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Submission date: 13-Jan-2025 11:41AM (UTC+0700)

Submission ID: 2563097754

File name: 40736-95510-2-PB.pdf (193.18K)

Word count: 9540

Character count: 53548



LAND ACQUISITION FOR PUBLIC INTEREST: BALANCING STATE CONTROL AND INDIVIDUAL PROPERTY RIGHTS

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ARTICLE INFO

Keywords:

Land Acquisition, Public Development, Property Rights, Compensation, Legal Challenges.

DOI:

10.26532/jh.v40i2.40736

ABSTRACT

Land acquisition is essential for public development, but it often causes disputes over land rights and compensation when governments acquire land for economic and infrastructural projects. This research aims to address the challenges in land acquisition, particularly focusing on the shift from land "management" to land "ownership" in for public interest. The study seeks to highlight issues related to coercion, inadequate compensation, and the lack of proper consideration for individual landowners during the acquisition process. This study employs doctrinal research, using a combination of the statutory approach to analyze the balance between the State's control and individual property rights in land acquisition. The study finds that while land acquisition is legally grounded in principles of land control and protection for landholders, its implementation often fails to respect the rights of individual landowners. Issues of coercion and inadequate compensation persist, and the shift from land management to ownership in development activities exacerbates these problems. Simplifying the land acquisition bureaucracy while maintaining respect for land rights, fairness, and caution is essential for a more just and efficient process, aligning with principles of justice and proper compensation.

1. Introduction

The meaning of balance in the context of land rights is equivalence/equality in owning, controlling and utilizing land for people or individuals. Likewise, in the constitution protected by the 1945 Constitution, in Article 28H paragraph (4) it states, "everyone" has the right to personal property and such property rights may not be taken over arbitrarily by others. Article 28J states that everyone is obliged to respect the human rights of others and is willing to have their rights limited for

the sake of realizing the human rights of others.¹ The implication of the balance in land rights, as outlined in the 1945 Constitution, underscores the importance of equality in ownership, control, and utilization of land. This balance ensures that individuals' property rights are protected from arbitrary confiscation, as guaranteed in Article 28H. However, the constitution also emphasizes that the exercise of these rights may be limited when necessary to uphold the rights of others, as stated in Article 28J. Therefore, land acquisition processes must carefully consider both individual property rights and the public interest, ensuring that landholders' rights are respected while facilitating development for the common good.²

Moreover, property rights are fundamental rights for every individual.³ Therefore, Indonesian citizens have an obligation to respect the basic rights of others. This underscores that Indonesian human rights, including land rights, must be balanced with the fundamental principles of land management.⁴ Land rights held by individuals cannot be justified for personal use solely, particularly when it causes harm to society and the state. However, this does not mean that individual interests will be entirely subordinated to public interests. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Basic Agrarian Law) also acknowledges individual interests, emphasizing that the interests of society and individuals must be balanced to achieve the ultimate goals of prosperity, justice, and happiness for both individuals and the broader community.⁵

Regarding the provisions above, as a manifestation of the nature of a state based on the rule of law based on Pancasila, especially the principle of just and civilized humanity, in obtaining land owned by individuals or communities needed for development must be protected. However, with the argument that all land rights have a social function, land owned by individuals or communities needed for development of public interests related to the existence of development programs that require land, such as infrastructure for public interests, there has been a legal disproportion between the objectives of the law and implementation in the field of land law.⁶ As a result of this misinterpretation, various demands and actions

¹ Mohammad Ibrahim., The Judicialisation of Discrimination in the Indonesian Constitutional Court, *International Journal of Discrimination and the Law*, Vol.22, no.2, 2022, page.132.

² Rebecca Meckelburg and Agung Wardana., The political economy of land acquisition for development in the public interest: The case of Indonesia, *Land Use Policy*, Vol.137, 2024, page.107017. See too, Zaka Firma Aditya and Sholahuddin Al-Fatih., The legal protection system of indigenous peoples in Southeast Asia, *Legality: Jurnal Ilmiah Hukum*, Vol.31, no.2, 2023, page.301.

³ Hariyanto, Mabarroh Azizah, and Nurhidayatuloh Nurhidayatuloh., Does the Government's Regulations in Land Ownership Empower the Protection of Human Rights?, *Journal of Human Rights, Culture and Legal System*, Vol.4, no.2, 2024, page.3911.

⁴ Arie Sukanti., *Konsep Yang Mendasari Penyempurnaan Hukum Tanah Nasional, Pidato Upacara Pengukuhan Guru Besar Tetap Dalam Ilmu Hukum Agraria*, Depok, Fakultas Hukum Universitas Indonesia, 2003, page.121.

⁵ Gusti Ayu Made Suartika., Territoriality and the market system—Adat land vs. state regulations on land matters in Bali, *Habitat International*, Vol.31, no.2, 2007, page.172.

