

BALANCING PUBLIC INTEREST AND HUMAN RIGHTS IN LAND ACQUISITION: A CRITICAL REVIEW OF LAWS AND POLICIES IN DEVELOPING COUNTRIES

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Abstract: Land acquisition for public interest is a vital component of development activities, particularly in developing countries. However, it remains a contentious issue due to its potential impact on human rights and legal land ownership rights. Conflicts between the government and landowners frequently arise during land acquisition for public interest purposes, leading to violations of human rights. This paper critically reviews the laws and policies governing land acquisition in developing countries and examines their effectiveness in balancing public interest and human rights. The paper argues that many developing countries have failed to strike a balance between these two interests, leading to widespread human rights violations during land acquisition processes. Using empirical evidence from various case studies, the paper highlights the importance of a just and fair approach to land acquisition that respects the human rights of those affected. The paper concludes by offering recommendations for improving the legal and policy frameworks governing land acquisition in developing countries to promote greater respect for human rights in such processes.

Keywords: Land acquisition, Public interest, Human rights, Developing countries, Legal framework, Policy framework, Displacement, Forced evictions, Property rights, Access to basic services, Economic growth, Social development, Just and fair approach, Empirical evidence, Human rights violations

INTRODUCTION

Land acquisition for public interest is a complex issue that has been widely debated in the context of human rights protection. On the one hand, public infrastructure development, such as roads, airports, and dams, is essential for economic growth and social development (Bhanot & McManus, 2021). On the other hand, land acquisition often leads to the displacement of people from their homes and livelihoods, which can result in a range of human rights violations, including forced evictions, loss of property, and loss of access to basic services (Van Der Straeten, 2018). In developing countries, where land acquisition is most prevalent, the challenge is to balance public interest with human rights protection (Lafontaine, 2017). Laws and policies that govern land acquisition are critical in this respect, as they provide a framework for addressing the complex issues involved. However, in many developing countries, the legal and policy frameworks are inadequate, leading to violations of human rights in land acquisition processes (Bhanot & McManus, 2021; Van Der Straeten, 2018). This paper critically reviews the laws and policies governing land acquisition in developing countries and examines the extent to which they balance public interest and human rights. Using empirical evidence from various case studies, this paper argues that many developing countries have failed to strike a balance between these two interests, leading to widespread violations of human rights in land acquisition

processes. The paper concludes by offering recommendations for improving the legal and policy frameworks governing land acquisition in developing countries, with a view to promoting greater respect for human rights in such processes.

B. Research Problem

This research's problems are as follows:

1. How are human rights protected in land acquisition activities for the public good?
2. What are the legal repercussions of violating the protection of human rights in land acquisition activities in the public interest?

C. Purpose of Research The purpose of the research are:

1. To determine how human rights protection would be implemented in land acquisition projects for public interest.
2. To determine the legal repercussions of violating the protection of human rights during land acquisition activities in the public interest.

D. Literature Review 1. Human Rights Protection

Human Rights are a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth (Article 1, Number 1, Indonesian Act Number 39 on 1999 of Human Rights). In the context of protecting human rights, the fulfillment of human rights in a nation cannot be separated from the existence of a duty created by the nation or its citizens, resulting in a balance and harmony between human rights and obligations. The emphasis of human rights protection efforts is on several preventive actions against human rights breaches. Human rights are primarily protected by the creation of legal frameworks and organizations dedicated to upholding them. Various aspects of the states, as well as private citizens', communities', and local governments', attempts to avoid violations of human rights may also play a role. The primary responsibility for safeguarding the rights of its citizens rests with the state.

2. Land Procurement for Public Utilities

Land Procurement means activities to provide land by giving an adequate and fair compensation to the entitled party (Article 1 Number 2, Indonesian Act Number 2 of 2012 on Land Procurement for Public Utilities Construction). Public interest means interest of nation, state and society that must be realized by government and used for the benefit of the greatest prosperity of the people (Article 1 Number 2, Indonesian Act Number 6 of 2012 on Land Procurement for Public Utilities Construction).

E. RESEARCH METHOD

1. Type of Research

This research employs a normative research method. Normative research is a type of research that focuses on the study of legal science and aims to highlight the relevant legal rules in relation to the role of customary institutions.

