Repositioning Public Consultation In Land Acquisition For Public Interest: A Legal Reform Perspective In Indonesia

Labib Renedy Crisdianto, Iwan Permadi, Herlindah
Faculty of Law, University of Brawijaya, Indonesia
Email: labibrenedy221@gmail.com

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Abstract

Land acquisition for public purposes is an important instrument in national development that often raises issues, particularly regarding the protection of the rights of affected communities. One crucial aspect that is often questioned is the implementation of public consultation. Normatively, Law No. 2 of 2012 on Land Acquisition for Development for Public Purposes and its implementing regulations have regulated the mechanism for public consultation. However, practices in the field show the dominance of government actors without balanced participation from civil society, resulting in procedural injustice and potential agrarian conflicts. This indicates the need to reconceptualise the repositioning of public consultation as an instrument of democratisation in the land acquisition process. This study departs from two problem formulations, namely: (1) how public consultation is regulated in land acquisition for public interests in Indonesia; and (2) how the reconceptualisation of the repositioning of public consultation can strengthen land acquisition for public interests. Meanwhile, the research method used is normative legal research, with a legislative, conceptual, and comparative approach. The results of this study show that, first, the current regulation of public consultation is still administrative-formal in nature and does not guarantee the substantive involvement of the community. Second, public consultation as regulated in Law 2/2012 and its derivatives has not been able to be implemented de facto.

I. Introduction

Land acquisition for public purposes is one of the most important legal instruments in national development. One of the efforts that can be made in order to realise development is by carrying out development for public purposes. The implementation of development for public purposes is essentially inseparable from basic requirements that must be met first, such as which area will be developed, its location, its size, and, more importantly, the availability of land to be developed.Therefore, to meet land requirements, the government acquires land. This acquisition does not simply involve taking land from its owners; it must go through procedures and take into account the principles of land acquisition for public interests, including the principles of humanity, justice, benefit, certainty, the principle of openness, the principle of agreement, the principle of participation, the principle of welfare, the principle of sustainability, and the principle of harmony (Solechan, 2019).

In addition, the enactment of Law No. 2 of 2012 concerning Land Acquisition for Development for Public Interest, Government Regulation No. 39 of 2023 concerning Amendments to Government Regulation No. 19 of 2021 concerning the Implementation of Land Acquisition for Development for Public Interest. The existence of principles and several related regulations ensures that land acquisition must comply with applicable regulations and prevents arbitrary actions by the government. When referring to PP 39/2023, one of the requirements that must be met is public consultation based on Article 1 point 10, which states that 'Public Consultation is a process of dialogical communication or deliberation between interested parties to reach an understanding and agreement on Land Acquisition for Development for Public Interest.' The existence of this article is essentially to provide legal certainty regarding the importance of public consultation. However, in some cases, land acquisition for public purposes often causes conflict. Based on the Annual Report of the Agrarian Reform Consortium (KPA) for 2020-2023, agrarian conflicts in the infrastructure sector ranked fourth in terms of frequency. Throughout 2023, there were 30 agrarian conflicts involving 243,755 hectares of land and 3,456 families. Of these, 21 conflicts were related to national strategic projects (PSN) (Widi & others, 2024). In addition, according to research conducted by Diyan Sejarot et al., agrarian conflicts over land acquisition for public interests occurred in the construction of the Bener Dam in Wadas Village, which is part of the PSN programme. The cause of the conflict was the community's concerns about the impact and the lack of community involvement in decision-making (Sejarot & Hariri, 2023). Muhammad Zaky Adriansa, in his research, stated that the riots or conflicts that occurred in Wadas village were due to a lack of socialisation (Adriansa & others, 2020).