⁶ Sri Hajati, Sri Winarsi, Xavier Nugraha, Rahajeng Dzakiyya Ikbarr, and Stefania Arshanty Felicia., Land acquisition for the public interest as an alternative to building a food estate in Indonesia: an effort to achieve proportional justice, *World Journal of Entrepreneurship, Management and Sustainable Development*, Vol.19, no.1, 2023, page.12. See too, Nora Eka Putri and Melinda Noer., Social risk assessment of land acquisition for the construction of the Sicincin-Padang toll

actually create conditions that reduce legal certainty for the development actors themselves.⁷

Land acquisition by the state for public interest can only be carried out if it is based on the authority granted by law. However, the meaning of "controlled" is interpreted as if it gives unlimited authority to the government so that in its implementation it causes dissatisfaction among the wider community.⁸ It is not uncommon for there to be a policy of land acquisition in the implementation of development for the public interest, both carried out by the government and the private sector, often becoming one of the causes of land disputes. This problem is caused by spatial planning often being translated into policies that tend to be oriented towards fulfilling the function of land, such as the allocation of roads, bridges, and buildings.⁹ Meanwhile, the unclear status of land ownership rights is a problem that often leads to land ownership conflicts in the community. This study will examine how the balance between the right to control the state and the protection of individual property rights in land acquisition for the public interest so as to obtain justice in a balanced position.

Roestamy et al. emphasized that land acquisition is mainly focused on the legal frameworks and procedures that govern the state's authority to acquire land for public interest. Many studies have examined the role of the land bank in providing legal certainty for effective land management in relation to public interests,¹⁰ including the using of land bank to provide legal certainty for effective land management of public interest.¹¹ Moreover, some have critiqued the legal aspects

road section, West Sumatra, Indonesia, *Kasetsart Journal of Social Sciences*, Vol.45, no.1, 2024, page.169.

⁷ Irene Eka Sihombing., *Pencabutan Hak atas Tanah Dipandang dari Konsepsi Hukum Tanah Nasional (Pemahaman dari Falsafah Komunalistik Religius)*, Master Theses, Jakarta, Universitas Trisakti, 2013, page.125. See too, Fifik Wiryani and Mokhammad Najih., The criticism of land procurement law to improve landowners welfare in Indonesia, *Sriwijaya Law Review*, Vol.5, no.2, 2021, page.183.

⁸ Budi Harsono., *Hukum agraria Indonesia: sejarah pembentukan undang-undang pokok agraria, isi dan pelaksanaannya*, Jakarta, Djambatan, 2007, page.154.

⁹ Mahsa Mesgar and Diego Ramirez-Lovering., Informal land rights and infrastructure retrofit: A typology of land rights in informal settlements, *Land*, Vol.10, no.3, 2021, page.273. See too, M. Priyanta and Zulkarnain, C.S.A., Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development, *Sriwijaya Law Review*, Vol.7, no.1, 2023, page.11. See too, Mohammad Arif Rohman., Assessment of the government's role performance in Public-Private Partnership (PPP) toll road projects in Indonesia, *Journal of Financial Management of Property and Construction*, Vol.27, no.2, 2022, page.252.

¹⁰ Rebecca Meckelburg and Agung Wardana., The political economy of land acquisition for development in the public interest: The case of Indonesia, *Land Use Policy*, Vol.137, 2024, page.107017. See too, Try Widiyono and Md Zubair Kasem Khan., Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law, *Law Reform*, Vol.19, no.1, 2023, page.129.

¹¹ Martin Roestamy, Abraham Yazdi Martin, Radif Khotamir Rusli, and Mohamad Ali Fulazzaky., A review of the reliability of land bank institution in Indonesia for effective land management of public interest, *Land Use Policy*, Vol.120, 2022, page.106275. See too, Rifki Ismal., Constructing Sukuk-linked Awqaf (endowment) model, *International Journal of Islamic and Middle Eastern Finance and Management*, Vol.17, no.5, 2024, page.879. See too, Grace Sharon, Bintang Aulia Hutama, Aghnia Risqa Hudiyarahma, and Levina Yustitiningtyas., Depiction of Public Interest Theory Based on the Welfare Economic Concept on Indonesia Regulation, *Yustisia*, Vol.11, no.2, 2024, page.136. See too, Rahayu Subekti, Adi Sulistiyono, Diah Pawestri Maharani, and I. Gusti Ayu Gangga Santi Dewi., The urgency of the legal strategy of abandoned-land use through the

of land procurement, particularly in terms of improving the welfare of landowners and the efficiency of land acquisition processes in Indonesia.¹² Mesgar and Ramirez-Lovering explore the informal land rights and challenges of infrastructure retrofit in informal settlements, highlighting the complexity of land ownership outside formal legal systems.¹³ In addition, the political and economic dimensions of land acquisition have been explored, which delve into the political economy of land acquisition for public development.¹⁴ Similarly, Roestamy et al. have reviewed the reliability of land bank institutions in Indonesia for managing public interest land acquisitions.¹⁵

Despite these studies, there remains a gap in understanding how the balance between the state's right to control land and the protection of individual property rights can be effectively achieved, especially in light of public dissatisfaction and land disputes.¹⁶ While earlier research has focused on causes of land disputes¹⁷ and the role of spatial planning in land acquisition,¹⁸ these studies have largely overlooked how these factors interact to impact the fairness and equity of the land

formation of land bank in Indonesia, *Cogent Social Sciences*, Vol.9, no.1, 2023, page.2239050. See too, Edy Lisdiyono., Land Procurement for Public Interest and Spatial Planning: Legal and Juridical Implications, *Lex Publica*, Vol.4, no.2, 2017, page.769.

