



Arrangements and Stages of Implementation of Land Acquisition for Development for Public Interests

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Abstract

From a formal legal perspective, the term land expropriation is recognized for the first time since Presidential Decree (Keppres) No.55 of 1993 on the acquisition of land for public interest development. This follows from Home Secretary's Order No. 15 of 1975 on the Procedural Regulations for the Liberation of Land (PMDN) which used the term "Land Liberation". With the entry into force of Law No. 2 of 2012, the term "land acquisition" is used. Several presidential decrees (Perpres) were issued to implement the Land Acquisition Act. Therefore, in order to understand in depth about the issue of land acquisition, it is necessary to explain how the arrangements and stages of land acquisition for the implementation of development in the public interest are necessary.

Keywords: *Land Acquisition, Development; Public Interests*

Introduction

The national goals of the Indonesian nation as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), one of which is to promote public welfare. Consequently, the state has an obligation or responsibility to create welfare for all its people. Therefore, the state as the power organization of all the people has the right to mastery over the land, water and natural resources contained therein, which is called the "Right to Control the State".

The Republic of Indonesia's goals are laid out in Article 33, paragraph (3) of UUD NRI 1945. According to this provision, the state is in charge of the land, water, and natural resources within its borders, and it must utilize them to improve the citizens' prosperity. The principle of state authority is predicated on the organization of the populace's power. The preamble and Article 33, paragraph (3) of UUD NRI 1945 indicate that the Constitution of Indonesia endorses the welfare state concept, with the latter being the fundamental article regarding social assistance. Hence, the government must always reference Article 33 of UUD NRI 1945 when forming policies- particularly with regard to economic development. Mohammad Hatta called this idea the "government" concept, which primarily involves the welfare state's roles and obligations in the economic and social spheres.¹

¹ John Salindeho, *Masalah Tanah Dalam Pembangunan*, Sinar Grafika, Jakarta, 1987, hlm. 110.

In order to realize prosperity for all Indonesian people or a just and prosperous society, the government carries out development in all aspects of people's lives. This is one of the factors that increases the need for land, while the area of land never increases. Therefore, land acquisition for the implementation of development is a demand of the times that cannot be avoided by any government, and the Indonesian government is no exception. The more advanced a society is, the more land is needed for the implementation of development, including the implementation of development for the public interest.²

To fulfill the aforementioned requirements for land usage, the process of land acquisition can be employed. This process is founded on the values of democracy, justice, and humanity.³ The Land Acquisition Act, also known as Law No. 2 of 2012, places an emphasis on the upholding of the rights and interests of the people while also improving their welfare and contributing to the growth of the nation and the country as a whole. From a legal standpoint, the notion of land expropriation was formally recognized with the publication of Keppres No. 55 in 1993, which pertains to the acquisition of land for public interest development. Prior to this, the Home Minister's Order (PMDN) No. 15 of 1975 governed the procedures for land acquisition. The present usage of the term "land acquisition" is linked to the implementation of the Land Acquisition Act.

Based on the description above, it is necessary in this short writing to set forth arrangements regarding land acquisition and the stages of implementing land acquisition for development in the public interest.

Research Methods

The type of research that is appropriate for studying and discussing land regulation and acquisition issues is normative research, because examining a law or regulation is indeed a normative discussion. According to Philipus M. Hadjon's opinion, normative legal research is research aimed at expressing legal arguments through an analysis of the issues raised.⁴ So, this research does not examine how a rule of law is practiced in society.

Thus, the approach used in this study is a statutory approach, a conceptual approach (especially the concept of land acquisition, the development and the public interest as stipulated in the Law on Land Acquisition).

Results and Discussion

1. Arrangements, Definitions and Legal Basis for Land Acquisition for Development in the Public Interest

The issue of land acquisition for development in the public interest is currently regulated by the Land Acquisition Act. Furthermore, according to Article 59 of the Land Acquisition Act, further provisions regarding the implementation of land acquisition for development are regulated by a Presidential Regulation (Perpres).

Realization of Article 59 mentioned above, several implementing regulations have been issued, namely:

1. Perpres No.71 of 2012 concerning Implementation of Land Acquisition for Public Interests.

² Mukmin Zakie, Pengadaan Tanah Untuk Kepentingan Umum (Perbandingan antara Malaysia dan Indonesia), *Jurnal Hukum Ius Quia Iustum*, Edisi Khusus Vol. 18 (2011), hlm. 187-206.

³ Konsideran Menimbang huruf b Undang-Undang No. 2 Tahun 2012.

