights, based on the principle of justice directs the government or local government as the basis for determining the form and amount of compensation to be given to landowners and people related to land that has been revoked or freed for the public interest.
- c. Principle of Usefulness.
Relinquishment of rights or revocation of rights over land in principle must be able to provide benefits for parties who need land and communities whose land has been released or deprived of their rights.
- d. The Principle of Legal Certainty.
The land release must comply with the principle of legal certainty, which is carried out in a manner that has been regulated in the prevailing laws and regulations, in which all parties know with certainty their respective rights and obligations. Legal certainty must also be focused on providing compensation to the landowner.
- e. Principle of Deliberation.
Deliberations are held to reach an agreement between the two parties in the implementation of land acquisition for the public interest.

Land acquisition for development for the public interest, even though it is following the provisions of Article 4 paragraph (1) and paragraph (2), Article 5 and Article 9 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2012, but if it is contrary to the *imperative principle procurement* for development in the public interest and the principle of relinquishing land rights for development in the public interest, are still viewed as government actions or actions that are contrary to the law or not following the nature of imperative law.

IV. CONCLUSION

The legal nature of Land Acquisition for Development for Public Interest in Indonesia is as a means (a) for the government requiring land acquisition for development in the public interest, (b) for parties entitled to land to fulfil the government's obligation to acquire land for development. public interest, and (c) For the community located at the location of the development plan for the public interest. The legal nature of land acquisition for development for the public interest in Indonesia is divided into 3 (three), namely (1) Imperative nature; (2) the nature of the indicative and (3) the nature of the optative.

V. SUGGESTION

- 1. The government, both central and local governments, needs to actively disseminate information to the public regarding land acquisition programs for development for interests, location for development plans for the public interest, and land acquisition funding for development for the public interest.
- 2. The government, both the central government and local governments or parties requiring land acquisition for development to be obliged to uphold the rights of those who have rights to land in terms of providing compensation.

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