¹² Fifik Wiryani and Mokhammad Najih., The criticism of land procurement law to improve landowners welfare in Indonesia, *Sriwijaya Law Review*, Vol.5, no.2, 2021, page.183.

¹³ Mahsa Mesgar and Diego Ramirez-Lovering., Informal land rights and infrastructure retrofit: A typology of land rights in informal settlements, *Land*, Vol.10, no.3, 2021, page.273

¹⁴ Rebecca Meckelburg and Agung Wardana., The political economy of land acquisition for development in the public interest: The case of Indonesia, *Land Use Policy*, Vol.137, 2024, page.107017

¹⁵ Martin Roestamy, Abraham Yazdi Martin, Radif Khotamir Rusli, and Mohamad Ali Fulazzaky., A review of the reliability of land bank institution in Indonesia for effective land management of public interest, *Land Use Policy*, Vol.120, 2022, page.106275

¹⁶ Iwan Permadi, M. Hamidi Masykur, Herlindah Herlindah, Setiawan Wicaksono, and Md Yazid Ahmad., Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region, *Journal of Law and Legal Reform*, Vol.5, no.2, 2024, page.707.

¹⁷ Iwan Permadi, M. Hamidi Masykur, Herlindah Herlindah, Setiawan Wicaksono, and Md Yazid Ahmad., Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region, *Journal of Law and Legal Reform*, Vol.5, no.2, 2024, page.707.

¹⁸ Hendra Gunawan, Titi Setyawati, Tri Atmoko, Rozza Tri Kwatrina, Irma Yeny, Tri Wira Yuwati, Rachman Effendy et al., A review of forest fragmentation in Indonesia under the DPSIR framework for biodiversity conservation strategies, *Global Ecology and Conservation*, Vol.5, no.3, 2024, page.02918. See too, Chay Asdak and Yulizar Yulizar., Transboundary water resources management and food security: An Indonesian perspective, *World Water Policy*, Vol.13, no.3, 2024, page.121. See too, Sherly Meilintan Surya, Nia Kurniati, H. Imamulhadi, and Maret Priyanta., Legal Aspects of Granting Land Rights for the Bajo Tribe in the Coastal Areas of Indonesia, *Coastal Management*, Vol.13, no.4, 2024, page.13. See too, Henzulkifli Rahman, Rizki Aththorih Hidayat, Adenan Yandra Nofrizal, Indra Wilastra, and Aulia Fajrin Ramadhani Nasution., Priority Corridor Zone for Human-Tiger Conflict Mitigation: A Landscape Connectivity Approach in West Sumatra Region, Indonesia, *Journal for Nature Conservation*, Vol.76, 2023, page.126501. See too, Maret Priyanta and Cut Sabina Anasya Zulkarnain., Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development, *Sriwijaya Law Review*, Vol.7, no.1, 2023, page.12. See too, Wen, Krishna Samudera, Luky Adrianto, Gabrielle L. Johnson, Mary Sue Brancato, and Alan White., Towards Marine spatial planning implementation in Indonesia: progress and hindering factors, *Coastal Management*, Vol.50, no.6, 2022, page.469.

acquisition process.¹⁹ This gap becomes more pronounced in cases where land disputes involve indigenous peoples or when the public interest is in conflict with the protection of individual property rights.

This study aims to fill this gap by specifically investigating how the balance between the state's control over land and the protection of individual property rights can be achieved in practice. Unlike previous studies that primarily focus on legal procedures or spatial planning in isolation, this research emphasizes the interaction between these elements, exploring how they can collectively contribute to achieving proportional justice in land acquisition processes. The focus is on ensuring that both the state's interests and the rights of landowners are adequately addressed, with a particular emphasis on fairness and justice in the acquisition process. By highlighting the competing interests of the state and individual landowners, and exploring the role of legal frameworks in balancing these interests, this research contributes to a deeper understanding of how land acquisition laws can be applied more equitably. It aims to offer insights into achieving just outcomes, addressing a critical gap in existing literature that has been insufficiently explored in prior studies.

2. Research Methods

This study uses the statutory approach, which is needed to analyze the balance between the State's right to control and the protection of individual rights in land acquisition for public interest.²⁰ Through the statutory approach, the balance between the State's right to control and the protection of individual property rights in land acquisition for public interest will be understood.²¹ Furthermore, by referring to the research problems as stated above, this study uses doctrinal research (norm research), namely research that focuses on studying the rules or norms in positive law or seeking the formulation of legal doctrine by analyzing existing legal rules.²² The legal norms in the land sector, including laws, government regulations, presidential regulations, presidential decrees, ministerial regulations, and court decisions, govern issues related to the balance between state control rights and the protection of individual property rights in land acquisition for public interests. These norms also address the legal protection of individual rights during land acquisition and the implementation and resolution of consignments in land acquisition for public purposes.

