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LAND AND SPATIAL PLANNING POLICE  
FOR SUSTAINABLE DEVELOPMENT

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## LAND PROCUREMENT FOR THE DEVELOPMENT FOR PUBLIC BENEFITS (STUDY CASE IN JAVA, CENTRAL AND JAVA EAST)

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### Abstract

Indonesian government currently is intensively developing various infrastructures for the improvement of the economy: widening toll roads, adding railroad tracks, building dams, increasing electricity networks, expanding airports, and so on. Based on the needs of the development of infrastructure, regulation is subsequently set up regarding land procurement for public benefits which is stated in Act No. 2 Year 2012 on Land Procurement for the Development for Public Benefits. However, Act No. 2 Year 2012 has advantages and drawbacks. There are at least three advantages: (1) it provides certainty that law considers public necessity, both in terms of the location of the construction and the price; (2) there is a time limit for the execution of the construction, so that it guarantees the completion of land acquisition; (3) the value of 'switch loss' is carried out by appraisal (the result of the sum of the land price, the building process and planting late). As for the drawbacks, there are at least three of them: (1) funds originating from State Budget or Local Government Budget are only used for land procurement and Badan Usaha Milik Negara or State-owned Enterprise (SOE) gets the assignment specifically; (2) the potential increase and loss in cash compensation as the result of communication with the public occur before SP2LP is published; (3) the repeated requirement of initial bill for the completion of the land acquisition is beyond the limit of the time period, which results in SP2LP potential rejection. Moreover, land procurement for public benefits turns out causing various problems that arise in three stages, though it is only the first of four series of land procurement activities. Many cases occur due to the incomplete documents during the planning process made by parties who need the lands. This causes cessation or termination of the construction in some sections of toll-roads, for example in Central Java and East Java. Among the problems are: (1) the exclusion of additional costs which is actually required in the early stages of land procurement; (2) the incomplete data comprising location of the land, vast land, the status of land and the number of areas of land related to land procurement project; (3) money locker r Ugi to land TKD, land endowments are also ground the rest of the te rkena project procurement of land. Another problem is in terms of land assessment which needs sufficient time span between location planning and determination of the location, because the longer the time span, the more money it costs. Principal issues that is also important is that the human resources involved in the activities of land procurement has not yet fully apprehended the rules of the implementation of land procurement for the development for public benefits. They do not fully understand the rules and regulations that apply when they prepare for the documents needed during the planning process, where the perception sometimes differs between one and another. Based on the problems that occur, it can be concluded that the most important thing among the activities of land procurement for the development for public benefits is the comprehension of human resources about the regulation as well as the preparation of documents during the planning process which needs guidance from National Land Agency from the beginning until the end.

**Keyword:** Land acquisition

### A. Land Acquisition Problems

The object of land acquisition regulated by Law Number 2 of 2012 is land, land and underground spaces, buildings, plants, objects related to land or other that can be valued. These objects can include land owned by citizens or lands that are controlled or managed by the government, such as village treasury land, waqf land, or land that is clung to use rights.

In land acquisition, the release of land owned by individuals is relatively smooth, different from the village treasury land (TKD), government-owned land, SOEs, and waqf land where the process of relinquishing rights does not only involve landowners (in this case also referred to as land managers) and implementing land acquisition (Ministry of ATR / BPN), but also requires other licensing channels that aim to prevent the land allotment / change and not cause losses both in economic and social terms.

Tanah Kas Desa (TKD) is a village asset that has the main function as a source of village income and is fully managed by the village. , so the release process must go through village deliberations. Actually, the definition of Village Cash Land (TKD) is not explicitly mentioned in the legislation governing village wealth, even in the Minister of Domestic Affairs Regulation No. 1 of 2016 on Village Asset Management also does not explain in detail the rules regarding village treasury land management but in Minister of Domestic Affairs Regulation No.4/2007 concerning Management of Village Wealth article 1 and article 2 states that village treasury land (bent land) is part of village wealth and belongs to the village. In the context of land acquisition, article 15 of the regulation also explains that "village assets in the form of village land may not be released from ownership rights to other parties , unless necessary for public interest".

