

# **Yuridical Analysis Of The Role Of The National Land Agency As The Implementation Of Land Procurement For General Interests**

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**Abstract:** This study aims to identify and analyze the role of the National Land Agency as the implementer of land acquisition for the public interest and to know and analyze the obstacles of the implementation of the National Land Agency as the executor of land acquisition for the public interest. This research method is normative, as research on legal principles and legal synchronization with the role of national land agency in land procurement for public interest.

**Keyword:** Yuridical Analysis, The Role Of The National Land Agency

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## **I. INTRODUCTION**

Land is one of the most important natural resources for the survival of mankind, the human relationship with the land is not just a place to live, but more than that the land provides resources for the survival of mankind. For the Indonesian people the land is a gift of God Almighty and is a national treasure, and the relationship between the Indonesian nation with the land is immortal, therefore must be managed carefully in the present and for the future. Land issues are a matter of the most basic rights of the people. Land in addition to having economic value also function socially, therefore the private interest on the land is sacrificed for the public interest. This is done with the disposal of land rights by obtaining compensation that is not in the form of money alone but also in the form of land or other facilities. Philosophically the land was not originally given to individuals.

So it is not true that one who sells the land is selling his property, which is true he only sells the services of maintaining and maintaining the land for as long as it is mastered. This is true when examined more deeply that the land in addition to having economic value, also has a social value that means the right to land is not absolute. However, the state must guarantee and respect the rights granted to the land to its citizens guaranteed by law. (Soedharyo Soimin, 1993 Status of Rights and Land Acquisition, Jakarta: Sinar Grafika, 82)

The term "land acquisition" is legally recognized for the first time since the issuance of Presidential Decree (Keppres) No. 55/1993 on Land Procurement for the Implementation of Development for the Public Interest. Article 1 Number 1 of Presidential Regulation No. 55 of 1993 as the substitute of the Presidential Decree, it states that "Land Procurement is any activity to obtain land by giving compensation to the landowners."

Article 1 Number 3 of the Presidential Regulation Number 36 Year 2005 as a substitute for the Presidential Decree, it states that "land procurement is any activity to obtain land by giving compensation to those who relinquish or deliver land, buildings, plants and objects related to land or by revocation of land rights.

Article 1 Number 3 of the Presidential Regulation No. 65 of 2006 revises the definition of land procurement, it states that "Land Procurement is any activity to obtain land by providing compensation to those who relinquish or deliver land, buildings, plants and objects related to soil".

The procurement arrangement of land in Article 1 Sub-Article 2 of Law Number 2 Year 2012 on Land Procurement for Development for the Public Interest states that "Land procurement is an activity of providing land by providing fair and fair compensation to the parties entitled". (Adrian Sutedi, 2007, Implementation of the Common Interest Principles in Land Procurement for Development, Jakarta: Sinar Grafika, 46)

Eligible parties are those who control or own the object of land procurement. Land Procurement Objects are land, underground and underground spaces, buildings and plants, objects related to land, or others that can be assessed.

Definition of Land Procurement further elaborated in Presidential Regulation No. 71 of 2012 on Implementation of Land Procurement for Public Interest and Regulation of Head of National Land Agency Number 5 Year 2012 on Technical Guidance of Implementation of Land Procurement.

Thus it can be concluded that, the procurement of land is the activity of the release of land rights by providing compensation that utilization must be for the public interest.

The land as a gift of God Almighty has a very important function to build a just and prosperous Indonesian society. In connection with this matter, in the implementation of national development in the field of land, as contained in article 33 paragraph (3) of the 1945 Constitution: "Earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". (Ibid, pp. 24) The official explanation of this article states that the earth and water and natural resources contained in the earth are the subjects of the people's prosperity. Therefore it must be controlled by the State and used for the greatest prosperity of the people.

