

Reconstruction of the Law on Compensation for the Remaining Land Acquisition of Government-Owned Projects in the Perspective of Islamic Law and National Law

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Article Info

Received: 2025-03-12

Revised: 2025-03-21

Accepted: 2025-05-05

Keywords:

Reconstruction,
Compensation, Land
Acquisition, National Law
& Islamic Law

Abstract

Development carried out by the government certainly cannot be separated from the land acquisition process. Legally, land acquisition for development in the public interest is regulated in Law Number 2 of 2012. The government as a policy maker is responsible for the birth of a regulation by looking at it from the perspective of the value of *maslahah* for the community, especially land owners. Compensation for land acquisition for public interest is one example of a case that can be resolved with this concept, because it is related to worldly matters (*muamalah*) and social problems. The law in the Qur'an and As - Sunnah teaches to create peace in life with the methods that have been given. The problems raised specifically include what are the weaknesses of the regulation on the period of compensation for the remaining land areas affected by the acquisition of government-owned project land in national law, how is the review of Islamic law related to the weaknesses of the regulation on the period of compensation for the remaining land areas affected by the acquisition of government-owned project land and how is the reconstruction of the law regarding the period of compensation for the remaining land areas affected by the acquisition of government-owned project land from the perspective of Islamic law and national law. The method used in this study is normative legal research through literature studies using a statutory approach (Statute Approach), conceptual, case study and comparison. Therefore, in order to obtain legal certainty and achieve a sense of justice, it is necessary to reconstruct several legal provisions regarding the time period for providing compensation for remaining land areas affected by land acquisition for public interest.

INTRODUCTION

Land has a very vital meaning for human life. When viewed from its function, land is a *social asset* as well as a *capital asset*. Land can be used as a means to achieve the welfare of the nation. This idea has become a constitutional mandate as stated in Article 33 Paragraph (3) of the 1945 Constitution which states: "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Currently, the need for land as a capital asset is increasing in connection with the increasingly intensive development along with and in line with the progress and dynamics of society, both in urban and rural areas. However, sometimes problems arise regarding the availability of land for development. The emergence of conflicts of interest when development activities really need land as the main facility, while on the other hand most people also need land as a place to live and a place to earn a living.

Land acquisition for public interest is regulated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. This activity is carried out in several stages, involving planning, preparation, implementation, and submission of results. In its implementation, there are stages of assessment and compensation. One interesting article regarding "remaining land" that has never been regulated in previous regulations is Article 35 of Law 2 of 2012. Furthermore, the matter of "remaining land" is discussed in the implementing regulations of Article 70 of Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest.

As a perfect religion, Islam always teaches that benefit must be prioritized over all bad things (harm). According to Islam, land acquisition must prioritize the benefit of both parties involved rather than the land purchase process itself. In addition, Islam prohibits parties who oppress others. The authorities in this case the government are prohibited from intimidating or pressuring and coercing in any form to land owners (the people).

The process of land acquisition for public interest, such as infrastructure development or other government projects, often presents problems related to inadequate compensation for land owners. Cases related to remaining land from land acquisition for public interest often show the inequality between the party procuring the land (often the government or state-owned enterprises) and the land owner. Unused remaining land can reduce its economic value, and in some cases, the land cannot be used at all, thus increasing losses for the owner. Therefore, providing adequate compensation for remaining land is important to ensure justice and the welfare of the affected community.

The limitations of theory and practice regarding remaining land in land acquisition for public interest also show that there is still much room for improvement in terms of policy and its implementation. This raises the urgency to conduct research in order to create a balance between development needs and the rights of the community that are disrupted due to land acquisition. The government as the holder of authority and policy is obliged to be responsible for the birth of a rule or regulation by looking at it from the perspective of the *maslahah* value for the community, especially land owners. This is in line with the *fiqh* principle *أمر بالمعروف والنهي عن المنكر* meaning:

"The ruler (of the state) is ordered to make policies that always refer to the maslahah".¹

In principle, Islam guarantees the protection of rights for everyone. Every rights owner may

¹ Jalaluddin as-Suyuthi, *al Ashbah wa an-Nazha'ir*, (Bairut-Dar al-Kutub al-'Ilmiyyah, 1403), p. 121

demand to fulfill their rights.² A person's rights may not be taken back or taken away arbitrarily, except for reasons and through methods justified by *Sharia*. Allah SWT says " *And do not harm humans by reducing their rights and do not cause damage to the earth.* " (QS: Asy-Syu'ara' : 183). The laws in the Al-Quran and As-Sunnah teach to create peace in life using methods that have been provided with illustrations, although not detailed. Therefore, the focus of the author's research title is " **Legal Reconstruction Concerning Compensation for Remaining Land Acquisition for Government-Owned Projects in the Perspective of Islamic Law and National Law** ".