Regulations on land procurement for public interests are very strict regarding the importance of public consultation, which is normatively designed as a forum for communication between the government, land procurement implementers, and landowners. The aim is to ensure that land procurement is carried out in a transparent, participatory, and fair manner. However, in practice, this mechanism is often carried out merely as a formality. Public consultations often take place without any real discussion, with minimal meaningful participation, and are sometimes conducted simply to fulfil administrative requirements before the land acquisition process continues. Constitutionally, public consultation is regulated in

Article 28D paragraph (1) of the 1945 Constitution, which guarantees that every person has the right to recognition, security, protection and certainty before the law. Article 28H paragraph (4) also emphasises that every person has the right to private property, and that this right cannot be arbitrarily taken away. Thus, land acquisition must be carried out through mechanisms that respect the constitutional rights of citizens, including the right to be heard through public consultation. If public consultation is only carried out procedurally without substance, this has the potential to diminish the meaning of constitutional protection for citizens. In addition, the existence of Law No. 2/2012 and its derivatives normatively places the government in a strong position when the public consultation process is carried out. This can be seen from the composition of the preparation team assigned to conduct public consultations, which consists entirely of government officials, with no independent parties or mediators. It cannot be denied that this can lead to an imbalance between the government and the community during the consultation process. As a result, public consultations are more often one-sided, with the government merely conveying information without opening up space for discussion. According to Jürgen Habermas, public consultations should be an arena for deliberation, where the voice of the public carries equal weight with the interests of the state. Based on the background described above, the problems formulated in this study are as follows:

1. How is public consultation regulated in land acquisition for public purposes?
2. How can public consultation be reconceptualised and repositioned as an effort to strengthen land acquisition for public purposes?

II. Research Method

Based on the background and problem formulation, this study uses normative legal research. Meanwhile, the research approach used is the statute approach, which is an approach that uses legislation and regulations (Diantha, 2017) related to land acquisition for public interests during public consultations. In addition, it also uses a conceptual approach that departs from the views and doctrines developed in legal science (Marzuki, 2010), particularly those related to the basic concepts of public consultation and land acquisition in general (Sumardjono, 2019).

III. Results and Discussion

3.1 Regulations on Public Consultation in Land Acquisition for Public Interest

The development of infrastructure and public facilities is an important part of supporting economic growth and improving the quality of life of the community. However, most of these projects require adequate and strategic land in order to function optimally. In many cases, the land required is owned by the community or other parties, which means that a land acquisition process must first be carried out. This poses its own challenges, both legally, socially, and economically, as land acquisition can have a direct impact on the lives of the affected communities. Land acquisition for public purposes is a very important process in supporting the development and progress of a region or country. Land, as a natural resource with strategic value, is often needed for the implementation of various infrastructure development projects, such as roads, bridges, educational facilities, hospitals, housing, and

various other public facilities. However, land acquisition cannot be carried out arbitrarily because it concerns the property rights of the community, which must be respected and protected.

In addition, land acquisition must be carried out in a fair, transparent manner that prioritises deliberation so that the rights of the community are protected. Therefore, the government and all relevant parties must implement procedures that comply with applicable laws and regulations. By guaranteeing and ensuring that the land acquisition process runs smoothly, development can be carried out efficiently without causing harmful social conflicts. In addition, land acquisition for public purposes has broader social and economic impacts because it concerns the welfare of society as a whole, so the process must be conducted transparently and fairly to avoid social conflict. Therefore, land acquisition for public purposes requires stricter mechanisms and regulations than land acquisition for private purposes in order to maintain a balance between development needs and the protection of community rights. In addition to differences in terms of purpose, process, and landowner rights, legal aspects are also an important distinguishing factor between land acquisition for private and public interests. Land acquisition for private interests generally only requires an agreement between the seller and buyer, which is subject to civil law regarding sales agreements. Meanwhile, land acquisition for public purposes is specifically regulated in legislation, such as the Law on Land Acquisition for Public Interest Development, which stipulates the procedures and compensation components that must be provided to landowners. This regulation aims to protect the rights of the community while facilitating the implementation of national development/ Therefore, land acquisition for public interests must prioritise fairness, transparency, and good communication between the government and the community so that development can run smoothly and the benefits can be felt by all parties. Essentially, the legal basis for land acquisition for public purposes is regulated in Law No. 2 of 2012 concerning Land Acquisition for Development for Public Purposes, as several provisions therein have been amended based on Article 123 of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law -Law No. 2 of 2022 on Job Creation into Law. Law No. 2 of 2012 was promulgated on 14 January 2012 and contains 7 chapters comprising 61 articles that comprehensively regulate the mechanisms, procedures, and legal protection in the implementation of land acquisition for development intended for public interests.

