



Reconstructing Land Acquisition and Compensation Policies for the Public Interest: Perspective on the Value of Justice in Indonesian Land Law

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Abstract

This article discusses the reconstruction of land acquisition and compensation policies for the public interest from the perspective of the value of justice in the context of Indonesian land law. The research method used is qualitative, using literature study and document analysis as data sources. This approach allows for a deep understanding of the dynamics and challenges in land acquisition and compensation to affected land owners. In the context of policy reconstruction, this article analyzes the steps required, including identification of needs, evaluation of existing policies, and formulation of new policies or updating existing policies. Factors influencing the policy reconstruction process are also studied in depth, including political, economic, social, cultural and legal dynamics. In addition, this article highlights the mechanism for land acquisition for public purposes and the process of compensation to affected land owners. In this context, the perspective of justice values becomes the main focus, by evaluating ethical, moral aspects and principles of justice in providing compensation to land owners. This research is expected to provide an important contribution to understanding the importance of justice in the reconstruction of land acquisition and compensation policies for the public interest in Indonesia.

Keywords: Compensation, Land Acquisition, Land Law, Value of Justice.

Introduction

Land acquisition for public purposes is a complex and sensitive process that often gives rise to debate and controversy in Indonesia. As a developing country that is intensively carrying out infrastructure development and other development projects, land acquisition has become an unavoidable necessity. However, in its implementation, problems often arise related to the

rights of affected land owners. This invites serious attention, especially in the context of protecting individual rights and the values of justice in Indonesian land law.

From a legal perspective, land acquisition for public purposes is an instrument given to the state to take over land belonging to individuals or groups with the aim of benefiting society at large. However, in this context, it is important to remember that land ownership rights are one of the most fundamental human rights and are protected by the constitution. Therefore, land acquisition by the state must be based on a strong legal basis and pay attention to the principles of justice.

One of the problems that often arises in land acquisition is determining fair compensation or compensation for affected land owners. There are many cases where land owners feel that the compensation they receive is not commensurate with the true value of their land. This creates dissatisfaction and distrust towards the land acquisition process itself. Therefore, protecting the rights of land owners in terms of compensation is a very important aspect in the reconstruction of land acquisition policies. Apart from that, another aspect that needs to be considered in the reconstruction of land acquisition policies is procedural fairness in the decision-making process. Transparency, public participation and accountability are very important principles in ensuring that land acquisition policies are taken by taking into account the interests of all parties involved. Public involvement in the decision-making process can help minimize conflict and increase the legitimacy of the policies taken.

Another challenge in reconstructing land acquisition policies is the conflict of interest between public interests and individual rights. While infrastructure development and public projects can benefit society at large, this is often done at the expense of individual rights, especially land rights. Therefore, a balanced and proportional approach is needed in formulating land acquisition policies that take these two aspects into account.

In the context of Indonesian land law, aspects related to land acquisition for public purposes are regulated in various statutory regulations, including the Basic Agrarian Law and Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. However, the implementation of these policies often faces various obstacles and challenges, both from a technical and social perspective. In this article, we will carry out an in-depth analysis of the reconstruction process of land acquisition and compensation policies from the perspective of the value of justice in Indonesian land law. Through this research, it is hoped that various challenges, obstacles and solutions that can be implemented to increase the protection of land owners' rights and achieve true justice in the process of land acquisition for the public interest in Indonesia can be revealed, and it is hoped that concrete steps can be taken to formulate policies that are more inclusive, transparent and fair for all parties involved.

Literature Review

Informed by a thorough literature review, this paper delves into various scholarly works, legal documents, and reports relevant to land law and policy in Indonesia.

