

# Agrarian Reform in the Implementation of Land Procurement for Development Based on Justice Value

Subhan Zein<sup>1\*</sup>, Gunarto<sup>2</sup>, Umar Ma'ruf<sup>2</sup>

<sup>1</sup>Doctorate Student of Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

<sup>2</sup>Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

DOI: [10.36348/sijlcj.2023.v06i03.008](https://doi.org/10.36348/sijlcj.2023.v06i03.008)

| Received: 07.02.2023 | Accepted: 23.03.2023 | Published: 27.03.2023

\*Corresponding author: Subhan Zein

Doctorate Student of Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

## Abstract

The purpose of this study is to analyze and find the weaknesses of agrarian reform in the implementation of land acquisition for development that has not been fair and how to reconstruct the law based on the value of justice. This study uses a constructivist paradigm with a sociological juridical approach to solving research problems by examining secondary data and primary data by finding legal realities experienced in the field as well as qualitative descriptive methods, namely where the data obtained is then arranged systematically so that a comprehensive picture will be obtained, where later the data will be presented descriptively. Based on the research results, it was found that the Weaknesses of agrarian reform in the implementation of land acquisition for development have not been fair, namely in terms of legal structure where there is overlapping issuance of a decision from agencies directly related to land and agrarian reform. in terms of legal substance Amendments to Law no. 2 of 2012 concerning Land Acquisition for Public Interest which is regulated in the Job Creation Law and Government Regulation no. 19 of 2021 concerning the Implementation of Land Procurement for Public Interest, has made agrarian conflicts escalate. The three aspects of legal culture namely the presence of a national strategic project in an area create conflict between communities in their respective interests. Therefore, the legal reconstruction of agrarian reform in the implementation of land acquisition for development based on the value of justice intended by the author is in the Part Three of Protection of Sustainable Food Agricultural Land Article 124 paragraph (2) In the case of public interest, Sustainable Food Agricultural Land as referred to in paragraph (1) can be converted, and implemented in accordance with the provisions of laws and regulations.

**Keywords:** Agrarian Reform, Land Procurement, Justice Value.

**Copyright © 2023 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

## INTRODUCTION

National strategic projects are aimed at the public interest aimed at the state and the people as stipulated in Article 18 of Law Number 5 of 1960 concerning Agrarian Principles.

Regulations governing land acquisition have existed since the 1990s. In 1993, in order to carry out land acquisition activities, the government issued the Presidential Decree of the Republic of Indonesia (Keppres RI) Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for Public Interests. Then the government issued Presidential Regulation (Perpres) Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest and Presidential Regulation Number 65 of 2006 concerning Amendments to Presidential Regulation Number 36 of

2005 concerning Land Acquisition for the Implementation of Development in the Public Interest.

In 2012, the policy regarding land acquisition for development in the public interest was regulated in Law Number 2 of 2012 concerning Land Acquisition for Public Interests and its implementing regulations, namely Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest. However, there has been a change in Law Number 11 of 2020 concerning Job Creation. But it does not remove the provisions in Law Number 2 of 2012 concerning Land Procurement for Public Interests (Koeswahyono, 2020). Because basically it only adds and changes some of the contents of the article. So this Job Creation Law only specifically regulates the addition of new articles related to land acquisition for public purposes. However, revoke Presidential Regulation Number 71 of 2012 concerning

the Implementation of Land Acquisition for Development for the Public Interest and replace it with Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest, as implementing regulations for Law Number 11 of 2020 concerning Job Creation.

As a national strategic project, the government adheres to principles based on controlling the state and the public interest, bearing in mind that this infrastructure development must be supported by a large land area (Cahyono, 2021). The Consortium for Agrarian Reform (KPA) revealed that around 50 percent of the land acquisition process for the 2021 National Strategic Project (PSN) was marred by agrarian conflict. The agrarian conflicts caused by the PSN cover the infrastructure and property sectors. If it is related to the area of land acquisition required by the government to run PSN in 2021, the area of the conflict area will reach 49.8 percent of the total area required for PSN. The main problem is that the lands that are targeted for land acquisition for PSN or Special Economic Zones overlap with land and agricultural land as well as community gardens.

