



Comparison of Legal Systems in Land Acquisition for Public Interest in Indonesia, Malaysia, China, and the United States

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Abstract: Land acquisition for the public interest is an important aspect of a country's development, with different policies in each country according to the legal system and socio-political factors. This study compares the legal systems governing land acquisition in Indonesia, Malaysia, China, and the United States, focusing on procurement, compensation, and dispute-resolution mechanisms. The method used is a normative legal approach with qualitative analysis of secondary data from regulations, journals, and literature. The results show that Indonesia and Malaysia rely on deliberation, but still face challenges in fair compensation. China prioritises state control over land, often overriding individual rights, whereas the United States applies eminent domain with stronger legal protections for landowners. Each country has advantages and disadvantages in balancing development interests and the rights of landowners. Indonesia needs to increase transparency in land price valuations and strengthen legal access for landowners. The adoption of best practices from other countries, such as market-value-based compensation systems and clearer government authority, can help achieve fairer and more effective land acquisition policies.

Keywords: Land Acquisition, Legal Comparison, Public Interest

A. Introduction

Land acquisition for public purposes is a fundamental aspect of a country's development. Infrastructure such as toll roads, airports, ports, and other public facilities require extensive land, so the government often needs to acquire land owned by individuals or community groups. This process, known as land acquisition, aims to support the public interest and accelerate economic growth. However, in practice, land acquisition often gives rise to conflicts between the state and landowners, particularly regarding ownership rights, compensation, and the social impact on affected communities. These conflicts can lead to public dissatisfaction and legal challenges, which in turn can slow down development projects and harm the public interest.¹

¹ AA Nugraha, L. Karjoko, and R. Subekti, Implementation of Justice Aspects in Land Acquisition for Public Interest in Indonesia (2022), <https://doi.org/10.20961/jd.v3i1.59681>

Each country has a different legal approach to land acquisition, influenced by its legal system, land policies, and prevailing social and political factors. In some countries, the government has broad authority to expropriate land with stipulated compensation, while in others, protection of property rights is stronger, requiring more complex negotiations. In Indonesia, land acquisition is regulated by Law No. 2 of 2012, while in Malaysia it is regulated by the Land Acquisition Act 1960. China has a unique land ownership system, where land is principally owned by the state and collectively. At the same time, in the United States, the concept of Eminent Domain gives the government the right to take private land for public use, with just compensation. These differences in land policy reflect varying approaches to property rights and the public interest, often influenced by each country's history, culture, and economic context.²

The differences in these legal systems are interesting to examine in more depth, particularly regarding land acquisition mechanisms, compensation, and dispute resolution. Some countries have stricter procedures to protect landowners' rights, while others place greater emphasis on the state's interests in development. Therefore, a comparison of the legal systems governing land acquisition in Indonesia, Malaysia, China, and the United States will provide broader insights into best practices to create fairer, more balanced policies for all parties. This analysis will also include relevant case studies that identify challenges and the solutions implemented in each country's context.

This research will address several key questions, including how the legal systems for land acquisition differ across Indonesia, Malaysia, China, and the United States, and the strengths and weaknesses of each in protecting community rights. Furthermore, the research will analyse compensation and dispute resolution mechanisms in these four countries.

In light of these issues, this study aims to analyse and compare the legal systems governing land acquisition in Indonesia, Malaysia, China, and the United States. Furthermore, this study will identify best practices in land acquisition that can be applied in other countries. Ultimately, this study aims to provide policy recommendations to ensure fairer, more effective land acquisition in the public interest.

B. Method

This research uses a normative legal method with a comparative legal approach. This approach aims to understand and analyse the differences in legal systems related to land acquisition in Indonesia, Malaysia, China, and the United States. The comparison is made by examining regulations, procedures, and legal protections for landowners in each country.