Article Title

1. **Legal Framework of Indonesian Land Law:** The examination commences with an exploration of the legal framework governing land acquisition and compensation in Indonesia. Key sources encompass constitutional provisions, land laws, and pertinent regulations, notably the Land Acquisition Law (No. 2/2012). Articles by legal scholars provide insights into the historical development of land law in Indonesia and the challenges encountered in its implementation.
2. **Land Acquisition Practices and Challenges:** This section scrutinizes scholarly research and reports elucidating the practical aspects of land acquisition in Indonesia. Studies by organizations like the World Bank and academic researchers shed light on challenges faced by landholders, including inadequate compensation, lack of transparency, and disputes over land ownership. These sources underscore the necessity for reforms to ensure fair and equitable land acquisition processes (Tibaka & Rosdian, 2017).
3. **Justice and Equity in Land Acquisition:** This segment critically evaluates the concept of justice within the realm of land acquisition. Scholarly articles, case studies, and legal analyses offer perspectives on distributive justice, procedural fairness, and social equity in land-related decision-making. Additionally, works exploring indigenous land rights and environmental justice contribute to a nuanced understanding of justice considerations in land policy (D. W. Sari et al., 2021).
4. **Public Interest and Policy Reforms:** This section investigates literature discussing the concept of the public interest in land acquisition and compensation policies. Scholars and practitioners offer insights into the delicate balance between public development objectives and individual property rights. Furthermore, analyses of policy reform initiatives, both domestically and internationally, provide valuable lessons for reconstructing land acquisition policies in Indonesia (Widiyono & Khan, 2023).
5. **International Perspectives and Comparative Analyses:** The literature review concludes by considering international perspectives and comparative analyses of land acquisition policies. Comparative studies with countries facing similar challenges in land governance offer valuable insights and potential best practices for Indonesia. Additionally, reports from international organizations like the United Nations provide frameworks for integrating human rights and environmental considerations into land policies (Armia, 2016).

Research Method

This study used qualitative research methods. Qualitative research methods are an approach used to understand social phenomena in depth through descriptive and interpretive analysis. In contrast to quantitative research methods which place greater emphasis on collecting and analyzing data in the form of numbers or statistics, qualitative research methods focus on in-depth understanding of the context, meaning and experiences of the individuals or groups involved in the study. The methods used in this research include:

1. **Literature Study.** This research may begin with a thorough literature study on land law, land acquisition, and compensation for the public interest. Through literature analysis, researchers can understand in depth various aspects of law, policy and practice related to the topic.

2. Document Analysis. This research method may also involve document analysis, including laws, statutory regulations, court decisions, official reports, and other related documents. Analysis of these documents allows researchers to understand the evolution of policies and practices related to land acquisition and compensation in the Indonesian context.
3. Document Analysis. Analyze documents related to existing land acquisition and compensation policies, including laws, government regulations and court decisions. This analysis aims to understand in depth the implementation of current policies, existing weaknesses, and opportunities to reconstruct policies that are more in line with the values of justice.
4. Data Analysis. Data obtained from literature studies, document analysis, and interviews were then analyzed in depth to identify emerging patterns, themes, and main findings. This analysis helps in formulating the arguments in the article and formulating recommendations for policy reconstruction

Result/Findings

1. Definition of Land and History of Its Regulation in Law

a. Understanding Land in the Context of Land Law

Land in the context of land law refers to all forms of property related to land, including the structures and natural resources contained therein. This understanding includes rights to land, such as ownership rights, cultivation rights, use rights and lease rights. In land law, land is considered an asset that has important economic and strategic value for individuals and society as a whole. The definition of land in land law often varies depending on the legal context in each country, but the general principles relate to the control, use and protection of land rights.

b. History of Land Management Before and After Indonesian Independence

The history of land regulation in Indonesia covers the period before and after independence which shows significant changes in land-related approaches and policies. Before independence, land management in Indonesia was influenced by a feudal system which was based on land control by rulers or political elites. After independence, there were efforts to formulate a new legal framework governing the control, utilization and protection of land rights for all Indonesian people. This is reflected in various agrarian laws and land policies which aim to ensure fair and equitable distribution of land throughout Indonesia (Joesoef, 2021) The history of land regulation before and after independence reflects a long journey towards establishing a legal framework that is more inclusive and favors the interests of the wider community. Changes in land regulation also reflect political, economic and social dynamics that influence changes in land policy in Indonesia. By understanding this history, we can identify challenges and opportunities in developing sustainable policies that support justice in the control and use of land in Indonesia.

