

**PENGATURAN KESEPAKATAN PEMBEBASAN LAHAN ANTARA PEMILIK
LAHAN DAN PEMERINTAH UNTUK PEMBANGUNAN INFRASTRUKTUR
NASIONAL**

JURNAL

Oleh:

Muhammad Raihan Zaky
2006200519



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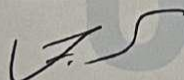
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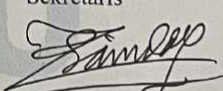
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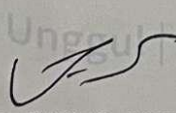
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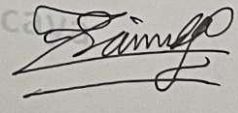
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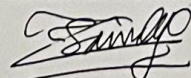
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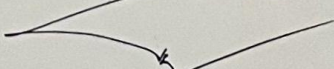
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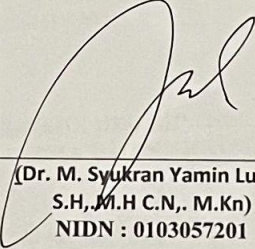
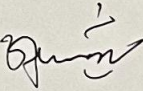
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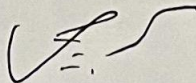
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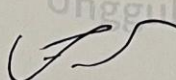
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The Regulation of Land Acquisition Agreements Between Landowners and the Government for National Infrastructure Development

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Abstrak: *Land acquisition for national infrastructure development is a critical process that supports economic growth and equitable development. However, this process often presents challenges, particularly conflicts between the government and landowners. This study aims to analyze the legal framework governing land acquisition agreements, the rights of both landowners and the government, and dispute resolution mechanisms under civil law. Using a normative research method, the study examines various legal regulations, including Law Number 2 of 2012 on Land Procurement for Public Interest Development and the Indonesian Civil Code (KUHPerdota). The findings reveal that land acquisition is regulated based on the principles of fairness, transparency, legal certainty, and balance. Landowners have rights to fair compensation and certainty in the process, while the government has the right to access land for public interest while adhering to legal procedures. In the event of disputes, several resolution mechanisms such as negotiation, mediation, conciliation, arbitration, and litigation can be employed to achieve a fair outcome for both parties. This study highlights the importance of clear regulations and consistent implementation to harmonize the need for development with the protection of community rights.*

Keywords: *land acquisition, civil law, national infrastructure,*

Abstrak: Pembebasan lahan untuk pembangunan infrastruktur nasional merupakan proses yang krusial dalam mendukung pertumbuhan ekonomi dan pemerataan pembangunan. Namun, proses ini kerap menimbulkan tantangan berupa konflik antara pemerintah dan masyarakat sebagai pemilik lahan. Penelitian ini bertujuan untuk menganalisis pengaturan hukum terkait kesepakatan pembebasan lahan, hak-hak masyarakat dan pemerintah dalam proses pembebasan, serta mekanisme penyelesaian sengketa yang sesuai dengan hukum perdata. Dengan menggunakan metode penelitian normatif, studi ini mengkaji berbagai peraturan perundang-undangan yang relevan, termasuk Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum dan Kitab Undang-Undang Hukum Perdata (KUHPerdota). Hasil penelitian menunjukkan bahwa pembebasan lahan diatur dengan prinsip keadilan, transparansi, kepastian hukum, dan keseimbangan. Hak masyarakat meliputi hak atas ganti rugi yang adil dan kepastian proses, sementara pemerintah memiliki hak untuk mengakses lahan demi kepentingan umum dengan tetap menghormati prosedur hukum. Dalam hal terjadi sengketa, berbagai mekanisme penyelesaian, seperti negosiasi, mediasi, konsiliasi, arbitrase, dan litigasi, dapat diterapkan untuk mencapai solusi yang adil bagi kedua belah pihak. Studi ini menegaskan pentingnya pengaturan yang jelas dan pelaksanaan yang konsisten dalam mendukung keselarasan antara kebutuhan pembangunan dan perlindungan hak masyarakat.

Kata kunci: pembebasan lahan, hukum perdata, infrastruktur nasional

PENDAHULUAN

National infrastructure development is one of the top priorities within the framework of a country's economic and social progress. This development process often encounters complex challenges, particularly related to land acquisition and procurement. The agreement between landowners and the government becomes a critical point in the success of strategic infrastructure projects, which encompass a wide range of interests, including the construction of roads, bridges, airports, as well as energy and public utility projects.(Winoto, Johannes. 2020)

Land acquisition for public interest, particularly for national infrastructure development, is a complex process that often gives rise to various social, economic, and legal issues. This complexity stems from the diverse interests involved, ranging from the rights of landowners and the needs of national development to the principles of social justice that must be upheld by the state.