Such explanation means that the powers granted to the State over the earth, water and natural resources contained therein shall be liable to the State to regulate ownership and to lead its use, to all lands throughout the territory of the sovereign State of Indonesia used for the greatest prosperity of the people.

Realizing a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, the government needs to organize development.

In Indonesia, the procurement of land, especially for the implementation of development for the public interest carried out by the government and local government implemented by way of revocation of land rights. Land acquisition for public interest since 1961 has been enacted Law No. 20 of 1961 on the Revocation of Land and Property Right thereon, and then followed by government policy through PMDN (Domestic Investment) Number 15 Year 1975 jo PMDN Number 2 Year 1976, then revoked and replaced by Presidential Decree No. 55 of 1993 on Land Procurement for the Public Interest, since June 17, 1993, all acquisition of land for public interest is done by this regulation whose implementation is supported by Regulation of the Minister of Agrarian Affairs / Head of Agency National Land No. 1 of 1994 (hereinafter referred to PMNA / Ka.BPN 1/1994). However, with the enforcement of these provisions in the process of implementation still creates a conflict within the community. Therefore, it is necessary to review the existence of Presidential Decree No. 55 of 1993 and related to the enactment of Law Number 22 Year 1999 regarding Regional Government which gives freedom to the Region to organize Regional Autonomy.

Procurement of land is then regulated by Presidential Regulation No. 36 of 2005 which is then amended by Presidential Regulation No. 65 of 2006. Until now Indonesia does not have a law that specifically regulates the Land Procurement. Head of National Land Agency (BPN), the procurement of land is regulated in the Regulation of the Head of BPN Number 3 of 2007 concerning Provisions of the Presidential Regulation Number 36 Year 2005 on Land Procurement for the Implementation of Development for Public Interest as amended by Presidential Regulation No. 65 of 2006 on Changes Upon Presidential Regulation No. 36/2005 concerning Land Procurement for the Implementation of Development for the Public Interest. (Muhrima S Rahmat, 2009, Land Procurement For Public Interest, Jogjakarta: Jayagrafik, pp. 93)

The reality of life in the community of land acquisition for development for the public interest is causing turmoil in practice, where the coercion of the parties of either the government which sets the price unilaterally or the landowner demands the price that is considered unnatural, while the existing legal instruments have not been able to accommodate two interests different. Finally occurs by coercion and intimidation to the community in terms of land procurement for development for the public interest.

After a long journey, the Bill on Land Procurement for Development for Public Interest was finally approved by the House of Representatives and the Government in the plenary session of December 16, 2011 ago. In accordance with Article 73 of Law Number 12 Year 2011 on the Establishment of Laws and Regulations, the Bill becomes law as long as 30 days since the bill is ratified. It is hoped that with Law No. 2 of 2012 on Land Procurement for Development in the Public Interest passed on January 14, 2012, Indonesia has a strong legal umbrella at the level of law to facilitate the implementation of infrastructure development for the public interest. Yet the extent to which this law provides protection for affected Communities for development for the public good. (Akhmad Safik, 2006, Land for Public Interest, Jakarta: Institute for Legal and Economic Studies, p.12)

According to Article 16 of Law Number 5 Year 1960 on Basic Regulation of Agrarian Principles or commonly referred to the Basic Agrarian Law abbreviated (UUPA) regulated on land rights that can be granted to citizens in the form of the most important Hak Milik, Hak Guna Usaha (Hak Guna Usaha), Hak Guna Bangunan (Hak Guna Usaha), Hak Guna (Hak Guna Usaha), Hak Guna Bangunan (Hak Guna Usaha), Hak Pakai (Hak Guna Usaha), Hak Guna, Hak Guna, Land Rights, Rights to Collect Forest Products and other rights not included in the above rights to be stipulated by law and which are temporary as mentioned in Article 53 of BAL.