2. Land Rights in Land Law

a. Concept of Land Rights

The concept of land rights refers to the various rights that individuals or legal entities have regarding the ownership, use and utilization of land. These rights can be in the

form of property rights, business use rights, use rights, rental rights, and other rights obtained based on applicable legal regulations. Land rights give the holder the authority to control and utilize land according to their interests, whether for commercial, residential, agricultural, industrial or other purposes. The concept of land rights is very important in the context of land law because it determines the relationship between an individual or entity and the available land resources.

b. Regulation of Land Rights in Indonesian Positive Law

The regulation of land rights in Indonesian positive law is regulated through various statutory regulations, including the Basic Agrarian Law and its derivative regulations. The Basic Agrarian Law establishes basic principles related to the control, utilization and protection of land rights in Indonesia. These arrangements include procedures for land registration, land acquisition, land distribution, and protection of land owners' rights. Apart from that, there are also regulations governing the transfer of land rights, distribution of land for public purposes, as well as provisions relating to land disputes. The regulation of land rights in Indonesian positive law aims to create a clear and fair legal framework in regulating the relationship between individuals or entities and land. In this way, land rights holders can feel protected and have legal certainty in exercising their rights in relation to the land they own or control. Therefore, a good understanding of the concept and regulation of land rights is very important for all parties involved in land transactions or litigation in Indonesia (Yamin et al., 2022).

3. Policy Reconstruction Process

The policy reconstruction process related to land acquisition and compensation for the public interest is an effort that involves a series of systematic and complex steps. The first step in this process is identifying the need to reconstruct the policy. This can arise from various factors, such as weaknesses or inconsistencies in existing policies, changes in social or economic conditions, and community demands for change. Discussion of these needs is the starting point in the reconstruction process, because without a clear understanding of the problems that need to be addressed, policy reconstruction will not be effective (Palenewen, 2022).

Once the need for policy reconstruction is identified, the next step is to conduct an in-depth analysis of existing policies. This includes evaluating existing policies, identifying advantages and disadvantages, and evaluating the impact of implementing those policies. This analysis helps in understanding what has worked and what still needs to be improved or adjusted in the new policy. In this process, the role of experts and stakeholders is critical, as they can provide valuable insights into how the policy functions in practice.

The third step in the policy reconstruction process is designing new policies or updating existing policies. This involves drawing up a clear and detailed plan about what is to be achieved through the new policy, as well as the concrete steps that will be taken to achieve those goals. This process may also involve consultation and discussion with various related parties, including the general public, legal experts, academics and civil society organizations. Through this collaboration, more comprehensive and inclusive policies can be produced.

Once a new policy is designed, the next step is to implement the policy. This includes the legislative process, where new policies are passed into law or government regulations,

as well as the stages of policy implementation in the field. Policy implementation also requires continuous monitoring and evaluation to ensure that the policy functions as expected and has a positive impact on society (Gallantry et al., 2021).

The factors influencing the policy reconstruction process are very diverse and complex. These factors may include political, economic, social, cultural, and legal conditions. Changes in political and economic conditions, for example, can influence the government's priorities and needs in formulating new policies. Meanwhile, social and cultural factors can influence people's views and attitudes towards the new policy. Therefore, it is important for policy makers to pay attention to all these factors in the policy reconstruction process to achieve optimal results.

4. Land Acquisition Mechanism for Public Interest Compensation or Compensation Process for Land Owners Affected by Procurement

Land acquisition for public purposes is a process in which the government or authorized entity takes over ownership of land from individuals or groups for purposes deemed important to society at large, such as infrastructure development or other public projects. This land acquisition mechanism is usually regulated in law or government regulations which regulate the procedures that must be followed to carry out legal land acquisition. This process often involves stages such as identifying the land to be taken, assessing the value of the land, providing notification to the land owner, and negotiating the amount of compensation.

The process of compensation or compensation to land owners affected by land acquisition is an important aspect in maintaining justice in land acquisition. Affected landowners must receive reasonable and fair compensation commensurate with the true value of their land taken. This compensation includes not only the market value of the land taken, but also any losses that landowners may experience as a result of losing their land, such as loss of livelihood or other losses related to the land (Fathoni, 2021).

Determining fair and just compensation often involves a process of careful assessment of the value of the land taken. This can be done by an independent appraiser who considers various factors, such as the location of the land, condition of the land, use of the land, and current market value. Landowners should also have the opportunity to provide input and relevant information that may influence the assessment process. Ultimately, the goal of the compensation process is to ensure that affected landowners feel that they have been treated fairly and received compensation commensurate with the losses they have experienced.