As village treasury land (TKD) for the release process for waqf land is regulated by Law No.41 of 2004, PP No. 42 of 2006 and PWI No. 1 of 2008 concerning Recommendations to Change Wakaf Land Property. And waqf land can only be waived by the ruislag process, or by finding another land substitute that has the same value , and is reused in accordance with the allotment of the waqf. Waiver of rights and replacement of waqf land involves various parties as well as involving cross-institutions with different coordinating authorities, so that obstacles are often encountered that cause the release and replacement of wakaf land cannot be carried out quickly. Some obstacles that cause the release and replacement of waqf land cannot be carried out quickly, including: 1) the release of waqf land and the search for replacement land must be carried out by nadzir as the mandate holder of the waqf land manager; 2) in general, the release of waqf land requires a long time. The land appraisal process was carried out three times at the district, provincial and central levels. Often, in waiting for this permit, replacement land is no longer available because it has been sold to another party, or the value of replacement land has increased in price; 3) the value of the results of the land assessment is small / few, because the location of the land or its area is not extensive, so nadzir has difficulty finding a replacement land in accordance with the price of the result of the valuation. 4) the amount of compensation for waqf land must be used entirely to buy replacement land, so that the allocation does not change and does not change the social moral mandate contained therein, but in reality it is very difficult to use the compensation money in the exact amount as the results of the assessment, karema to date there are no regulations governing the use of the remaining money from the payment of waqf

land compensation. 5) the process of managing the waqf land is entirely in the duties and authority of nadzir, and is very dependent on nadzir's initiative. In fact, there is no legal regulation that binds nadzir related to the release of waqf land rights, or even nadzir does not have sufficient knowledge about the procedure for releasing land rights for land acquisition. This causes the completion of waqf land often hampered and long.

Another problem is related to the land acquisition stage, which is the planning stage, where agencies requiring land should prepare the planning stage in accordance with Law No. 12 of 2012 Article 15 and Article 16. The planning stage must be set forth in a planning document containing several things important such as the preparation of costs or budgets that sometimes do not include other costs needed from the early stages of land acquisition such as administrative costs or costs for socialization to owners or authorities / managers of land objects affected by land acquisition projects. In the view of agencies that require land, land acquisition planning documents are made partially. And this creates obstacles because the land acquisition should be completed in one year with a comprehensive budget, so if funds are not yet available then the land acquisition should be postponed.

Also included in the planning document is the status of the land parcels affected by the land acquisition project, because there is no status of land parcels in the planning documents found in the field. also the number of plots affected, where this data should have existed since the planning. Therefore the role of the Ministry of ATR / BPN in relation to these two matters is very important in preparing planning documents. Problems with the status as well as the number of plots affected by the project also result in changes to the construction or design of the project that requires the approval of the central PPK (Jakarta), so that the processing time is stopped.

The issue of land valuation must also be considered in the time span between planning and location determination, because too long a span of time can cause land prices to surge dramatically. Appraisal compensation appraisal that does not oversee land acquisition from the beginning to the end of land acquisition which results in frequent price mismatches at the time of valuation.

The main problem that is no less important is that the actors or human resources involved in land acquisition activities do not fully understand the rules of land acquisition.

## **B. Analysis of Law Number 12 of 2012**

Law Number 12 of 2012 includes several advantages and disadvantages that can be a bit of thought or analysis for the perfection of this law.

The strengths of Law No.12 of 2012 include: (1) providing legal certainty regarding community objections, both to the construction stage / location and objections to prices; (2) there is a time limit for the implementation of activities so that it guarantees the completion of land acquisition; (3) the value of compensation is carried out by an independent appraisal

team that provides an assessment of land parcels (the results of the sum of the prices of land, buildings and plants), making it easier to carry out price deliberations, and (4) providing certainty for post-consignment land status.

As for the drought from Law No.12 of 2012 are: (1) can only be used for Land Procurement whose source of funds comes from the APBN / APBD and BUMN that get special assignments; (2) potential for plants and buildings to grow due to communication with the community before the SP2LP was issued; (3) demand a repeat from the beginning if the completion of the land acquisition exceeds the deadline for the potential rejection of SP2LP.

### C. Recommendation

1. The planning document should also provide clarity in the process of compensation stages for the Village Cash Land and the Waqf Land. The main thing is the arrangement of a cross-sectoral coordination between related agencies / departments, so that the approval procedure from the Ministry of Home Affairs and the Ministry of Religion does not take a long time.
2. The BPN needs to be involved from the beginning of the planning, and the appraisal should also be bound by a contract stating that the appraisal is obliged to assist when giving compensation.
3. Needs to be disseminated to the procurement regulations ta nah so that people'm truly understand will of their rights
4. Separate compensation needs to be calculated for those affected due to the development project.
5. A regulation needs to be made for the legal umbrella in the process of planning and preparation stages for land acquisition which are the objects of Government agencies, Village Kas Land (TKD) and waqf lands so that the implementation process is faster.
6. Training or workshops need for the committee and the executor of the land acquisition, especially for agencies that need land for development in the public interest, so that land acquisition can be carried out from the planning stage to the final stage of yield submission.
7. Even if it is possible to hold an education and training for land acquisition providers to better understand and equate perceptions in land acquisition activities.

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