² Andrizar, Payment of Compensation for Land for the Pekanbaru-Kandis Toll Road Based on the Principle of Public Interest (2018), <https://doi.org/10.26555/NOVELTY.V9I1.A9121>

The data sources used in this study are secondary data, including laws and regulations, academic journals, books, and articles related to land acquisition policies in the four countries. These sources provide a comprehensive overview of how each country regulates land acquisition for the public interest.

The data analysis technique used in this study was a descriptive qualitative method that compared regulations and practices across the four countries to identify similarities, differences, and the strengths and weaknesses of each legal system. The analysis was conducted to identify applicable best practices and provide policy recommendations for fairer and more effective land acquisition.

C. Results & Discussion

1. Definition and Principles of Land Acquisition

Land acquisition is a legal process in which a government or other authority takes over land owned by an individual or group for the public interest, providing fair compensation to the owner. In international law, land acquisition is often associated with the concept of "eminent domain," which authorises the state to take private land for the public interest, provided there is fair compensation and a transparent legal process. At the national level, various countries have their own regulations regarding land acquisition, tailored to their respective legal systems and land policies. This process involves not only legal aspects but also public participation and transparency to ensure that landowners' rights are respected and the public interest is genuinely protected.³

Several key principles must be applied in the land acquisition process to ensure fairness and legal certainty. The first principle is justice, under which the government must ensure that landowners receive adequate, fair compensation and are not disadvantaged in the acquisition process. Second, the principle of legal certainty, which ensures that the land acquisition process is carried out in accordance with applicable regulations and provides legal protection for landowners. Third, the principle of balancing interests, which requires a compromise between the needs of national development and the rights of the community, so that land acquisition does not lead to prolonged social conflict. These principles are essential to build trust between the government and the public and to ensure that every land acquisition process is conducted with transparency and accountability.⁴

³ B. Irawan, Land Acquisition Based on Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Study in Cilacap Regency) (2015), <https://doi.org/10.20884/1.JIH.2015.1.2.19>.

⁴ F. Kotalewala, AI Laturette, and N. Uktolseja, Dispute Resolution in Land Acquisition for Road Construction in the Public Interest (2020), <https://doi.org/10.47268/SASL.V26I3.397>.

2. Legal Theory Related to Land Acquisition

One relevant theory in land acquisition is the Eminent Domain Theory, which provides the basis for the state to take over private land for the public interest. This theory is widely applied in countries with legal systems that grant significant authority to the government, such as the United States and China. However, its application must meet the requirements of a clear public interest and fair compensation for landowners. The application of the Eminent Domain Theory often sparks debate about the boundaries between public interest and individual rights, making it crucial to establish clear regulations to ensure a fair and balanced land acquisition process.⁵

Furthermore, there is the theory of land ownership, which emphasises individual rights to the land they own. Some countries, such as Malaysia and Indonesia, emphasise protecting land ownership through stricter legal procedures before the government can acquire land. Citizens' rights to land are also regulated in various legal instruments aimed at protecting them from arbitrary land acquisition. A fair and transparent legal system is key to ensuring that land acquisition is carried out in a manner that not only respects landowners' rights but also considers the interests of society as a whole.⁶

Finally, the principle of compensation in land law is a crucial aspect of land acquisition. Compensation must be provided based on fair value, taking into account market prices, the land's economic potential, and the social impact on affected landowners. Countries with transparent and fair compensation systems tend to experience fewer conflicts in the land acquisition process. An effective system also requires the active participation of communities and stakeholders to ensure that all voices are heard and accommodated in every decision related to land acquisition.

3. Comparative Analysis of Land Acquisition Laws in Indonesia, Malaysia, China, and The United States

a. Indonesia

Land acquisition for public purposes in Indonesia is regulated by Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The land acquisition procedure involves several stages, from planning and preparation to implementation and delivery of the proceeds. A key aspect of this regulation is the provision of a compensation mechanism for landowners, which may take the form of cash, replacement land, resettlement, or other agreed-upon arrangements. However, in practice, disputes often arise between landowners and the government, particularly

⁵ HRS Ningrum, Legal Analysis of Justice-Based Land Dispute Resolution System (2014), <https://doi.org/10.26532/IPH.V1I2.1481>.

