

# Validity Of Assessment Policy On Land Acquisition For Development In The Public Interest

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## **Abstract.**

*The acquisition of land for development for the public interest is a manifestation of the social function of land rights which is seen as the first step in the implementation of development to improve community welfare. Problems in the process of acquiring land for development for public interest often occur due to inappropriate forms and amounts of compensation applied. This study aims to analyze the validity of assessment policies on land acquisition for development in the public interest. This research is normative, and prescriptive, with a legislative and conceptual approach. The results of the study found that land acquisition for the implementation of development the or public interest is carried out by releasing or surrendering land rights, while still providing protection and implementing the principle of respect for parties affected by land acquisition. The determination of the amount of compensation is carried out by the Public Appraiser as a professional Independent Appraiser who has received a license from the Minister. The assessment is carried out by the Assessor based on the Indonesian Assessment Standard 204. The indicator that forms the basis for the validity of the assessment policy on land acquisition for development in the public interest is appropriate compensation to replace with appropriate land in terms of value, benefits, and ability of replacement land, providing plus value, and the community gets the opportunity to live a better life.*

**Keywords:** Land acquisition; Public Interest and Policy Validity.

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## **I. INTRODUCTION**

In the framework of national development organized by the Government, namely development for the public interest. The development requires land whose procurement is carried out by the principles contained in the 1945 Constitution and national land law which is also regulated in Government Regulations Substitute for Law (Perpu) Number 2 of 2022 concerning Job Creation. Development aimed at the public interest prioritizes land whose procurement is actualized by prioritizing the principles, namely: humanitarian principles, justice, expediency, certainty, openness, agreement, participation, welfare, sustainability, and harmony. The implementation of national development continues to be pursued in line with the increasing population accompanied by increasing good prosperity. The acquisition of land for development for the public interest is a manifestation of the social function of land rights which is seen as the first step in the implementation of development to improve community welfare.<sup>1</sup> Based on Article 18 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles states: “in the public interest, including the interests of the nation and state as well as the common interests of the people, land rights can be revoked by providing appropriate compensation and demanding the means regulated by law.” Article 33 paragraph (3) of 1945 authorizes the state, among others, to regulate and administer the allocation, use, supply, and maintenance of earth, water, and space. Furthermore, Article 1 number 10 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, stipulates that compensation is an appropriate replacement and fair to the entitled parties in the land acquisition process. In connection with this authority, to provide land for various community and state purposes, the government may revoke land rights by providing appropriate compensation in the manner provided by law, if efforts through deliberative means fail to bring results.

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In land acquisition activities, there are interests of two parties, namely government agencies that need land and communities whose land is needed for development activities. Because land is a basic human need, the land acquisition must be carried out through a process that ensures there is no “coercion of will” of one party on another. Furthermore, the interests of the community and the interests of the government related to land acquisition for infrastructure development are two opposites. On the one hand, the government must carry out development to improve people's welfare. Meanwhile, the community as a provider of land for development also needs land as a source of livelihood. On that basis, people who give up their land for development activities must be guaranteed that their socio-economic welfare will not be worse than the original state, at least equivalent to the situation before the land was used by others.<sup>2</sup> In principle, land acquisition for the public interest is compulsory land acquisition, where the government can free land from the landowner even though the owner does not want to sell/release the land. However, based on the principle of justice, although the land acquisition is coercive, the compensation given to the landowner must not result in a decrease in the standard of living before the land acquisition is carried out. The implementation of land acquisition for public interest has several obstacles, namely the existence of certain parties who object to land acquisition for public interest can be an obstacle to the success of land acquisition for the public interest, in land acquisition for public interest landowners or land rights holders must get what is rightfully theirs, namely fair compensation when releasing their land rights. Land rights by individuals are things that need equal attention from the government.

Maria Somardjono said compensation can be called fair if the situation after the acquisition is at least socio-economic conditions. On par with the previous situation, besides that, there is a guarantee of the survival of those who are displaced. In other words, the principle of justice must be concrete in the provision of compensation, meaning that it can restore the socio-economic conditions of the land and the people who were previously land. It can be said that there are frequent cases of land acquisition for development purposes, so the form and amount of compensation become the main problem. It often happens that its citizens whose land is affected by the development plan reality refuse to form an amount of compensation and even refuse to enter into any negotiations.<sup>3</sup> Referring to the general provisions of the Regulation of the Minister of Finance of the Republic of Indonesia Number 101 / PMK.01 / 2014 as amended by the Regulation of the Minister of Finance of the Republic of Indonesia Number 56 / PMK.01 / 2017, it is known as the Indonesian Assessment Standard. The Indonesian Assessment Standard is a basic guideline that must be adhered to by the Appraiser in conducting an assessment. In the context of land acquisition, the Assessor refers to Indonesian Assessment Standard 204 (formerly Indonesian Assessment Standard 306) as a guideline for the Assessment of Land Acquisition for Development in the Public Interest. Theoretically, land law is built on the values that live in society, and the deprivation of land rights by the State for public interest must be carried out with the provision of appropriate compensation and should be obtained through deliberation, then the taking of land rights for the public interest should be accepted and obeyed by the community, so disputes will be relatively rare.<sup>4</sup> It appears that land acquisition for public use often experiences problems in the procurement process.

