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Dispute Resolution Related to the Determination of Compensation Price in Land Acquisition for Public Interest of Wonokromo - Jombang Double Track Railway

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ABSTRACT

Land acquisition for development in the public interest is an act of acquiring land by providing compensation to the party releasing the land. This provision is regulated in Law No. 2/2012 on Land Acquisition for Development in the Public Interest. However, in practice, land acquisition activities often trigger conflicts regarding the provision of compensation. These conflicts often arise from disagreements that arise in providing the value of compensation provided by the appraisal team, as well as because the party releasing the land considers that the nominal compensation given is different from the value of the land. This research aims to examine the conflicts in land acquisition to identify the legal provisions used when granting compensation and the settlement of disputes over compensation in land acquisition to answer the problems that arise in every practice of land acquisition for the public interest. The method used in this research is juridical empirical based on field facts. The research findings revealed that the provision of compensation is not given based on the selling value of the tax object (NJOP), which is even below the market price. Therefore, it is necessary to review the legal rules in providing compensation for land acquisition, considering the importance of the existence of land for the public interest in ensuring the sustainability of human life.

Keywords: *Compensation, Land Acquisition, Public Interest*

INTRODUCTION

The development of transportation in Indonesia is experiencing significant growth in line with population growth. The impact of this situation is an increase in the use of transportation, especially in the context of land transportation that adapts to these developments. This development results in congestion that is increasingly challenging to unravel, leading to a decline in the quality of the urban environment, which will also lead to a decline in the community's quality of life.

For this reason, the government is currently trying to come up with alternative solutions to overcome the congestion that has occurred. One of the measures taken is through land acquisition for public interest. However, problems arise due to the limited availability of land for the development planned by the current government. Therefore, this issue is a significant concern for the government. Land is an essential factor in any development that determines the success of infrastructure expansion for the public interest that requires extensive locations. The existence of an expansion means that there is an effort to solve and overcome the problems that will be faced seriously, considering the extremely sensitive issue of land.¹

The current land acquisition plan in realizing development for the public interest is to complete the construction of the Wonokromo-Jombang Indonesian Railway (KAI) double-track system. Land acquisition planning for the construction of the Wonokromo-Jombang Indonesian Railway double track is carried out to realize the sustainable development of Surabaya City in order to realize the integration of development between sectors and between actors, both various work units within the local government with the community and the business world. Land acquisition for the public interest is inseparable from the problems that occur in society because many negative paradigms arise in society regarding the connotation of land acquisition, which means land eviction by the government by force and arbitrariness without regard to justice so that it triggers conflicts between the community and the government. Article 28 H of the 1945 Constitution states that every person also has the right to have private property rights, and such property rights may not be taken over arbitrarily by anyone.²

Land acquisition for the public interest can be carried out by deliberation to reach an agreement between the parties to relinquish rights or surrender their land rights to the government and receive compensation not only in the form of money but also in the form of land or other facilities.³ In fact, the procedure for

¹ Sahrina Safiuddin, Heryanti, Nur Intan, and Ramadan Tabiu, "Human Rights Protection in Land Acquisition for Public Interest," *Scholars International Journal of Law, Crime and Justice* 6, no. 1 (January 7, 2023): 10–17, <https://doi.org/10.36348/sijlcj.2023.v06i01.002>.

² Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI), "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (Jakarta, 1945), <https://www.dpr.go.id/jdih/uu1945>.

³ Shafira Lintang Rosyadah, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "The Concept of Deliberation in Land Procurement Arrangements for Public Interest," *International*

implementing land acquisition for the public interest is relatively easy. However, the problem that often arises among the public is the cultural belief that land rights are absolute rights. As a result, determining the amount of compensation when releasing land rights is considered entirely the landowner's right. If this culture is not addressed, serious problems will continue to arise. Currently, the challenge faced by the government and the community is related to the pricing of compensation provided by the government. The amount of compensation is considered small by landowners because they generally expect a high price in accordance with market prices or at least above market prices, considering the price several years in the future after the land is released and used for public use. This difference of opinion in determining the amount of compensation has always been a serious concern if not immediately resolved.