LITERATURE REVIEW

1. Definition of Justice

The theory of justice whose main benefit is used in the context of land acquisition to ensure that the land acquisition process is carried out fairly and transparently, by considering the rights of all parties involved, especially land owners. Related to theories of justice that have been developed, are relevant and can be synergized with the discussion in the dissertation that is being prepared, including the following:

A. Justice According to Islam

In the Al-Quran, Surah An-nisa verse 58, which means "Indeed, Allah commands you to convey a message to those who are entitled to receive it, and when you determine a law between people, you must determine it fairly. Indeed, Allah is the best in teaching you. Indeed, Allah is All-Hearing, All-Seeing." (QS An-nisa: 58).

Talking about justice is so long in the history of legal philosophy. This also happens in Islamic legal philosophy where the theory of justice, or called the theory of *maslahat*, has always been a topic that is never stopped being studied by Islamic legal philosophy experts (*ushul fiqh*), especially when discussing the issue of *maqashid tasyri'* or *maqashid syari'ah*³

B. Justice According to John Rawls

Principle of Justice as the First Truth: Rawls emphasizes the importance of justice as the basis for building a good society. In the context of land acquisition, this principle means that every individual, regardless of social or economic status, has the right to receive fair treatment. Rawls proposes two main principles of distributive justice, namely, first, *the greatest equal principle*, second, *the different principle* and *the principle of fair equality of opportunity*.

Both are expected to provide the greatest benefit to the less fortunate, and provide an affirmation that with the same conditions and opportunities, all positions and positions must be open to everyone (Objective Difference Principle). Rawls said that, if in a conflict situation, the principle of the greatest equal principle must be prioritized over the principle of *the different principle* and *the principle of fair equality of opportunity*. Meanwhile, *the principle of fair equality of opportunity* must be prioritized over *the different principle*⁴ so that in land acquisition, the community most affected by land acquisition must receive adequate compensation and the opportunity to improve their living conditions.

²Dimyauddin Djuwaini, Introduction to Fiqh Muamalah. First Edition, (Yogyakarta: Pustaka Pelajar, 2008).

Page 12.

³Sayyid Qutb, "Social Justice in Islam", in John J. Donohue and Jhon L. Esposito, Islam and Reform, Translated by Machnun Husein, (Jakarta Rajawali, 1984), p. 224

⁴Muhammad Taufik, JOHN RAWLS' PHILOSOPHY ON THE THEORY OF JUSTICE, Journal of Islamic Studies: Mukaddimah, Vol. 19, No. 1, 2013, pp. 51-52.

2. Understanding Legal Certainty

One of the objectives of law is the theory of legal certainty, it can be said that legal certainty is part of an effort to realize justice. Legal certainty consists of the implementation and enforcement of the law against actions, no matter who does it. Everyone can predict the consequences they will experience if they take certain legal actions through legal certainty.

Gustav Radbruch stated that legal certainty is one of the products of law or more specifically a product of legislation.⁵ According to Gustav Radbruch, legal certainty is a definite state, provision, or decision.

3. Definition of 'An Taradin'

aims to bridge the understanding of larger concepts, such as Islamic economic law and theories of business ethics in Islam. This theory can be used to connect Islamic legal theories with the practice of buying and selling transactions in everyday life, as well as to provide a critical analysis of how law and ethics interact in these transactions.

In this case, An Taradin's theory serves to maintain a balance between freedom of transaction and protection of consumer and producer rights in Islamic sales law, especially in compensation for "remaining land" in land acquisition in government projects. This can enrich the study of the influence of these theories on economic regulations or practices in countries with a Muslim majority, especially Indonesia.

According to Qurthubi, scholars have different opinions about mutual consent, some argue that the phrase "an taradin minkum" means "With mutual consent between you" and only uses the *mufa'alah pattern* (reciprocity from two parties) because commerce consists of two parties. In addition, Qurthubi scholars have different opinions about mutual consent. Some scholars believe that perfection and its decision are achieved by physically separating the two parties after the sale and purchase agreement, or by telling the owner. While the two have not separated, he says, "choose," then replies, "I have chosen."⁶

4. Understanding Maqashid Syariah

Maqashid is the plural form of the verb "qasada yaqsudu", which has various meanings, such as towards a direction or goal. Sharia means the path to a spring, it can also mean the path to the source of life.⁷ Talking about maqashid asy-shari'ah, or the purpose of Islamic law, is an important topic in Islamic law that always attracts the attention of scholars and Islamic legal experts. The scholars of the salaf and khalaf agree that every sharia law must have a reason (illah) and also a purpose (maqashid), its implementation. The purpose and reason are to build and maintain human welfare.