The problem is, on the one hand, the need for land in the context of development has become more urgent, while on the other hand, the supply of land is limited. In addition to being used for the construction of public facilities such as transportation access/roads, offices, housing, and others, the land is still needed to meet the needs of the community. In land acquisition, the welfare of landowners must remain the same or more than their situation before the implementation of land acquisition. The land acquisition must not impoverish landowners.<sup>5</sup> Problems in the process of acquiring land for development for public interest often occur due to inappropriate forms and amounts of compensation applied. Communities whose land is affected

by development plans often reject the form and amount of compensation and even reject any negotiations on various grounds. The government felt its actions were legitimate and just, while the landowners declared injustices had been done to them.<sup>6</sup> The clarity of the procedure for waiver and compensation in Indonesia in practice is not as easy as written in the law. Judging from the emergence of many problems and even becoming a prolonged dispute.<sup>7</sup> The tendency possessed by Law Number 11 of 2020 concerning Job Creation prioritizes economic development, so that investors or capital owners are recognized as having a vital role in the implementation of the law through the Law aforementioned. With an emphasis on the economic approach, it will foster a tendency to ignore or ignore the needs and aspirations of other social groups even though the state is tasked with meeting economic growth targets that adhere to the values of justice, expediency, and certainty.

According to Mahfud MD, legal politics has 3 (three) reflections, First, there are ideals from policies and regulations made; second, in every process of discussion and ratification of laws and regulations is always followed by political interaction; Third, applications or interpretations are required and can be monitored depending on the policy created.<sup>8</sup> Similar research that has been done before includes; First, research conducted by Cahyani (2021) found and weighed changes to articles related to the land acquisition that will be used by legal regulations governing labor copyright to ease the land acquisition process, especially on rights that intersect with national strategic projects used.<sup>9</sup> Second, research conducted by Gallantry et al (2021) found that the practice of the principle of justice has also been carried out in Islamic rules in the time of the prophet in connection with the provision of land for extensive purposes and public interests. Implementation of studies on the implementation of the principle of justice in land acquisition for development for public interest in Indonesia based on the practice of justice in land acquisition based on Islamic rules at the time of the prophet.<sup>10</sup> And third, research conducted by Lainsamputty et al (2020) found that a new formulation is needed that can be a solution to land disputes due to overlapping regulations quickly, perfectly, and efficiently, and can organize and harmonize in many types of land regulations in each structural both central and regional offered in the omnibus law concept. Along with the preparation of regulations in the land department that are efficient and effective, therefore the development of the investment climate in Indonesia will be supported.<sup>11</sup> When compared with previous studies, there are differences from the studies studied in this study, namely focusing on the validity of land acquisition policies for the public interest.

## II. METHODS

This research is normative and prescriptive; that is by reviewing legal materials that contain normative legal rules.<sup>12</sup> The research approach used in this writing uses a statutory and conceptual approach. The approach in research is carried out by first reviewing various relevant laws and regulations along with documents that can help to overcome what is the problem and what is discussed in this study and understand the extent to which the law in Indonesia regulates the problem.<sup>13</sup> The technique of collecting legal materials uses literature studies. The sources of data in this paper are primary, secondary, and tertiary legal materials. These legal materials are legal materials consisting of related laws, regulations, views, and doctrines that develop. The legal materials in this study were analyzed using syllogism analysis techniques, deduction, and interpretation.

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### III. RESULTS AND DISCUSSION

Economic growth that needs to be sustained by the development of infrastructure and public facilities often involves acquiring land owned by communities or even relocating residents. To ensure that infrastructure or public facilities are built at a reasonable cost in appropriate locations, the Government implements regulations for the acquisition of land for development in the public interest by providing compensation. Land acquisition for the implementation of development in the public interest is carried out by releasing or surrendering land rights, while still providing protection and implementing the principle of respect for parties affected by land acquisition. In Indonesia, the Government has issued regulations in the form of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest and other laws and regulations. The determination of the amount of compensation is based on the principles of humanity, justice, expediency, certainty, openness, agreement, participation, welfare, sustainability, and harmony. The determination of the amount of compensation is carried out by the Public Appraiser as a professional Independent Appraiser who has received a license from the Minister. Public appraisers have been regulated by 3 (three) regulations that are still valid today, namely Minister of Finance Regulation (PMK) Number 101/PMK.01/2014 concerning Public Appraisers, PMK Number 56/PMK.01/2017 concerning Amendments to PMK Number 101/PMK.01/2014 concerning Public Appraisers, and PMK Number 228/PMK.01/2019 concerning Second Amendments to PMK Number 101/PMK.01/2014 concerning Public Appraisers. According to PMK Number 101 / PMK.01 / 2014 concerning Public Appraisal, the definition of an appraisal is a work process to provide a written opinion on the economic value of an appraisal object by Indonesian Valuation Standards (SPI).

