



## Legal Review of Compensation for Revocation of Land Rights for the Purpose of Toll Road Construction

Leyla Vani Panjaitan<sup>1\*</sup>, Janpatar Simamora<sup>2</sup>, Jinner Sidauruk<sup>3</sup>

Fakultas Hukum, Universitas HKBP Nommensen, Medan

**Corresponding Author:** Leyla Vani Panjaitan

[leylavani.panjaitan@student.uhn.ac.id](mailto:leylavani.panjaitan@student.uhn.ac.id)

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### ARTICLE INFO

*Keywords:* Land, Compensation, Revocation of Rights, Toll Road Development, Legal Remedies

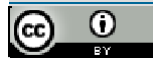
*Received :* 15 December 2024

*Revised :* 05 January 2025

*Accepted:* 07 February 2025

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### ABSTRACT

Land issues in Indonesia are an important issue that affects people's lives, especially in the context of infrastructure development. This study aims to analyze the form of compensation for the revocation of land rights for toll road construction and legal remedies that can be taken by land owners if compensation is not paid. The research method used is normative juridical with a qualitative approach, referring to the applicable laws and regulations, especially Law No. 2 of 2012 and UUPA No. 5 of 1960. The results of the study show that the land acquisition process involves the stages of identification, value determination, deliberation, compensation, and release of land rights. Compensation can be in the form of money, replacement land, resettlement, or shares. In the event of disagreement, the landowner has the right to file an objection to the District Court and proceed to the Supreme Court if dissatisfied with the decision. This study emphasizes the importance of legal protection for landowner in the process of land acquisition for the public interest.

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## INTRODUCTION

Land issues have always been a central concern due to their broad implications for individuals and society. The availability of land has become a crucial challenge faced by countries worldwide, both developed and developing. One of the main obstacles is the increasing difficulty in acquiring land for various development needs. In Indonesia, where a significant portion of the population still relies on the agricultural sector, land acquisition for development must be carefully managed. This aims to balance economic development with social welfare, in accordance with the principles of **Pancasila**.

Thus, the government is needed as a regulator to manage and regulate land use in Indonesia. The state has the authority to establish policies related to the use, provision, and management of land, as well as to determine ownership rights over land, water, and airspace, and to regulate the legal relationships associated with them. To function as a regulator, the government requires clear regulations. The 1945 Constitution of the Republic of Indonesia is further specified in **Law No. 5 of 1960 on Basic Agrarian Principles (UUPA)**, which states in Article 2:

*"Based on the provisions in Article 33, paragraph (3) of the Constitution and the matters referred to in Article 1, the land, water, and airspace, including the natural resources contained therein, at the highest level are controlled by the State, as the power of the people as a whole."*

This article implies that the state, as the power of the people, has the right to control land. According to the **Indonesian Dictionary (KBBI)**, "to control" means to manage. Therefore, the state or government controls land to ensure proper land management in Indonesia. However, this does not mean that the state owns all land, as the government recognizes, respects, and provides legal protection for individuals who hold land rights under the **UUPA**. Various types of land rights held by the public are recognized and legally protected by the government.

Every type of land right, whether owned by individuals, groups, or legal entities, still has a **social function**. This is based on **Article 6 of UUPA No. 5 of 1960**, which states:

*"All land rights have a social function."*

According to **KBBI**, a social function is the usefulness of something for the general community. According to **Achmad Rubaie** in his book *"Hukum Pengadaan Tanah untuk Kepentingan Umum"*, the social function of land serves as a means of unifying the social community for life and livelihood.

Because all land has a social function, individual, group, and legal entity land rights may be set aside by the government for the **public interest**. In other words, the government revokes land rights for public purposes. The term used for this process is **land acquisition**, which is a procedure for the government to use public land for development projects.

The legal basis for land acquisition is **Article 18 of the UUPA**, which states: *"For public interest purposes, including the interests of the nation and state as well as the common interests of the people, land rights may be revoked, with fair compensation provided according to procedures regulated by law."*

This means that land acquisition is carried out for the public interest, superseding personal land ownership rights, by revoking land rights and providing compensation. The **public interest** in this context includes government infrastructure projects such as toll roads, tunnels, railway tracks, and other public constructions aimed at serving the community. The public interest refers to national, state, and societal interests that the government must address for the welfare and prosperity of the people.