Law No. 2/2012 and Presidential Regulation No. 72/2012 on the Implementation of Land Acquisition for Public Interest regulate land acquisition for public interest. One of the land acquisitions currently taking place in Indonesia, especially in the East Java region, is the construction of the Wonokromo-Jombang double track. This project has been outlined in the Decree of the Governor of East Java No. 188/68/KPTS/013/2021 Regarding the Second Amendment to the Decree of the Governor of East Java No. 188/105/kpts/013/2019 Regarding the Determination of the Location of Land Acquisition for the Benefit of the Construction of the Wonokromo -Jombang Double Track Railway in East Java Province after the Letter of the Head of the East Java Region Railway Engineering Center dated January 21, 2021, No. KA.101/1/19/BTP-JT/2021. In the practice of land acquisition, the compensation aspect is sensitive as it involves the livelihood of many people, which often causes problems regarding compensation costs that arise due to the absence of an agreement between the government and the community.

Law No. 2/2012 and its implementing regulations basically favor rights holders. However, there are severe obstacles in practice due to the imbalance between the amount of compensation demanded by landowners and the state's ability to provide compensation. Therefore, this research aims to identify the legal provisions relevant to the land acquisition process for the government's public interest of development and efforts to resolve disputes related to the determination of compensation prices.

LITERATURE REVIEW

Land Acquisition

Land acquisition provides land for development in the public interest by breaking the relationship between land rights holders and their land rights by

Journal of Business, Economics and Law 28, no. 3 (2023): 53–56, https://ijbel.com/wp-content/uploads/2023/03/IJBEL28.ISU-3_225.pdf.

providing adequate compensation.⁴ According to Harsono, land acquisition is a legal action in the form of releasing the legal relationship that initially existed between the right holder and the land needed by giving compensation in the form of money, facilities, or others through deliberation to reach an agreement between the owner of the land and the party that needs it.⁵ Meanwhile, Sarjita defines land acquisition as any act of acquiring land by providing compensation to those entitled to the land.⁶ Furthermore, Sumardjono explained that land acquisition for construction activities in the government's public interest is implemented by releasing or surrendering land rights.⁷ Apart from that, land acquisition is implemented by buying and selling, exchanging, or other agreed methods.

Compensation

In civil law, the definition of compensation is to provide relative access to a party by agreement as a result of an adverse action. Article 1 Paragraph 10 of Law No. 2/2012 explains that compensation is a fair and just compensation to the rightful party in the process of land acquisition.⁸ Harahap states that compensation is the actual loss or *fietelijke nadeel* caused by the act of default (*wanprestasi*).⁹ Some aspects are used in the imposition of compensation resulting from the exercise of the rights of one party to fulfill the interests of another party:

a. Comparability aspect

The compensation and the rights to be taken must be balanced in favor of both parties by including alternatives to compensation.

b. Feasible aspect

Compensation that is replaced with another thing that has nothing in common must be replaced with something worthy of the things that have been replaced.

c. Careful calculation aspect

⁴ Menteri Hukum dan Hak Asasi Manusia Republik Indonesia, "Undang-Undang (UU) Nomor 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum" (Jakarta, 2012), <https://peraturan.bpk.go.id/Details/39012>.

⁵ Agung Basuki Prasetyo, "Prinsip Pengadaan Tanah Bagi Kepentingan Umum," *Administrative Law & Governance Journal* 1, no. 3 (2018): 259–67, <https://ejournal2.undip.ac.id/index.php/alj/article/download/3806/2125>.

⁶ Geby Fauzia Anindita, Supriyanto, and Kartono, "Ganti Rugi Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum (Tinjauan Yuridis Terhadap Putusan Mahkamah Agung Nomor: 474/K/Pdt/2019)," *Soedirmsn Law Review* 2, no. 4 (2020): 676–85, <http://journal.fh.unsoed.ac.id/index.php/SLR/article/download/112/90>.

