

A Comparative Study: Land Acquisition for The Public Interest in Indonesia and India



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ABSTRACT: Revoking land ownership rights in Indonesia and the Eminent Domain in India in an attempt to acquire land for the public good is a process that often causes conflict. Based on this, this research was conducted to describe the problem by comparing land acquisition and compensation processes in Indonesia and India. The type of research used is conventional law using secondary data, collecting data through literature studies that are qualitatively analyzed. The implementation of compensation in Indonesia starts with the Land Appraiser by calculating the loss value of the Land Acquisition Object. Based on the Indian law, compensation in India will be done by the Collector and the compensation amount decided by the Collector must meet solatium equal to one hundred percent of the money compensation and a sum of money calculated at 12% per year at the market value for that year. After all the calculations are completed, the Collector will give a report to the senior project officer and compensation will be given to the landowners.

KEYWORDS: land acquisition, legal comparison, compensation, Indonesia and India.

INTRODUCTION

The Population Reference Bureau reports that Indonesia has the fourth largest population in the world with 273.5 million people, while India is second in the world with 1.4 billion people.¹ A large population certainly requires a lot of land to live on each inhabitant. The data shows that Indonesia has a land area of 1,922 km² and a population density of 141 people per km² India has a land area of 15,200 km² and a population density of people per km².

In an agricultural society, the relationship between people and the land is religious-magical-cosmic. This change in the form of human relations with land is clear from the development of land law, especially written law, which usually allows individual ownership. If the land needed for development is government land, it is not difficult to take action, ie. by taking the land and then using it for development. However, the reality is that a large part of the available land is tied to property rights and the government's land supply is very limited. On the other hand, at the same time, Indonesia and India are making great improvements for the benefit of the people, so they must acquire land for public purposes. Below is a diagram of land acquisition for the construction of toll roads, expanded in length:

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¹ Population Reference Bureau, 2020, *2020 World Population Data Sheet*, Washington: Population Reference, p. 14.

² Religio-magical-cosmic has a meaning, namely the relationship between humans and the land which emphasizes collective control, lihat John Salindeho, *Masalah Tanah Dalam Pembangunan*, (Jakarta: Sinar Grafika, 1987), p. 170

³ *Ibid.* p. 170

⁴ Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)*, (Yogyakarta: Citra Media, 2011), p. 217

⁵ N. Maroya, *Pengadaan Tanah Untuk Pembangunan Jalan Di Kecamatan Sentolo Kabupaten Kulon Progo Provinsi Daerah Istimewa Yogyakarta* (Doctoral dissertation, Sekolah Tinggi Pertanahan Nasional), (2021), p. 3

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Sumber: Dinas Bina Marga Provinsi DKI Jakarta

Some of the main problems in land acquisition in Indonesia are related to inequality in the ownership structure, control, use and utilization of agricultural resources. Data shows that from 2015 to 2020, there were 2,288 land acquisition conflicts in Indonesia. Meanwhile in India, data shows that most land conflicts were related to communal land rights. In 2016, 32% of 289 land-related conflicts in India involved shared land and 42% involved both common and private land. As of 2020, there have been 703 land acquisition conflicts involving over 2.1 million (21 lakh) hectares of land in India.

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The problems in land acquisition in Indonesia in this study will be supported by several cases such as Construction of Manado-Bitung Toll Road,⁹ Construction of New Airport in Kulon Progo Regency,¹⁰ and Construction of the Ring Road in Langkat Regency, North Sumatra Province,¹¹ Construction of New Airport in Kulon Progo Regency. Meanwhile, in India, problems in land acquisition can be seen in several cases, such as the Kaleshwaram Irrigation Project in Telengana,¹² Goa-Belagavi Highway,¹³ and Pavagada Solar Par.¹⁴ In comparing land acquisition and compensation in the two countries, this is done by comparing arrangements in Indonesia through Government Regulation No. 19 of 2021 and Regulations in India through the Right to Fair Compensation and Complexity in Land Acquisition, Rehabilitation and Resettlement Act, 2013. There have been several studies that examine the comparison of land acquisition problems in different countries, taking -in those made by Andreas Febrian Kurnia Putra¹⁵, E. Suparsetyani,¹⁶ and Mukmin Zakie.¹⁷ However, this research mainly examines various problems related to land acquisition issues in Indonesia and India which are separated using the theory of determinism and injustice.