⁴ Philipus M.Hadjon, et.al., *Argumentasi Hukum*, Gadjah Mada University Pres, Yogyakarta, 2005, hlm. 3.

2. Perpres No.40 of 2014 concerning Amendments to Perpres No.71 of 2012.
3. Perpres No.99 of 2014 concerning the Second Amendment to Perpres No.71 of 2012.
4. Perpres No.30 of 2015 concerning the Third Amendment to Perpres No. 71 of 2012.
5. Perpres No.148 of 2015 concerning the Fourth Amendment to Perpres No. 71 of 2012.

The Head of the National Land Agency issued Decree No.5 in 2012 which stipulates technical guidelines for land acquisition. This order was later amended by Amendment No.6 of 2015 from the Minister of Agrarian Affairs and Spatial Planning/Director General of the National Land Agency (Permen ATR/Kepala BPN). In addition, Ministerial Regulation No.22 was also determined as the second amendment to Perkaban No. 5 of 2012. The Minister of ATR/Head of BPN also issued Regulation No. 22 concerning Land Acquisition for Public Interests and Regulation No.4 of 2020 which regulates procedures for land appraisal. Land Acquisition Act and Perpres No.71 of 2012 (last changed to Perpres No.148 of 2015) contains several definitions.

- a. Institutions requiring land are state agencies, ministries, non-ministerial government agencies, provincial governments, county/city governments, and state-owned legal persons/state-owned enterprises (BHMN/BUMN) or commercial entities that have obtained special contracts from the government. An agreement between non-ministerial government agencies, provincial governments, district/municipal governments and BHMN/BUMN to obtain land mandates to undertake specific government tasks in providing public infrastructure.
- b. Land acquisition refers to the provision of land by providing fair and reasonable compensation to right holders.
- c. Beneficiary is a person who owns or controls an object of real estate.
- d. The subject matter of real estate acquisition is land, ground and underground rooms, buildings, facilities, property-related items or other valuables.
- e. Land rights are land rights within the meaning of Act No.5 of 1960 on UUPA and other statutory rights.
- f. The public interest is something that must be realized by the government for the greatest prosperity of the people. In this case, it is the interest of the nation, state and society.

Article 2 of the Land Acquisition Act determines several principles of land acquisition for public purposes, namely:

- a. **Humanity:** Land acquisition must provide full protection and respect for the human rights, dignity and dignity of every citizen and resident of Indonesia.
- b. **Equity:** Provide reasonable alternative security to parties who control or own land, above and below ground, buildings, facilities, objects related to land, or anything else that can be valued in the land acquisition process, so that they have the opportunity to obtain Better results, fulfilled life.
- c. **Benefits:** The results of land acquisition can have far-reaching benefits for community, nation, and national interests.
- d. **Certainty:** The outcome of land acquisition can have far-reaching benefits for community, nation, and national interests.
- e. **Transparency:** Land acquisition development is done by providing information about land acquisition to the public.
- f. **Agreement:** The land acquisition process is negotiated by all parties, and the parties are not forced to reach an agreement.
- g. **Participation:** Encourage the involvement of the community in both direct and indirect ways to facilitate the implementation of land acquisition initiatives. This includes participation in the planning stages as well as during the actual development activities.
- h. **Welfare:** The acquisition of land for developmental purposes can have a significant impact on the welfare of those who own or control the land, including the subterranean and above-ground

spaces, buildings, plants, land-based objects, and other items that may hold value during the acquisition process.

- i. **Sustainability:** This impact extends beyond just the individual or group who possess the land to the entire community involved in the process. Sustainability can be achieved through ongoing development activities that work towards the attainment of desired objectives.
- j. **Alignment:** The process of land acquisition can be balanced and aligned with the welfare of both the community and the nation at large.

In addition, Law No.2 of 2012's Article 3 establishes that the expropriation of land for public use must serve the aim of providing land for the construction of developments that enhance the welfare and success of the country, its citizens, and its communities. This is done while ensuring that the lawful rights and benefits of those who stand to gain from these developments are safeguarded.