Positive norms that aimed to achieve legal certainty were analyzed to determine the value of justice, balance, and public interest. The analysis of primary data, supported by normative analysis, ultimately showed the absence of a balance

¹⁹ Aldhanalia Pramesti Salsabila and Vera Ayu Riandini., Meaning of Public Interests and Business-Economic Legal Interests in Development (Case Study of the Development of PT Semen Indonesia in Rembang), *Lex Scientia Law Review*, Vol.3, no.1, 2019, page.98. See too, Maret Priyanta and Cut Sabina Anasya Zulkarnain., Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development, *Sriwijaya Law Review*, Vol.7, no.1, 2023. Page.13.

²⁰ Aartje Ehupeiory., *Bahan Ajar, Metode Penelitian Hukum*, Jakarta, Universitas Kristen Indonesia Pres, 2021, page.243.

²¹ P. Chynoweth., *Advance Research Method in the Building Environment ed Knight and AL Ruddock*, Oxford, Wiley-Blackwell, 2008. Page.132.

²² Soetandyo Wignjosoebroto., *Hukum: Paradigma, Metode dan Dinamika Masalahnya*, Jakarta, Elsam dan Hilma, 2002, page.251.

between the state's right to control and the protection of individual property rights. The data analysis conducted was descriptive. The data obtained, collected as described above, was systematically arranged, then analyzed qualitatively, and ultimately used to outline what should be done (from a legal perspective).

3. Results and Discussion

3.1. The Governance of Land: Global Capitalism and Agrarian Conflict

The governance of land involves complex interactions between state authority, private interests, and social equity, particularly in contexts of land acquisition and land grabbing. Dunlap discusses how land grabbing, fueled by the green economy and ecological policies, contributes to ecological conflict and further marginalizes local communities in developing countries.²³ Illien emphasizes that in Laos and Rwanda, coffee cultivation and agrarian issues are seen through a bottom-up perspective, highlighting the role of local communities in resisting land dispossession driven by capitalist agrarian systems.²⁴ Grajales and Toukpo explore how deforestation and agrarian capitalism in Côte d'Ivoire, exacerbated by the legacy of war, have led to significant land conflicts, particularly in the cocoa sector.²⁵ Eke analyzes the ongoing conflict between Fulani herders and village landowners in Ghana, linking the disputes to capitalism, climate change, and peasant struggles over access to land.²⁶ García and Wong examine the political economy of deforestation in the Colombian Amazon, where the expansion of agribusiness, driven by capitalist interests, leads to widespread land conflicts and environmental degradation.²⁷ In addition, Navarrete-Cruz et al. review the connection between agrarian change, land dispossession, and the armed conflict in Colombia, showing how land grabbing for resource extraction deepens social inequalities and violence in the region.²⁸ Fletcher highlights that the tourism industry, as part of global capitalism, is not exempt from its role in deepening land conflicts, playing a significant role in shaping land use and acquisition patterns, often prioritizing capital accumulation over social and environmental considerations.²⁹ These demonstrate how global capitalist forces influence land governance, often intensifying conflicts over land in developing countries. In this context, Karjoko et al. emphasize the need for a scientific paradigm that underpins the development of land acquisition laws, arguing that legal frameworks must ensure fairness while addressing power imbalances.³⁰

²³ Xander Dunlap., *This System is Killing Us: Land Grabbing, the Green Economy & Ecological Conflict*, Pluto Press, 2024, Page.123.

²⁴ Patrick Illien., Coffee and the agrarian questions in Laos and Rwanda: Taking a bottom-up perspective, *Journal of Rural Studies*, Vol.106, 2024, page.103201.

²⁵ Jacobo Grajales and Oscar Toukpo., Making green cocoa: Deforestation, the legacy of war, and agrarian capitalism in Côte d'Ivoire, *Journal of Agrarian Change*, Vol.16, 2024, page.12609.

²⁶ Surulola Eke., Conflict between Fulani herders and village landowners in Ghana: capitalism, climate change, and peasant struggles, *Third World Quarterly*, Vol.45, no.13, 2024, page.2021.

²⁷ García, Paula Andrea Sánchez, and Grace Y. Wong., The political economy of deforestation in the Colombian Amazon, *Journal of Political Ecology*, Vol.31, no.1, 2024, page.195.

²⁸ Angela Navarrete-Cruz, Athena Birkenberg, and Regina Birner., Agrarian change and land dispossession linked to the armed conflict in Colombia—a review, *Third World Quarterly*, Vol.44, no.7, 2023, page.1528.

²⁹ Robert Fletcher., Sustaining tourism, sustaining capitalism? The tourism industry's role in global capitalist expansion, *Tourism Geographies*, Vol.13, no.3, 2011, page.449.