⁶ Konsorsium Pembaruan Agraria, *Catatan Akhir Tahun 2020 Konsorsium Pembaruan Agraria*, (Jakarta: Sekretariat Nasional, 2020), p. 19

⁷ Ankur Paliwal, *Land Conflicts in India, An Interim Analysis* (Rights and Resources Initiative, Washington DC, United States & Tata Institute of Social Sciences, Mumbai), p. 7

⁸ Thomas Worsdell and Kumar Sambhav, *Locating the breach: mapping the nature of land conflicts in India*, (India: Land Conflict Watch, 2020), p. 3

⁹ Mengie, S.W., 2021. Problematika Pembebasan Tanah Dalam Rangka Pembangunan Jalan Tol Manado-Bitung. *Jurnal Politico*, 10(3).

¹⁰ Dewi, N.L.G.M.P., 2021. *Beberapa Permasalahan Pengadaan Tanah Pembangunan Bandara Baru di Kabupaten Kulon Progo, Daerah Istimewa Yogyakarta* (Doctoral dissertation, Sekolah Tinggi Pertanahan Nasional).

¹¹ Lubis, N., 2021. *Pengadaan Tanah Untuk Pembangunan Jalan Lingkar Di Kabupaten Langkat Provinsi Sumatera Utara* (Doctoral dissertation, Sekolah Tinggi Pertanahan Nasional).

¹² Prudhviraj Rupavath dan Shreethigha Ganeshan, 2021. *Telangana Govt Violates Land Acquisition Laws*, (Mumbai: Land Conflict Watch)

¹³ Nihar Gokhale, 2020, *New Western Ghat Projects*, (Mumbai: Land Conflict Watch)

¹⁴ Sudheer, R. and Pai, N., 2018. An Assessment of Land-Leasing Model Adopted by Karnataka for Grid-Connected Solar Park in Pavagada. Available at SSRN 3400214.

¹⁵ Andreas Febrian Kurnia Putra, skripsi, 2014. *Konstruksi Hukum Atas Kepentingan Umum Dan Ganti Rugi Dalam Pengadaan Tanah (Studi Perbandingan Hukum Tanah Indonesia Dan Hukum Tanah Inggris)*

¹⁶ Suparsetyani, E., 2014. Analisis yuridis perbandingan pengadaan tanah untuk kepentingan umum serta ganti rugi kerugian menurut hukum di Negara Indonesia dan di Negara China. SKRIPSI-2014. Analisis Yuridis Perbandingan Pengadaan Tanah Untuk Kepentingan Umum Serta Ganti Rugi Kerugian Menurut Hukum Di Negara Indonesia Dan Di Negara China.

¹⁷ Zakie, M., 2011. *Pengadaan Tanah Untuk Kepentingan Umum (Perbandingan antara Malaysia dan Indonesia)*. *Jurnal Hukum Ius Quia Iustum*. No. Edisi Khusus, 18, pp.187-206.

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METHOD

This study is a Normative Juridical study,¹⁸ Membahas tentang persoalan-persoalan menyangkut tentang hukum pengadaan tanah dan ganti kerugian di Indonesia dan India. which discusses issues concerning the law of land acquisition and compensation in Indonesia and India. The problems studied are limited to problems with rules, norms, regulations, and legal theories of land acquisition in these countries. This study uses a statute approach and a comparative approach.¹⁹ The statutory approach in this study is used to examine all laws and regulations that are relevant to the problem under study²⁰ namely laws and regulations regarding land acquisition in Indonesia and India. The data used is secondary data which is done through case studies. The analysis in this study is descriptive qualitative.

RESULTS AND DISCUSSION

A. Examples of Cases on Land Acquisition in Indonesia and the settlement process.

The case of land acquisition in Indonesia	The case of land acquisition in India
Manado-Bitung Toll Road Construction. The problem is that the land has not been determined yet, there are differences of opinion between the People and the Government, the problem has been submitted to the Court (not according to Article 38)	Goa-Belagavi Highway The project will cross forests like Kali Tiger Reserve and Bhagwan Mahaveer National Park. The site investigation report stated that the toll road being built would pass through forests with a canopy density of over 100%, so it was recommended not to clear the forest. But the Karnataka Forest department approved the project in January 2020.
Construction of a new airport in Kulon Progo There are different understandings of environmental impact analysis. The weakness of Presidential Regulation No. 71 of 2012 is that it does not define in detail the completeness of the environmental impact analysis in the planning document.	Pavagada Solar Park People from the city of Nedan in western India filed a petition with the Rajasthan High Court against allotment of land for the factory. Many people are still registering their land. 15 cases filed by the community against solar power plants in the Rajasthan High Court and courts (9 rejected 2 not proceeded because the power plant was already built)

Analysis of Justice and Legal Certainty for Land Acquisition in Indonesia and India

In general, land acquisition rates in Indonesia and India are almost the same. In Indonesia land acquisition goes through 4 stages, namely planning; preparation; implementation; and submit results that are clearly written in Article 3 of Government Regulation No. 19 of 2021. In India land acquisition also goes through the same process but it is not clearly stated in LARR 2013. Land acquisition in Indonesia has to go through a feasibility study which including: ²¹ social survey economics; feasibility of location; analysis of development costs and benefits for the area and community; estimated land value; environmental impacts and social impacts that may arise as a result of Land Acquisition and development; and other necessary studies.