According to Ibn Qayyim al-Jawziyyah in Jasser Audah, sharia is a policy of life in this world and the afterlife. Sharia is the sum total of justice, peace, wisdom and goodness. Thus, there is nothing wrong if this discussion highlights the meaning of maslahah so that the understanding of maqashid asy-Syariah becomes more complete and perfect. The benefits that sharia aims to achieve are general and universal. Being general means that it applies not only to individuals but also to all humans as a whole.

5. Understanding Legal Harmonization

The theory of legal harmonization between national law and Islamic law aims to create a legal system that is inclusive and relevant to society, especially in countries with a Muslim majority population such as Indonesia. This theory hopes that national law is based on the

⁵Satjipto Rahardjo, 2012, Legal science. Bandung, Citra Aditya Bakti, p. 20.

⁶ Imam Al Qurthubi, *Tafsir al Qurthubi Volume 2, Translated by Ahmad Rijali Kadir, Jakarta: Pustaka Azzam, 2008, p. 357.*

⁷Moh. Toruquddin, Theory of Maqashid Sharia from the Perspective of Ibn Ashur (Journal), p. 2 Moh. Toruquddin, *Theory of Maqashid Sharia from the Perspective of Ibn Ashur (Journal)*.

principle of universal justice and combines the religious values of society, especially Islamic values.

Legal harmonization is the process of adjusting laws and regulations, judicial decisions, government decisions, legal systems and legal principles that aim to improve legal unity, legal certainty, justice, usefulness and clarity of law, without having to obscure or sacrifice legal pluralism. Through this approach, national law can reflect the values of justice that are in line with religious teachings, thereby increasing the legitimacy and compliance of society, reducing legal conflicts, and strengthening unity and harmony in national and state life.

6. Understanding Maslahah (benefit)

The theory of *maslahah* (benefit) in land acquisition, compensation focuses on providing fair benefits to landowners affected by the acquisition project. Compensation here includes compensation or additional benefits provided in addition to compensation to balance the rights and interests of private landowners with the most important public interests in the development project. The *maslahah approach* emphasizes that every type of compensation must contain elements of justice and benefit the affected people.

The most relevant *maslahah* (benefit) theory in the context of compensation in land acquisition can be found in the works of classical and contemporary Islamic scholars, who emphasize the balance between public benefits and the protection of individual rights. Imam Al-Ghazali, Imam Asy-syatibi, and Yusuf Al-Qaradawi are sources of *maslahah* theory that are appropriate for this context. They each provided their perspective on how *maslahah* is applied in legal decisions related to the common good.

METHODOLOGY

This type of research is normative juridical through library research. using the approach described in *the statute approach, conceptual approach, Case Approach and comparative approach*.⁸ This research is descriptive analysis that aims to accurately describe the characteristics of an individual, condition, symptom or certain group, or to determine the spread of a symptom, or to determine whether or not there is a relationship between a symptom and other symptoms in society.⁹ In this qualitative research, data sources are categorized into three main types: primary, secondary, and tertiary data. Primary data through literature studies in the form of written materials such as books, laws and regulations and data from agencies or institutions where research is carried out that are related to the problems discussed in the research .¹⁰ Secondary data, all publications on law in the form of unofficial documents, including textbooks that discuss one or several legal problems, including legal theses, theses and dissertations, and law journals. Tertiary data supporting legal materials that provide guidance and explanations for primary legal materials and secondary legal materials.

RESEARCH RESULT

1. National Legal Analysis Regarding Compensation for Remaining Land Acquisition for Government Projects

⁸ Desak Paramita Brata, Ni Putu Rai Yulianti, and Dewa Gede Sudika Mangku, " *Legal Review of the Principle of Open Trials for the Public in Broadcasting Criminal Trial Processes* ," Yustisia Community, Ganesha University of Education, Legal Studies Program 3, no. 1 (2020): 79–89.

⁹ Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* , Jakarta: PT RajaGrafindo Persada, 2004, p.25.

¹⁰ Ronny Hanitijo Soemitro, 2013, *Legal Research Methodology and Jurimetrics*, p. 53.

Since the Dutch colonial era, the issue of land acquisition for public interest has been regulated in Indonesia. Several important regulations govern land compensation in Indonesia, from Law Number 5 of 1960 concerning Basic Agrarian Principles to the current Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Overall, these regulations are made to provide justice and legal certainty in land acquisition while maintaining a balance between public interest and the individual rights of land owners. In practice, the compensation given must be fair, namely in accordance with the land value or its market value.