This means that the economic value of land rights will be different from the rights attached to the land, so the compensation provided for the land also determines how much to receive by the existence of such a distinct right, however the state has the authority to carry out the development as regulated in legislation either by revocation of rights or by land acquisition. The problem of land acquisition is a very complicated matter in

handling it, because in it concerning the livelihood of the people, when viewed from the government's need for land for development purposes, it is understandable that the available state land is very limited, therefore the only way that can be pursued is to free land owned by the community, whether it has been controlled with rights under customary law or other rights under the BAL.

In Article 27 paragraph (1) Presidential Regulation No. 71 of 2012 Implementation of Land Procurement carried out several stages, namely:

1. Inventory and identification of tenure, ownership, use and utilization of land;
2. Appraisal of compensation;
3. Deliberation agreement on compensation;
4. Provision of indemnification; and
5. Release of agency land.

The process of land acquisition will never be separated from the problem of compensation, therefore it is necessary to conduct prior research on all information and data submitted in the assessment (Appraisal) of compensation. If an agreement has been reached on the form and size of the compensation, a compensation payment will be made and then proceed with the disposal or transfer of title to the land concerned.

The value of compensation is very important for the holder of the land rights because the land is a resource in addition to having economic value as well as social, political, and even for the people of Indonesia the land also has links with religious values. For most communities, land is where they live and their livelihoods, so that their land acquisition by others must take into consideration the economic and social impact it brings. A farmer whose livelihood depends on the land will lose his livelihood if his land will be taken over and that has the potential to greatly reduce the welfare of the farmer and his family. Besides, normatively, the Constitution provides assurance of protection to the holder of the land right to the land owned as stipulated in Article 28 H paragraph (4) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) that every person has the right to own the right of private property and such property shall not be arbitrarily taken over by any person. The provision is reinforced by Article 28 J Paragraph (2) of the 1945 Constitution that in exercising the right and freedom of each person shall be subject to the restrictions stipulated by law with the sole intention to guarantee the recognition and respect for the rights and freedoms of others and for fulfill fair demands in accordance with moral judgment, religious values, security, and legal order in a democratic society.

The Basic Agrarian Law itself through Article 16 provides the legal basis for the extraction of land of this right by determining: for the public interest, including the interests of the nation and the state and the common interest of the people, the rights to land may be repealed, by giving proper compensation in a manner regulated by law. The Law regulating Land Procurement is Law No. 2 of 2012 on Land Procurement for Development for Public Interest.

Daam Article 6 of Perpres No. 65 of 2006 states that Land Procurement for Public Interest carried out by the Government or Regional Government is used for the construction of public roads and toll roads, railroads (above ground, in the upper ground or in the basement) , drinking water / clean water units, drainage and sanitation; reservoirs, irrigation dams and other irrigation structures; ports, airports, railway stations and terminals; public safety facilities, such as flood prevention embankments, lava floods, and other disasters; garbage dump; nature reserves and cultural heritage; and transmission, and distribution without electricity.

This is different from the procurement of land for private sector development interests, the transfer of rights and the determination of compensation is entirely based on the parties' agreement and the market mechanism as the transfer of land rights in general. Thus the holder of the right to land has a bargaining position in balance with the party in need of the land in deciding whether to relinquish his land rights with compensation agreed or otherwise retain the right to his land.

The authority of the land acquisition committee to carry out land procurement while assessing the price of land to be exempted to carry out development for the public interest in implementation often can not be objective. The pricing of land carried out by the Land Procurement Committee tends to side with those in need of land and ignores the interests of the owner or holder of the land rights.