In accordance with Article 6 of the Land Acquisition Act, it is stated that the process of acquiring land is carried out by the government. As a result, the government or regional authorities are responsible for ensuring both the availability of funds and land for public use. Consequently, the owner or controller of the land must cede their rights to the land, which will then become the property of the government. It is important to note that compensation will be provided to the owner or controller for the land relinquished. The execution of land acquisition for public purposes must adhere to Article 7 of the Land Acquisition Act, which specifies the following requirements: Spatial plans refer to the strategies, designs, and policies that are implemented to manage and organize physical space. These plans are used to shape the built environment, define land use, and allocate resources in a way that maximizes efficiency and sustainability. By analyzing and predicting patterns of human activity, as well as considering environmental factors, spatial plans aim to create livable, functional, and aesthetically pleasing communities. National and regional development plans are essential for the growth and progress of a country. These plans outline the strategies and policies that will be implemented to address the economic, social, and environmental challenges and opportunities in specific regions. By focusing on the unique needs and resources of each region, development plans can ensure that resources are allocated efficiently and effectively, leading to sustainable growth and development. The phrase "The strategic plan; And" is incomplete and lacks context. Without additional information, it is difficult to provide a meaningful recreation of this text. Please provide more context or a complete sentence to work with. Each agency that requires land must have a work plan in place. When it comes to acquiring land for oil, gas, and geothermal infrastructure, the process follows the strategic and work plans of the agency that requires the land as stated. The acquisition of land for public benefit is carried out through a comprehensive planning process that involves all stakeholders and managers.

In addition, Article 9 of the "Land Acquisition Act" stipulates that when expropriating land for the public interest, the balance between development interests and community interests must be respected, and adequate and fair compensation must be given. The category of development for the public interest can be seen in Article 10 of the Land Acquisition Act.

2. Stages of Implementation of Land Acquisition for Development in the Public Interest

Article 13 of the Land Acquisition Law regulates 4 (four) stages of land acquisition for public purposes. This mechanism is contained in Article 14 to Article 39 of Law No.2 of 2012. The stages of land acquisition according to Article 13 of Law No.2 of 2012 are:

a. Planning Stage

At the planning stage, the land-using unit formulates a public interest land acquisition plan in accordance with the law in accordance with the provisions of Article 14 of the Land Acquisition Act, based on the development priorities listed in the Regional Spatial Planning (RTRW) and the development time plan. Government work program in (RPJM) and related agencies. Each agency that needs to develop

public land is required to prepare a land acquisition plan document that includes development plan objectives, RTRW compliance, site location, required site size, general description and assessment of site conditions. The value of the land must be given to the governor in charge of the area where the land is located.⁵

Therefore, the planning phase of land acquisition for public interest development is the responsibility of the authority that needs the land. The administration plans according to the spatial planning and development priorities outlined in the RPJMN, and Renstra of the agency concerned. Furthermore, the agency requiring the land prepares a planning document based on a feasibility study prior to handing it over to the provincial government which is carried out according to the mechanism stipulated in laws and regulations.

The planning documents that have been stipulated by the agency are submitted to the Provincial Government, containing:

- a) Planned development goals and objectives;
- b) The development plan must be in accordance with the RTRW and the National Development Plan and Regional development;
- c) The position or location of the land;
- d) The amount or area of land required;
- e) General land status;
- f) Land Procurement implementation plan or timeline;
- g) Development implementation plan;
- h) Estimated price or value of land; And
- i) Source of budget plans.⁶

b. Preparation Phase

After the Planning Stage, the Governor proceeds to the Preparation Stage by creating a specialized Land Acquisition Preparation Team. This team is assembled within a span of 2 working days upon the Governor's receipt of the official Land Acquisition planning document. The Preparatory Team comprises several members, including regents and mayors, various provincial work units, agencies that require land, and other pertinent agencies. Then the Governor also formed a Secretariat for Land Acquisition Preparation which is domiciled at the Provincial Regional Secretariat, in order to smooth the implementation of the duties of the Preparatory Team that has been formed (Articles 8 and 9 of Perpres No.71 of 2012 as amended for the fourth time, most recently by Perpres No.148 of 2015).

The Preparatory Team, according to Article 10 of Perpres No.71 of 2012 as amended for the fourth time and the last by Perpres No.148 of 2015 has the following tasks:

1. Inform the development implementation plan.
2. Collect data on the location of the development implementation plan.
3. Conduct Public Consultation on the development implementation plan.
4. Preparing to determine the location of the development.
5. Announce the location of the construction that has been determined.
6. Carry out other tasks assigned by the Governor relating to the preparation of Land Acquisition.

Notification of the development plan as mentioned above is conveyed to the community in the area (location) where development for the public interest is planned. Notifications can be made either directly or indirectly. Direct notification is carried out by:

⁵ <https://nasional.kontan.co.id/news/akhirnya-perpres-pengadaan-lahan-terbit-juga>, diakses tanggal 11 Mei 2023.