Normatively, "land acquisition" as stipulated in Article 1 paragraph 2 of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest is defined as: 'Land acquisition is the activity of providing land by giving fair and reasonable compensation to the entitled parties.' From this definition, it can be understood that land acquisition is not merely a process of transferring land rights, but a legal mechanism that emphasises a balance between development needs and the protection of landowners' rights. The balance between these two dimensions is very important, because development must not ignore the rights of the community, and conversely, the protection of individual rights must not hinder the interests of public development. Therefore, land acquisition needs to be placed within a legal framework that guarantees certainty, fairness, and benefits for both the state and the community (Watung, 2024).

The urgent need for more systematic, transparent, and equitable land acquisition regulations, in line with the increase in infrastructure development in Indonesia, is the reason behind the enactment of Law No. 2 of 2012 on Land Acquisition for Development for Public Interest. The enactment of this law is expected to be a solution to balance national development needs with the protection of community rights. One of the important instruments introduced is public consultation, which is intended as a participatory forum to reach agreement between the government as the development implementer and the communities whose land is affected. Thus, the enactment of Law No. 2 of 2012 became an important milestone in the history of land acquisition law reform in Indonesia, although in practice it still leaves various issues that have prompted discussions on the reconceptualisation and repositioning of public consultation.

Although there is a clear legal basis, practice in the field shows that one important aspect, namely public consultation, is often carried out merely as an administrative formality, without truly involving meaningful participation from the affected community. Thus, Poltaris' statement that it is impossible to create a perfect law may still be relevant. For no matter how good and perfect a law may be when it is discussed and debated in parliament, once it is enacted, it will inevitably face a thousand and one problems that were not anticipated or predicted when the law was formulated. Public consultation in land acquisition has its main legal basis in Law No. 2 of 2012 concerning Land Acquisition for Development for Public Interest as amended by Law No. 6 of 2023 concerning Job Creation. Articles 18 to 20 of Law No. 2 of 2012 stipulate that public consultation is conducted to obtain agreement on the location of the planned development. This public consultation is part of the land acquisition preparation stage carried out by the agency requiring the land together with the local government and the affected community. In addition, technical regulations regarding public consultation are clarified in Presidential Regulation No. 71 of 2012 and its amendments, which regulate the procedures for conducting consultations, eligible participants, and follow-up actions based on the results of public consultations. The existence of these regulations indicates that, normatively, the state has endeavoured to position public consultation as an important instrument in the land acquisition process.

The definition of "public consultation" can be found in Article 1 point 8 of Law -Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, which states that: 'Public Consultation is a process of dialogical communication or deliberation between interested parties to reach an understanding and agreement in the planning of land acquisition for development for public interest'. From this definition, it can be understood that public consultation is not merely a one-sided provision of information, but rather a dialogue forum that emphasises deliberation, understanding, and agreement between the parties who need the land (the government/development implementers) and the landowners or interested parties. From a legal reform perspective, public consultation needs to be repositioned so that it is more binding and effective. First, there needs to be clarification regarding the procedural standards for public consultation, such as the time frame for implementation, the forms of media used, and the mechanisms for channelling public aspirations. Second, transparency needs to be strengthened by requiring the government to disclose as much information as possible regarding development plans, including analyses of the benefits, risks and

compensation. Third, an effective objection mechanism needs to be formulated, whereby the public can raise objections without fear of intimidation, and an independent institution is established to oversee the implementation of public consultation. With these measures, public consultation can truly become a participatory instrument that balances national development interests with the protection of the public's constitutional rights to land.

3.2 Reconceptualisation of Public Consultation Repositioning as an Effort to Strengthen Land Acquisition for Public Interest