In Presidential Regulation no. 36 of 2005 in conjunction with Presidential Decree No. 65/2006 on Land Procurement for the Implementation of Development for the Public Interest, concerning the Institute or the Land Assessment Team is regulated separately outside the duties and authorities of the Land Procurement Committee, although the Land Procurement Committee must coordinate with the Land Price Appraisal Agency / Team as one of the land procurement mechanisms conducted by the land acquisition committee. The General Provisions of Article 1 Paragraph (12) of Presidential Decree Number 36 Year 2005 stipulates that the Land Price Assessment Institute / Team is a professional or independent body or team to determine the value / price of land to be used as a basis to reach agreement on the amount / amount of compensation. This provision is clarified in the Regulation of the Head of the National Land Agency Number 3 of 2007 concerning the Implementation of Presidential Regulation Number 36 Year 2005 on Land Procurement for the Implementation of Development for the Public Interest as amended by Presidential Regulation No. 65/2006 on Amendment to Presidential

Regulation No. 36/2005 About Land Procurement for the Implementation of Development for Public Interest (Perka BPN No. 3 Year 2007), by separating the understanding of Land Price Appraisal Institute and Land Appraisal Team. The Land Price Appraisal Agency is a professional and independent institution with expertise and capability in the field of land valuation. While the Land Price Appraisal Team is a team formed with the Decision of Regent / Mayor or Governor for the Special Capital Region of Jakarta to assess the price of land, if in the district / city concerned or surrounding areas there is no Appraisal Agency of Land Prices. However, in the Perpres, the task and authority of the appraisal agency or the appraisal team for land prices has not been clearly regulated. Article 15 paragraph (2) only states that in order to establish the basis of compensation, the Land Price Appraisal Institute / Team is determined by the regent / mayor or governor for the Province of Jakarta Capital Special Region. Thus this institution is passive because the determination of the base of compensation is still returned to the government. The Perpres also does not mention clearly who has the authority to calculate the amount of compensation for the procurement of land for public purposes. (Shah Mudakar Iskandar, 2008, Fundamentals of Land Acquisition for Public Interest, Jakarta, First Net, 53.)

## **II. FORMULATION OF THE PROBLEM**

Based on the background that has been described above, then the issues that will be the authors discussed are as follows:

1. What is the role of the National Land Agency (BPN) as the executor of land acquisition for the public interest?
2. What factors affect the role of the National Land Agency (BPN) as the implementer of land acquisition for the public interest?

## **III. THEORETICAL FRAMEWORK**

### **1. The State's Right to the Land**

The right to control land by the state in Indonesia is regulated in Article 33 Paragraph (3) of the 1945 Constitution which is expressly stated: "The earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Article 2 of BAL which is the rule of implementation of Article 33 paragraph 3 of the 1945 Constitution explains the definition of the right to control natural resources by the State as follows:

On the basis of the provisions of Article 33 paragraph 3 of the 1945 Constitution and things as meant in Article 1, the earth's water and space including natural resources contained therein at the highest level controlled by the State, as an organization of power of all people.

The Right Of Control Of That State In Clause 1 Of This Article Authorizes:

- 1) Arrange and administer the designation, use, inventory and maintenance of the earth, water and space.
- 2) Determine and regulate the legal relationships between people and the earth, water, and space.
- 3) Determining and regulating legal relationships between persons and legal acts concerning earth, water, and space.

The authority derived from the right of control of that State in paragraph 2 of Article 33, is used to achieve the greatest prosperity of the people in the sense of national prosperity, freedom in society and an independent, sovereign just and prosperous Indonesian state. The right of control of that State in respect of its exercise may be authorized to the regions, private and customary law societies, as necessary and not contrary to the national interest, in accordance with the provisions of the applicable Regulations. According to Mohammad Hatta as quoted by Febrian: "Controlled by the state does not mean the state itself becomes ruler, businessman or" ondernemer ". It is more appropriate to say that the power of the state lies in the making of rules for the smoothness of economic roads, a rule which prohibits the "exploitation" of the weak by the capitalists.

### **2. Theory of Legal Effectiveness In Society**

According Soerjono Soekanto there are five things that influence in law enforcement that is the legal factor itself, law enforcement factors, facilities or facilities, community factors, cultural factors.