⁶ Pasal 15 Undang-Undang No.2 Tahun 2012.

- a. Socialization,
- b. Face to face, or
- c. Letter of notification.

While indirect notifications are made through print media or electronic media.

Preliminary data collection of planned locations, including preliminary collection of beneficiaries and objects of property acquisition. The initial collection of data holds a significant value as it serves as a crucial resource for the public consultation in regards to the development plan (as per Section 16 of the Land Acquisition Act). The commencement of the first data collection on the development plan location is determined by the date that is recorded on the minutes of the social or personal meeting. To start, gather preliminary data about the development plan site by coordinating with the local Kelurahan/village officials or through other means. After the data is collected, it is organized in the form of a preliminary list of development plan sites, and is signed by the leader of the team responsible for compiling it. Later, the zoning planning preliminary site selection list will be used as materials for the zoning planning public consultation. The duration of the public consultation is up to 60 days, which can be extended by 30 days if the parties object (new public consultation). Next, the governor assembled a team to study the siting objection. The respective research teams include:

- a. The secretary or official of the provincial party committee concurrently serves as the chairman and committee member.
- b. Head of the Regional Office (Kakanwil) of the National Land Bureau (BPN), acting as Secretary and Member at the same time.
- c. Institutions serving as political committee members in the field of regional development planning.
- d. Kakanwil Member of the Ministry of Law and Human Rights (Kemenkumham).
- e. Regents/Mayors or officers are appointed as members.
- f. Scientists as members.

The research team is responsible for:

- a. List the issues that raise objections.
- b. Conduct clarifications or meetings with objecting parties.
- c. Make recommendations for acceptance or rejection of objections.

Based on the recommendation of the Study Team, the Governor issues a letter of acceptance or rejection of objections to the location of the development plan. The letter is submitted to the agency that requires the land and the party objecting. The handling of objections by the governor is carried out no later than 3 (three) working days after the objection is received.

If the governor in his letter accepts the objections raised, then the agency that needs land through land acquisition must cancel the planned development program or find another location and move the location. Then, if an agreement has been obtained in the public consultation (including a repeat public consultation), or the objections they submitted are rejected by the Governor, then immediately within 7 (seven) days the Governor decides and determines the location of the construction in the public interest. If the 7 (seven) days have passed and the Governor has not issued a location determination, then the location determination is deemed to have been approved by the Governor.

c. Implementation Stage

After the location of the development plan is determined, the land title department submits the land acquisition to the land department. The implementation of land acquisition includes the following activities:

- a. Inventory and identification of land control, ownership, use rights and uses;
- b. Compensation evaluation;
- c. Recommendations for determination of compensation;
- d. Compensation; and
- e. Proxy land release.

The land acquisition was carried out by BPN Kakanwil as the main executor of the land acquisition. The composition of the land expropriation executor shall be determined by the land expropriation chief executive, and shall at least consist of the following personnel:

- a. The individual who holds the position of overseeing land acquisition at the BPN Regional Office.
- b. The individual who holds responsibility for overseeing the land registry within the specific locality in which the land is procured.
- c. The individuals responsible for managing land-related matters within provincial jurisdictions are commonly referred to as land affairs officials.
- d. The individual responsible for overseeing the land acquisition operations within the nearby sub-district office.
- e. The person in charge of a village, known as the Lurah or village head, or any other official who holds a similar position at the site of land acquisition.

Upon receipt of the real estate purchase application, the executor must be appointed within two working days. BPN Kakanwil may designate the land registry head as the primary executor for land acquisition, with a maximum two-day turnaround time for application processing, taking into account factors such as efficiency, effectiveness, geographical limitations, and human resources. The inventory and identification of land control, title, uses and uses includes the following activities:

- a. Land surveying and mapping; and
- b. Data collection of beneficiaries and property acquisition objects.

The inventory and determination of control, ownership, use rights and uses of the land is completed within 30 (thirty) working days. The results of land confirmation, ownership, use, and use of the inventory and determination must be reported to the village/kelurahan office, sub-district office, and land acquisition within 14 working days at the latest. The results of land inventory and determination of control rights, ownership rights, use rights and uses must be announced in stages, in part or in full. Announce the results of the inventory and appraisal of the acquisition target's rights and property maps. If the results of the inventory are not received as planned, the beneficiary may raise an objection to the Office of the State Council within 14 working days after the announcement of the inventory. Any objection to the inventory result referred to in paragraph (4) shall be reviewed within a maximum of 14 working days from the date of receipt of the objection to the inventory result. The results of the announcement or verification and repair are the basis for determining the Entitled Party in granting compensation, which in this case is determined by the Land Agency.