The same thing is done in India too and it is called "Social Impact Assessment" which includes:²² assessment of the proposed land has a general purpose; estimates of affected families and the number of families that may be displaced; the area of public and private land, houses, settlements, and other public property that may be affected by the proposed land acquisition; whether the area of land proposed to be purchased is the minimum required for the project; whether land acquisition elsewhere has been considered and is not feasible; an analysis of the social impacts of projects and the costs of addressing them and the impact of these costs on the total costs of the project compared to the benefits of the project.

The Social Impact Study conducted in India emphasized the element of public interest, this can be seen from letter a which must assess the element of common purpose in land acquisition. In the Feasibility Study in Indonesia, it is not written about this. However, in Article 1 paragraph (7) PP No. 19 of 2021 it is explained that the meaning of "public interest" is the interests of the country, the state and the society that must be fulfilled by the Central Government / Regional Government and used as much and

¹⁸ Penelitian Yuridis Normatif adalah metode penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka atau bahan sekunder belaka, lihat Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1981), p. 52

¹⁹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayu Media Publishing, 2008), p. 300

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2005), p. 133.

²¹ Article 7 paragraph (1) Government Regulation No.19 of 2021

²² Article 4 paragraph (4) LARR 2013

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the prosperity of the people was possible. Until the "Feasibility Study" in Indonesia, it is considered that the element of public interest already exists and does not need to be explained in detail.

In Indonesia, after the Feasibility Study report, the government through the Preparation Team conducted public consultations on development plans to obtain the agreement of the parties with the right, property managers, users of goods, and communities on did it have an effect and the results were included in the minutes of the agreement. If an agreement is not reached during the public consultation where parties object, the governor creates a Complaints Investigation Team that handles complaints not later than 14 (fourteen) days. The governor, based on the recommendation of the Inspection Team can reject objections or accept the condition of the development plan. If the governor accepts the objection, the group that needs the land must move the construction site to another piece of land or cancel the land acquisition plan.

Meanwhile in India, a government intending to acquire land for public use in preparing a Social Impact Assessment must hold consultations with the Panchayat, Municipal/Provincial Government, and the Government Corporation relevant. The government may determine and notify consultation dates.²³ Then a public hearing must be held in the affected area, giving notice of the date, time and place to ensure that the views of the affected families are heard. the impact land acquisition and then recorded and included in the Social Impact Assessment.²⁴ For land acquisition for private companies, consent must be obtained from at least 80% of the affected families.²⁵ For public-private projects, consent must be obtained from at least 70% of affected families.

In Indonesia's land acquisition regulations, if the majority of the public opposes the land acquisition plan, the government can reject the objection and continue the land acquisition process. Meanwhile in India, the government must get consent from at least 80% of affected families for private projects and at least 70% for public-private projects. If this is not achieved, land acquisition cannot continue until LARR 2013 brings more legal certainty and justice to the community. At every stage of land acquisition in India, LARR 2013 arranges for a report to be available in the local language and written down.

LARR 2013 emphasizes that the government must also prepare a report in the local language so that the local people can clearly understand the implementation of land acquisition that is taking place on their land. This regulation is mentioned 7 times in LARR 2013 in Article 4 paragraph (2), Article 6 paragraph (1), Article 7 paragraph (6), Article 8 paragraph (3), Article 11 letter (3), Article 18, and Article 19 so that LARR 2013 provides justice and legal certainty also to people who use more local languages in their daily conversations.

At the same time, Article 14 of Government Regulation No. 19 of 2021 regulates that socialization regarding the acquisition of land shall be communicated to the public directly or through the head of lurah/village or other name. There is no mention of arrangements on how to reach out to people who are more fluent in local languages, thus showing that the Indonesian government has not taken this factor into account and believes that its -everyone is fluent in Indonesia. This regulation does not provide justice and legal certainty to people who speak regional languages because there can be misunderstandings about the intentions of the government with the understanding of the community.