Meanwhile, according to PMK Number 173 / PMK.06 / 2020 concerning Assessment by Government Appraisers within the Directorate General of State Assets, the appraisal is an activation process to provide an opinion on the value of an object of assessment at a certain time. In addition, according to PMK Number 101 / PMK.01 / 2014 concerning Public Appraisal, the definition of an appraiser is someone who has competence in carrying out Assessment activities and has at least passed the initial education of Assessment. Meanwhile, according to PMK Number 173 / PMK.06 / 2020 concerning Assessment by Government Appraisers within the Directorate General of State Assets, an appraiser is a party who conducts an independent assessment based on their competence. The conclusions of the appraisal and appraiser definitions of each regulation have shown the differences and similarities between public appraisers and government appraisers. The difference can be seen from the guidelines it uses, namely, public appraisers using SPI or usually called SPI KEPI. Meanwhile, government assessors are guided by the Regulation of the Minister of Finance or the applicable Decree of the Directorate General. The similarity between the two is to provide valuable opinions and is done by someone or parties who are competent in their fields. The appraiser in this case needs to obtain appraisal standards in the context of land acquisition for the implementation of development in the public interest, which among others guide the general concepts and principles of valuation, the Basis of Value used and the appropriate assessment approach applied to each type of assessment object. Land acquisition in the implementation of small-scale public interest development by laws and regulations can be carried out directly through buying and selling, exchanging, or in other ways agreed by both parties.

From this and based on the Minister of Finance Regulation as explained earlier, Indonesian Assessment Standard 204 (SPI 204) was formed which is currently a guideline for Appraisers in procurement assessment land for development in the public interest. The absence of a basis for calculating legal compensation a quo is still understandable because the assessor is bound by a code of ethics that requires compliance with the Indonesian Assessment Standard. The anticipatory attitude of the Indonesian Professional Appraisal Society (MAPPI) which makes comprehensive assessment guidelines deserves to be appreciated even though it still has shortcomings, especially regarding NPW. NPW is the value of the calculation of physical and non-physical losses. Of course, this is contradictory to the previous statement that asserts NPW is a basic value, not a result. More based on physical loss value. The basis for calculating physical losses in the illustration is referred to its market value, not Tax Object Selling Value (NJOP). Even the overall nomenclature of NJOP cannot be found at all through the Indonesian Assessment Standard 204,

which is contained in the Indonesian Assessment Standard 204 is an approach that can be used by the Assessor in terms of determining the amount of compensation. So it becomes ironic when in practice there are still appraisers who calculate the loss of assets of entitled parties based on NJOP, especially below. The objects of assessment in determining losses by Indonesian Assessment Standard 204 are as follows: 1. Physical losses, including a. Land; b. Aboveground and underground chambers; c. Buildings; d. Plants; and e. Objects related to land, such as utilities and building complements. 2. Non-physical losses, including; a. Loss of job or business; b. Emotional loss (solatium); c. Transaction costs which include, among others, moving and emptying fees, taxes or BPHTB, and PPAT fees by the provisions of applicable laws and regulations; d. Waiting period compensation (interest); e. Loss of residual soil; and f. Other physical damage, some buildings are cut off due to but can still be functioned according to their designation.

Assessment in the context of land acquisition for small-scale public interest or other interests whose implementation is carried out directly and does not follow the stages as determined by Law Number 2 of 2012, the Appraiser can use other Value Bases such as Market Value or Special Value, as long as it is appropriate and based on relevant reasons. The selection of the Value Basis must be based on the identification of the land acquisition process carried out by the Tasker so that the assessment results can meet the needs of the Assignor. From this, it can be seen that the assessment carried out by the Assessor only prioritizes the needs of the Task Provider which may override the needs of the affected community acquisition of such land. Based on Article 18 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, namely taking land rights must provide adequate and equitable compensation by the Law, which is the basis for the validity of the Indonesian Assessment Standard regulation in land acquisition. The determination of value in land acquisition depends on the appraisal agency that works based on SPI 204, so it seems that there is no deliberation in the land acquisition process because it is only based on SPI. From this, the assessment carried out by the Appraiser based on the Indonesian Assessment Standard is still a debate that can be seen in the consignment of land acquisition. To fulfill the needs of the community affected by land acquisition, in determining the value of land, the appraiser must assess the highest and best use (HBU) potential with the assumption that the land is vacant or has been developed (as improved). The appraiser's job is to apply his or her expertise to reflect relevant market considerations at all times through analysis of comparable market evidence. This is a fundamental factor in determining the indication of the Market Value of land for compensation.

#### IV. CONCLUSION

The validity of the assessment policy on land acquisition for development for public interest above can be seen based on Article 18 of Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles, there are indicators of adequate compensation that are the basis for this validity, namely there must be appropriate compensation to replace with appropriate land in terms of value, benefits, and the ability of replacement land, i.e. land uprooted for public use, and based on statutory provisions. Furthermore, looking at the indicators of decent and fair compensation in Law Number 2 the Year 2012 can be interpreted in two aspects, namely: (a) getting the opportunity to live a better life, and (b) providing added value.

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