2. Data Collection Method

This research necessitates the collection of both primary and secondary data. Secondary data is gathered by researching specific sources related to the research's title. Observations (participatory observations), surveys, in-depth interviews, and Focus Group Discussions were used to collect primary data. A diary or field record containing qualitative data from field observations and interviews in the form of detailed descriptions or direct quotations is another tool for collecting qualitative data.

3. Data Analysis

The data that is successfully collected will be analyzed both during and after the research in the field. Data review efforts, data reduction, data categorization, validity checking, and data interpretation are all part of the interpretive qualitative data analysis process.

F. RESULTS AND DISCUSSION

1. Human rights protection in land acquisition activities for public interest

According to the mandate as stated in Article 33 verse number 3 Indonesia's 1945 Constitution, the state, which is the highest power organization, has the power to control and administer the earth, water, and space, as well as the natural resources they contain on Indonesian territory. At this level, the State is required to fulfill these needs in accordance with the authority it possesses when there is a need for land for development objectives to be carried out by government agencies, –Susani Triwahyuningsih, 2018, *Perlindungan dan Penegakan Hak Asasi Manusia (HAM) di Indonesia*, Jurnal Hukum Legal Standing, Vol 2 No. 2, September 2018, file:///C:/Users/LENOVO/Downloads/1242-

4817-1-PB.pdf., p. 116, last visited October 2 2022. Agencies, or institutions. In article 2 verse number 2 on Act Number 5 of 1960 on Basic Regulation on Agrarian Principles mention that:

The rights of controlled by the State meant in clause 1 of this Articles provides authority:

- a) To regulate and implement the appropriation, the utilization, the reservation and the cultivation of that earth, water and air space;
- b) To determine and regulate the legal relations between persons concerning the earth, water and air space;
- c) To determine and regulate the legal relations between persons and legal acts concerning the earth, water and air space in order to achieved the maximum prosperity of the people in the sense of happiness, welfare and freedom in the society and constitutional state of Indonesia which is independent, sovereign, just and prosperous.

This State authority is consistent with Article 3 on Act Number 5 of 1960 on Basic Regulation on Agrarian Principles social function of the land that all land rights have a social function. The social function of land means that the holder of land rights must give up the right to his land to be released or surrendered if the Government needs the land for the implementation of development in the public interest. According to A.P. Parlindungan, the most important content of land rights to social functioning is balance, justice, expediency, and truth. As a result, it will demonstrate personal functions within a social framework that provides various harmonious and fulfilling harmony relationships in order to reduce the complexity of various problems that may and will arise in the social life of society, nation, and state

Land acquisition is an activity related to land acquisition activities for specific interests that, if carried out by the State, are stated to be in the public interest and whose implementation is governed by laws and regulations. According Maria S.W. Sumardjono that land acquisition is the government's act of acquiring land for various development activities, especially in the public interest. In general, land acquisition is accomplished through deliberation between parties in need of land and holders of land rights whose land is required for development activities According to the general explanation of Act Number 2 of 2012, the national land law recognizes and respects the community's rights to land and related objects with land, as well as granting the state public authority in the form of authority to make arrangements, make policies, manage, and organize and supervise land acquisition activities.

Land acquisition means activities to provide land by giving an adequate and fair compensation to the entitled party (Article 1 Number 2, Act Number 2 of 2012). The consequence is that when a piece of land is included in the land acquisition activities for the public interest, the legal subject's right to land will be lost to the right

to control the State with the state's land category. As a result, the legal subject of the land rights holder will receive compensation. Because not all landowners voluntarily waive their rights, even if they will be compensated, it is not uncommon for disputes to arise during this land acquisition activity for the public good. The existence of Act Number 2 of 2012 is undeniable that there will be negative impacts. Government arrangements and policies intended to realize land acquisition in the public interest, whose consequences will reduce or negate the rights to land and other rights that exist on it from community citizens or certain groups in the community will affect the community's human and civil rights, particularly those whose rights are revoked or released/waived. As a result, laws and regulations governing the revocation or release/waiver of land rights must take into account the protection of human rights and civil rights.