Land acquisition cannot be separated from the community or owners of the land rights. The involvement of the affected community in the participation process is very important, as it will determine the sustainability and utilisation of the land by the parties who need it, thus requiring the participation of the community. Article 28F of the 1945 Constitution of the Republic of Indonesia explicitly states that 'Every person shall have the right to communicate and obtain information for the purpose of developing his personality and social environment, and shall have the right to seek, obtain, possess, store, process and convey information using all available channels.' This norm emphasises that public participation is not merely a procedure, but part of a constitutional right that must be guaranteed by the state. However, as mentioned above, public consultation seems to be nothing more than an administrative requirement. Based on research conducted by Diyan Sejarot et al., agrarian conflicts over land acquisition for public interests occurred in the construction of the Bener Dam in Wadas Village, which is part of the PSN programme. The cause of the conflict was the lack of community involvement in decision-making. Muhammad Zaky Adriansa said that the chaos or conflict that occurred in Wadas village was due to a lack of socialisation (Sejarot & Hariri, 2023). Jaga Rudi echoed this sentiment, saying that obstacles in land acquisition often occur during the public consultation stage, as in the case of the Padang-Pekanbaru toll road construction (Rudi, 2024). Similarly, Yance Arizona emphasised that land acquisition often causes agrarian conflicts because the affected communities are not substantively involved in the decision-making process (Arizona, 2014). The above cases reflect that public consultation has not been able to provide solutions for land acquisition for public interests. The existing facts show that agrarian conflicts are caused by a lack of public consultation or community involvement. Indeed, on the one hand, the enactment of Law 2/2012 and its derivative regulations has included provisions for public consultation, but this is not in line with its implementation in the field. There is no agreement between the government and the community, caused by haphazard public consultation where input and objections from the community are not properly accommodated.

However, Law No. 2 of 2012 on Land Acquisition for Public Interest, Article 37 paragraph (1) stipulates that land acquisition shall be carried out through 'public consultation on development plans that require land'. Articles 18–20 comprehensively regulate the procedures for public consultation, from notification of development plans and submission of location maps to the preparation of consultation reports. This regulation positions public consultation as an instrument of dialogue between the government, landowners, and interested parties to determine the feasibility of development plans. In addition, as stipulated in Government Regulation No. 19 of 2021, amended by Government Regulation No. 39 of 2023

concerning the Implementation of Land Acquisition for Development for Public Interest, the implementing regulations of Law No. 2 of 2012 are regulated. The existence of public consultation in Law No. 2/2012, Government Regulation No. 19/2021 and Amending Government Regulation No. 39/2023 is still very weak because it is only understood as an administrative mechanism, not as a participatory right inherent to citizens. This situation often causes vertical conflicts between the government and landowners. Based on Article 3 of Government Regulation No. 19/2021, the stages of land acquisition for development in the public interest are carried out through the stages of planning, preparation, implementation, and handover of results. Public consultation is included in the preparation stage, as stipulated in Article 9 of Government Regulation No. 19/2021, which states that during the preparation stage, the governor shall form a Preparation Team consisting of members.

In order to support and facilitate the implementation of the preparatory team's tasks, the governor established a land acquisition preparatory secretariat located at the Provincial Regional Secretariat. Based on Article 11 of PP 19/2021, the preparatory team has the following tasks. Some of the tasks assigned to the preparatory team include, under point c, "conducting public consultations on development plans". Thus, public consultations are a mandatory task for the preparatory team, but when implemented, they often lead to agrarian conflicts (Maliki, 2024). This means that the legal framework has weaknesses in its implementation. One of the causes of agrarian conflicts at the public consultation stage is the composition of the preparatory team, which is part of the government. This provision shows that the entire structure of the Preparatory Team in the public consultation stage is dominated by government actors and state agencies, without the presence of civil society, independent organisations, or representatives of directly affected groups. Research conducted by Frengky et al. states that the cause of agrarian conflicts begins with the material aspects of all existing regulations, which are inadequate and therefore have the potential to cause disputes (Kotalewala & others, 2020). This can be seen from the provisions of public consultation that favour the government.

Meanwhile, the legal construct established in the Government Regulation on Land Acquisition indirectly places the government in a position of power, resulting in an imbalance between the government and the community during the public consultation process (Sendow, 2023). The government's very strong position easily controls everything. When the public consultation process is underway, this can be seen from the preparation team formed by the Governor, Regent, or Mayor, which consists of government agencies, without the presence of independent parties or the community, thus creating an unbalanced situation. Michel Foucault said that power is not only repressive but also productive in shaping ways of thinking, behaviour, and social norms (Gordon & Foucault, 1980). Furthermore, power operates through mechanisms of regulation, normalisation, and surveillance. This opinion is in line with the process of land acquisition for public interests, especially in the public consultation section, where the government's very strong position renders the community powerless. Julia Eckert highlights how modern states use laws and administrative procedures not only as formal legal instruments, but also as disciplinary mechanisms, with a position supported by strong legal constructs (Whimster & Lash, 2014). Thus, the government easily disregards public participation in the land acquisition process for public interests. Public consultation in land

acquisition should be positioned as a manifestation of the principle of participatory democracy, not merely as an administrative requirement.