Concerns about the conversion of agricultural land are increasing due to changes in regulations for the protection of sustainable food agricultural land. Where previously the legal protection for sustainable food agricultural land as stipulated in the PLP2B Law is now being changed by the Job Creation Law, which will only worsen the fate of farmers. Its application will be increasingly degraded and the conversion of agricultural land functions will be increasingly facilitated in cluster 8 of the Job Creation Law. The community's agricultural land will decrease, and so will the number of land-owning farmers and sharecroppers, due to the loss of the main means of production, namely land. This argument is supported by the phrase National Strategic Project (PSN) in the Job Creation Law. The author believes that the addition of the word PSN to the Job Creation Law shows how contradictory the government is with the previous regulations. This is because, for reasons of the National Strategy Project, the conversion of agricultural land can easily be carried out (Arifin, 2021).

National Strategic Projects that are coupled with the public interest are not compatible with the previous PLP2B Law, this can be seen from the orientation of the two, which in substance, the previous PLP2B Law clearly protected people's rights. The conversion which can only be carried out if it is oriented to the public interest becomes weak in its position when the government also includes a National Strategic Project as a condition for the conversion of land. Apart from that, the fact that even with the PLP2B Law, conflicts regarding the depreciation of agricultural land have gotten out of control, this will of course get

worse when the Job Creation Law is substantially enacted. The policy that was changed with the Job Creation Law will further widen the loophole and legalize land conversion. The Job Creation Law actually betrays the main objective of the UUPA.

Various facilities are provided in the context of land conversion for public purposes to land that has been designated as Sustainable Food Agricultural Land by removing four (4) main requirements. Such as strategic feasibility studies, preparation of plans for land conversion, freeing of ownership rights from owners, and providing replacement land for the conversion. This deletion has an impact on shrinking agricultural land.

The four pre-existing requirements are still unable to reduce the rate of depreciation of agricultural land, especially when these requirements are abolished and only replaced with sentences implemented in accordance with applicable laws and regulations. The four pre-existing requirements should have been sharpened and supported with additional requirements in order to avoid the depreciation of agricultural land in the name of public interest. When the requirements relating to the conversion of Sustainable Food Agricultural Land which has been accommodated in detail are then abolished, what about the fate of the number of agricultural lands which are decreasing day by day? and what about the fate of Indonesian farmers and then handing over agricultural land which had already been designated as agricultural land to be converted for infrastructure after the amendment to Article 44 Paragraph 2 of the PLP2B Law as amended in the Job Creation Law? To answer this problem, the author is interested in conducting research and examining the problem in a scientific paper titled "*Agrarian Reform in the Implementation of Land Procurement for Development Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Implementation of Land Procurement for Development in Indonesia Currently?
2. How is the Agrarian Reform in the Implementation of Land Procurement for Development Based on Justice Value?

## **METHOD OF RESEARCH**

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and

effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## **RESEARCH RESULT AND DISCUSSION**

### **1. Weaknesses of the Implementation of Land Procurement for Development in Indonesia Currently**

Laws and regulations always follow the dynamics of legal politics, especially those related to land acquisition. The policy regarding land acquisition for development in the public interest is regulated in Law Number 2 of 2012 concerning Land Acquisition for Public Interests and its implementing regulations, namely Presidential Regulation Number 71 of 2012 concerning Implementation of Land Acquisition for Development in the Public Interest. However, there has been a change in Law Number 11 of 2020 concerning Job Creation. But it does not remove the provisions in Law Number 2 of 2012 concerning Land Procurement for Public Interests. Because, basically it only adds and changes some of the contents of the article. So this Job Creation Law only specifically regulates the addition of new articles related to land acquisition for public purposes. However, revoke Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest and replace it with Government Regulation Number 19 of 2021 concerning The Implementation of Land Acquisition for Development for the Public

Interest, as implementing regulations for Law Number 11 of 2020 concerning Job Creation.