⁷ Mohammad Mulyadi, "Implementasi Kebijakan Pengadaan Tanah Untuk Kepentingan Umum Di Jakarta Utara," *Aspirasi* 2, no. 2017 (8AD): 145–59, <https://jurnal.dpr.go.id/index.php/aspirasi/article/download/1262/690>.

⁸ Indonesia, "Undang-Undang (UU) Nomor 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum."

⁹ Ardina Khoirun Nisa and Rita Defriza, "Perlindungan Konsumen Terhadap Pelaku Usaha Jasa Pangkas Rambut Yang Wanprestasi," *El-Ahli: Jurnal Hukum Keluarga Islam* 4, no. 1 (2023): 1–11, [https://dspace.uui.ac.id/bitstream/handle/123456789/26873/16410356 Bernad Adjie Sudarmono.pdf?sequence=1&isAllowed=y](https://dspace.uui.ac.id/bitstream/handle/123456789/26873/16410356%20Bernad%20Adjie%20Sudarmono.pdf?sequence=1&isAllowed=y).

Calculations must be careful, including time, value, and degree.¹⁰

Public Interest

According to Sumardjono, referring to Presidential Decree No. 55/1993, the public interest is the interest of all levels of society regarding the construction activities carried out and subsequently owned by the government and not used for profit.¹¹

Dispute

The definition of dispute in the Great Dictionary of the Indonesian Language is everything that causes differences of opinion, disputes, and arguments.¹² According to Margono, disputes usually arise when a party feels aggrieved by another party, which is preceded by a subjective and closed feeling of dissatisfaction.¹³ A dispute is a situation that causes differences in interests or contradictions between one party and another caused by various factors. Usaman describes the occurrence of land disputes as a result of the impact of industrial activities closely related to the form of social relations among stakeholders, such as the community, government, industrial entrepreneurs, and other agencies whose activities are directly related to the three.¹⁴ According to Harsono, a land dispute is caused by a legal act or event concerning a land parcel.¹⁵

RESEARCH METHODOLOGY

This research is a type of empirical research. Empirical research is a legal research method that aims to examine the law in a literal context and examine how the law works in a community environment or is known as field research.¹⁶ This research is considered empirical legal research because the primary data in this research is data obtained by researchers from the community. As empirical

¹⁰ C. P. Paparang, "Hak Warga Atas Tanah Pengganti," *Jurnal Universitas Sam Ratulangi*, 2015, <https://ejournal.unsrat.ac.id/index.php/administratum/article/viewFile/7058/6571>.

¹¹ Presiden Republik Indonesia, "Keputusan Presiden (KEPPRES) Nomor 55 Tahun 1993 Tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum" (Jakarta, 1993), <https://peraturan.bpk.go.id/Details/62386/keppres-no-55-tahun-1993>.

¹² Kamus Besar Bahasa Indonesia (KBBI), "Arti Kata Sengketa - Kamus Besar Bahasa Indonesia (KBBI) Online," Kamus Besar Bahasa Indonesia (KBBI), 2023, <https://kbbi.web.id/sengketa>.

¹³ Ahmad Zaini, "Mediasi Sebagai Salah Satu Bentuk Alternatif Penyelesaian Sengketa," *Al-Qisthâs: Jurnal Hukum Dan Politik* 9, no. 2 (2018): 53–86, <https://jurnal.uinbanten.ac.id/index.php/alqisthas/article/download/1573/1326/3708>.

¹⁴ Robin Wawan Wijaya, "Penyelesaian Sengketa Tanah Waris Terhadap Kepemilikan Hak Atas Tanah (Studi Di Kecamatan Lowokwaru Kota Malang)," *DINAMIKA* 28, no. 10 (2022): 4543–55, <http://jim.unisma.ac.id/index.php/jdh/article/download/14530/11346>.