The state accepts the responsibility of providing a sense of security and equal treatment to all of its citizens. One of them is the protection of a sense of security over ownership rights to objects. The term "public interest" is frequently used as a strong argument for the government to take community land even if compensation is provided, which the government believes is feasible but is not always the same assumption as the holder of land rights. The public interest in Article 1 number 6 of Act Number 2 of 2012 is the interest of the nation, state, and society which must be realized by the government and used for the greatest prosperity of the people. According to Maria S.W. Sumardjono, the public interest is defined as the interests of all levels of society, whereas development activities for the public interest are limited to development activities carried out and subsequently owned by the government, and are not used for profit. The fulfillment of these three elements is the only activity that falls under the category of public interest.

The humanitarian principle is one of the guiding principles behind public-interest land acquisition. According to the explanatory section of Act Number 2 of 2012, the humanitarian principle is that land acquisition must provide protection and respect for the human rights, dignity, and worth of every Indonesian citizen and resident proportionally. Protecting those who own property rights is strongly tied to land acquisition operations.

Individual property rights are also recognized by the state as part of human rights in Act Number 39 of 1999 on Human Rights. According to Article 36 verse (1) and (2), everyone has the right to property and no one should be arbitrarily and unlawfully deprived of their property rights. Furthermore, according to the explanation section of Article 89 verse (3) letter h of Act Number 39 of 1999, the land sector is one of the public problems that, if it harms the community, is classified as a violation of human rights.

Some aspects of land acquisition activities for the public interest include parties who require land from the government, both central and regional, land objects to be released, owners of land rights, and compensation for land rights. The following types of human rights protection are available for land acquisition activities in the public interest:

a. Protection of landowners against land acquisition objects

Land acquisition activities for the public interest are not only related to the fulfillment of the purpose of providing land for development, but also to the fulfillment of the legal interests of the rightful parties. The owner of the land, or the person in control of or the owner of the subject of the land acquisition, is the party with legal title to the land. Then, land, underground areas, structures, plants, items connected to land, and other things that can be valued are the objectives of land acquisition (Article 1 number 3 and number 4 of Act Number 2 of 2012). The party in need of land is the government, both central and regional, as the party responsible for ensuring the availability of land for public interest. As a result, lands acquired through land acquisition activities for the public good are also owned by the central government or local governments. The entitled party is obligated to release his land during the implementation of land acquisition for the public

interest following compensation or based on a court decision with permanent legal force (Article 5 of Law Number 2 of 2012). Waiver is the termination of legal relations by a party entitled to the state via the Land Agency (Article 1 number 9 of Law Number 2 of 2012). The land agency in this case is the National Land Agency, which owns the property being acquired for public use.

In addition to carrying out notification of development plans and preliminary data collection of development site plans, agencies that require land with the provincial government conduct public consultations on development plans with the goal of obtaining an agreement on the location of the development plan from the rightful party (the holder of land rights).

The existence of Law No. 11 of 2020 on Job Creation alters several aspects of land acquisition arrangements for the public good. Article 19 of Law Number 2 of 2012 concerning public consultation amends the Job Creation Law by requiring the Manager and User of State-Owned Goods/Regional Property to agree on the location of the plan, which previously only involved the proper party. This consultation is conducted with the affected communities in lieu of the relevant or agreed-upon development plan. If the entitled party, as well as the Manager and User of State Property / Regional Property, are not present after three (three) times being appropriately invited not to attend, the party is deemed to agree. After an agreement is reached, it is documented in the form of agreement minutes. The agreement served as the foundation for agencies in need of land to submit location designations to the Governor.

The transfer of land rights in this land acquisition activity is primarily concerned with the transfer of ownership of land from the property of individuals / legal entities to the control of the State (government), but the most important aspect is the loss of private rights to the land of legal subjects, particularly individuals.

Land acquisition for the public interest is intended to use land in the form of physical development to meet the public interest (community), but it can have a broader impact on the subject of the right holder who must or can be declared obliged to give up his land rights, particularly if the land becomes the rights holder's lifeblood. Other losses felt by rights holders are defined in Law Number 2 of 2012 as nonphysical losses that can be equated with the value of money, such as losses due to loss of business or work, costs of moving, costs of transferring professions, and the value of residual property.