The Job Creation Law adds and revises several articles in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Especially for the development of areas that have been encouraged by the government. There are an additional 6 sectors that are categorized as development for the public interest.

The six areas include upstream and downstream oil and gas areas, Special Economic Zones (KEK), industrial areas, tourism areas, food security areas, and technology development areas (Toebagus, 2022).

UU no. 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land (UU PLP2B) is also included in the realization of the Job Creation Law, UUPLP2B is actually included in the land acquisition cluster for investment, infrastructure, and national strategic projects.

Article 124 point 1 of the Job Creation Law, that what is meant by public interest is the interest of the majority of the community which includes interests in the construction of public roads, reservoirs, dams, irrigation, drinking water or clean water, drainage and sanitation, irrigation buildings, ports, airports, railway stations, and roads, terminals, public safety facilities, nature reserves, as well as power plants and networks. Referring to this explanation, food production is not included in the public interest, even though food is a necessity for human life. Food is also not included in the National Strategic Project.

A number of changes to the provisions are considered to threaten the survival of farmers, exacerbate agrarian conflicts, increase inequality in land ownership, and the practice of evictions for the sake of investment (Widodo, 2019). This change is related to the approval of the conversion of agricultural land to non-agricultural land, the addition of the category of public interest, and the National Strategic Project in land acquisition.

This concern is understandable, considering that the provisions of Article 44 paragraph (3) of the UUPLP2B which have been amended by Article 124 point 1 of the Job Creation Law contain the same content. While Article 44 paragraph (2) UUPLP2B added the phrase "*National Strategic Project*" so that it can be interpreted that there is no obligation to provide replacement land for the conversion of sustainable food agricultural land used for National Strategic Projects. In practice, it is feared that other conditions will be ignored, such as the need to carry out a strategic feasibility study and the formulation of a land conversion plan. These changes can accelerate the

conversion of agricultural land and threaten the existence of farmer groups.

Data from the Central Statistics Agency (BPS) shows that every year around 60,000 hectares of rice fields are turned into other uses outside of agriculture. This figure is equivalent to a reduction in rice production by 300,000 tons each year. According to the 2012 Ministry of Agriculture Audited Field Area calculation, Indonesia's rice field area is 8,132,344 ha. Meanwhile, the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 399/KEP-23.3/X/2018 states that the area of paddy fields is only 7,105,144 ha. Thus there is a difference in the area of paddy fields of 1,247,481 ha which is assumed to have changed function.

After the Job Creation Law, the conversion of agricultural land will accelerate if the government does not take systematic steps to fix the conversion rate. But so far what has been encouraged is the policy of facilitating the use of large-scale non-agricultural land for the people.

Based on the 2020 Ministry of Agriculture Report regarding the Protection of Sustainable Food Agricultural Land (LP2B), it is stated that the area of raw rice fields, both irrigated and non-irrigated, has decreased by an average of 650 thousand hectares per year. This means that if the rapid rate of conversion of agricultural land is not stopped, and even facilitated by the Job Creation Law, the community's agricultural land will shrink even more. Likewise, the number of land-owning farmers and sharecroppers will decrease in number due to the loss of their main means of production, namely land and the livelihoods of farmers will be further eroded. What is in the spotlight is the additional category of public interest for land acquisition. This addition is feared to exacerbate agrarian conflicts. Article 123 numbers 1 and 2 of the Job Creation Law amending Article 8 and Article 10 of Law Number 12 of 2012 concerning Land Procurement for Development in the Public Interest (Land Procurement Law). This article adds four points to the category of land acquisition for the development of public interests. The four new categories are oil and gas industrial areas, special economic zones, industrial areas, tourism areas, and other areas initiated or controlled by the central government, regional governments, BUMN, and BUMD as well as other areas that have not been regulated in the Job Creation Law.