However, in practice, the implementation of land acquisition often results in both advantages and disadvantages for different parties. Essentially, **loss** refers to a decrease in wealth suffered by one party due to actions (or inactions) that violate norms by another party. Compensation is a stage that follows the land acquisition process undertaken by the government for public interest projects.

According to the **Encyclopedia of Islamic Economics and Banking**, compensation is defined as ensuring (guaranteeing) payment of debts, providing goods, or presenting a person at a predetermined place. According to **Article 1, Paragraph (10) of Law No. 2 of 2012**, compensation is a fair and reasonable replacement provided to the entitled party in the land acquisition process.

It can be concluded that compensation is a **fair and proportional** replacement for those who feel disadvantaged due to land acquisition for public interest. The party responsible for providing compensation is the one conducting the land acquisition. **Article 6 of Law No. 2 of 2012** states that the **government** is the party responsible for land acquisition in Indonesia.

According to **Article 36 of Law No. 2 of 2012**, compensation can take various forms, including:

1. Money
2. Replacement Land
3. Resettlement
4. Share Ownership
5. Other forms of compensation agreed upon by the government and the landowner

The compensation process follows specific steps. **Article 32 of Law No. 2 of 2012** regulates compensation procedures, including the assessment of compensation amounts by **land appraisers**. According to **Paragraph 3 of Law No. 2 of 2012**, compensation assessment is conducted by **Public Appraisers** within the **Public Appraisal Service Office (KJPP)**. The appraisal covers various aspects, including:

- Land value
- Above-ground and underground space
- Buildings
- Plants
- Objects related to the land
- Other relevant losses

In practice, many landowners **dispute** the compensation amounts determined by appraisers during **deliberations**.

Since **six years ago**, Indonesia has been aggressively constructing **toll road infrastructure**. To date, **approximately 2,893.02 km** of toll roads have been built – a significant achievement within a relatively short period. Given the large scale and rapid pace of toll road construction, there have inevitably been many legal consequences arising from this process.

Because toll road construction falls under the category of **public interest projects**, it is closely related to **Law No. 2 of 2012**, as building toll roads **requires land acquisition**. Consequently, many individuals have had their land rights **revoked** for toll road construction, since the state **does not own** land but instead **controls** it.

The discussion above provides an overview of land acquisition and compensation related to **public interest projects** such as toll road construction. Based on this discussion, the author is interested in conducting research, which is presented in the journal titled: "**Juridical Review Of Compensation For The Revocation Of Land Rights For Toll Road Construction.**"

## **LITERATURE REVIEW**

Land procurement is a series of activities aimed at providing land through compensation or acquiring land by providing compensation to those who have rights over the land. According to Law No. 2 of 2012 Article 1 concerning Land Procurement for Development in the Public Interest, land procurement is defined as the activity of providing land by offering fair and appropriate compensation to the rightful parties. The concept of land procurement, based on previous research by Imam Koeswahyono, is a legal act carried out by the government to acquire land for specific interests by providing compensation to the landowners (either individuals or legal entities) according to specific procedures and nominal values.

To implement land procurement, the release of rights is required. The release of rights refers to the relinquishment of legal ties between an individual and the land they own through compensation determined based on negotiations between both parties. Meanwhile, the revocation of rights involves the forced acquisition of land by the state, resulting in the termination and transfer of land ownership for public development purposes. According to previous research by Abdurrahman, the revocation of land rights is a mechanism organized by the government to take ownership of citizens' land for the public interest, which includes the collective interests of the people, the nation, and the state, as well as development interests that benefit the majority of society.

Compensation, as stated in Law No. 2 of 2012 Article 2, is fair and appropriate restitution given to the rightful parties in the land procurement process. As a country that upholds the rule of law, the government must prioritize monetary compensation while also considering other forms of restitution as outlined in Article 36 of Law No. 2 of 2012. These alternative compensation forms cannot be ignored, as they are explicitly regulated by law and constitute the rights of landowners.

