

## **Land Acquisition for Development in the Public Interest: A Justice and Human Rights Perspective (Land Acquisition Study for Bali Cultural Center Development in Klungkung Regency, Bali)**



**Dr. I Ketut Kasta Arya Wijaya, SH.M. Hum.<sup>1</sup>, Dr. Ni Made Jaya Senastri, SH. MH.<sup>2</sup>,**

**Dr. Ni Komang Arini Styawati, SH.MH.<sup>3</sup>**

<sup>1,2,3</sup>Universitas Wa-ma lewa

**ABSTRACT:** This study examines the implementation of land acquisition for development for public interest from the perspective of justice and human rights. The phenomenon that occurs in the community in land acquisition carried out by the Government in taking community land has not fully provided a sense of justice and respect for the rights owned by the community. Therefore, it will be studied and analyzed related to the acquisition of land at the Bali Cultural Center in Klungkung. This research will use empirical legal research, because there is potential in land acquisition in the community is not fully in accordance with procedural and existing laws and regulations. Thus, this study found that in the implementation of land acquisition, the principles that exist in land acquisition such as the principle of justice and respect for community rights. Related to the provision of compensation has not been in accordance with the sense of justice for land rights holders and respect for the rights that must be given to the community has not been accommodated.

**KEYWORDS:** land acquisition, public interest, justice and human rights

### **INTRODUCTION**

The issue of land acquisition for development in the public interest is indeed a dilemmatic thing because it involves two dimensions where both must be placed in balance. (Zakie, 2011) The balance referred to in the acquisition of land for development for public interest is related to the need for the area of land used in development. State land that is very limited and minimal makes land acquisition necessary for the community. on the other hand community land used for development for public interest cannot be sidelined and economically disadvantaged. (Dilla Nandya Oksitania, Erlina B, 2021)

Land acquisition for public interest in Bali has recently become more and more common, one of which is the construction of the Bali Cultural Center in Klungkung Regency. Currently, affected residents have to free up their land to build the project. The Bali cultural center construction project is planned to be built in the area of Klungkung Regency, Klungkung Regency has an area of 315 km<sup>2</sup>, the general land layout based on administrative areas consists of: Tangkas Village, Gelgel Village, Jumpai Village, Sampalan Klod Village, and Gunaksa Village, Klungkung District and Dawan District, Regency: Klungkung Province: Bali. The land area required for the development of the Bali Cultural Center Area as a whole is 334,622 ha. Of the total area of 110, 315 Ha has been determined by the Governor's Decree Number 180/01-A/HK/2020 concerning the determination of the Location for the Construction of Tukad Unda Flood Control Infrastructure and Muara Unda Reservoir in Klungkung Regency and around 11,187 Ha is the existing residential land of Agile Village.

Thus, the land area needed is the difference between the area of Bali Cultural Center Area (334,622 Ha) minus the Area of Location Determination and existing settlements to an area: 213,120 Ha. The required land area is 213,120 Ha with land acquisition in accordance with the determination of the existing location and existing settlements will become a unit of the Bali Cultural Center Area.

The implementation of land acquisition for development in the public interest still pays attention to aspects of justice and respect for the rights owned by the community. Based on the description above, it can be studied in this paper about aspects of justice and human rights in the implementation of land acquisition at the Bali Cultural Center in Tangkas Klungkung Village.

From the background presentation described earlier, the following problems can be raised: Has the principle of justice been implemented in the implementation of land acquisition for development for public interest in the construction of the Bali Cultural Center in Klungkung Regency?

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## RESEARCH METHODS

This research uses a type of empirical legal research. Empirical legal research is used because it is alleged that there are gaps in the implementation of land acquisition, a sense of community justice, and respect for community rights have not been fully accommodated by the government.

Empirical legal research oriented towards harmonizing the gap between legal substance and community legal culture. The approaches used are: case approach, sociology of law, and customary law approach. The data used is in the form of primary data collected by freely guided interview techniques to Perbekel (Head of Village) and Bendesa Adat, Klian Banjar, and communities affected by land acquisition activities.