¹⁵ Wella Ayu Hilari, "Penyelesaian Sengketa Tanah Dengan Cara Mediasi Pada Kantor Pertanahan Kabupaten Lampung Tengah" (Universitas Lampung, 2019), <http://digilib.unila.ac.id/57409/3/SKRIPSI TANPA BAB PEMBAHASAN.pdf>.

¹⁶ Ina Rosmaya and Mochammad Rafly Tjahjadi, "The Investigation of Criminal Negligence Against Victims of Kanjuruhan Tragedy," *IUS POSITUM: Journal of Law Theory and Enforcement* 2, no. 4 (2023): 1–13, <https://doi.org/https://doi.org/10.56943/jlte.v2i4.395>.

research, this research is conducted on the actual situation that occurs in society, intending to identify and discover the facts and information needed after collecting the necessary information leads to problem identification, which ultimately leads to the resolution of the problem.¹⁷

RESULT AND DISCUSSION

Land Acquisition for Public Interest in Laws and Regulations

Land in construction is inseparable because it is interrelated and the most critical factor in construction.¹⁸ However, the availability of land is currently an urgent issue that requires special attention because it may lead to serious societal problems. There are always two interests involved in land acquisition, which are land expropriation and revocation of land rights, that must be positioned in a balanced manner.¹⁹ The two interests are the interests of the government and those of citizens or people who own land or hold land rights. The legal foundations of land acquisition in Indonesia consist of:

1. The 1945 Constitution of the Republic of Indonesia, in Article 33, Paragraph 3, states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.²⁰
2. Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA). The basic agrarian principles in Article 12 Paragraph 2 provide further understanding of the meaning of the right to control by the state.²¹
3. Government Regulation No. 39/1973 is an implementing regulation of Article 8 of Law No. 20/1961 concerning Procedures for Determination of Compensation by the High Court in connection with the revocation of land rights and objects thereon.
4. Presidential Instruction No. 9/1973, which regulates the Guidelines for the Implementation of Revocation of Land Rights and Objects on it, is an implementing regulation of Law No. 20/1961, which states 2 points: the revocation of rights to land and objects on it is merely implemented for the actual public interest, everything must be carried out under the

¹⁷ Kusno and Djoko Sumaryanto, "Electoral Offenses as White-Collar Crime: A Case Study," *IUS POSITUM: Journal of Law Theory and Enforcement* 2, no. 3 (2023): 13–24, <https://doi.org/https://doi.org/10.56943/jlte.v2i3.345>.

¹⁸ Nina Fahriana et al., "Analisis Klasifikasi Tanah Dengan Metode UCS (Meurandeh Kota Langsa)," *Jurnal Ilmiah JURUTERA* 6, no. 2 (2019): 5–13, <https://ejournalunsam.id/index.php/jurutera/article/download/1622/1284/>.

¹⁹ Husen Alting, "Konflik Penguasaan Tanah Di Maluku Utara: Rakyat versus Penguasa Dan Pengusaha," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 266–82, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/download/209/157>.

²⁰ (BPUPKI), "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."

²¹ Sekretaris Negara, "Undang-Undang (UU) Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria" (Jakarta, 1960), <https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960>.

applicable statutory provisions. Article 1 Paragraph 1 of Presidential Instruction No. 9/1973 mentions four categories of activities in the context of development that serve the public interest concerning:

- a. Nation and State Interests,
 - b. Community Interests,
 - c. Public Interests,
 - d. Development Interests.²²
5. Regulation of the Minister of Home Affairs No. 15/1975 concerning Provisions on the Procedure for Land Acquisition
Land acquisition is one of the ways to obtain a land right. Other ways to obtain land rights can be conducted through the transfer of rights and revocation of rights.
 6. Presidential Decree No. 55/1993 concerning Land Acquisition for The Implementation of Development in The Public Interest
This presidential decree intends to accommodate the aspirations of the community due to the negative impact of the 1975 Ministry of Home Affairs (Permendagri).
 7. Land Acquisition According to Presidential Regulation No. 36/2005
The regulation on land acquisition for development in the public interest, as stipulated in Presidential Decree (Keppres) No. 5/1993, has been effective for 12 years. This indicates that the Presidential Decree (Keppres) works well and can be considered better than the previous regulations (Permendagri No. 15 of 1975 and Permendagri No. 2 of 1967).
 8. Land Acquisition According to Presidential Regulation No. 65/2006 on Land Acquisition for the Implementation of Development for the Public Interest
In every renewal of laws and regulations, many pros and cons occur in society. This situation indicates that the Indonesian people have been able to think critically in this open democratic country. This is because people still think several articles in Presidential Decree No. 36/2005 have weaknesses. Therefore, on June 5, 2006, the government issued Government Regulation No. 65/2006 concerning Amendments to Presidential Decree No. 36/2005 concerning Land Acquisition for the Implementation of Development for the Public Interest.
 9. Law No. 2/2012 on Land Acquisition for Development in the Public Interest
On January 14, 2012, the government passed Law No. 2/2012 regulating Land Acquisition for Development in the Public Interest. With this

²² Presiden Republik Indonesia, "Keputusan Presiden (KEPPRES) Nomor 9 Tahun 1973 Tentang Kabinet Pembangunan Dua" (Jakarta, 1973), <https://peraturan.bpk.go.id/Details/78346/keppres-no-9-tahun-1973>.

enactment, the regulation of land acquisition for development in the public interest has a solid legal foundation because a law regulates it. In the preamble to the consideration of Law No. 2/2012, there are three reasons for the government to enact this law:

1. In order to realize a just, prosperous, and welfare society based on Pancasila and the 1945 Constitution, the government needs to implement development.
2. To ensure the implementation of development in the public interest, the land is needed, the acquisition of which is carried out by prioritizing humanitarian, democratic, and fair principles.
3. Legislation in land acquisition in the public interest can guarantee land acquisition for development implementation.²³

Principles of Land Acquisition

1. Principles of Land Acquisition According to Law No. 2/2012

- a. The principle of humanity;
- b. The principle of justice;
- c. The principle of expediency;
- d. The principle of certainty;
- e. The principle of openness;
- f. The principle of agreement;
- g. The principle of participation;
- h. The principle of welfare;
- i. The principle of sustainability;
- j. The principle of harmony.²⁴

2. Principles of Land Acquisition According to Experts

Mertokusumo stated that legal principles are not concrete legal regulations but rather general basic thoughts. Legal principles are the background of concrete regulations in every legal system embodied in laws and judicial decisions, which are positive laws that can be found by looking for general characteristics in the concrete regulations.²⁵ Meanwhile, Besar claims that legal principles are the normative foundation for the formation of law.²⁶ Without principles, positive law has no meaning and loses its normative characteristics, becoming positive rules and principles that require juridical form. In addition,

²³ Indonesia, “Undang-Undang (UU) Nomor 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.”

²⁴ Indonesia.

²⁵ Edward Omar Sharif Hiariej, “Asas Lex Specialis Systematis Dan Hukum Pidana Pajak,” *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 1–11, <https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.001-012>.

²⁶ Mukti, “Politik Hukum Pembentukan Peraturan Daerah Tentang Anggaran Pendapatan Dan Belanja Daerah,” *Al-Ishlah: Jurnal Ilmiah Hukum* 21, no. 2 (2018): 75–84, <https://jurnal.fh.umi.ac.id/index.php/ishlah/article/view/18>.

Hasan divides legal principles into legal principles of land objects and legal principles of non-land objects:

- a. Legal principles of non-land objects:
 - 1) The principle of differential treatment
 - 2) The principle of property contains a closed principle
 - 3) The principle of coercion
 - 4) The principle of publicity
 - 5) The principle of individual
 - 6) The principle of totality
 - 7) The principle of accessi
 - 8) The principle of transferability, ownership of objects
- b. Legal principles of land objects:
 - 1) The principle of unification
 - 2) The principle of customary law
 - 3) The principle of horizontal separation
 - 4) The principle of land having a social function
 - 5) The principle of publicity
 - 6) The principle of specialty.²⁷