## METHODOLOGY

### 1. Scope of Research

According to the Indonesian Dictionary (KBBI), scope refers to the boundaries that define the subject of an issue. The purpose of defining a research scope is to guide the author in ensuring the study remains aligned with its initial objectives and provides a more specific analysis. In this study, the research scope focuses on the forms of compensation received by landowners and the measures taken by landowners when compensation is not paid.

### 2. Type of Research

The type of research used in this journal follows a normative juridical method. This research analyzes legal issues by examining legal principles and adhering to legal norms contained in applicable laws and regulations in Indonesia.

### 3. Research Approach

This study adopts a qualitative approach. According to Jonathan Sarwono, qualitative research is a process that seeks to understand the complexity of human interactions. This research specifically analyzes legal provisions regarding compensation for land acquisition for public facility development.

### 4. Data and Data Sources

Data refers to all collected information that provides insights relevant to the research. According to Hasan, data consists of descriptions of a particular subject. In other words, all collected data can be used as components in compiling information within a study. The data used in this research is secondary data. According to Sugiyono, secondary data is data that does not directly originate from the source but is obtained through other people or documents.

The data sources in this research include:

- **Primary Legal Materials:** Laws and regulations, including Law No. 2 of 2012 on Land Procurement for Public Interest and the Basic Agrarian Law (UUPA) No. 5 of 1960.
- **Secondary Legal Materials:** Literature such as research journals, books, scientific papers, legal theories, expert opinions, and legal research findings.
- **Tertiary Legal Materials:** Supporting references that explain secondary materials, sourced from the internet, legal dictionaries, and legal encyclopedias.

### 5. Data Collection Method

According to Daniel, Endang, and Nanan Warsiah, a literature study is a research method in which the researcher collects data from books and journals related to the research problem and objectives. Therefore, this study employs a literature study method to gather necessary data. The literature study includes collecting data from books, journals relevant to the research topic, scientific papers, and legal research findings.

## **RESULTS AND DISCUSSION**

### **I. Forms of Compensation for the Revocation of Land Rights for Toll Road Construction**

Land procurement is essentially aimed at development for public interest. Public interest in this context refers to the interests concerning the majority of society. According to Roscoe Pound, public interest is one of the interests that must be protected by law.

In land procurement, the principle states that in the process of relinquishing land ownership rights for public interest, both individuals and legal entities who must relinquish their land ownership rights for development purposes should be provided with a better life than before. This is because the rights relinquished cannot be economically valued with money, as most of the land owned by the community serves as a source of livelihood and residence.

In this regard, land procurement cannot be repurposed for private use, sacrificing public interest and causing harm to the community. The criteria for an activity to be categorized as serving the public interest include being carried out by the government and not for profit-making purposes. Therefore, the state proactively and imperatively ensures justice.

Law No. 2 of 2012, Article 3, states: "Land procurement for public interest aims to provide land for development to improve the welfare and prosperity of the nation, state, and society while maintaining the legal interests of the entitled parties." This means that land procurement is conducted solely for public interest, such as the construction of hospitals, toll roads, health centers, and other public facilities. As a legal act, land procurement entails compensation for landowners through mutual agreement among the involved parties.

The forms of compensation are determined through several stages, including:

1. **Inventory and Identification** At this stage, the land procurement committee appoints a task force responsible for inventory and identification. This involves collecting data, mapping, and measuring the land parcels to be relinquished. Systematic inventory entails gathering factual and spatial data on affected land. The results are announced at the village/urban ward office, sub-district office, and land procurement site. If any entitled party objects, they may submit their objection to the land procurement committee within 14 days of the announcement.
2. **Determination of Value** The land procurement committee determines the amount of compensation based on assessments conducted by appointed appraisers or public assessors.
3. **Deliberation on Compensation Form** The entitled parties, including the land procurement committee and landowners, conduct deliberations on the compensation amount. The process includes asset valuation and negotiation. Compensation is determined based on actual value, considering the most recent taxable property value.
4. **Provision of Compensation** According to Presidential Regulation No. 71 of 2012, Article 76:
  1. Compensation in monetary form is provided in Indonesian Rupiah.