Land acquisition procedures for government projects begin with determining the purpose of land acquisition for public interest, such as infrastructure development. Furthermore, the government conducts socialization to the affected community regarding the purpose and procedures of the acquisition. Then, within a maximum of 14 (fourteen) working days, the results of the inventory, identification of control, ownership, use, and utilization of land by the land agency must be announced at the village/sub-district office, sub-district office, and land acquisition location.¹¹ If there are objections to the inventory results, they will be verified and corrected within 14 (fourteen) working days from the date the objection is received.¹² The verification and correction or results of the announcement made by the land agency are used as the basis for determining the party entitled to compensation.¹³

The land agency determines the Appraiser in accordance with the provisions of the laws and regulations after the process of inventory and identification of control, ownership, use, and utilization of land is completed.¹⁴ Land Appraisers, also known as Appraisers, are individuals who conduct assessments independently and professionally with an assessment practice permit from the Minister of Finance and a license from the land agency to calculate the price or value of the purchased land object.¹⁵ If there is a difference of opinion regarding the compensation value, negotiations will be held between the government and the landowner. If negotiations fail, dispute resolution can be done through mediation or court. The losses to be paid will be submitted in the form of:¹⁶ Money, replacement land, resettlement, share ownership and other forms agreed by both parties.

The presence of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest is expected to be a momentum for improving policies, procedures, and practices of land acquisition for development that are more pro-community and prioritize the true public interest. In Presidential Regulation Number 36 of 2005, which has been amended by Presidential Regulation Number 65 of 2006 to represent the Old Regulation Group, and Presidential Regulation Number 71 of 2012 as a representation of the New Regulation Group, there are several policy changes that refer to the old laws and regulations. Several differences between the two can be seen that in Presidential Regulation Number 36 of 2005 as amended by Presidential Regulation Number 65 of 2006, Article 13 explains that the form of

¹¹Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 29 paragraph (1).

¹²Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 29 paragraph (5).

¹³Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 30.

¹⁴ Explanation of Article 31 paragraph (1) (The provisions of the statutory regulations referred to are provisions regarding procurement of goods/services by government agencies).

¹⁵Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 1 number 11

¹⁶Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Article 36.

compensation provided by the government can be in the form of money, replacement land, resettlement, a combination of two or more forms of compensation, or other forms agreed to by the parties concerned.

Meanwhile, Article 15 paragraph (1) states that the amount of compensation provided by the government regarding land acquisition is based on:

- a. Taxable Object Sales Value (NJOP), or real or actual value, based on the assessment of the land price assessment institution or team appointed by the committee in the previous year;
- b. The estimated selling value of the building by the agency responsible for buildings in the area;
- c. The selling value of the plants is estimated by the agricultural institution responsible in the area.

Then the Regulation of the Head of BPN Number 7 of 2007, Article 28 (2), provides additional explanation on how to calculate the compensation value. Before the amount of compensation or land price is determined together with the entitled party through a deliberation mechanism, the Land Acquisition Committee must first appoint a Land Price Assessment Institution or form a Land Price Assessment Team for districts/cities that do not yet have a Land Price Assessment Institution to assess land prices based on the Taxable Object Sales Value (NJOP) by taking into account the current year's NJOP, and can be guided by the variables that have been determined.

In general, in the land provision process stage, it only focuses on the compensation value of land acquisition (land affected by the Right Of Way or ROW), be it road procurement or government development procurement for other public interests. So in this case, there are still many cases in its implementation where the land is only partially affected by the ROW of the Development planning, so that other parts affected by the ROW are ignored or in this case not involved in being released, this results in the land not being compensated for by the entitled party. Communities whose land is not included in the ROW of the development planning must feel the impact of the loss due to this. Article 25 of Law Number 2 of 2012 on Land Acquisition From the contents of the article, it causes losses to the affected community, namely related to the regulation of the compensation period for the remaining land of the government project which has no clear time limit, a very long bureaucracy and the absence of an effective protection mechanism so that this article does not reflect the value of justice.

Then in Paragraph 3 of Article 35 of Law Number 2 of 2012 concerning Compensation Assessment, the previous regulation on land acquisition and release did not discuss whether the land affected by the acquisition consisted of remaining land, also known as remaining land that was not released, which could no longer be used in accordance with its original purpose. Despite the fact that many people are affected by land acquisition, there is remaining land that can no longer be used in accordance with its original purpose. Therefore, this article is clearly good news for the community.

In Paragraph 3 of Article 35 of Law Number 2 of 2012, community land used for residential or non-agricultural purposes can request compensation for losses for all land, as explained in the explanation of this article. However, what about land used and utilized for agriculture, such as rice fields and plantations, is not mentioned in the explanation of this article. In Article 70 of Government Regulation of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest.

This Presidential Regulation does not mention and explain what the criteria are for

remaining land affected by land acquisition that can no longer be used in accordance with its designation and use, such as what should be released and compensated or should not be released and compensated. Until now, there have been no standard regulations or technical instructions to regulate the criteria for whether remaining land can still be used or not and to regulate compensation for remaining land affected by land acquisition for public interest for development.