Land Rights Under the Basic Agrarian Law

Land rights are regulated in Article 16 of the Basic Agrarian Law, Article 16 Paragraph 1, the land rights as referred to in Article 4 Paragraph 1:

- a. Right of Ownership
Right of ownership is the hereditary, strongest, and fullest right that people may have over land, considering the provisions in Article 6.
- b. Right to Cultivate
Right to cultivate is the right to cultivate land directly controlled by the state, within the period referred to in Article 29, for agricultural, fishing or livestock enterprises.
- c. Right to Build
Right to build is the right to construct and own buildings on land that is not one's own, with a maximum period of 30 years.
- d. Right to Use
Right to use is the right to use or collect products from land directly controlled by the state or land owned by others, which authorizes and obliges specified in the decision to grant it by the official authorized to grant it or in an agreement with the owner of the land, which is not a lease agreement or a land processing agreement, as long as it does not conflict with the provisions of this law.

²⁷ Indah Sari, "Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2017): 15–33, <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/492>.

- e. Lease
A person or a legal entity has a lease on land if they are entitled to use the land-owned by another person for building purposes, by paying rent to the owner of the land.
- f. Other rights not included in the aforementioned rights which will be determined by law, as well as temporary rights as mentioned in Article 53.²⁸

There are two recognized principles regarding the land rights in the law of land:

1. The principle of vertical unification (*verticale accessie beginsel*): a principle stating that the building and the plants on it are an integral part of the land. This is due to the fact that the law also covers the ownership of buildings and plants on the land, with the exception of any other agreement with the party who built or planted them.²⁹
2. The principle of horizontal separation (*horizontale scheiding beginsel*): a principle stating that buildings and plants on land are not part of the land. Land rights do not automatically include the landowner's buildings and plants on the land. If the legal act is intended to include the buildings and plants, this must be expressly stated in the deed confirming the legal act in question.³⁰

The Basic Agrarian Law in Indonesia only recognizes the principle of horizontal separation, i.e., buildings and plants located on land are not part of the land but separate. The holder of a land right is not always the owner of the buildings and plants on it. The land may be owned by the holder of the land right, while another person owns the building or plant.

Tenure of Land Rights

Land tenure rights contain a series of powers, obligations, and prohibitions for the right holders to do something with the land they are entitled to.³¹ A land tenure right can also be interpreted as a legal institution if it has not been linked to a particular land and a particular subject as the right holder. However, a land tenure right is a concrete legal relationship if it has been linked to a particular land and a

²⁸ Negara, "Undang-Undang (UU) Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria."

²⁹ Cicilia Putri Andari and Djumadi Purwoatmodjo, "Akibat Hukum Asas Pemisahan Horizontal Dalam Peralihan Hak Atas Tanah," *NOTARIUS* 12, no. 2 (2019): 703–17, <https://doi.org/https://doi.org/10.14710/nts.v12i2.29010>.

³⁰ Dyah Devina Maya Ganindra and Faizal Kurniawan, "Kriteria Asas Pemisahan Horizontal Terhadap Penguasaan Tanah Dan Bangunan," *Yuridika* 32, no. 2 (2017): 228–59, <https://doi.org/10.20473/ydk.v32i2.4850>.

³¹ Kadek Yosa Pramana, "Tinjauan Yuridis Pembatasan Penguasaan Tanah Oleh Warga Negara Asing Berdasarkan UU No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria" (Universitas Pendidikan Ganesha, 2020), <http://repo.undiksha.ac.id/id/eprint/1178>.

particular subject as the right holder. The term land right is formulated in Article 4 of the Basic Agrarian Law as follows:

- a. On the basis of the right to control from the state as referred to in Article 2, various kinds of rights over the surface of the earth, called land, are determined, which can be granted to and owned by other persons and legal entities.
- b. The land rights referred to in Paragraph 1 of this Article authorize the use of the land in question, as well as the soil, water, and the space above them, merely for the purposes directly related to the use of the land, within the limits set by this law and other higher legal regulations.³²