2. The relevant agency provides compensation based on validation by the land procurement committee.
3. Compensation is granted simultaneously with the release of rights.
4. Compensation must be provided within seven working days after the determination of the compensation form.

This stage ensures fair and reasonable compensation without harming the community.

5. **Release of Land Rights** The release of land procurement objects for public interest, controlled by the state, follows legal regulations. If not resolved within 60 working days after the public interest location is determined, the land is deemed nullified and becomes state property for direct use in public development. Officials violating this provision are subject to administrative sanctions per applicable laws.

Compensation can take various forms, including monetary payment, land substitution, resettlement, shares, or other mutually agreed forms. Resettlement involves providing alternative land, while compensation through shares refers to ownership participation in public-interest projects based on agreements among the parties.

Before compensation is provided, negotiations must be conducted under the principle of equality, without coercion. The assessment of compensation value considers land, space above and below the land, buildings, plants, and objects related to the land. The assessed value is submitted to the entitled parties based on mutual agreement or court decisions.

## **II. Legal Remedies for Landowners if Compensation is Not Paid**

Legal remedies are mechanisms provided by law for individuals or legal entities to contest decisions made by courts or competent authorities.

In a legal state, the law must be upheld fairly at all times. This includes ensuring that landowners whose rights are revoked receive their entitlements. Compensation claims arise due to issues such as lack of transparency in valuation, erroneous payments, delays in compensation despite land usage, and other concerns.

Legal protection ensures that land rights holders are safeguarded by law. In land rights revocation, compensation determination is a major issue due to disagreements between landowners and land procurement executors.

According to Law No. 2 of 2012, if no agreement is reached or if the landowner objects, they may file a complaint with the local District Court within 14 days of deliberation. If the court rules in favor of the landowner, the land agency must pay compensation accordingly. If the landowner disagrees with the District Court's ruling, they may file an appeal with the Supreme Court within 14 days. This falls under ordinary legal remedies, specifically cassation.

Regarding legal remedies for court decisions on land procurement compensation objections, Supreme Court Regulation No. 3 of 2016, Article 21, stipulates:

1. Parties may file a cassation request with the Supreme Court of the Republic of Indonesia.

2. Cassation must be filed within 14 days of the court ruling in an open session attended by the parties.
3. If the cassation petitioner was absent at the ruling session, the deadline is counted from the date of receiving the notification.
4. The cassation memorandum must be submitted within seven days of filing the cassation request.
5. The court clerk must notify the respondent within one day of receiving the cassation memorandum.
6. The respondent may submit a counter-memorandum within seven days of receiving the cassation memorandum.
7. Case files must be sent within seven days of receiving the cassation memorandum/counter-memorandum.
8. Hardcopy case files must be preceded by electronic document submission.
9. Hardcopy documents must be sent to the Supreme Court via registered mail.
10. Case fees are estimated by the clerk and determined by the court chairman.

Final court decisions serve as the basis for compensating objecting landowners. If the landowners still reject the compensation amount, the land procurement committee deposits the compensation with the local District Court.

## **CONCLUSION AND RECOMMENDATION**

The process of land acquisition for public interest, such as highway construction, requires clear stages to determine fair compensation for landowners. These stages include inventory, valuation, deliberation, compensation payment, and land rights relinquishment. The forms of compensation provided may include monetary compensation, land substitution, relocation, or shares, based on mutual agreement between the parties.

If there is a disagreement or if compensation is not paid, landowners have the right to file an objection with the District Court. If they are not satisfied with the District Court's decision, they may file a cassation appeal with the Supreme Court of the Republic of Indonesia. This legal process ensures legal protection for landowners and guarantees that compensation is provided fairly and in accordance with applicable laws and regulations.

## **ADVANCED RESEARCH**

This journal focuses on the "**Juridical Review of Compensation for Land Rights Revocation for Highway Development.**" The research presents knowledge on the forms of compensation and legal remedies available to dispute compensation values that are deemed inappropriate, based on relevant laws and regulations.

Given the limitations of this study, the author suggests further research, such as in-depth case studies on land acquisition compensation, surveys of affected landowners, analysis of policy effectiveness based on relevant laws, comparative legal analysis, and quantitative analysis.



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