

Expropriation and Legal Protection of Land Rights for Toll Road Infrastructure in Positive Law

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ARTICLE INFO	ABSTRACT
<p>Keywords: Land Rights; expropriation; compensation; Legal Protection</p> <p>How to cite: Riziq, Mohammad (2025). Expropriation and Legal Protection of Land Rights for Toll Road Infrastructure in Positive Law. <i>Veteran Law Review</i>. 8(1). 95-105.</p> <p>Received:2025-04-21 Revised:2025-08-14 Accepted:2025-08-16</p>	<p>The Basic Agrarian Law explains the regulation of land rights, which can be given and owned by other people, either alone, together or legal entities. And according to Law No. 2/2012 and Presidential Regulation No. 65/2006, the government can expropriate (take over) the rights to land acquisition by the state for the public interest, which often causes conflict between the government and the community. This research is conducted with juridical-normative research using a legal approach. The result of the research is that the government and the community can come to a mutual agreement through the process of releasing land rights and providing balanced compensation. The government also seeks to provide legal protection for landowners, both preventive and repressive, with the government and the community deliberating to reach an agreement on the amount of compensation given, and providing consignment and support to people who are willing to have their land used for the state and get tax breaks.</p>

1. Introduction

A land right is defined as the right of control over land that contains the authority, obligations, and prohibitions for the right holder to engage in certain actions with the land. Accordingly, land rights are defined as the prerogatives bestowed upon an individual or legal entity, encompassing solely the surface of the earth. The right to utilize land is a prerogative bestowed by the state upon Indonesian legal entities. This entitlement encompasses the exploitation and research of natural resources located within Indonesia, with the objective of achieving economic interests, whether directly or indirectly. The realization of national prosperity is predicated on the utilization of land, the earth's body, and space. The regulation of land rights is delineated in Article 4, paragraph (1) of the Basic Agrarian Law, which stipulates, "In accordance with the right to control stipulated in Article 2,

various categories of rights pertaining to the surface of the earth, colloquially referred to as "land," are delineated. These rights may be bestowed upon individuals, either as sole proprietorships or in conjunction with other individuals and legal entities. These land rights authorize the utilization of the land in question, as well as the earth, water, and airspace above it, to the extent necessary for the direct interests related to its use, within the limits established by the Basic Agrarian Law and other higher legal regulations." (Amarrohman & Witjaksono, 2021)

The relinquishment of land rights signifies the dissolution of the legal relationship between the land rights holder and the land under their control. The results of the deliberation determine the type of land on which the rights are released, including land of customary law communities and land that already has rights under Law No. 5 of 1960. Article 18 of Law No. 5 of 1960 stipulates that land rights may be revoked in the public interest, encompassing the interests of the nation and state as well as the common interests of the people. This revocation process is subject to the provision of adequate compensation and is governed by the provisions outlined in relevant laws and regulations. The compensation is typically provided in the form of financial remuneration, replacement land, or resettlement. The relinquishment of rights is a land acquisition activity that is predicated on the principle of respect for land. In accordance with Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 1, paragraph 2 stipulates that "Land acquisition is defined as an activity that involves the provision of land by compensating the rightful parties with fair and just compensation, where land acquisition is constrained as an activity to acquire land by compensating the parties affected by land acquisition for development activities for the public interest." (Wardoyo, 2024)

According to Law No. 2/2012, the process of land acquisition for public interest is methodically structured through the sequence of planning, preparation, implementation, and delivery of results. The strategic planning of land acquisition for the public interest is predicated on the regional spatial plan and development priorities enumerated in the medium-term development plan, strategic plan, and government work plan of the agency concerned. According to Article 18, land rights can be revoked for the public interest, which encompasses the interests of the nation and state as well as the common interests of the people. This revocation process is subject to the provision of adequate compensation and is regulated by law. In accordance with Presidential Regulation No. 65/2006, the government or regional governments are authorized to initiate land acquisition for the implementation of development projects in the public interest. This process involves the

release, surrender, or revocation of land rights, as stipulated within the regulation. (Artana et al., 2021)

In recent decades, the development of toll road infrastructure has undergone a substantial and impressive expansion. This development has been undertaken to serve the public interest. In order to implement this development in an effective and efficient manner, there must be adequate land available. Since this development is intended to serve the public interest, the results of the development carried out by the government must still be oriented towards the ideal nature of development, which is able to realize human potential. Government-built infrastructure on privately-owned land must serve the broader community and be accessible to the public. Its design and operation should prioritize the benefits of the development programs for the general public, rather than exclusively serving the interests of specific groups or the government. However, the veneer of infrastructure projects conceals underlying issues concerning land expropriation and the state's acquisition of land for public interests, which often give rise to discord between the community and the government. Expropriation is not merely a matter of land; it is also about justice and legal certainty. Categorized as a public interest project, the concept of expropriation is often a subject of debate and must be carefully organized and implemented in an applicable manner as stipulated in Law No. 12/2012 on Land Acquisition for Development in the Public Interest and Law No.5/1960 on Agrarian Principles as its basis. (Isnaini, 2022)

In consideration of the aforementioned background, a number of problem formulations emerge, including the following: first, the manner in which positive legal provisions regarding land expropriation for toll roads are to be interpreted; and second, the extent to which land rights holders are to be granted legal protection throughout the expropriation process. The objective of this research is to analyze the provisions of expropriation in Indonesian positive law and to examine the form of legal protection for land rights holders.