Meanwhile Lawrence M. Friedman with legal system theory mentioned three aspects of law enforcement: (1) Content of Law, (2) Structure of Law and (3) Culture of Law. In measuring the effectiveness of a rule, these three aspects need to be analyzed in a comprehensive manner.

This legal research includes the type of Normative-Empirical legal research, a legal research focusing its study on the "implementation or implementation" of normative legal provisions (in abstracto) on specific legal events (in concreto) and the results.

## **IV. DISCUSSION**

### **1. Land Procurement Under Law No. 2 of 2012**

Land procurement pursuant to Law Number 2 Year 2012 aims to provide land for the implementation of development in order to improve the welfare and prosperity of the nation, state and society while maintaining

the legal interests of the Eligible Person. The Authorized Party shall release the land upon the execution of Land Acquisition for the Public Interest after the Provision of Indemnification or on the basis of a court decision which has obtained permanent legal powers.

According to Maria Sumardjono, in the procurement of land, there are two parties' interests, namely government agencies that need land and communities whose land is needed for development activities. Since land as a basic human need is a manifestation of economic, social and cultural rights, the procurement of land must be done through a process that ensures the absence of a "coercion of will" from one party to another. In addition, given that the community must give up its land for a development activity, it must be ensured that its social economic welfare will not be worse than its original state, at least equivalent to the situation before the land is used by another party, therefore the procurement of the land must be done according to the following principles:

- a. a. Principle of Agreement, namely that all land acquisition activities are conducted based on agreement between the parties who need the land and holders of land rights.
- b. b. The principle of Utilization, land acquisition is expected to have a positive impact on those who need land, affected communities and the wider community.
- c. c. Principle of Justice, to affected communities is provided compensation that can restore its social economic condition, at least equivalent to its original state, taking into account losses to physical and nonphysical factors.
- d. d. Principle of Certainty, the procurement of land is done according to the order of the way regulated by the laws and regulations, so that the parties know their rights and obligations.
- e. e. The principle of Openness, in the process of land acquisition, affected communities are entitled to information about the project and its impacts, compensation policies, construction schedules, resettlement plans and replacement locations (if any), and the right of the community to file their objections.
- f. f. Principle of Participation / Participation, the participation of all stakeholders in every stage of land acquisition (planning, implementation, evaluation) is needed to generate ownership and minimize the community's rejection of the activity.
- g. g. Principle of Equality, this principle is intended to obtain the position of the party requiring the land and the affected parties parallel in the land acquisition process. Minimize the impact and sustainability of socio-economic welfare. The negative impacts of land acquisition are minimized as much as possible, along with efforts to improve the lives of affected people so that their social economic activities are not regressing. (Maria Sumardjono, 2001:89)

Normatively, land acquisition relates to activities for obtaining land by providing compensation to the discharged or surrendered land, buildings, plants, and objects related to the land. In relation to land procurement always involves two sides that must be placed in a balanced way, namely public interest / public interest and government interest.

Based on the definition of land acquisition, it is known that the release or delivery of land rights is done if the land to be acquired or required is land rights and there is willingness of the holder of the land right to submit it, but the legal status of the party requiring the land is not authorized as the subject of the right of the land to be acquired, for example (Sitorus, 2007: 7)

- a. Agencies that need land are government agencies while the land to be acquired is land of property rights or land use rights for buildings, whereas government agencies are only authorized as subjects of use rights or the rights of the *pengelolaan*.
- b. The institution in need is a private legal entity of a limited liability company whilst the land it acquires is land of property.

As an organization of power, the state must have a great authority to further facilitate its regulatory functions. In Indonesia, this is regulated in Article 33 paragraph 3 of the 1945 Constitution. The problem that may arise is the extent to which the authority can be used so as not to deviate from the circumstances that should be. According to Pluto, as quoted by Arif Budiman in the book *Theory of State of Power and Ideology*, the interests of the state always outweighs personal interests, so that whatever becomes private property including state property. The state must have power over its citizens that power is necessary to educate its citizens with moral values. Where every individual has a strong tendency to act on his own behalf but the state must prevent it.