2. Analysis of Islamic Law Regarding Compensation in Land Acquisition

One of the main principles of Islam that serves as a foundation for various aspects of life, including compensation and land use, comes from the Qur'an and Hadith, as well as the opinions of scholars who prioritize the balance between the rights of each person and the public interest. In Islamic law, it is known as *maqashid al-syariah*, in line with the idea of *maslahah 'ammah*. *Maqashid al-syariah* comes from the words "maqashid" and "syari'ah". *Syari'ah* is the laws of Allah that are set for humans to be followed to achieve happiness both in this world and in the hereafter.¹⁷

In issuing its fatwa, the MUI considers the rules of Islamic jurisprudence on public interest. MUI Fatwa No. 8/MUNAS VII/MUI/12/2005 was made based on legal basis and consideration of several rules of Islamic jurisprudence. According to the Indonesian Ulema Council (MUI), private property rights are ownership of something whose benefits are only enjoyed by its owner, a person, or several certain people. while public interest is an interest utilized by the general public without discrimination. In the following cases, the government can revoke private property rights for the public interest:

- a. Achieved through deliberation between the government and rights owners without any coercion.
- b. Must be paid in a fair manner (*tsamanul mitsli*).
- c. The government is responsible for the public interest.
- d. public interest determined by the DPR or DPRD by taking into account the fatwa and opinion of the MUI.
- e. Public interest should not be used for other interests, especially in business.

The decision of the 29th Nahdlatul Ulama Congress in Cipasung Tasikmalaya on 1 Rajab 1415 H./4 December 1994 M. regarding the law of land eviction by the government is almost in line with the MUI fatwa. According to Ahlul Bait, the law of land eviction by the government for the public interest (*al-maslahah al-'ammah*) is justified if it is used by the government for purposes justified by sharia and with adequate compensation. According to fiqh, the best method to determine compensation for land eviction is through deliberation conducted in a fair manner in which no party is harmed.¹⁸

In Islamic legal literature and legislation, compensation is referred to as damages or compensation. In legislation, compensation has been carried out before the existence of government, or in societies that are still in the form of tribes (tribal organizations), compensation is a common thing. Now it is clear that if a person or government does something that can harm others, then they are responsible for providing compensation sanctions. Likewise in Islamic law, the term "compensation" was first used during the reign of the Prophet when land that had been attached to community rights was taken for public interest.

¹⁷Ghofar Shidiq, "The Theory of Maqashid Al-Syariah in Islamic Law," Sultan Agung, VOL XLIV, June 2009, pp. 118–19.

¹⁸Ibn Hakim, "Evicting People's Land for Public Interest", in <http://www.laduni.id/post/read/30552/menggusur-tanah-rakyat-untuk-kepentingan-umum.html>.

The *qiyas* and *maslahat murlahi* approaches are often used in *siyasa* because this is the area of *ijtihad*. Therefore, the main basis for the existence of *siyasah Syar'iyah* is the belief that Islamic law was revealed for the good of the world and the hereafter by enforcing laws that are as fair as possible, even though the methods used are not explicitly stated in the Qur'an and Sunnah.¹⁹ There are several pillars of compensation that must be considered in the land acquisition process for public interest according to the concept of *siyasah syar'iyah*, *sighat*, *Dhamin* or *Kafil*, *Madhmin* or *Makhfil*, and *Makful bih*.²⁰

The importance of deliberation in decision making and land utilization for the common good. Land acquisition according to Islamic law, the deliberation carried out must result in a voluntary agreement (*antaradin*) between the parties involved so as to avoid *gharar* (uncertainty). This process must be carried out with transparency, justice, and prioritizing the common welfare.

In Islamic sharia, *Maqashid al-Syariah* is a basic principle which aims to achieve benefit (goodness) and prevent harm (damage). This principle has five main objectives, known as *al-dharuriyat al-khamsah*, including *Hifz al-Din* (Protection of Religion), *Hifz al-Nafs* (Protection of the Soul), *Hifz al-'Aql* (Protection of Reason), *Hifz al-Nasl* (Protection of Offspring) and *Hifz al-Mal* (Protection of Property). In practice, exploiting the public interest in development projects actually threatens the existence of human souls, which must be stopped morally. The rules of fiqh have provided a conceptual framework (rejecting danger is prioritized over achieving benefit). The notion of protecting the soul (*hifz al nafs*) is not only placed in the present concept, but also for the future. Therefore, the factors of *maslahah* (benefit) and *mafsadah* (damage) must take into account the fate of future generations.

The basis of the principle of public interest is the basis of land management policy in Islamic law, with the state having the authority to set regulations. In such a situation, the state has the authority to do things like nationalize land ownership, transfer land, change the land management system, limit and even revoke land ownership rights. In the context of Islam, the legal authority of land owned by the state aims to create a legal order between the landowner and the land, with a focus on creating harmony between the interests of individuals and society, the state and individuals, and the state and the state. This is an implementation of the state's function in regulating social institutions (*siyāsāt al-dunyā*).