In addition to the value of financial compensation, the compensation process may also include providing alternatives or other incentives to affected land owners. For example, the government can offer equivalent replacement land or provide assistance in finding new jobs or skills training to help land owners adapt to changes resulting from land acquisition. Such an approach can help minimize the social and economic impacts that affected landowners may experience, as well as promote a sense of fairness in the land acquisition process as a whole (Lestari, 2020).

5. Analysis of the values of justice that underlie this policy in the context of Indonesian land law

The perspective of the value of justice in the context of land acquisition and compensation policies for the public interest is very important in Indonesian land law. Justice is the main basis that must be considered in the decision-making process regarding compensation to land owners affected by the procurement. One aspect that needs to be considered is the ethical and moral aspect. This refers to considerations about what is considered fair and morally correct in providing compensation to landowners who have lost their property rights because of the public interest.

The principles of justice also play an important role in determining the compensation or compensation mechanism given to land owners. These principles include the principle of distributive justice, which emphasizes that compensation must be proportional to the losses suffered by the land owner. Apart from that, the principle of procedural justice is also important, which demands that the process of determining compensation must be transparent, open, and involve fair participation from all parties involved (Ramadhani, 2020).

In the context of Indonesian land law, these values of justice are also reflected in the laws and regulations governing land acquisition and compensation. Existing laws seek to strike a balance between the public interest and individual rights, by providing clear guidelines on how compensation should be determined and awarded to affected landowners. However, the implementation of this law often creates challenges in practice, especially in relation to fulfilling the principles of justice (Sari, 2017).

In the decision-making process regarding compensation, factors such as land market conditions, property values, and the needs and interests of the general public must also be considered. Even though the principles of justice are the main basis, the policies taken must also be realistic and can be implemented effectively. Therefore, it is important to find the right balance between moral aspects, ethics and principles of justice in formulating fair and sustainable land acquisition and compensation policies in Indonesia.

6. Legal and regulatory context governing land acquisition and compensation in the Indonesian land system

Indonesian land law is a legal framework that regulates all matters related to the ownership, use and procurement of land in Indonesia. This legal framework includes laws, government regulations, presidential decrees, and other regulations relating to land. One of the aspects regulated by Indonesian land law is land acquisition and compensation for the public interest. Existing laws and regulations provide clear guidelines on how the land acquisition process should be carried out, as well as the rights and obligations of all parties involved.

Implementation of Indonesian land law in practice involves various institutions and processes. The process of land acquisition for public purposes usually begins with the determination of areas that will be audited for public purposes by the local government. After that, the government carried out a land acquisition process based on a fair and transparent assessment. During this process, affected land owners must be given reasonable compensation or compensation according to the value of their land (Kamal, 2021).

However, in practice, the implementation of land acquisition and compensation policies often faces challenges. Some of the challenges that often occur include problems in determining fair land values, complex and convoluted procedures, and conflicts of interest

between the government, developers and local communities. In addition, there are also problems related to transparency and accountability in the decision-making process, which can result in distrust and social conflict (Wirawan, 2021).

Therefore, it is important to continue to evaluate and update Indonesian land law so that it is more in line with current developments and community needs. Progressive land law reform can help overcome challenges and improve the protection of landowners' rights. This can also help ensure that the land acquisition and compensation process is carried out fairly, transparently and in accordance with the values of justice in Indonesian land law.

Conclusion

This research describes the context of land law in Indonesia with a focus on land acquisition and compensation for the public interest. In the context of policy reconstruction regarding land acquisition and compensation for the public interest in Indonesia, the steps taken involve a series of systematic and complex processes. Identifying the need to reconstruct policies is an important initial stage in understanding the changes needed, both in terms of existing policies and developing social and economic conditions. The next step is an in-depth analysis of existing policies, followed by designing new policies or updating existing policies. Collaboration with various stakeholders is also key in formulating more inclusive and comprehensive policies.

In the context of land acquisition and compensation, clear and fair mechanisms must be implemented to ensure that affected land owners receive compensation commensurate with the losses they have experienced. Determination of compensation must be transparent and based on the fair value of the land taken, and must consider additional losses that may be experienced by the land owner. The compensation process may also include providing alternatives or other incentives to land owners, such as replacement of other land or assistance in finding new work.