2. Method

This research employs a juridical-normative research method, which involves the examination of document studies utilizing various secondary data sources, including regulations, legislation, court decisions, and legal theories. The present study employs a normative juridical research method that utilizes the statutory approach. This method involves the analysis of legislation and the examination of the legal principles and their implementation. (Muhaimin, 2020)

3. Main Heading of the Analysis or Results

3.1. The Expropriation of Land Rights in Positive Law

The Basic Agrarian Law in Indonesia aims to address the country's agrarian issues and promote a just and prosperous society. The law includes five key programs. Firstly, it focuses on agrarian law reform by unifying the legal framework and ensuring legal certainty. Secondly, it aims to eliminate foreign and colonial rights to land. Thirdly, it seeks to gradually put an end to feudal exploitation. Fourthly, the law aims to reform land ownership and control, as well as the legal relations surrounding land exploitation, in order to achieve equitable prosperity and justice. Lastly, it emphasizes the need for planning the supply and allocation of land, water, and natural resources, taking into account their carrying capacity and capabilities. Overall, the Basic Agrarian Law aims to address agrarian challenges and promote a fair and prosperous society in Indonesia. (Supit et al., 2021)

Law No. 5 of 1960, also known as the Basic Agrarian Law, does not explicitly regulate the acquisition of land for developmental purposes. Instead, it governs the revocation of land rights, a matter that is addressed in Article 18, which stipulates: In the interest of the public, including the interests of the nation and state, as well as the common interests of the people, land rights may be revoked. This revocation must be accompanied by adequate compensation and in a manner regulated by law. According to Article 18 of the Basic Agrarian Law, land rights may be revoked under circumstances in which the land is utilized for the benefit of the general public. Concurrent with this, during the present development period, the issue of land acquisition is a significant impediment, namely whether the government requires land owned by citizens for development purposes in the public interest. This phenomenon can be attributed to the government's need for land to fulfill its constitutional duties and obligations, as well as to the desire of landowners to maintain their land as a source of livelihood, whether it be agricultural land, commercial premises, or residential areas. (Isnaeni, 2020)

The onus for development does not exclusively lie with the government; the private sector must also assume responsibility and play an active role in this process. Consequently, the government deems it imperative to furnish public amenities in the form of services to facilitate the acquisition of land for projects that serve the public interest. Such projects may include the development of public facilities and social infrastructure, such as toll roads. The construction of toll roads is predicated on the

assumption that the public will not reject them, given that national roads are considered to be in the public interest. These roads are expected to alleviate traffic congestion and accelerate development and economic growth. The construction of toll roads is expected to achieve several objectives, including the mitigation of traffic congestion, the reduction of travel distances, the acceleration of travel times, and the enhancement of social mobility. (Esdarwati, 2024)

In terms of benefits, this development will have a positive impact on the acceleration of economic development. Therefore, from a rational standpoint, the populace will provide support for the construction of toll roads. However, the implementation of such a project carries with it a significant risk of failure due to the difficulty of land acquisition and the low number of expected toll road users, who fall below the standard of feasibility. From a regulatory perspective, the legal framework governing land acquisition for toll road projects is comprehensive. One of the pertinent regulations is Law Number 2 of 2012, which stipulates the framework for land acquisition for development initiatives undertaken for the benefit of the public. This regulation is subject to further oversight through Presidential Regulation (Perpres) Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, which was subsequently amended by Perpres Number 40 of 2014, and then further amended by Perpres Number 99 of 2014. (Nuraningsih, 2023)

3.2. The Government and Landowner Expropriation Efforts for Public Infrastructure

The release of ownership of a land right is the release of a legal relationship with a community that has proof of ownership of a land. The land it owns must be balanced with compensation based on an agreement, namely in deliberation. The government's acquisition of land is facilitated by the release of a right, thereby ensuring that the proprietor of the property is accorded legal protection in the form of adequate and fair compensation. The community obtained ownership of a land right regarding development intended for the public by holding a land acquisition, as explained in Government Regulation No. 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest. Article 1, Point 9 of the aforementioned regulation states that releasing ownership of a land right is an act of breaking the relationship with the previous land that has been given to the general public, witnessed by a land agency. (Sinaga, 2022) In instances where individuals decline to relinquish their land for the sake of the public good,

the government's initiatives to transfer property rights to a community land utilized for public purposes, such as the construction of a highway, entail the provision of compensation deposited in court or referred to as consignment. This signifies that the party requiring the land has fulfilled its obligations by depositing the compensation funds in court. This is due to the fact that the development intended for the public interest must still be carried out. (Nail, 2020)