3. Legal Reconstruction Regarding Compensation for Remaining Land Acquisition for Government Projects

In terms of land acquisition for public interest, the harmonization of Islamic law and national law can be explained by the principle of *syura*, which means deliberation and *maslahah* which means benefit. *Maqasid syar'iyah* is a form of regulation that creates harmony and balance in Islamic law, so that it aims to maintain human welfare, both physically and spiritually, both personally and collectively. Therefore, every law aims to maintain the five objectives of *sharia* contained in the *maqasid syariah* and avoid things that can damage or endanger. A similarity with what is explained, namely the public and social interests that emanate from the core of this learning.

The term "Reconstruction" has various meanings in terminology, but it is often used in national development planning. The word "construction" means a form or system, while "re"

¹⁹ HA Djazuli, *Fiqh siyasah: Implementation of the welfare of the people within the guidelines of sharia*, (Jakarta: Kencana Prenada Media Group, 2003): 29 .

²⁰ H. Hendi Suhendi, *Fiqh of Muamalah Author*, (RajaGrafindo Persada, 2002), page 191 .

means renewal. In the term reconstruction, "re" means renewal. There are many different definitions for reconstruction by experts. According to Sarwiji, a linguist, what is meant by "construction" (construction meaning) is the meaning contained in linguistic construction. In reality, the term "construction" is a concept that is quite difficult to understand and agree on.²¹

One way to improve the rule of law by considering the changes that occur in society is to carry out legal reconstruction. In addition, this is also one method to develop legal materials or positive law by using logical reasoning to achieve the desired results. In other words, reconstruction means reorganizing and adjusting some existing legal rules. Scholten pays attention to 3 (three) conditions, including:²²

- a. Reconstruction must cover all relevant areas of positive law.
- b. There should be no reasonable contradiction in it. For example, there is a belief that says that a person can have a mortgage right on his own property. However, this belief is wrong because the mortgage itself is a right that a person has over another person's property.
- c. The requirement for reconstruction must indicate beauty, meaning that it is not something that is made up but must provide a clear and simple picture.

Reviewing the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 Concerning the Implementation of Land Acquisition for Development in the Public Interest, where the spirit of the Presidential Regulation lies in the point of compensation, and the determination of the compensation value. Considering the point of compensation, the most important factor in taking land rights owned by the community is the last one. So that the steps in implementing land acquisition for development in the public interest lie in the process of determining the compensation value, related to this, researchers have a basis for thinking about implementing the reconstruction of several articles in the Presidential Regulation of the Republic of Indonesia Number 71 of 2012 Concerning the Implementation of Land Acquisition for Development in the Public Interest. The following table shows the articles that will be reconstructed, namely:

Table of Forms of Legal Reconstruction Time Period for Compensation for Remaining Land Areas Impact of Land Acquisition for Public Interest

NO	Legal Provisions	Before reconstruction	Weaknesses Before Reconstruction	After Reconstruction
1.	Article 25 of Law Number 2 of 2012	In the event that the time period for determining the location of development for the Public Interest as referred to in Article 24 is not fulfilled, the determination of	It does not provide a deadline for completion, does not regulate deliberation mechanisms or administrative sanctions, thus potentially creating legal uncertainty.	1) In the event that the time period for determining the location of development for the Public Interest as referred to in Article 24 is not fulfilled, the determination of the location of development for the

²¹Sarwiji Suwandi, *Semantics: An Introduction to the Study of Meaning*, (Media Perkasa: Yogyakarta, 2004) p. 63.

²²Satjipto Rahardjo, *legal science*, (Citra Aditya Bakti: Bandung, 2000) pp. 103-104.

		the location of development for the Public Interest will be re-processed. for the remaining land whose procurement has not been completed.		Public Interest will be re-processed for the remaining land whose procurement has not been completed. 2) “Remaining land” is land whose rights have not been released until the end of the location determination period, or land that is divided and some of which are no longer technically or economically feasible to use. The process of re-determining the remaining land must be completed by the agency purchasing the land no later than 60 (sixty) working days after the end of the location determination period.
2.	Article 35 of Law Number 2 of 2012	In the event that a particular plot of land affected by Land Acquisition has any remaining land that can no longer be used in accordance with its designation and use, the Entitled Party may request full replacement for its plot of land.	Not explaining the form of compensation in detail, appraisal is not mentioned, and there is no deadline or dispute resolution mechanism, causing unclear implementation in the field.	1) In the event that a particular plot of land affected by Land Acquisition has any remaining land that can no longer be used in accordance with its designation and use, the Entitled Party may request full replacement for its plot of land. 2) The government is obliged to provide outreach to parties entitled to the remaining land through a deliberation process between land owners to reach a fair agreement. 3) a. The amount of compensation is determined based on the results of an independent assessment agreed

				upon through deliberation. B. The form of compensation is determined in deliberation. 4) Compensation as referred to in paragraph (1) must be paid no later than 30 (thirty) working days from the date of determination of the amount of compensation. If no agreement is reached during the deliberation or a dispute arises over the amount of compensation, the settlement will be submitted to the District Court, which is required to issue a decision no later than 14 (fourteen) working days from the date the application is received.
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Referring to the reasons put forward by the author regarding the legal recommendation for the period of compensation for the remaining land areas due to the impact of land acquisition for public interest in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest above. Where the reconstructed articles are in articles 25 and 35 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