The issue of land acquisition in Indonesia has undergone various dynamics since the country's independence. During the New Order era, land acquisition was often carried out through repressive approaches with little regard for justice toward landowners. This changed with the advent of reform, where transparency, public participation, and justice became key demands in the land acquisition process. Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest seeks to provide a strong legal foundation for land acquisition procedures. However, its implementation in practice still faces many complex challenges, particularly in reaching agreements on compensation values and in the mechanisms of land release.

Article 33 of the Basic Agrarian Law (UUPA) affirms that the Right to Cultivate (Hak Guna Usaha/HGU) can only be held by Indonesian citizens or legal entities established under Indonesian law. When land under HGU status is required for national infrastructure development, the land acquisition process must comply with applicable legal provisions. According to Adrian Sutedi (2019), Article 31 of the UUPA discusses the Right to Build (Hak Guna Bangunan/HGB), which allows a party to construct buildings on land they do not own. If land held under HGB is needed for national infrastructure projects, the HGB holder must relinquish their rights based on an agreement reached with the government.

Research on the regulation of land acquisition agreements between landowners and the government for national infrastructure development is crucial to undertake. The findings

of this research are expected to contribute to the development of a more effective and equitable agreement framework.(Widodo, Bambang. 2021)

METODE

This research is a legal study that employs a normative legal approach through document study, which is based on literature and relevant regulations related to the author's discussion, and is also compared with the opinions of legal experts. Normative legal research examines law as a set of norms or rules that are valid in society and serve as a standard for individual behavior. In normative legal research using a document study method, the researcher is not required to conduct fieldwork but rather collects secondary data, processes and analyzes it, and constructs it into the research findings.

HASIL DAN PEMBAHASAN

A. Civil Law Regulation on Land Acquisition for National Infrastructure Development Projects

Legal regulations concerning land acquisition in Indonesia are generally based on Law Number 5 of 1960 on the Basic Agrarian Law (UUPA) and Law Number 2 of 2012 on Land Procurement for Development in the Public Interest. The UUPA provides the legal foundation for land rights, including the process of transferring or relinquishing land rights. Within the UUPA, the principles of social justice and a balance between individual and public interests form the core foundation. (Salim H.S and Erlies Septiana Nurbani, 2014)

Law Number 2 of 2012 outlines in more detail the procedures for land procurement for infrastructure development. Article 2 of this law states that land procurement must be conducted based on principles of justice, legal certainty, transparency, participation, efficiency, effectiveness, and public welfare. Furthermore, Article 3 emphasizes that land procurement can only be carried out for development purposes that aim to bring the greatest benefit to the public.

In civil law, the land acquisition process involves the transfer of land rights through the mechanism of relinquishment of rights, as regulated in Articles 26 and 27 of the UUPA. This relinquishment is based on an agreement between the landowner and the party requiring the land, typically represented by the government or a business entity executing the infrastructure project.

The stages of land acquisition based on Law No. 2 of 2012 include:

1. Planning (Articles 12–15): This stage involves identifying land needs, determining the location, and conducting public consultations.
2. Preparation (Articles 16–23): This stage includes preliminary data collection on landowners, coordination with relevant agencies, and public outreach.
3. Implementation (Articles 24–30): At this stage, land measurement and compensation valuation are carried out by an independent appraisal institution. The assessment must cover the value of land, buildings, crops, and other material losses.

Handover of Results (Articles 31–35): After compensation is paid, the land is transferred to the agency responsible for implementing the development project. (alip asya hidayat, 2024)

In the context of land acquisition, civil law regulations emphasize the obligation to provide fair compensation to landowners. Article 27 of the Basic Agrarian Law (UUPA) stipulates that every transfer of land rights must involve a process of relinquishment with adequate compensation. In the context of land procurement for the public interest, Article 18 of the 1945 Constitution of the Republic of Indonesia provides the constitutional basis that land for public use may be taken with appropriate compensation. Law No. 2 of 2012 reinforces this principle. Article 33 paragraph (1) states that compensation may be provided in the form of money, replacement land, resettlement, shares, or other agreed forms. The valuation of compensation is conducted by an independent appraiser with expertise in the property sector, as stipulated in Article 34. (Simarmata, Rikardo, 2020)

Despite the existence of clear regulations, land acquisition often gives rise to legal conflicts, both at the community level and between institutions. These conflicts typically relate to:

- a. Determination of Compensation Value: Landowners often feel that the offered compensation is too low, while developers rely on the valuation conducted by independent appraisal institutions.
- b. Unclear Land Status: Land that is under dispute or lacks official certification frequently poses an obstacle in the acquisition process.
- c. Inconsistency with Transparency Principles: In some cases, communities feel that they are not actively involved in the socialization process or in the determination of land acquisition locations.