³⁰ Lego Karjoko, Zaidah Nur Rosidah, and I. Gusti Ayu Ketut Rahmi Handayani., *Refleksi Paradigma*

Borras et al. argue that land governance at the global level is increasingly influenced by changing agricultural contexts and competing political interests, with land grabbing posing a significant challenge to equitable land distribution.³¹ Bozeman adds that public interest and values must counterbalance economic individualism in land governance, ensuring that public benefits do not diminish in favor of private profits.³² In the context of agrarian conflict, Lucas and Warren explore how state control over land in Indonesia intersects with grassroots struggles for land rights, highlighting the tensions between state development priorities and local demands for land access.³³ Similarly, Caldeira describes how social movements, such as the Landless People's Movement (MST) in Brazil, reflect broader struggles over land ownership and its transformative power.³⁴ Roudart and Mazoyer provide a historical lens on large-scale land acquisitions, illustrating how such transactions often lead to social and economic inequality.³⁵ Li discusses the risks associated with transnational farmland investments, which can exacerbate global inequities in land control.³⁶ Rigg et al. highlight the persistence of smallholder agriculture in East and Southeast Asia as a resistance to larger-scale land acquisitions that threaten food security and community livelihoods.³⁷ Lastly, Yoshino et al. examine attitudes toward land acquisition in Indonesia, emphasizing the challenges of reconciling state interests with the rights of individual landowners.³⁸ This shows that the issue of land governance is deeply intertwined with complex social, political, and economic factors that demand a careful balancing act. The increasing influence of global agricultural shifts and political interests, as highlighted by scholars like Borras et al., presents a growing challenge to equitable land distribution, often exacerbated by land grabbing. The tension between state control and local communities' rights, particularly in countries like Indonesia, reflects broader struggles over the ownership and use of land.

This highlights a key challenge: how to reconcile the interests of the state, private sector, and local communities. While large-scale land acquisitions are often presented as necessary for economic development, they can lead to the marginalization of local landowners and exacerbate social inequalities. These

Ilmu Pengetahuan Bagi Pembangunan Hukum Pengadaan Tanah, *Bestuur*, Vol.7, no.1, 2019, page.7.

³¹ Saturnino M. Borras Jr, Jennifer C. Franco, and Chunyu Wang., The challenge of global governance of land grabbing: changing international agricultural context and competing political views and strategies, *Globalizations*, Vol.10, no.1, 2013, page.173.

³² Barry Bozeman., *Public values and public interest: Counterbalancing economic individualism*, Washington, Georgetown University Press, 2007, page.116.

³³ Anton Lucas and Carol Warren., *Land for the people: The state and agrarian conflict in Indonesia*, Chicago, Ohio University Press, 2013.

³⁴ Rute Caldeira., My land, your social transformation': Conflicts within the landless people movement (MST), Rio de Janeiro, Brazil, *Journal of Rural Studies*, Vol.24, no.2, 2008, page.156.

³⁵ Laurence Roudart and Marcel Mazoyer., Large-scale land acquisitions: A historical perspective, *Development policy*, Vol.1, 2015 page.23.

³⁶ Tania Murray Li., Transnational farmland investment: A risky business, *Journal of Agrarian Change*, Vol.15, no.4, 2015, page.562.

³⁷ Jonathan Rigg, Albert Salamanca, and Eric C. Thompson., The puzzle of East and Southeast Asia's persistent smallholder, *Journal of Rural Studies*, Vol.43, 2016, page.121.

³⁸ Naoyuki Yoshino, Rasyad A. Parinduri, and Yoko Oishi., Attitudes Toward Land Acquisition in Indonesia, *Land Acquisition in Asia: Towards a Sustainable Policy Framework*, Vol.19, 2019, page.59

acquisitions frequently prioritize sectors such as industry, forestry, and mining, which dominate access to land, often to the detriment of agricultural communities and indigenous groups. Consequently, this results in the concentration of land ownership and the erosion of individual land rights, leaving many vulnerable to displacement and injustice.³⁹

The orientation of large-scale land acquisition results in the concentration of land ownership on the one hand, and on the other hand the absence of agrarian law functions to provide protection for individual property rights to their land, so that access to strategic lands is dominated by limited groups for example: industry, forestry, mining, plantations, manufacturing, housing, and entertainment. Land that functions socially is not fully implemented in the field, on the contrary, land commercialization occurs, which results in the wider community's access to land being left behind, which in turn, on a macro scale, the agrarian sector is increasingly left behind compared to other sectors.

For instance in Indonesia, as a result, now there are parties who are demanding the abolition of the state's control rights institution, which is based on the 1945 Constitution.⁴⁰ In fact, the authority stated in Article 2 of Basic Agrarian Law, even though in the laws of the countries concerned there is no statement as formulated in the Article, with various regulations and restrictions on that authority, it is in any country in relation to the existing land. Land acquisition by the state for the public interest can only be carried out if it is based on the authority granted by law. It turns out that the authority to procure land for public interest is not expressly granted by the 1945 Constitution. Therefore, this was done by expanding the interpretation of Article 33 paragraph (3) of the 1945 Constitution regarding the authority to regulate (*beleid-regel*) and manage (*beheersdaad*) land throughout the territory of Indonesia.⁴¹

Land should not only be seen as a territory but as an integrated part of it. This means that land represents complete and exclusive sovereignty, which must be guarded, maintained, and regulated. Land is the personification of a country's sovereignty and a source of the people's prosperity. Based on this, the state holds the authority (or right) to oversee land within its territory, which includes the authority to regulate the "legal relations" between individuals and land. Regulating