The competent real estate department appoints appraisers in accordance with the provisions of laws and regulations, and announces the appraisers who are entrusted to evaluate the land acquisition targets. The commissioned assessor must be held accountable for the assessment performed. The appraiser evaluates the compensation value of each plot, including:

- a. Land.
- b. Underground space and above ground.
- c. Building.
- d. Plant.
- e. Obyek related to land.
- f. Other loss that can be assessed.

The compensation amount determined according to the expert evaluation results becomes the consideration basis for determining the compensation amount. Compensation may be given in the form of:

- a. Money.
- b. Alternate country.
- c. Resettlement.
- d. Participation; or
- e. Other forms agreed by both parties.

Within a maximum of 30 business days after the report results are sent to the national office, the beneficiary shall be consulted by said office to determine the extent and/or quantity of compensation in accordance to the expert findings. The assessment of compensation is predicated on dialogue, which serves to achieve mutual understanding between both parties.⁷ The outcomes of these discussions will be used as the foundation for any awarded compensation to the entitled party, and shall be documented in the minutes of the agreement. In the case of disagreement about the nature or quantity of compensation, the recipient has the right to file a formal objection with the appropriate district court within 14 days of the compensation decision being made. The district court is then obligated to review the objection and make a decision regarding the form and amount of compensation within 30 days. Should either party disagree with the decision made by the district court, there is an opportunity to appeal to the MA within 14 days of the decision being issued. Once the revocation application has been received by the MA, they are required to come to a decision within a period of three days. The MA's ultimate decision serves as the foundation for granting compensation to the appellant. If the obligee declines the compensation's structure and/or sum, but does not file an objection within the legally specified time limit, it will be regarded that the obligee agrees to the compensation's structure and sum. In order to receive compensation, beneficiaries must adhere to the guidelines set forth by local courts or administrative agencies. The amount of compensation awarded is determined through a thorough assessment and subsequent decision-making process. The act of waiving one's rights refers to the voluntary surrender of entitlements or privileges that one possesses. The process of filing for land ownership through the Land Office requires going through a specific set of steps. The beneficiary is responsible for the accuracy and validity of the inspection or proof of title provided. The person entitled to compensation is responsible for handling third-party claims arising from the purchase of the property, which has been handed over to the office responsible for the property. One of these steps involves completing the filing process with the responsible agency. The sole evidence that is deemed lawful and cannot be disputed at a later time is this document.

d. Results Submission Stage

After the acquisition of land, the land agency will send the results to the requesting agency:

- a. The party that is considered eligible shall be granted indemnification and waiver.
- b. The District Court has received the compensation. Once organizations have handed over the results of their land acquisition, they may proceed with development activities.

Emergencies, such as natural disasters, wars, widespread social conflicts, and disease outbreaks, may result in expropriation of public land. In such cases, the land for public welfare development is determined immediately. If there are objections or litigation regarding the land acquisition, the organization needing the land may still carry out development activities. The agency responsible for expropriating land must register the expropriated land in accordance with the law.

⁷ Antoni M., Abubakar M., Suhaimi. "Legal protection for landowners without certificates in the land acquisition process for The Banda Aceh-Sigli Toll Road". *International Journal of Law*, Volume 8, Issue 1, 2022, Pages 176-184.

e. Monitoring and Evaluation

The government monitors and evaluates the implementation of land acquisition for public purposes. The real estate intermediary supervises and evaluates the results achieved in the transfer of real estate in the public interest.

Conclusion

Article 59 of the Land Acquisition Law stipulates that further arrangements regarding land acquisition for development in the public interest are regulated by a Presidential Decree (Perpres). So that Perpres No. 71 of 2012 was issued which was amended by Perpres No. 40 of 2014 and again amended by Perpres No. 99 of 2014 and amended for the third time by Perpres No. 30 of 2015. Lastly, Perpres No. 71 of 2012 was also amended again for the fourth time with Perpres No. 148 of 2015. Subsequently, Perkanan No. 5 of 2012 as a technical guide or order for implementing the Perpres mentioned above, and amended by Permen ATR/BPN No. 6 of 2015 and most recently amended again by Permen ATR/Head of BPN Decree No. 22 of 2015 for the second time. The process of acquiring land can be divided into four distinct stages. These stages are the planning stage, the preparation stage, the implementation stage, and the results delivery stage.

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