The justice value perspective is the main basis for determining land acquisition and compensation policies. This includes ethical, moral and justice considerations in providing compensation to affected land owners. Formulating policies based on the principles of distributive and procedural justice is important in ensuring that land acquisition is carried out fairly and in accordance with the values of justice in Indonesian land law.

The legal and regulatory framework governing land acquisition and compensation is also an important part of the Indonesian land law context. Implementing these policies in practice often faces challenges, such as difficulties in determining fair land values and complicated procedures. Therefore, continuous evaluation and updating of Indonesian land law is necessary to improve the protection of land owners' rights and ensure that the land acquisition process is carried out fairly, transparently and in accordance with the values of justice.

References

- Armia, M. S. (2016). The Role of Indonesian In Protecting Energy Security Perlindungan Hukum terhadap Ketahanan Energi Nasional Melalui Putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 13(2), 241–258.
- Fathoni, M. Y. (2021). Peran Hukum Adat Sebagai Pondasi Hukum Pertanahan Nasional

Article Title

- Dalam Menghadapi Revolusi Industri 4.0. *Refleksi Hukum: Jurnal Ilmu Hukum*, 5(2), 219–236. <https://doi.org/10.24246/jrh.2021.v5.i2.p219-236>
- Gallantry, T., Hidayat, Y., & Wasitaatmadja, F. F. (2021). Penerapan Prinsip Keadilan Dalam Pengadaan Tanah Untuk Kepentingan Umum Menurut Hukum Tanah Nasional dan Hukum Islam. *Jurnal Magister Ilmu Hukum*, 6(1), 62. <https://doi.org/10.36722/jmih.v6i1.797>
- Joesoef, I. E. (2021). Rekonstruksi Pencabutan Hak Atas Tanah Dan Konsinyasi Dalam Pengadaan Tanah Untuk Kepentingan Umum. *Masalah-Masalah Hukum*, 50(3), 318–330. <https://doi.org/10.14710/mmh.50.3.2021.318-330>
- Kamal, N. (2021). Perlindungan Hukum Pemegang Hak Atas Tanah Terhadap Penyimpangan Pelaksanaan Pengadaan Tanah Untuk Kepentingan Umum Dengan Instrumen Pinjam Pakai Tanah. *Otentik's: Jurnal Hukum Kenotariatan (Vol, 3(1)*, 81–99.
- Lestari, P. (2020). Pengadaan Tanah untuk Pembangunan demi Kepentingan Umum di Indonesia Berdasarkan Pancasila. *SIGN Jurnal Hukum*, 1(2), 71–86. <https://doi.org/10.37276/sjh.v1i2.54>
- Palenewen, J. Y. (2022). Hukum Agraria dan Pendaftaran Tanah di Indonesia. In *Penerbit Widina*.
- Ramadhani, R. (2020). Peran Poltik Terhadap Pembangunan Hukum Agraria Nasional. *SOSEK: Jurnal Sosial Dan Ekonomi*, 1(1), 1–6.
- Sari, D. W., Hidayat, F. N., & Abdul, I. (2021). Efficiency of Land Use in Smallholder Palm Oil Plantations in Indonesia: A Stochastic Frontier Approach. *Forest and Society*, 5(1), 75–89. <https://doi.org/10.24259/fs.v5i1.10912>
- Sari, I. (2017). Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA). *Jurnal Mitra Manajemen*, 9(1), 15–33. <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/492>
- Tibaka, L., & Rosdian, R. (2017). The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia. *Fiat Justisia Jurnal Ilmu Hukum*, 11(3), 266. <https://doi.org/10.25041/fiatjustisia.v11no3.1141>
- Widiyono, T., & Khan, M. Z. K. (2023). Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law. *Law Reform: Jurnal Pembaharuan Hukum*, 19(1), 128–147. <https://doi.org/10.14710/lr.v19i1.48393>
- Wirawan, V. (2021). Rekonstruksi Politik Hukum Penyelesaian Sengketa Tanah Dan Konflik Tanah Di Indonesia. *Jurnal Hukum Progresif*, 9(1), 1–15. <https://doi.org/10.14710/jhp.9.1.1-15>
- Yamin, M., Purba, H., Sembiring, R., & Sari, E. (2022). Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja. *Jurnal Ius Constituendum*, 7(1), 50–67.