These provisions can facilitate the process of conversion of agricultural land and have the potential to harm farmer groups. The process of land conversion is made easier and exacerbates agrarian conflicts, imbalances in land ownership, practices of land grabbing, and eviction in the name of land acquisition for development and public interest. The Job Creation

Law will exacerbate religious conflicts, inequality, expropriation, and eviction of community land. This statement of adding the category of public interest is an obstacle and a complaint from investors regarding the procurement and acquisition of land for infrastructure development projects and business activities. Through the Job Creation Law, the government expanded the definition of public interest by adding the interests of investors in mining, tourism, industry, and Special Economic Zones (KEK) to the category of public interest. Land acquisition cannot be seen as merely the process of providing land for the construction of infrastructure or industrial projects. However, systemic impacts must also be taken into account related to economic, social, and cultural degradation of the location which is the object of land acquisition as well as the community. It must be remembered, without the Job Creation Law, the land acquisition law has in practice resulted in agrarian conflicts and evictions.

## **2. Agrarian Reform in the Implementation of Land Procurement for Development Based on Justice Value**

Development for the public interest is carried out to provide social welfare for the community, which contains the values of justice, benefit, and certainty. The application of the public interest can be realized through the planning and implementation stages, especially deliberations in determining the location and determining compensation in order to achieve justice. UUCK, there are arrangements regarding the provision of land where the land area is less than 5 (five) hectares regulated in Articles 19A to 19C. Development for the public interest is intended to be handled directly by the institution that needs land with the group entitled to it, this is intended to increase the efficiency and effectiveness of land acquisition for the public interest which is carried out by adjusting the spatial layout of the area.

New colors are presented through PP No. 19 of 2019 by involving the participation of a public appraiser whose job is to evaluate compensation for land acquisition objects as stipulated in Article 1 points 13 and 14, and their involvement in public consultations as stipulated in Article 31 which is expected to provide clarity to the entitled party in terms of compensation assessment. Additionally, PP No. 19 of 2021 also includes space above ground and basement in the category of assessment of compensation that will be given to the rightful party. The person giving the score is an individual who carries out the assessment independently and professionally and has been certified for the manifestation of the assessment by the minister who holds government affairs in the field of state finance.

Land acquisition regulated through UUCK in Article 125-Article 135 introduced a Land Bank agency whose function is to carry out planning, acquisition,

procurement, management, utilization, and distribution of land in ensuring the availability of land in the framework of a just economy for the public interest; social interests; national development interests; economic equity; land consolidation; and agrarian reform (Widodo, 2018) whose follow-up arrangements are regulated through government regulations. In addition, through PP No. 19 of 2021, Land Banks are categorized as legal subjects so that it is legal to carry out legal actions with third parties, and is regulated in Article 18 of Law no. 19 of the Year 2021.

The existence of the Land Bank is actually aimed at ensuring availability for land acquisition for just economic interests in accordance with the interests stated in UUCK Chapter VII Article 126 paragraph (1). Land Bank is an institution that is not profit-oriented (non-profit) as illustrated in Article 129 paragraph (2) that fulfills management rights (HPL) Land Banks can obtain business use rights (HGU), building use rights (HGB), or use rights legally obligated based on agreements drawn up by the Land Bank with third parties. The allocation of land bank management rights (HPL) is classified into two interests, namely for the relevance of a just economy and for investment purposes. The challenges faced in terms of the existence of this Land Bank are as follows (Marchello, 2023):

- a. Determining the priority of interests between economic interests and investment interests;
- b. The existence of overlapping authorities in land acquisition; and
- c. Minimizing land acquisition consignment problems for development in the public interest due to compensation deemed unfair and appropriate by the entitled party.