³⁹ Cletus Famous Nwankwo., Perceptions of injustices in the struggle for scarce critical lands: Farmer-herder conflict and violence escalation in the Benue-Nasarawa borderland, *World Development*, Vol.186, 2025, page.106824. See too, Hidalgo., The Indigenous Peoples in Mexico City: A Multiplicity of Social, Spatial, and Environmental Injustices | Els Pobles Originaris a la Ciutat de Mèxic: Una Multiplicitat d'Injustícies Socials, Espacials i Ambientals, *Scripta Nova*, Vol.28, no.2, 2024, page.183. See too, Hekia Bodwitch, Andrew M. Song, Owen Temby, John Reid, Megan Bailey, and Gordon M. Hickey., Why New Zealand's Indigenous reconciliation process has failed to empower Māori fishers: Distributional, procedural, and recognition-based injustices, *World Development*, Vol.157, 2022, page.105894. See too, Faustin Tirwirukwa Kalabamu., Land tenure reforms and persistence of land conflicts in Sub-Saharan Africa—the case of Botswana, *Land use policy*, Vol.81, 2019, page.339. See too, Ibnu Sina Chandranegara and Dwi Putri Cahyawati., Conflict of interest prevention clause in the constitution: The study of the Indonesian Constitution, *Heliyon*, Vol.9, no.3, 2023, page.14679.

⁴⁰ Boedi Harsono., *Menuju Penyempurnaan Hukum Tanah Dalam Hubungannya Dengan Tap MPR RI No. IX/MPR*, Jakarta, Universitas Tri Sakti, 2002, page.142.

⁴¹ Guna Negara., *Rakyat dan Negara, dalam pengadaan tanah untuk Pembangunan*, Jakarta, Tatanusa, 2008, page.154.

these legal relations means that the state has the authority to grant land rights to its citizens, but it also holds the power to revoke (take over) individual (private) rights. In the Indonesian context, it can be concluded that the state's authority to grant and revoke land rights is based on an expanded interpretation of Article 33, paragraph (3) of the 1945 Constitution, which is correlated with Article 2, paragraph (2) of the Basic Agrarian Law Number 5 of 1960, giving the state the power to control state land.

3.2. The Legal Framework of Land Acquisition for Public Interest in Indonesia

State authority must be limited to two things. First, matters regulated by the state must not result in violating human rights guaranteed by the 1945 Constitution. Regulations that can be against an interest and cause losses to another party are one form of such violation. A person who gives up his land rights must receive legal protection and fair compensation for the sacrifice. Second, restrictions that are substantive, in the sense that regulations made by the state must be relevant to the objectives to be achieved, namely for the greatest possible prosperity of the people. The private sector because it concerns public welfare which is full of service missions. Delegation to the private sector which is part of society will create a conflict of interest and therefore is not possible.

Related to one of the basic principles in living together is that common interests must be prioritized over individual or personal and group interests. It does not mean that individual interests will be completely suppressed by public interests. Basic Agrarian Law also takes into account individual interests. For this reason, public interests and individual interests must balance each other, until finally the main goal is achieved, namely to bring prosperity, happiness and justice to the state and the people, in the framework of a just and prosperous society. Then to provide legal certainty regarding land rights for the people. This is stated in the general explanation of Basic Agrarian Law regarding the Basics of Agrarian Law.⁴²

With the acquisition of land for public interest, with the existence of development programs that require land, then the development carried out as an effort to achieve the main objective of land control certainly requires land, such as infrastructure development for public interest. For that, the state that has authority over land, according to the 1945 Constitution, regulates the basic rights of individuals as citizens while protecting human rights together. Strengthening the regulation of human rights together reduces the authority of the state over the basic rights of individuals as citizens, for example the protection of individual property rights as regulated in Article 28G in conjunction with Article 28H paragraph (4) which states, "everyone has the right to protection of themselves, their families, honor, dignity, and property under their control". Furthermore, they also receive a guarantee of legal protection as regulated in Article 28H paragraph (4) which states, "everyone has the right to have a guarantee of personal property rights and the right to such may not be taken over arbitrarily by anyone". Therefore, the implementation of the state's right to control is returned to the agrarian legal policy which is expressly stated in Article 33 paragraph (3) of the

⁴² Helena Sumiati and Bagio Kadaryanto., Kepastian Hukum Sertifikat Hak Milik Atas Tanah Dalam Hukum Pertanahan Indonesia, *Yustisia Merdeka: Jurnal Ilmiah Hukum*, Vol.7, no.2, 2021, page.137.

1945 Constitution, but in its journey, by using the concept of the state's right to control, agrarian politics develops the process of marginalizing the position of the 1960 Basic Agrarian Law as the parent. On the one hand by developing, it as another law, and on the one hand by developing various other basic laws. By implementing land acquisition for the public interest, the problem that is prone to giving rise to conflict in land acquisition for the development of the concentration of land control is in forest control, the basis of which is given by the government through forest control rights for private companies and the implementation of production forest areas based on forest use agreements (*Tata Guna Hutan Kesepakatan/TGHK*) which are controlled by State Forestry Public Company (*Perusahaan Umum Kehutanan Negara/Perhutani*).

With the state's right to control land acquisition for public interest, the authority of the state's right to control is to regulate and organize the allocation, use, supply, and maintenance of the earth, water, and space as regulated in Article 14 of Basic Agrarian Law Number 5 of 1960, which is not further translated into sectoral interests. The phenomenon that has emerged so far is that spatial planning in Indonesia is not carried out in an integrated manner. Each sector related to the arrangement of the earth, water, and space and the natural resources contained therein has its own spatial planning. This condition gives rise to a policy of land acquisition in the implementation of land acquisition for development activities, both carried out by the government and the private sector, often becoming one of the causes of land disputes.