The government implements two forms of legal protection to release property rights for public use during highway construction. The first form is preventive legal protection, which involves conducting negotiations and reaching an agreement on the compensation for the land beforehand. This allows the government to resolve any potential issues before they arise. The second form is repressive legal protection, which deals with disputes that arise when there is no agreement on compensation. In this case, the government provides compensation through a consignment process, where the amount is deposited with the Court. Once deposited, the party requiring the land considers its obligation to provide compensation fulfilled. These two actions aim to protect the rights of landowners during the construction of highways for the general public. (Sam'un et al., 2024)

Regarding the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition mentioned in Article 41 states that along with the delivery of compensation and in releasing ownership of a land right carried out in front of the Head of the Land Office of the respective region, it has been proven by the elimination of land ownership or property rights of a land from the community and regarding the proof of ownership of rights is explained by no longer being able to be used or not having a valid function because it has become state property. As for other forms of government efforts, namely for people who support and want to provide their land for the development of public interests and do not file a lawsuit against the government, the community is entitled to tax incentives. Tax incentives are efforts made by the government in the tax system by minimizing the rate of a tax so as to facilitate or relieve the public in paying taxes. (Sa'adiyyah, 2023)

As outlined in Presidential Regulation Number 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest, specifically in Article 122, Paragraph (2), tax incentives are designated for individuals who possess property rights over land and aspire to contribute to the implementation of projects for the public

interest. This provision is contingent upon the absence of any disputes concerning the determination of the site and the outcomes of the agreement on compensation in the assessment of compensation. The provision of tax incentives is a strategy employed to facilitate collaboration among individuals, communities, and organizations with governmental entities, with the objective of achieving collective prosperity. Therefore, this has a very positive impact on the community and the government, making it easier to carry out all developments intended for the benefit of society in general. From this form of government effort, it has explained that the government prioritizes the interests of the community in general and is strengthened by the existence of regulations that have regulated which in the development activities carried out will be beneficial and have a very large function for people's lives in the future. (Nugroho et al., 2024)

3.3. Legal Protection of Land Rights Owners for Toll Road Infrastructure

Recent developments in public policy demonstrate a shift towards proactive measures in addressing land acquisition. These measures involve the involvement of the landholder in the deliberative process with government agencies, aimed at determining the form and amount of compensation. This approach is intended to facilitate the attainment of a mutually acceptable agreement, thereby enabling the landholder to fulfill the obligations and expectations of the government. The application form is a legal document that provides protection for landowners. It is determined by a compensation process that is balanced by deliberation. This compensation is agreed upon, feasible, and fair. It is intended to improve the economic welfare of the landowner from their previous economic situation. Government Regulation No. 71/2012 on the Implementation of Land Acquisition for Development in the Public Interest, as outlined in Article 63, Paragraph (3), stipulates that the deliberation process is conducted concurrently with the determination of the compensation form, which is determined based on the outcomes of the compensation assessment. (Silalahi et al., 2024)

In the implementation of land acquisition activities intended for the benefit of the general public, namely in the construction of highways, the government provides legal protection to people who have ownership of a land, namely by holding deliberations before being agreed upon in the assessment of compensation for later submission. (Rahmadani, 2022) According to Sudikno's explanation, the concept of legal protection entails the safeguarding of rights and obligations inherent in the operation of a

land in accordance with legal mandates. This encompasses the implementation of regulatory frameworks that govern the utilization of land rights, ensuring compliance with legal obligations. (Sudiarto, 2021) In order to ensure the protection of community interests in regard to land rights intended for the general public's development, such as the construction of a highway, it is necessary to release or surrender community land rights to the government. This process is facilitated by the National Land Agency (BPN), and the government is responsible for providing balanced compensation. The determination of compensation is made through a deliberation process conducted by a land appraisal team, which is tasked with ascertaining the value or price of the property to be acquired. In the event of a lack of consensus on the matter of the valuation of compensation provided by government agencies to individuals in possession of land, the local District Court is authorized to receive and review any objections submitted by any community that opposes the valuation of the compensation. (Putra et al., 2023)

According to Presidential Regulation No. 71 of 2012 concerning the Implementation of Land Acquisition for Development for the Public Interest (hereinafter "the Regulation"), in Article 73, Paragraph (1), the deliberation process is to be followed in order to reach a consensus on the matter of compensation. In the event that an agreement is not reached during the aforementioned deliberation, the affected parties are permitted to file an objection to the District Court within a period of no later than 14 days following the signing of the minutes detailing the results of the deliberation. As demonstrated by the two legal protections outlined, the public can comprehend the implications of land acquisition. This process involves the relinquishment of ownership of community land for developmental purposes, with the objective of safeguarding the rights of the public. The provision of adequate and equitable compensation is integral to this process, ensuring legal certainty for the community. (Slamet, 2024)

4. Conclusion

The National Land Agency (BPN) can protect communities' land rights for community development by releasing the land rights and providing equal compensation. This process involves consultation with the affected communities and a mutually agreed outcome. In order to prevent any issues with land ownership during community development such as road construction, the government must consult with the communities and the land ownership will be transferred to the appraiser while compensation is paid later. On the other hand, the government also offers legal protection by

providing consignment compensation. Additionally, communities that are willing to use their land for public purposes without going through a lawsuit are entitled to tax relief. These efforts aim to support communities and ensure fair and equitable development.

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