In addition to the rights to land, as referred to in Paragraph 1 of this Article, rights to water and airspace shall also be determined.³³

Procedures for Land Acquisition

In order to determine and establish the procedure for land acquisition, there are several factors that should be considered:

1. The legal status of the available land, whether it is state land, customary land of indigenous peoples, or freehold land.
2. Whether or not the landowner is willing. This implies that if the land available is freehold land, whether the owner of the land:
 - a. Willing to surrender the land or relinquish their land rights; or
 - b. Unwilling to surrender the land or relinquish their land rights;
 - c. The legal status of the person claiming the land, if the land title is available and the owner is willing to surrender or relinquish their land title, whether the person claiming the land:
 - 1) Qualified as the holder of the land title; or
 - 2) Not qualified as the subject of the title to be acquired.³⁴

Stages in Land Acquisition Process

Law No. 2/2012 describes four stages of process in land acquisition:

1. The Planning Stage
In the planning stage, the agency that requires the land makes a land acquisition plan based on the Regional Spatial Plan and development priorities prepared in the form of a land acquisition planning document.
2. The Preparation Stage
After the documents prepared by the agency that requires the land are submitted to the provincial government, the next step is to conduct:

³² Negara, "Undang-Undang (UU) Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria."

³³ M. Arba, *Hukum Agraria Indonesia* (Jakarta: Sinar Grafika, 2021).

³⁴ Boedi Harsono, *Hukum Agraria Indonesia: Himpunan Peraturan-Peraturan Hukum Tanah* (Jakarta: Universitas Trisakti, 2013).

- a. Notice of development plan
 - b. Initial location data collection
 - c. Public consultation on development plans
3. The Implementation Stage
- Based on the results of the location determination in the preparation stage, the agency that needs the land can propose the implementation of land acquisition to the Defense Agency, as stated in Article 27 of Law No. 2/2012 on Land Acquisition for Development in the Public Interest, including:
- a. Inventory and identification of land tenure, ownership, use, and utilization
 - b. Assessment of compensation
 - c. Deliberation on the determination of compensation
 - d. Provision of compensation (in this case given directly to the entitled party, and the entitled party is obliged to relinquish rights)
 - e. Release of agency land
4. The Handover Stage
- The handover of land acquisition results to the agency that requires the land is carried out after the provision of compensation to the entitled parties and the release of rights has been carried out or the compensation has been deposited in the district court.³⁵

Profile of Jambangan District in the Construction of Wonokromo-Jombang Double Track Railway

Jambangan district is one of the districts in the city of Surabaya, East Java Province. Jambangan district has an area of 385,167 m² divided into four sub-districts of Jambangan, Karah, Kebonsari, and Pagesangan. There is a total population of 45,770 people in Jambangan district.³⁶ In the Decree of the Governor of East Java No. 188/68/KPTS/013/2021 issued on February 15, 2021, concerning the Second Amendment to the Decree of the Governor of East Java No. 188/105/KPTS/013/2019 concerning the Determination of the Location of Land Acquisition for the Construction of the Wonokromo-Jombang Double Track Railway in East Java Province, the areas of Jambangan district affected by land acquisition are Pagesangan sub-district covering ±4,556 m² and Kebonsari sub-district covering ±32 m².

³⁵ Indonesia, "Undang-Undang (UU) Nomor 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum."

³⁶ Markus Patiung et al., "Pemanfaatan Lahan Sempit Menuju Kejuaraan Lomba Program Kampung Lingkungan (PROKLIM) Di Kecamatan Jambangan Surabaya," *Indonesian Collaboration Journal of Community Services* 1, no. 3 (2021): 90–98, <https://doi.org/https://doi.org/10.53067/icjcs>.