The orientation of large-scale land acquisition has resulted in the concentration of land ownership on the one hand, and on the other hand the absence of an agrarian function to protect the rights of land owners as individuals and communities so that access to land is limited. Strategic land for individuals is dominated by limited groups, namely the government and the private sector. Land that has a social function is not fully implemented in the field, on the contrary, land commercialization occurs, which results in the lag of individual and wider community access to land. The state's right to control has great power, which is much greater than that of individuals or individuals and communities. Power here shows that the state has the authority to determine how to allocate and how to act and how to take individual ownership rights to land. This is because there is no right that stands alone apart from the rights of the state. Furthermore, the state's right to control based on constitutional authority, which is based on Article 33 paragraph (3) of the 1945 Constitution, is what makes it possible to carry out land acquisition for the public interest. Philosophically, land that concerns the livelihoods of many people is controlled by the state and used as much as possible for the prosperity of the people.

Based on this constitutional authority, the state's authority to plan, control, use, and utilize land arises to take over individual rights to land for development in the public interest. This shows that the 1945 Constitution, which regulates the protection of individual property rights to land, has been neglected. For this reason, protection of rights for individuals regarding their rights and obligations is needed as stated in Basic Agrarian Law, that the interests of society (general) and

individual interests must balance each other.⁴³

Balancing the state's right to control land with the protection of individual rights in the procurement of land ownership is essential. Every land procurement activity must adhere to the applicable principles regarding land control and ownership, as well as the protection provided by national land law to land rights holders. The control and use of land by any individual, for any purpose, must be based on land rights granted by the National Land Law. Furthermore, controlling and using land without a legal basis (i.e., illegally) is not justified and is subject to criminal sanctions. The control and use of land, when based on the rights granted by the National Land Law, is protected by law from interference by any party, whether other members of society or authorities, provided the interference lacks legal justification. In this context, the law provides various legal means to overcome existing disturbances, namely:

- 3.2.1. Disturbance by fellow community members: civil lawsuit through the district court or request protection from the Regent/Mayor according to Law Number 51 of 1960.
- 3.2.2. Disturbance by the authorities: lawsuit through the general court or state administrative court.

Under normal circumstances, the acquisition of land, which is required by anyone and for any purpose (including public interest projects), must be carried out through deliberation to reach an agreement. This agreement should cover both the transfer of the land to the party in need and the compensation to which the holder of the land rights is entitled. In connection with the above, under normal circumstances, there is no justification for any form of coercion by any party against the holder of the land rights, compelling them to hand over their land or accept compensation they do not agree to. This includes the use of the 'payment offer followed by consignment to the district court' procedure, as regulated in Article 1404 of the Civil Code.

In compelling circumstances, if the land in question is needed for the implementation of public interests and it is not possible to use other land, and the deliberations held do not result in an agreement, forced acquisition may be carried out. This means that it does not require the consent of the rights holder, using the 'rights revocation' procedure regulated in Law Number 20 of 1961. In the acquisition or taking of land, whether based on mutual agreement or through the revocation of rights, the rights holder's land, buildings, and plants are included, along with any other losses suffered as a result of the transfer of the land. Lastly, the form and amount of compensation, when land is needed for public interests and rights are revoked, must ensure that the former rights holder does not experience a decline in their social status or economic level.

Based on these principles, individuals can be forced to release their land for public

⁴³ Fikahati Prasetya and Muh Afif Mahfud., Pendaftaran Tanah Untuk Pertama Kali Secara Elektronik Dalam Hukum Pertanahan Nasional, *Jurnal Hukum*, Vol.39, no.1, 2023, page.81. See too, Tommy Leonard and Niko Demus Simarmata., Legal Dynamics of Land Digitalization in The Electronic Land Registration System, *Jurnal Hukum*, Vol.39, no.1, 2023, page.71.

interest. For example, compensation for land rights in the release of rights for individuals to build the East Flood Canal infrastructure in East Jakarta, that the state's right to control gives too much power so that there is an imbalance between the state's right to control and the protection of individual property rights, where the recognition of individual property rights to land in terms of compensation does not find a meeting point between the two interests. The provisions governing the amount of compensation from a legal aspect, both the interests of the government as a land user and the interests of the land owner as the party charged, want the continuation of their lives from the results of the replacement of their land release. This balanced interest must be the basis for replacing land for the public interest, which provides justice for the recognition of property rights for individuals in accordance with their dignity as human beings, because the land problem is a problem that is very touching on justice because the nature of land is rare and limited and is a basic need for every human being.