The changes that came through the UUCK, and its derivative regulations, give a strong impression that the direction of development is currently concentrated on increasing investment to provide an impetus for economic growth. The first relates to the addition of development for the public interest, simplification of land acquisition procedures for land acquisition procedures of no more than 5 (five) hectares, and the mandate to establish a Land Bank. These three reforms are steps that are considered good from the perspective of economic development, but it should not be forgotten that economic development in Indonesia has a different style that adheres to the highest values contained in Pancasila. One of the changes that should be appreciated is the presence of appraisers or appraisers who participate in the process of assessing compensation and the process of deliberating compensation. The presence of the appraiser in the process is not only a step in realizing equal and appropriate compensation which can minimize problems such as the low value of compensation, besides that, the presence of the appraiser can also be a step in the sociological approach that provides

assistance during land acquisition procedures for the public interest.

It should be noted that land acquisition is a framework that must cover aspects of landowner rights, social capital, and social psychology of the community after land acquisition and compensation, which include: replacement, resettlement, rehabilitation, and reconstruction (Wiryani, 2021). These matters refer to aspects of the condition of rights, social capital, and social psychology of the community as the subject of land acquisition which must be considered as a whole and comprehensive in the land acquisition process. In the end, there are still things that must be considered and carried out in relation to land acquisition for development in the public interest.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses of agrarian reform in the implementation of land acquisition for development have not been fair, namely because in terms of legal structure, there is overlapping issuance of a decision from agencies directly related to land and agrarian reform. Then, in terms of legal substance, changes to Law no. 2 of 2012 concerning Land Acquisition for Public Interest are regulated in the Job Creation Law and Government Regulation no. 19 of 2021 concerning the Implementation of Land Procurement for Public Interests, This change expands the land acquisition instrument for public interest to the Upstream and Downstream Oil and Gas Industrial Estates which are initiated and/or controlled by the Central Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises. Special Economic Zones, industry, tourism, food security, and/or technology development initiated and/or controlled by the Central Government, Regional Government, State Owned Enterprises, or Regional Owned Enterprises. Then, in terms of legal culture, namely the presence of a national strategic project in an area creates conflict between communities in their respective interests.
2. The Proposed agrarian reform in implementing land acquisition for development based on the value of justice by the author is in the form of value reconstruction, namely land acquisition for development must reflect the value of fulfilling basic needs and increasing the welfare of the people whose land is used for development programs. then, legal reconstruction is also needed in the Job Creation Law Article 124 paragraph (2) which reads as In the case of public interest, Sustainable Food Agricultural Land as referred

to in paragraph (1) can be converted, and implemented in accordance with statutory provisions.

## REFERENCES

- Arifin, M., Sukrisno, W., & Arifin, Z. (2021). Land Procurement for Public Interest in Local Governments with Small Scale. *Jurnal Usm Law Review*, 4, 458. 10.26623/julr.v4i1.3711.
- Cahyono, H., & Gunarto, G. (2021). The Law Application of Land Procurement for Development in Public Interest. *Sultan Agung Notary Law Review*, 3, 515. 10.30659/sanlar.3.2.515-525.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Koeswahyono, I., & Ula, H. (2020). Institutional Policy in Land Procurement under the Omnibus Law Regime. *Brawijaya Law Journal*, 7. 27-44. 10.21776/ub.blj.2020.007.01.02.
- Marchello, R., Israhadi, E., & Suparno, S. (2023). Analysis of Land Disputes Arising from Land Procurement Activities in the Development of Public Facilities and Infrastructure (Review of Law Number 2 of 2012 concerning Land Acquisition). *Edunity: Kajian Ilmu Sosial dan Pendidikan*, 2, 94-104. 10.57096/edunity.v1i05.41.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Wahyu, W., & Toebagus, G. (2019). Poverty, Evictions and Development: Efforts to Build Social Welfare through the Concept of Welfare State in Indonesia. *3rd International Conference on Globalization of Law and Local Wisdom (Icglow 2019)*, Dx.Doi.Org/10.2991/Icglow-19.2019.65.
- Wahyu, W., Sapto, B., & Toebagus, G. W. P. (2018). The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
- Wiryani, F., & Najih, M. (2021). The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia. *Sriwijaya Law Review*, 5, 175. 10.28946/slrev.Vol5.Iss2.1073.pp175-191.