⁶ Justice Aspects of Compensation Arrangements in Land Acquisition for Development in the Public Interest (2023), <https://doi.org/10.18196/pls.v1i1.101>.

regarding the amount of compensation. To address this, dispute resolution mechanisms include deliberation, conciliation, mediation, and even court proceedings. These mechanisms aim to reach fair agreements and reduce the potential for conflict, allowing land acquisition to proceed more smoothly and more effectively to support necessary infrastructure development.⁷

b. Malaysia

In Malaysia, land acquisition is regulated by *the Land Acquisition Act 1960*, which authorises the government to acquire land for public purposes by compulsory acquisition. While similar to the Indonesian system, there are several differences, including the government's active role in determining compensation and a faster acquisition process. Landowners who object can appeal to the courts, but the final decision rests with the government. Malaysia's compensation system is also more flexible, with a compensation and resettlement scheme for affected communities. This system aims to ensure that communities affected by land acquisition receive adequate protection and support, allowing development to proceed without violating individual rights.⁸

c. China

China has a unique land ownership system in which land is generally divided into state-owned and collective land. Land acquisition is regulated by *the Land Administration Law of China*, which gives the government full authority to acquire collectively owned land for national development. Unlike Indonesia and Malaysia, which recognise individual land ownership, China operates a leasehold system, meaning citizens have land use rights for a specific period. The land acquisition process in China is often closely tied to Communist Party policy, and compensation is typically provided through resettlement rather than direct payments. This has led to numerous conflicts, particularly in rapidly expanding urban areas. These conflicts often involve farmers who lose their land without proper consent, leading to public discontent and protests.⁹

d. United States

In the United States, land acquisition for public purposes is based on the concept of *Eminent Domain*, enshrined in *the Fifth Amendment* to the US Constitution and clarified in *the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*. The

⁷ M. Hutabalian, "Civil Law Review of Consignment Policy Based on Law of the Republic of Indonesia Number 2 of 2012 concerning State Authority regarding Land Acquisition for Public Interest," *Journal of Legal Communication* (2022), <https://doi.org/10.23887/jkh.v8i2.51743>.

⁸ RR Marchello, EI Israhadi, and S. Suparno, "Analysis of Land Disputes Arising from Land Procurement Activities in the Development of Public Facilities and Infrastructure (Review of Law Number 2 of 2012 Concerning Land Acquisition)" (2023), <https://doi.org/10.57096/edunity.v1i05.41>

⁹ GM Rehm and H. Julius, "The New Chinese Property Rights Law: An Evaluation from a Continental Perspective," *Columbia Journal of Asian Law*(2019), <https://doi.org/10.7916/CJAL.V22I2.3277>

government has the right to take private land provided it provides fair compensation to the landowner. Unlike in other countries, land acquisition mechanisms in the US are more transparent and involve a more robust legal process to protect landowners' rights. If landowners feel the compensation offered is inadequate, they can file a lawsuit, which often results in decisions that favour the landowners over government policies. This process not only ensures fairness for landowners but also encourages the government to more carefully evaluate the need for land acquisition and its impact on the community.

To provide a clearer picture of the similarities and differences in the land acquisition legal systems in the four countries, here is a comparison table:¹⁰

TABLE 1. Comparison Table

Aspect	Indonesia	Malaysia	China	United States of America
Legal basis	Law No. 2 of 2012	Land Acquisition Act 1960	Land Administration Law of China	Fifth Amendment & URA 1970
Land Ownership System	Individual & state ownership	Individual & state ownership	State and collective land	Individual ownership with constitutional protection rights
Government Authority	Can take land with compensation	Mandatory takeover by the government	The government has full control over the land	The government can take land on the condition of "just compensation"
Compensation Mechanism	Money, replacement land, relocation	Money or relocation	Relocation is more dominant, cash compensation is often debated	Money based on market value determined by the court

¹⁰ S. Winarsi, "The Concept of Compensation for Land Rights in Land Procurement for Public Interests," *El-Hekam: Journal of Islamic Studies* (2023), <https://doi.org/10.31958/jeh.v8i1.9416>.