Forms of Compensation Implementation According to Law No. 2/2012 on Land Acquisition for Development in the Public Interest

Law No. 2/2012 on land acquisition for the public interest is conducted by an appraisal team. The appraisal team is an individual who conducts an independent and professional appraisal and has obtained a license to practice appraisal from the Minister of Finance and has received a license from the Land Institute to calculate the value or price of the land acquisition object. The compensation assessment by the appraisal team is completed parcel by parcel of land, which includes land, aboveground and underground space, buildings, plants, and objects related to land or other losses that can be assessed.³⁷

Then, the Chief Executive of the Land Acquisition determines the amount of compensation value based on the assessment results of the appraisal team. In the provisions of Article 35 of Law No. 2/2012 concerning Land Acquisition for Development for the Public Interest, the entitled party may request a complete replacement for the land plot in the existence of residual land as a result of land acquisition that can no longer be utilized.³⁸ Therefore, in order to achieve the objectives of land acquisition, the following principles are required:

1. The principle of land for interests must be available because the government may exercise its authority to acquire and revoke land rights as necessary. Therefore, there must be openness between the community and the government.
2. The principle of guaranteeing community rights as stated in Article 28 letter H Paragraph 4 of the 1945 Constitution which provides restrictions on the acquisition of community land by providing an opportunity to object to compensation.
3. The principle of land speculation which led to people experiencing trust issues with the government due to lack of transparency.³⁹

The compensation process in land acquisition is conducted at the completed planning and preparation stage. Based on the location determination, the agency that requires the land submits the implementation process to the land agency, including:

1. Inventory and identification of land tenure, ownership, use, and utilization;
2. Assessment of compensation;
3. Deliberation to determine compensation;
4. Provision of compensation;

³⁷ Indonesia, “Undang-Undang (UU) Nomor 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.”

³⁸ Indonesia.

³⁹ Harsono, *Hukum Agraria Indonesia: Himpunan Peraturan-Peraturan Hukum Tanah*.

5. Release of agency land.⁴⁰

Legal protection that can be provided to the community consists of preventive protection and repressive legal protection.⁴¹ Preventive protection can be realized in the form of public consultations regarding objection efforts which will later find solutions related to the rights of Surabaya residents whose land is affected by development for land acquisition for the public interest. As for repressive legal protection, the community can file a lawsuit at the Local District Court. In addition to preventive and repressive legal protection, the Surabaya City Government must be able to hear and observe firsthand the facts in the field and always provide a forum for discussion in order to make decisions that conform to local wisdom, the sense of justice, or existing customary law. This will foster a sense of legal harmonization between the Surabaya City Government and the community.

CONCLUSION

The legal provisions used by the Surabaya City Government in land acquisition for the public interest are based on Law No. 2/2012 concerning Land Acquisition for Development for the Public Interest. The authority possessed by the Surabaya City Government in terms of land acquisition for development for the public interest of the Wonokromo - Jombang double track railway in Pagesangan sub-district is implemented based on government law (Surabaya city regulations related to land acquisition for the public interest) and in accordance with the work plan of the Railway Engineering Center (BTP).

The problems that occur in land acquisition in Surabaya are due to the absence of concrete legal provisions regarding the basis for granting compensation, since the provisions governing the granting of compensation based on the Tax Object Sale Value, which is Presidential Regulation No. 36/2005, have been revoked by Government Regulation No. 19/2021 which does not contain provisions on the basis for granting compensation. Preventive and repressive efforts are conducted regarding the legal protection that can be given to citizens. This legal protection aims to protect the citizens of Surabaya to obtain legal certainty and legal justice, especially in resolving disputes related to compensation in the land acquisition process. Law No. 2/2012 has provided legal protection for land rights as stipulated in Article 19 Paragraph 2 letter c, Article 23 Paragraph 2, Article 38 Paragraph 2 of the Basic Agrarian Law.

⁴⁰ Harsono.

⁴¹ Agus Surono, "Perlindungan Hak Korban Pengadaan Tanah Untuk Pembangunan Jalan Tol Di Kabupaten Kendal," *Jurnal Penelitian Hukum De Jure* 17, no. 4 (2017): 391–409, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/306/pdf>.

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