The government's interest in developing land should not jeopardize the rights of other entitled parties. Land expropriation in the public interest shall be carried out in accordance with the principles of humanity, justice, expediency, certainty, openness, agreement, participation, welfare, sustainability, and harmony. According to the definition of land acquisition in Article 1 number 2 of Law Number 2 of 2012 as an activity to hold land by providing appropriate and fair compensation to the entitled party, the State is considered to have provided protection to rights holders by fulfilling the element of justice for rights holders. Although the rightful recipients will be interpreted differently depending on their eligibility for indemnification.

b. Landowners are safeguarded against the transfer of rights to land acquisition objects.

According to Article 37 paragraph (1) Number 24 of 1997 concerning Land Registration, the transfer of land rights and property rights to apartment units through buying and selling, exchanging, grants, income in companies, and other legal acts of transferring rights, aside from the transfer of rights through auction, can only be proved by a deed made by the authorized Land Deed Author in accordance with the applicable provisions.

According to the terms of the relevant laws and regulations, the transfer of land rights is the transfer of land rights from the previous right holder to the current right holder. Land rights can be transferred in 2 (two) ways: by switching and by being transferred. Switching refers to the transfer of land rights without the owner taking any legal action, such as through inheritance. While transfer refers to the legal actions taken by the owner,

such as buying and selling, to transfer ownership of land. Land rights are transferred during land acquisition activities for the public good, specifically from the rightsholder to the State, in this case, a government organization in need of land.

Land has a great deal of strategic importance, particularly as the need for land rises due to the phenomenon of a fixed land area. Several aspects of the appraisal that the appraiser (who has been chosen by the land agency) is taking into consideration with regard to lands that are being considered for land acquisition for the public interest on land that will become the standard for paying compensation to those who are entitled to it are: a) soil;

b) both the surface and the underground;

c) building;

d) plant;

e) land-related items; and/or

f) Non-physical losses that are comparable to the value of money, such as losses from the loss of business or employment, relocation expenses, the cost of changing careers, and the value of leftover property, are also able to be assessed.

The term "compensation" rather than "compensation of profit" is used in laws and regulations. It means that the losses incurred by the party whose land had to be released for development purposes (not voluntarily, but required) are compensated using a variety of alternative forms, including (i) money; (ii) replacement land; (iii) resettlement; (iv) share ownership; or (v) other forms agreed upon by both parties. Rupiah is used for the provision of monetary compensation, which is done through banking services. Within a maximum of 17 (seventeen) days of the Land Procurement operator submitting the validation results, compensation in the form of money is provided. Compensation may be granted for a period longer than 17 (seventeen) days in some circumstances. According to Article 117 of Permen ATR/BPN Number 19 of 2021, there are instances where: (i) the available budget is insufficient; (ii) the Entitled Party is absent at the time designated for payment of Compensation; or (iii) there are security, economic, political, social, cultural, and/or other technical issues. The provision for compensation for the loss of property rights is also highlighted in Article 37 paragraph (1) of Law Number 39 of 1999, which states that the loss of property rights to an object in the public interest may only be permitted with compensation for reasonable and immediate losses and implementation in accordance with the law. If the public interest truly desires or requires it, property rights may be revoked in accordance with the legal requirements, according to the explanation section of Article 36 paragraph (3).

This suggests that when it comes to land, the public interest should take precedence and that private property rights may be curtailed to serve the public good. The legal ramification of this priority is that the holder of land rights must immediately have their rights fulfilled in accordance with all applicable laws and regulations.

2. The legal repercussions of breaching the protection of human rights in land acquisition activities for the public interest

Legal repercussions are the results of an action taken to achieve a goal desired by the offender and governed by law. The action he takes is legal in nature, that is, it is taken to achieve a goal that the law has set forth. The results of a land acquisition act that affects or results in the property rights of the entitled party's land are the legal repercussions of violating the protection of human rights in land acquisition activities for the public interest.

There are two ways to meet the demand for land coming from the community for development activities, namely:

a) Land acquisition, which involves releasing the original legal connection between the owners of land rights by paying compensation after consultation with the parties involved.

b) The revocation of land rights, which occurs when the State forcibly seizes land that belongs to a party and annuls that party's land rights without any wrongdoing or failure to uphold a legal obligation on the part of the person in question.