In Article 25, it requires updating to better guarantee legal certainty, justice, and protection of the rights of landowners. Reconstruction of this norm is important, especially when viewed from a progressive legal approach and Islamic legal values based on justice, benefit, and protection of rights. The analysis of the Need for Legal Reconstruction Related to Land Acquisition Compensation in Indonesia is as follows:

- a. Approach : The State Must Be Active and Responsive
- b. Islamic Law Perspective: Justice, Benefit, and the Prohibition of Taking Other People's Rights Without Their Consent

The reconstruction of this article should consider:

- a. The obligation of fair deliberation (shura) between the government and land owners.
- b. Provision of fair compensation ('iwadh) according to the value of the lost land.
- c. Emphasis on the common good, but without sacrificing individual interests unilaterally.

There are principles of Maslahat and justice in legal reconstruction, Maslahat is the main concept in Islamic law that aims to realize the welfare of the people. In land acquisition, decisions must be oriented towards public benefits without harming individuals. The principles of Maslahat and justice in legal reconstruction are as follows:

- a. Article 25 of Law No. 2 of 2012: Article 25 defines “remaining land” as land whose rights have not been released until the location determination period ends. If the procurement agency still needs the land, the procurement process must be resubmitted from the beginning to ensure the validity and protection of rights.
- b. Article 35 of Law No. 2 of 2012: Article 35 stipulates that a plot of land that can no longer be used for its original purpose, for example due to being divided so that part of it is uninhabitable, gives the owner the right to request compensation for the entire plot of land. The value of Maslahat in the Reconstruction of Articles 25 and 35 of Law No. 2 of 2012 is as follows:

- a. Benefits in Legal Certainty (Article 25)

The original Article 25 only stated that the remaining land must be resubmitted for procurement without a time limit for completion or a sanction mechanism. This caused legal uncertainty for landowners. The reconstruction of Article 25 presents a beneficial value by:

- Ensure that landowners' rights remain protected, even for insignificant portions of land.
- Provides a 60-day deadline for completion of applications, which provides legal certainty.
- Provide administrative sanctions in the form of fines to negligent procurement agencies, thereby encouraging compliance with the law.

In this way, benefits are realized in the form of ḥifẓ al-māl (protection of property) and ḥifẓ al-'adl (upholding justice).

- b. Benefits in the Distribution of Justice (Article 35)

Article 35 previously did not specify the form of compensation, appraisal, or payment deadline, which could lead to unclear and unequal treatment of land owners. The reconstruction of Article 35 provides benefits through:

- Affirmation that land owners are entitled to compensation when land is no longer usable.
- Assessment based on independent appraisal and deliberation (mufāqah), creating transparency and participation.
- Flexible forms of compensation (money, replacement land, or a combination) according to the owner's needs.
- Deadline of 30 working days for payment and 14 working days for dispute resolution through a special institution.

This reflects substantive justice and public interest through the protection of people's civil rights.

- c. Benefits in the Context of Maqasid al-Syariah

This reconstruction upholds three main values in maqāṣid al-sharī'ah:

- Ḥifẓ al-māl, Protecting land ownership as part of assets.
- Ḥifẓ al-nafs, Ensuring the sustainability of the land owner's life through adequate compensation.
- Ḥifẓ al-'adl, Upholding justice in the process of legislation and implementation of law.

With the integration of these values, law not only becomes an instrument of power, but also a means of protection, justice, and benefit for society.