## **2. General Interest**

One important understanding that needs to be addressed is the definition of public interest because with this understanding is the main reference in the implementation of the provisions of this law. Public Interest is the interests of the nation, state, and society that must be realized by the government and used as much as possible for the welfare of the people. Included in this category are (Article 10):

1. National defense and security;

2. Public roads, toll roads, tunnels, railways, railway stations and railway operations facilities;
3. Reservoirs, dams, weirs, irrigation, drainage, drainage and sanitation, and other irrigation structures;
4. Ports, airports and terminals;
5. Infrastructure of oil, gas and geothermal;
6. Power plant, transmission, substation, network and distribution of electricity;
7. Government telecommunications and informatics networks;
8. Landfills and waste management;
9. Government Hospital / Local Government;
10. public graveyard of the Government / Regional Government;
11. social facilities, public facilities and public green open spaces;
12. nature reserves and cultural heritage;
13. Government Offices / Local Government / Villages;
14. arrangement of urban slum settlements and / or land consolidation, and housing for low-income communities with rental status;
15. education infrastructure or government / local government schools;
16. sports infrastructure of the Government / Regional Government; and
17. general market and public parking.

In the history of land acquisition for development for public interest, the problem of Appraisal Institute or Land Appraisal Appraisal Team is newly known in Presidential Regulation Number 36 Year 2005 concerning Land Procurement for Implementation of Development for Public Interest (Perpres No. 36 Year 2005) which is then amended by Presidential Regulation No. 65 of 2006 on Amendment to Presidential Regulation Number 36 Year 2005 on Land Procurement for the Implementation of Development for Public Interest.

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Given the urgency of land appraisal agencies in Land Procurement for Development for Public Interest, the legislators through Law no. 2 of 2012 on Land Procurement for Development for the Public Interest, providing special arrangements concerning land appraisal agencies.

Land Procurement for Public Interest is carried out on the basis of:

1. humanity;
2. justice;
3. expediency;
4. certainty;
5. openness;
6. agreement;
7. participation;
8. welfare;
9. sustainability; and
10. alignment.

There are several matters which need to be considered in the land acquisition procurement that the rightful party is obliged to relinquish his land at the time of Land Acquisition for Public Interest after the provision of Compensation or based on a court decision that has obtained permanent legal force. And in the implementation must be in accordance with:

1. Regional Spatial Plan;
  2. National / Regional Development Plan;
  3. Strategic Plan; and
  4. Work Plan of each agency that needs land, and by involving all the stakeholders and stakeholders.
- Implementation of Land Procurement for Public Interest takes into account the balance between development interests and the interests of the community. Land Procurement for Public Interest is carried out by providing fair and equitable Loss Prevention. It is inevitable that the disposal of Rights which constitutes the activity of termination of the legal entity to the state through the Land Agency requires compensation which in this law is defined as a just and fair reimbursement to the party entitled in the land procurement process.

## V. CONCLUSION

1. Land procurement pursuant to Article 1 point 2, is the activity of providing land by providing fair and fair compensation to the party entitled. The word "worth" and "fair" in the definition reflects a new paradigm that guarantees and respects the rightful. The word "eligible" also addresses various issues concerning buildings, plants and other objects related to the land but not necessarily the right of the landowner, may belong to its tenants, its users, its processors, its managers and so on.
2. The Constitution provides assurance of protection to the holder of the land right on its land as confirmed in Article 28 H paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution) that every person has the right to own the right of private property and property shall not be arbitrarily taken over by any person. The provision is reinforced by Article 28 J Paragraph (2) of the 1945 Constitution that in exercising the right and freedom of each person shall be subject to restrictions stipulated by law with the sole intention to guarantee the recognition and respect for the rights and freedoms of others and for fulfill fair demands in accordance with moral judgment, religious values, security, and legal order in a democratic society

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