The research area is determined based on the activities held in the implementation of land acquisition for development for public interest, (Dilla Nandya Oksitania, Erlina B, 2021) where the location of land acquisition is in general land layout based on administrative areas consisting of: Agile Village, Gelgel Village, Jumpai Village, Sampalan Klod Village, and Gunaksa Village, Klungkung District and Dawan District, Regency: Klungkung Province: Bali.

Similarly, the determination of informants is carried out by purposive sampling techniques, such as Village Head/Perbekel, Bendesa Adat, while secondary data is collected by documentation techniques and recording with a file system.

## RESULTS AND DISCUSSION

Land acquisition for public interest (King Faisal Sulaiman, 2021) can only be done on the basis of agreement from the holder of land rights regarding the basis and form of compensation given to the holder of land rights themselves. Because it is the government's act to acquire land, in principle, land acquisition is carried out by means of deliberation between parties who need land and holders of land rights whose land is needed for development activities for public interest. (Tukgali, 2010) The definition of land acquisition in Article 1 point 1 of Presidential Decree No. 55 of 1993 concerning Land Acquisition for the Implementation of Development for Public Interest which reads: (Natasha Marcella Geovanny, Marchelina Theresia, 2019)

"Land acquisition is any activity to obtain land by providing compensation to those entitled to the land." The definition of land acquisition in Article 1 point 2 of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest which reads: (Natasha Marcella Geovanny, Marchelina Theresia, 2019)

"Land acquisition is the activity of providing land by providing adequate and fair compensation to the entitled party." The definition of land acquisition in Article 1 point 1 of Government Regulation No. 19 of 2021 concerning the Implementation of Land Acquisition for Development for Public Interest which reads: "Land acquisition is the activity of providing land by providing adequate and fair compensation."

In H.M Arba's opinion, land acquisition is the activity of providing land for development for public interest by releasing / severing the legal relationship between the right holder and his land and the objects on it through consensus deliberation by providing adequate and fair compensation to the entitled party. (Arba, 2019)

## THE PRINCIPLE OF JUSTICE IN THE ADMINISTRATION OF LAND ACQUISITION

Speaking of justice, it cannot be separated from the theory put forward by John Rawls, an American philosopher who is considered one of the leading political philosophers of the 20th century. In his book "A Theory of Justice", he states that justice is the first virtue of social institutions, as is truth in systems of thought. (Rawls, 1999)

Justice according to Rawls is basically a fairness, or what he calls pure procedural justice. (Hanafi., 2023) From this idea, Rawls' theory of justice emphasizes the importance of a fair and impartial procedural that allows political decisions born from that procedure to guarantee the interests of all. Furthermore, fairness according to Rawls speaks of two main things, first, how each of us can be obliged, namely by doing everything voluntarily precisely because the obligation is seen as an extension of the natural obligation (natural law concept) to act fairly, second, regarding the conditions for whether existing institutions (in this case the state) must be fair. (Hanafi., 2023) That means the obligations imposed on institutions only arise when the underlying conditions (constitution, laws, regulations under them) are met. (Hanafi., 2023)

In the implementation of land acquisition carried out by the Bali Provincial government, it is mandatory to accommodate what is the teaching or theory put forward by Jhon Rawls which prioritizes a sense of justice in providing its rights related to the acquisition of land land by the state.

The main field of justice according to Rawls, is the basic structure of society which includes social, political, legal, economic institutions, because the structure of these institutions has a fundamental influence on the prospects of individual life. So the main problem of justice is to formulate and reason for a number of principles that must be fulfilled by a basic structure of a just society, namely how to distribute income fairly to the community. (Hamidah, 2015).

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### **HUMAN RIGHTS PRINCIPLES IN THE IMPLEMENTATION OF LAND ACQUISITION**

The concept of human rights-based development is different from the concept of needs-based development. In a needs-based approach, development strategies, policies and programs are more aimed at providing and providing services for basic needs. The community is placed as the beneficiary and the State as the beneficiary. (Aries, 1985)

The Constitution of the State of Indonesia has regulated Human Rights, articles that regulate human rights material Articles 28 A to 28 J and further regulated in Law Number 39 of 1999 concerning Human Rights.