Courts often serve as the final avenue for resolving such disputes. In the context of civil law, these disputes can be settled through mediation or litigation. Article 134 of the Basic Agrarian Law (UUPA) stipulates that all agrarian disputes must be resolved through

deliberation and consensus. However, litigation in court remains a final option if no agreement is reached.

B. Rights of the Public and Government in the Land Acquisition Process According to Civil Law.

Land acquisition for national infrastructure development projects is a legal process that involves the rights of the public as landowners or managers, as well as the rights of the government as the party in need of land for public purposes. This process is comprehensively regulated in various regulations in Indonesia, particularly within the framework of civil law, which emphasizes the principles of justice, legal certainty, and respect for human rights. (Priyono, Aditya. 2022)

Public Rights in Land Acquisition

1. **Right to Ownership and Land Management :** The public's right to land ownership is protected by Article 28H, paragraph (4) of the 1945 Constitution, which states that every person has the right to own private property. This right is also affirmed in Article 20 of Law Number 5 of 1960 on Basic Agrarian Regulations (UUPA), where land can be owned by individuals, legal entities, or customary law communities. The public has the right to maintain their land ownership unless the land is taken for public purposes with appropriate compensation.
2. **Right to Information :** In the land acquisition process, the public has the right to receive clear and transparent information. In accordance with Article 18 of Law Number 2 of 2012 on Land Acquisition for Public Purposes, the government is obliged to provide full explanations regarding the purpose of development, the need for land, and the compensation process to affected communities.
3. **Right to Fair Compensation :** The right to fair compensation is the core of the land acquisition process. Article 33 of Law No. 2 of 2012 states that the public has the right to receive compensation in the form of money, replacement land, resettlement, shares, or other agreed forms. The compensation value is assessed by an independent appraisal agency to ensure transparency and fairness.

4. Right to Reject or Demand Compensation : The public has the right to reject compensation offers if they feel they are unfair. In such cases, the public can submit objections through legal channels, as regulated in Article 37 of Law No. 2 of 2012, where disputes can be resolved through the courts or mediation.
5. Right to Participation : The public has the right to participate in public consultations conducted before the project location is determined. This process is regulated in Article 13 of Law No. 2 of 2012, which states that the government must involve the public in the planning of land acquisition to ensure transparency and active participation.
6. Right to Respect for Customary Land : For customary law communities, the right to customary land is protected by Article 3 of the UUPA, which states that customary land can be utilized as long as it does not conflict with national interests. If customary land is subject to land acquisition, the customary community is entitled to receive compensation according to the agreed mechanism.:

Government Rights in Land Acquisition

1. Right to Acquire Land for Public Interest

The government has the right to acquire land for development purposes aimed at fulfilling public interests. This right is regulated in Article 6 of the UUPA, which states that all land rights have a social function, allowing land to be used for public purposes with fair compensation.

2. Right to Determine the Project Location

The government has the authority to determine the location of development projects according to needs. This determination is made through an administrative process regulated in Article 13 of Law No. 2 of 2012, where the government works with development planning bodies and related agencies to identify strategic locations.

3. Right to Conduct Data Collection

In the land acquisition process, the government has the right to conduct land data collection and identify involved parties. This process is regulated in Article 17 of Law No. 2 of 2012, which includes land measurement, ownership identification, and land valuation.

4. Right to Conduct Public Consultations

The government has the right to hold public consultations with affected communities to gather input and approval. This consultation ensures that the development project is carried out transparently and involves the community, as stated in Article 14 of Law No. 2 of 2012.

5. Right to Determine Compensation Assessment

The government has the right to determine the compensation amount through an independent appraisal institution. This institution works on the basis of professionalism and accountability to provide a fair value, in accordance with Article 34 of Law No. 2 of 2012.

6. Right to Conduct Consignment

In cases of disputes or rejection of compensation, the government has the right to conduct consignment, which involves depositing the compensation money with the court. This mechanism is regulated in Article 42 of Law No. 2 of 2012 to ensure that the project proceeds while resolving disputes legally.