One of the principles that must be followed in the process of acquiring land for the public good is the principle of discussion to reach an agreement. Through public consultation, the appropriate party and the location of the land acquisition for development must come to an understanding. A second public consultation will be held in accordance with Law Number 2 of 2012's Articles 19 to Article 22 if an agreement cannot be reached, i.e., there are still objections from the entitled party. In the event that an agreement is also not reached, Article 23 states that the party entitled to the location determination may file a lawsuit with the local State Administrative Court no later than 30 (thirty) working days following the issuance of the determination of the location if there are still objections after the determination of the location of the development.

The government has a number of powers that it can use to implement development and meet the desired objectives. The primary source of governmental authority in the administration of government, including one of its functions—fulfilling land needs for the advancement of public interests—is the legality principle. According to the legality principle, laws and regulations are where the government gets its power to run the country. When the government imposes the will to expropriate land from the right holder for reasons of public interest, it may be in violation of human rights. This is due to the government's authority in the land sector. Law Number 2 of 2012, which was passed in response to the government's coercion, governs the legal actions that the entitled party may take, including bringing a lawsuit before the Administrative Court to request that the government's decision be formally revoked.

The government has the right to revoke land rights when a plot of land is required urgently and cannot be pursued or held on a plot of land elsewhere. This can happen even if the party with the right to object to the attempt to take over his land does so. Law Number 20 of 1961 Concerning Revocation of Rights to Land and Objects on It regulates this.

Revocation of land rights is the final option available if all other options, such as buying and selling, exchanging, or relinquishing rights without an agreement, have failed. The government is required to pay the holders of land rights fair compensation when revoking their rights. According to the following guidelines, land rights under Law Number 20 of 1961 are revoked:

- a) Compelled by the government to act immediately;
- b) Carried out in the public interest, sacrificing personal interests;
- c) The regional leader, the minister of agrarian affairs, the minister of justice, and the minister of the agencies needing land have all made recommendations or taken them into consideration;
- d) The appraisal committee determines the amount of compensation due to the concerned landowner;
- e) Being given the chance to appeal the High Court's decision regarding the estimated compensation;
- f) To revoke rights, a presidential decree must be used;
- g) Published in newspapers and the State Gazette

Through land acquisition or the revocation of rights, land acquisition activities for the public good result in the loss or elimination of legal relations between legal subjects and the land in the status of property rights. According to John Salindeho, the transfer of a right can happen as a result of a legal act as well as a legal event or legal consequences. A party's intention to carry out a legal act to transfer or transfer land rights to another party is indicated by the transfer of rights.

The party who has the most to gain from the loss of land rights is the rightful party, so the state is required to provide legal protection for the assurance of the fulfilment of the rights (including human rights) of the entitled party while also upholding the principles of certainty, justice, and the advantages of the law's very existence.

G. Closing

1. CONCLUSION

- a) The method of human rights protection used in land acquisition activities that is consistent with The humanitarian principle is one of the guiding principles for land acquisition projects that serve the public interest. There are various ways to protect human rights, including: 1) The protection of land rights holders against land acquisition activities objects to the transfer of land rights, which, in essence, is not only related to the transfer of land ownership from individual/legal entity ownership to State (government) control but also, and most importantly, to the loss of private rights to land subject to law, particularly for individuals; 2) Protection of landowners against the transfer of rights to the land acquisition's target by paying the entitled party appropriate, just, and prompt compensation.
- b) The principle of deliberation to reach an agreement is one that must be followed in the process of land acquisition for the public interest so that in the event that there are still objections after the determination of the development location, the party entitled to the determination of location may file a lawsuit to the violation of human rights protection in land acquisition activities for the public interest.

2. RECOMMENDATION

- a) Because the term "appropriate" as mentioned in Law Number 2 of 2012 still leaves room for various interpretations, it is important that there be a standard formulation of the assessment that satisfies the necessary components in the provision of compensation for land acquisition activities for the public interest.
- b) Compensation assessments for land that is a source of income for the entitled party but is the target of land acquisition and cannot be moved should be higher than the industry norm for land valuation.

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