The main problem of human rights in Law Number 2 of 2012 is that state power always needs to be limited, so that it does not act arbitrarily. On the other hand, the state in achieving its goal increases its power, with the existence of this land acquisition law. This needs to be re-examined because it opens up space for the creation of human rights issues. Restrictions and additions to state power must be regulated in laws and regulations. (Aries, 1985)

According to Maria S.W Sumardjono, the new paradigm of development that is used as a guideline in land acquisition arrangements should accommodate three things, namely:

1. Respect and protection of human rights in the form of poverty eradication, employment expansion and equitable development,
2. Sustainability of the productive capacity of the community,
3. Community empowerment through the development and implementation of good governance (participation, transparency, accountability and rule of law) (Rosari, 2010)

Thus, (Dilla Nandya Oksitania, Erlina B, 2021) the implementation of land acquisition for development for public interest aspects of human rights protection, (Wahyu Prawesthi, M. Khoidin, Slamet Suhartono, 2022) community sustainability in productivity and the active role of the community continue to be developed in realizing good government governance.

In the research, Ketut Kasta (et al) stated that the constitutional mandate in the land sector demands that politics and land policy can make a real contribution in the process of realizing social justice for all Indonesian people and realizing the greatest prosperity of the people ( Wijaya, 2021)

Caste (et al) also states that certificates that provide guarantees of certainty and legal protection for their owners, with legal lawsuits carried out on the basis of evidence of land ownership marks such as Girik, Pipil, and so on, certainly rule out the existence of the certificate itself as strong evidence of ownership of land parcels. Even in the judiciary, doubts sometimes arise in the many lawsuits made over agrarian disputes that occur. (Wijaya, 2021)

Caste (et al) also stated the importance of land registration, this will provide a guarantee of legal certainty of land rights. For rights holders, an inventory of data relating to each transition must be carried out. The implementation of good land registration is the basis and manifestation of orderly administration in the land sector in order to provide compensation. (Wijaya, 2021)

Putri Lestari in the results of her research stated that the provision of compensation due to land acquisition must be carried out based on deliberation for consensus for the creation of justice based on Pancasila so as not to cause losses to parties who lose their land rights. (Lestari, 2020)

Slamet Riyadhi (et al) in the results of his research said that the implementation of deliberation is part of human rights mandated by Article 28H paragraph (4) of the 1945 Constitution providing deliberation as a guarantee of community rights (Dilla Nandya Oksitania, Erlina B, 2021) in land acquisition for the public interest guarantee for every citizen for the provision of reasonable compensation as a consequence of state recognition of the land rights of a person or a community, then the state is obliged to actualize Article 37 of Law No. 2 of 2012 honestly and as well as possible. (Law et al., 2020)

Mohamad Ridwan Saripi in the results of his research found that the land acquisition process was in accordance with applicable procedures based on the principle of adequate compensation to the entitled party for further release of land rights by land owners to the state in the form of Minutes of Release of Land Rights. Minutes of Release of Land Rights is carried out after the payment of compensation from the executor of land acquisition to the land owner or the implementation of the deposit of compensation (consignment) to (Dilla Nandya Oksitania, Erlina B, 2021) the District Court as a form of implementation of the state's obligation to protect and respect Human Rights. (Saripi, 2018)

In the implementation of compensation for land rights holders, (Dilla Nandya Oksitania, Erlina B, 2021) often aspects of justice are excluded and certainty and expediency are prioritized. The issue of compensation is the most important thing in the land acquisition process. (Natasha Marcella Geovanny, Marchelina Theresia, 2019) Indemnity is the provision of compensation for losses suffered by land rights holders for the transfer of rights. Article 1 of Law Number 12 of 2012 states that compensation is a decent and fair compensation to the entitled party in the land acquisition process. (King Faisal Sulaiman, 2021) In accordance with Article 67 of Government Regulation Number 19 of 2021 which states that Appraisal Services are held by agencies that require land and are determined by the chief executive of land acquisition.