CONCLUSION AND RECOMMENDATIONS

1. Conclusion

- A. The weakness of the regulation on the period of compensation for the remaining land areas due to the impact of land acquisition for government projects in national law, along with the limited budget of the agencies that require land, there is no clarity regarding the time limit for the re-determination process as a basis for providing compensation for the remaining community land, while the party receiving the compensation also cannot utilize it according to its designation due to the condition of the shape and area of the land while the price of the land is no longer in accordance with the initial location determination/determination price and there is no mechanism for resolving the remaining land.
- B. The impact of the weaknesses in remaining land regulations is viewed from Islamic law in terms of justice, certainty, protection of rights and deliberation which reflects the principles of Islamic law. Islamic principles aim to create a legal order that focuses on creating harmony between the interests of individuals and society, state and individual, and state and state. This is an implementation of the state's function in regulating social institutions (*siyāsat al-dunyā*) and trying to maintain life with all its elements known as *al-dharuriyat al-khamsah* , including *Hifz al-Din* (Protection of Religion), *Hifz al-Nafs* (Protection of the Soul), *Hifz al-'Aql* (Protection of Reason), *Hifz al-Nasl* (Protection of Offspring) and *Hifz al-Mal* (Protection of Property).
- C. Legal reconstruction regarding the compensation period for remaining land areas affected by the acquisition of government-owned land projects from the perspective of Islamic law and national law by reconstructing the following provisions:
 - a. In Article 25 of Law Number 2 of 2012, 3 (three) paragraphs were added, explaining the re-determination process for the location, definition of remaining land and the time limit for completion of remaining land.
 - b. In Article 35 of Law Number 2 of 2012, 5 (five) paragraphs were added, explaining the request for compensation, socialization, determination of compensation, payment deadline and dispute resolution.

2. Recommendation

- A. The budget required by the government to consider the risk of remaining land. This is related to the budget required to pay compensation for remaining land. The impact of the weakness of the regulation of the form of loss results in injustice in the loss of landowner rights and increased potential for complications or disputes between the community and the government.
- B. Technical instructions for remaining land related to land acquisition must be made so that the procedures and implementation of the settlement of remaining land are carried out through deliberation to guarantee the land owner's rights to fair compensation and losses due to the taking of part of the land which causes the remaining land to no longer have any utility value.
- C. Recommendations for further researchers are to examine the extent to which land acquisition agencies or committees carry out their functions in resolving objections or compensation disputes.

BIBLIOGRAPHY

- Aminuddin Salle. *Law on land acquisition for public interest* . Yogyakarta: Kreasi Total Media., 2007, nd
- Amiruddin, Asikin, Zainal H. *Introduction to Legal Research Methods*. PT. Rajagrafindo Persada, 2010
- Amir Syarifudin. *Usul Fiqh Volume 2*. Jakarta: Jakarta Kencana, 2009, nd
- As-Suyuthi, Jalaluddin, Al-Ashbah wan Nadha`ir, Beirut, Darul Kutub Al-Ilmiyyah, 1403H
- Desak Paramita Brata, Ni Putu Rai Yulianti, Dewa Gede Sudika Mangku, “Legal Review of the Principle of Open Trials to the Public in Broadcasting Criminal Trial Processes”, e-Journal of the Yustisia Community, Ganesha University of Education, Legal Studies Program (Volume 3 No. 1, 2020): 86.
- Dimyauddin Djuwaini. *Introduction to fiqh muamalah*. Third. Yogyakarta: Pustaka siswa, 2015, nd
- Shidiq, Ghofar, “Theory of Maqashid Al-Syariah in Islamic Law,” Sultan Agung, Vol. XLIV, June 2009
- H. Hendi Suhendi. *Fiqh of Muamalah Author* . RajaGrafindo Persada, 2002, nd
- HA Djazuli. *Fiqh siyasa: Implementation of the welfare of the people in the guidelines of sharia* . Rev. Ed., 5th ed. Jakarta: Kencana, 2013, nd
- Hakim, Ibn, “Evicting People’s Land for Public Interest”, in <http://www.laduni.id/post/read/30552/menggusur-tanah-rakyat-untuk-kepentingan-umum.html>.
- Jashash, Abu Bakr Ahmad bin Ali ar Razi. *Ahkam al Qur'an Volume 2* . Beirut : Dar al-Kotob al-Ilmiyah, sa, nd
- Sarwiji Suwandi, 2008, *Semantics: An Introduction to the Study of Meaning*, Yogyakarta, Media Perkasa.
- Soemitro, Ronny Hanitijo, 1984, *Legal Research Methods and Jurimetrics*, Ghalia Indonesia, Jakarta.
- Taufik Muhammad, John Rawls' Philosophy on the Theory of Justice. Coordinator of Private Islamic Colleges Region III DI Yogyakarta, 2013.
- Quthb, Sayyid. *Social Justice in Islam*. First. Bandung: Pustaka Publisher, 1984, nd
- Imam Al Qurtubi. *Tafsir al Qurthubi Volume 2* . Jakarta: Pustaka Azzam, 2007, nd
- Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (State Gazette of the Republic of Indonesia 2012 Number 22, Supplement to the State Gazette of the Republic of Indonesia Number 5280);
- Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, page 34
- Satjipto Rahardjo. *Law in Social Perspective* . Bandung Alumni 1981, nd
- Suwandi, Sarwiji. 2011. *Assessment Models in Learning*. Surakarta: Yuma Perkasa.