Dispute Resolution Mechanism	Consultation, mediation, court	Appeal to the courts, but the final decision rests with the government	Very limited, often government decisions are final	Lawsuit in court, landowner can reject government offer
Excess	There is a mediation and deliberation mechanism before the dispute goes to court.	Flexible compensation system	The government has full control, accelerating development	A more transparent legal process that better protects individual rights
Lack	Disputes often occur regarding the amount of compensation.	The government has great authority to determine land prices.	Citizens' rights to land are limited, social protests often occur	The legal process could drag on if the landowner sues.

D. Conclusion

Based on a comparative analysis of land acquisition legal systems in four countries, it can be concluded that each country adopts a different approach to balancing development needs with the protection of landowner rights. Indonesia and Malaysia have systems based on negotiation and deliberation, but still face challenges in securing fair compensation. China relies on a state-based land ownership system, which gives the government full control but often ignores individual interests. Meanwhile, the United States stands out for its stronger legal protection for landowners through court mechanisms.

As a recommendation, Indonesia can strengthen its land acquisition system by ensuring transparency in the land valuation process and improving public access to legal redress in the event of disputes. Furthermore, the government can adopt best practices from other countries, such as a more independent court system for determining compensation, as in the United States, or a clearer delineation of government authority, as in Malaysia.

The legal implications of this research indicate that regulatory reform in land acquisition is crucial to strike a balance between development interests and the protection

of community rights. Clearer, more transparent, and fairer regulations will increase public trust in government policies and reduce the potential for disputes in land acquisition for the public interest.

E. Reference

- AA Nugraha, L. Karjoko, and R. Subekti, Implementation of Justice Aspects in Land Acquisition for Public Interest in Indonesia (2022), <https://doi.org/10.20961/jd.v3i1.59681>.
- Andrizal, Payment of Compensation for Land for the Pekanbaru-Kandis Toll Road Based on the Principle of Public Interest (2018), <https://doi.org/10.26555/NOVELTY.V9I1.A9121>.
- B. Irawan, Land Acquisition Based on Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Study in Cilacap Regency) (2015), <https://doi.org/10.20884/1.JIH.2015.1.2.19>.
- F. Kotalewala, AI Laturette, and N. Uktolseja, Dispute Resolution in Land Acquisition for Road Construction in the Public Interest (2020), <https://doi.org/10.47268/SASI.V26I3.397>.
- GM Rehm and H. Julius, "The New Chinese Property Rights Law: An Evaluation from a Continental Perspective," Columbia Journal of Asian Law (2019), <https://doi.org/10.7916/CJAL.V22I2.3277>.
- HRS Ningrum, Legal Analysis of Justice-Based Land Dispute Resolution System (2014), <https://doi.org/10.26532/JPH.V1I2.1481>.
- Justice Aspects of Compensation Arrangements in Land Acquisition for Development in the Public Interest (2023), <https://doi.org/10.18196/pls.v1i1.101>.
- M. Hutabalian, "Civil Law Review of Consignment Policy Based on Law of the Republic of Indonesia Number 2 of 2012 concerning State Authority regarding Land Acquisition for Public Interest," Journal of Legal Communication (2022), <https://doi.org/10.23887/jkh.v8i2.51743>.
- RR Marchello, EI Israhadi, and S. Suparno, "Analysis of Land Disputes Arising from Land Procurement Activities in the Development of Public Facilities and Infrastructure (Review of Law Number 2 of 2012 Concerning Land Acquisition)" (2023), <https://doi.org/10.57096/edunity.v1i05.41>.
- S. Winarsi, "The Concept of Compensation for Land Rights in Land Procurement for Public Interests," El-Hekam: Journal of Islamic Studies (2023), <https://doi.org/10.31958/jeh.v8i1.9416>.