In an interview on July 6, 2022, which took place at the Klungkung Regency Land Agency Office with Mr. Aditia Widiawan, (Widiawan interview, 2023) as the Young Cadet Stylist and Head of Team A of Land Acquisition for the Public

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Interest of the Construction of the Bali Cultural Center in Klungkung Regency as an informant, said that the problems or obstacles faced had a large impact in land acquisition to reach an agreement with land rights holders. For development in the public interest, it is not the initial information of the plan or better known as public consultation or inventory map drawings or called determining the location of field drawings in which there are data on land rights holders affected by procurement, but about the amount of compensation value determined by the appraisal service which is felt to be very far from the real market price of the area that will be affected by the procurement, thus causing land rights holders not to be willing to use their land for public interest. (King Faisal Sulaiman, 2021)

Appraisal services have used standard appraisal formulas for the amount of compensation value calculation determined how and what it looks like in accordance with the formulation or calculation of appraisal services that have been fully submitted by (Dilla Nandya Oksitania, Erlina B, 2021) the government as the land acquisition organizing committee. In Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest and in Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for Public Interest, there is no article that determines the calculation formula for determining the value of compensation.

In an interview on July 9, 2022, which took place at the House of Mr. Ketut Gede Ariambara, Jalan Raya Sampalan, Br Lekok with Mr. Ketut Gede Ariambara as the respondent of the landowner said that from the determination of the compensation value provided by the appraisal service was not in accordance with the market value or surrounding selling value in the area, he wanted his land to be used as a plantation to get a price that was in accordance with the criteria of productive land, because currently the land is only valued the same as unproductive land or categorized as ex-excavated C. Appraisal services are considered too partial to the success of land acquisition without protecting the rights of land owners and also there are several objections made by other land owners affected by land acquisition for public interest. (Wawancara Dengan Bapak Ketut Gede Ariambara, 2022)

In an interview with Mrs. Wayan Sutastri on July 9, 2022, which took place at Mrs. Wayan Sutastri's house, Jl Raya Sampalan, Br Lekok, as a respondent for land rights owners, said that he did not refuse to release his land rights and purely supported land acquisition carried out by the government without demanding other forms of compensation other than those provided by the government. (Interview with Mrs. Wayan Jro Sutastri, 2022)

In an interview with Mr. I Wayan Sadiarna as the Head of Gunaksa Village as an informant on July 7, 2022 at the Gunaksa Village Office, stated that all residents of Gunaksa Village whose land was affected by land acquisition for public purposes for the construction of the Bali Cultural Center received a form of monetary compensation provided by the government and did not claim compensation in any form again. (Wawancara Dengan Bapak I Wayan Sadiarna, 2022)

In an interview with Mr. Wayan Budi Susila as the Head of Sampalan Kelod Village as an Informant on July 7, 2022 at the Sampalan Kelod Village Office, it was stated that there were several land rights owners in the Sampalan Kelod Village area who were affected by land acquisition for public interest objected to the determination of compensation because the nominal was considered not in accordance with the market price in the area. (Wawancara Dengan Bapak Wayan Budi Susila, 2022)

Compensation is given to the entitled party based on the results of the assessment determined in the deliberation on the determination of compensation and / or the decision of the district court / supreme court. (Natasha Marcella Geovanny, Marchelina Theresia, 2019) The party entitled to receive compensation is responsible for the truth and validity of the evidence of possession or ownership submitted and those who violate it will be subject to criminal sanctions in accordance with applicable laws and regulations. (Natasha Marcella Geovanny, Marchelina Theresia, 2019).

### **CONCLUSION**

Based on the discussion described above, it can be concluded as follows: Land acquisition for development for public interest in the construction of the Bali Cultural Center in Klungkung Regency on the facts that occur in the field of land rights communities tend to prioritize their individual interests and pay less attention to the social function of land rights, it can be interpreted as respect for the basic rights of affected communities has not been obtained his rights with dignity. Whereas on the other hand government in the name of the public interest focuses only on success. However, in providing compensation for landowners, it is evident that the government through the services of appraisers appointed in the assessment of compensation prices is too dominant in determining the issue of compensation, which should pay more attention to the interests of the community who release their land. This means that the principle of justice has not been fully accommodated in providing compensation.

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