Ganti Kerugian di Indonesia terlihat pada ayat (3) dan (4) pada Pasal Compensation in Indonesia is reflected in paragraphs (3) and (4) of Article 34 of Government Regulation No. 19 of 2021 which is said to be final and binding to be used as a basis for determining the form of compensation. In addition, Article 71 paragraph (2) of Government Regulation No. 19 of 2021 states: "The consideration as mentioned in paragraph (1) is directly considered, in order to obtain a find out what type of Compensation is based on the results of the Compensation assessment as mentioned in Article 68 paragraph (1)".

This does not reflect legal certainty²⁶ as stated by Jan M. Otto because on the one hand the results of the assessment by the assessor are final and binding, but on the other hand discretionary efforts can still be made to determine compensation. In addition, with the provision that it is the duty of the district court to accept compensation to be kept safe within a period of 14 (fourteen) days, regardless of which party is entitled to it accept or refuse to pay the compensation amount offered, ultimately within a period of time. of 14 (fourteen) days it is the duty of the district court to accept that compensation and keep it safe, and as prescribed in Article 43 of Government Regulation No. rights to the land of the party entitled to it are extinguished and the evidence for their rights is declared invalid and the land becomes land under the direct control of the state.

The results of the evaluator's evaluation will be final and binding and the evaluation will be considered a mere formality and the party will lose the right to participate and express its opinion in the evaluation. Even though the actual negotiations were done so that the level of compensation was determined based on the agreement of both parties, so that one party would not be penalized and benefited in land acquisition. Then compensation must be obtained in the district court within 14 (fourteen) days. This also shows a lack of justice as Roscoe Pound said.²⁷

²³ Article 4 paragraph (4) LARR 2013

²⁵ Chapter 2(2-i) LARR 2013, as defined in sub-clauses (i) and (v) of clause (c) of Chapter 3

²⁶ Frans Magins Suseno, *Etika Dasar Masalah-Masalah Pokok Filsafat Moral*, Kanisius, Yogyakarta, p. 79.

²⁷ Pound views the increasingly widespread recognition and satisfaction of human needs, demands or desires through social control; wider and more effective guarantees of social interests; efforts to eliminate continuous and more effective waste and avoid conflicts between people in

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The law is in favor of the valid party, because after a compensation award has been filed in the district court, immediately the property or land rights of the valid party are disposed of and the evidence for their rights is declared invalid and the land becomes land which is directly controlled by the state.

At the same time in India, collectors in calculating compensation to be paid to communities affected by the market value of real estate and other immovable property attached to the land or buildings acquired; The collector may use the services of a competent engineer, or other expert in the relevant field, if he needs it; To ascertain the value of trees and plants attached to the acquired land, the Collector may employ the services of persons with expertise in agriculture, forestry, horticulture, sericulture or other fields, if necessary. In order to assess the value of damaged plants during the land acquisition process, the Collector may use the services of people with experience in agriculture if he needs it; the amount of compensation determined by the Collector must meet a solatium equal to one hundred percent of the compensation. For the avoidance of doubt, it is stated that the amount of solatium must be added to the compensation payable to each person in accordance with the provisions of the First Schedule. In addition to the market value of the land, the Collector must provide a sum of money calculated at 12% per annum at the said market value for the period commencing on and from the date of publication of the first know.

This comparison shows that land acquisition arrangements in India provide more justice and legal certainty to the people. The method for calculating compensation is clearly written in LARR 2013 so that the community can also make calculations and if there is fraud in calculating the value of the compensation, the community can get legal confirmation in legal action against the relevant government/agency to give up their rights in accordance with LARR 2013.

Rules for land acquisition in India through LARR 2013 are also richer for the affected communities because apart from the market value of the land, the collector has to give a sum of money calculated at 12% per annum according to the market value calculated from the publication date of first notification.

CONCLUSION

The implementation of land acquisition for development in the public interest in cases in Indonesia and India is still rejected by residents due to differences of opinion regarding land status and compensation. In the process of land acquisition for the public good in Indonesia, there is still an element of certainty, there is the possibility of consideration, but on the other hand he says that the decisions made in final and mandatory land acquisition implementation. In general, land acquisition in Indonesia and India go through the same stages, although LARR 2013 does not clearly state the number of stages of land acquisition, LARR 2013 pays more attention to the situation local communities by making notes and reports in local languages. so that the local people understand and can participate in the study and knowledge of the land acquisition process. Then, even in compensation rules, India provides more justice and certainty to the affected communities, which can be seen in the calculation of compensation that must follow the market value and is added to an amount of 12% of the market value in that year until the acquisition of land law in India covers more things and it greatly promotes the welfare of the people.

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