7. Right to Resolve Disputes

The government has the right to resolve disputes arising in the land acquisition process through mediation, arbitration, or the court. This provision is outlined in Article 37 of Law No. 2 of 2012, aiming to provide fair solutions for all parties. (Nugroho, Budi 2021)

The rights of the public and the government in the land acquisition process are based on several key principles that aim to strike a balance between national development needs and the protection of individual rights. The principle of justice is the main foundation, where all parties involved in the process should receive fair treatment. The public's right to their land must be respected, while the government has the responsibility to ensure that the land acquisition process is carried out without harming any party.

Additionally, the principle of transparency is crucial to ensure trust among all parties involved. Information about the project's objectives, the land acquisition procedures, and the compensation mechanisms must be openly communicated to the public. This not only avoids misunderstandings but also provides space for the public to participate actively in the process. The principle of legal certainty is another important element, providing a clear legal framework for the land acquisition process. All actions taken by the government must be based on applicable laws, so that each party understands their rights and obligations. With legal certainty, the potential for conflict and disputes can be minimized because the procedures are in accordance with the agreed regulations.

Lastly, the principle of balance is key to maintaining harmony between the rights of the public as landowners and the needs for development for the public good. The government must ensure that the rights of the public to their land are not disregarded, even when the land is needed for national infrastructure projects. On the other hand, the public is expected to understand that the land they own has a social function that can be used for broader public

purposes. By prioritizing these four principles, land acquisition is expected to be carried out fairly, transparently, and to benefit all parties involved. (Lestari, Putri. 2020)

C. Dispute Resolution Between the Government and the Public Regarding Land Acquisition for Infrastructure Projects According to Civil Law

Dispute resolution between the government and the public regarding land acquisition for infrastructure development projects is a common issue, as the public interest represented by the government must be balanced with the protection of the individual rights of landowners. In Indonesian civil law, the resolution of such disputes is regulated through several legal mechanisms aimed at achieving justice for both parties. (Kurniawan, Dedi. 2023)

Negotiation often becomes the initial step in resolving land acquisition disputes. Negotiations are conducted to reach an agreement between the government as the land acquirer and the community as the landowner. This process typically involves discussions regarding compensation, land value, and other compensatory matters regulated in Law No. 2 of 2012 on Land Acquisition for Public Purposes. This process is crucial to minimize the potential for conflict, as it provides space for the public to express their concerns and objections.

If negotiations fail to result in an agreement, the dispute can be brought to the civil court. In this case, either the government or the public can file a lawsuit with the district court in the area where the land is located. The judge will assess the claims of both parties based on the evidence presented, including land ownership documents, land appraisal values, and the legal basis for the government's land acquisition. The court has the authority to issue a fair decision in accordance with civil law principles, such as the principle of freedom of contract and the principle of justice.

In addition to civil court, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution also provides an avenue for resolving disputes through mediation or arbitration. Mediation involves a neutral third party facilitating dialogue between the public and the government, while arbitration involves an arbitrator who provides a final and binding decision. This mechanism is often preferred as it is faster and more flexible compared to the litigation process in court. (Harsono, Boedi. 2017)

Outside of formal mechanisms, the public can also file an administrative objection to the Land Acquisition Commission or the relevant body handling land acquisition. This objection can be submitted if the public feels that the land acquisition process violates legal

procedures, such as discrepancies in land valuation or lack of transparency in the information provided. The government is responsible for reviewing these objections and providing an appropriate response.

In the context of national infrastructure projects, land acquisition disputes may also involve the filing of a human rights (HR) lawsuit if the public feels that their rights have been violated, such as the right to adequate housing or the right to property ownership. These lawsuits are typically filed with the National Commission on Human Rights (Komnas HAM) or the relevant human rights court for further protection.

The resolution of these disputes requires a balance between public interest and individual rights. Therefore, civil law provides a flexible framework for resolving these conflicts through various mechanisms that can be adjusted to meet the needs and circumstances of the dispute. Both the government and the public must commit to following the applicable legal processes to achieve a fair and mutually beneficial solution. (Helmi. 2021)

KESIMPULAN

The importance of balancing the rights of the public and the interests of the government in the land acquisition process for national infrastructure projects is crucial. This process must adhere to the principles of justice, transparency, legal certainty, and balance, which form the foundation for protecting public rights without hindering development needs.

The resolution of land acquisition disputes demonstrates that various legal mechanisms, whether through negotiation, mediation, arbitration, or court proceedings, are designed to ensure that each party receives justice in accordance with the applicable law.

Overall, the success of land acquisition heavily relies on the implementation of clear regulations, transparent execution, and the protection of public rights, so that the goals of infrastructure development can be achieved without sacrificing individual interests.

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