3.3. Towards a Just Land Acquisition Policy: Balancing State Control and Individual Property Rights

It can be concluded that the balance between state rights and individual rights when referring to the provisions of the 1945 Constitution in Article 33 paragraph (3) in conjunction with Article 2 paragraph (1) of Basic Agrarian Law Number 5 of 1960 with the background of the philosophical meaning contained in the provisions of the 1945 Law in Article 33 paragraph (3) in conjunction with Article 2 paragraph 1 of Basic Agrarian Law Number 5 of 1960, then in agrarian legal policy if traced from the 1945 Constitution and Basic Agrarian Law Number 5 of 1960 there are two things that have a correlation. First; the earth, water and natural resources are controlled in the sense that they are regulated as well as possible by the State. Second; control by the state or state rights are aimed at building the prosperity of the people, then in Basic Agrarian Law Number 5 of 1960 several legal policies are found such as recognition of customary rights and other rights of control over land. The words "controlled by control by the state or state rights" here cannot be interpreted that the state directly becomes the owner of all natural resources. Controlling in law is defined as regulating "because individual property rights" are still recognized as ordered in Article 28H paragraph (4) of the 1945 Constitution which states, "everyone has the right to have personal property rights and such property rights may not be taken over arbitrarily by anyone." According to the author, to balance this, there are provisions regulated in Article 33 paragraph (3) of the 1945 Constitution concerning state rights which allow the state to revoke land rights for the public interest. However, these provisions cannot simply be applied by the state considering the limitations of power derived from the right to control from the state which exist in the legal principles of our country, complemented by the principle of just and civilized humanity rather than the principle and provisions of its implementing legislation. Obtaining land owned by anyone for any purpose and by anyone must be done through deliberation with the land owner to reach an agreement, both regarding the surrender of the land and the compensation. Only in compelling circumstances, if deliberation fails to reach an agreement, can land needed to carry out a public interest project be taken by force, through procedures regulated by law, known as revocation of rights. However, even if it is needed for the public interest, there is a general principle that is universal in nature, applicable to every country of law, regarding

the form and amount of compensation, namely that by taking his land, the former rights holder's condition may not be reversed.

Thus, the state's right to land is not absolute because it is limited by the provisions stipulated in the legal principles of our country and must not conflict with human rights. The provisions of state rights stipulated in the 1945 Constitution must be seen as a general and special relationship. In general, every person or individual has the right to have property rights, but in special circumstances for the public interest, individual property rights can be taken by the state in a non-arbitrary manner. This means that if individual property rights are needed for the public interest, then individual property rights must be defeated, this means that individual property rights are not absolute. In its implementation, to defeat individual rights from the public interest using the "right to control" by the state, this is where the populism of Basic Agrarian Law Number 5 of 1960 lies, which places the interests of the people together as pressure without being allowed to eliminate individual rights alone. The term control in the constitution does not mean becoming a direct owner, but rather regulates how property rights occur and how to change those property rights into other rights for other parties for the public interest.

The problem that often arises is the shift in the use of control rights that are based on "regulating" to "owning" in implementing economic development programs that are oriented towards growth, thus giving rise to other problems such as the failure to properly pay attention to individual lands that are used for development purposes. According to the author, there must be a point of balance between the two interests between the state's control rights and the protection of individual property rights, this balanced interest is the basis for land acquisition for the public interest that provides justice and benefits to the community.

Justice is an equal distributor among equals.⁴⁴ Justice is a complex balancing process that moves between various factors including equality. Thus, legal protection in land acquisition for public interest lacks balance, proportionality, and harmony between the state's right to control and the protection of individual property rights. Justice put forward by John Rawls in relation to the transfer of land for public interest has never been felt to be fair. For some interests, there seems to be no balance between the state's right to control and the protection of individual property rights. On the one hand, development for public interest requires sufficient land availability, but on the other hand, individual rights also need land for their survival. If, for the sake of development, land is simply taken away, then it is clear that this ignores the protection of individual property rights to land. Therefore, the law that is made should protect individual property rights to land, to have equal rights and opportunities, to receive a share of the benefits of the land, both for themselves and their families, so that they can obtain a decent life in the concept of justice based on needs in a balanced position.

4. Conclusion

Based on the findings, the balance between the state's right to control and the protection of individual property rights in land acquisition for public interest is not

⁴⁴ Maria S. Sumardjono., *Dinamika pengaturan pengadaaan tanah di indonesia: dari keputusan presiden sampai undang-undang*, Yogyakarta, Gadjah Mada University Press, 2015, page.78.

balanced and the respect requested by citizens for individual rights to release control of their land to the State for development. Proportionally, this is because the delegation of authority for the state's right to control land gives the impression of very broad and large authority. Theoretically, this passage highlights the tension between state authority over land and the protection of individual property rights, emphasizing the need for a more balanced and just framework in land acquisition policies. It suggests that policymakers must understand and integrate the concept of justice into land acquisition laws, ensuring that individuals displaced for public development purposes are compensated in a way that protects their socio-economic well-being and future opportunities.

In principle, land acquisition regulations provide justice for the rights of individuals and citizens. However, in the end, making a policy that regulates land acquisition for public interest depends on the maker. Policy makers are expected to have a correct understanding of the concept of justice and be able to translate the concept into various provisions. By considering the universal aspect that someone who has lost land for development activities for the public interest should not suffer from their future or better socio-economic conditions than their previous conditions. As suggestions, there is a need to simplify bureaucracy in the field of land acquisition while still prioritizing the principle of caution, the principle of respect for land rights and the principle of justice.

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