The existence of Law No. 2/2012, which should be the main instrument in realising participatory public consultation, has in fact had the opposite effect. Arnstein, in his concept of the Ladder of Citizen Participation, divides the levels of community participation from manipulation to citizen control (Arnstein, 1969). Public consultation in the context of Law No. 2/2012 can be categorised as still being at the level of tokenism (symbolic), where the community is only 'heard' without any guarantee that their aspirations will influence decisions (Shofiana, 2023). In practice, as reflected in the cases of the Jatigede Dam and land acquisition for the IKN (Ibu Kota Nusantara), public consultation is often carried out merely as an administrative formality, rather than as an equal deliberative forum (Waruwu et al., 2024). All of this occurred as a result of an imbalance during the public consultation process, in which the government, which was going to acquire the land, was represented by a prepared team that held discussions with the landowners. Therefore, it is important to reconceptualise the repositioning of public consultation so that there is a balance between the government and landowners, When the Preparation Team was formed by the Governor, Regent or Mayor, one of its tasks was to conduct public consultations, but the team did not include independent organisations as part of the team. This created an imbalance between the government and the community, given the absence of a mediator or neutral party during the public consultation process. This situation could be exploited by the government to force the release of land ownership. In fact, according to Bruce Ackerman, the involvement of independent organisations is an effort to create checks and balances so that there is no concentration of power (Ackerman, 2005). In the context of land acquisition, the aim is to prevent the government from acting arbitrarily in acquiring land. Jimly Asshiddiqie also explains that public participation in state administration aims to strengthen legitimacy and prevent abuse of authority. Without an independent element, public consultation will lose its social control function and only benefit the government (Asshiddiqie, 2006). In addition, several countries around the world also include independent organisations in the process of land acquisition for public purposes, namely:

1. India

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR Act) of 2013 in India provides a strong normative basis for public participation in land acquisition (Government of India, 2013). One of the main instruments introduced is the Social Impact Assessment (SIA), which is a mandatory social study that must be conducted before a development project is implemented. The SIA is conducted in a participatory manner, involving the affected communities, civil society organisations, and independent parties. Community participation in the SIA mechanism is binding. This means that the results of the SIA are not merely administrative documents, but can determine the continuation of the project. If the results of the social assessment indicate a significant impact on the community and the environment, the project may be suspended or cancelled. This provision reflects the recognition that the legitimacy of development is not only based on the economic interests of the state, but also on the protection of community rights, especially the right to land as part of human rights.

2. Philippines

The Comprehensive Agrarian Reform Law (Republic Act No. 6657, 1988) in the Philippines regulates land redistribution to farmers and farm workers (Borras, 2007). This law established the Presidential Agrarian Reform Council (PARC) and various decision-making committees at the national and local levels, consisting of representatives from the government, farmer organisations, and NGOs. The involvement of farmer organisations and NGOs is not only consultative, but also formal and institutional within the decision-making framework. Thus, civil society organisations have a role as co-decision makers, not merely as parties whose opinions are heard. According to Borras, the involvement of non-state actors in the formal structure of land redistribution in the Philippines is one way to reduce state domination while preventing co-optation by the political elite and large landowners (Borras, 2007).

According to Bardach, the successful implementation of public policy requires an independent support organisation to ensure fairness (Bardach, 2000). Unfortunately, land acquisition regulations in Indonesia do not explicitly regulate the existence of independent mediating institutions in public consultations. The process is entirely under the control of the agency that needs the land, making it prone to bias. Sembiring asserts that the absence of independent institutions in the public consultation mechanism causes the community to be structurally weak (Sembiring, 2016). As a result, public consultation resembles one-way socialisation rather than deliberative dialogue. However, the involvement of the community or civil society groups could be a solution to bridge the gap between the community and the government. In the 1990s, a good governance paradigm was developed in government administration through the UNDP in Governance for Sustainable Human Development (Dernbach, 1998). The report emphasises eight key principles of good governance: participation, rule of law, transparency, responsiveness, consensus, equality, effectiveness-efficiency, and accountability Of these principles, participation is placed as the foundation, because the legitimacy of public policy can only be formed if the community is involved in the decision-making process. . According to Robert Dahl in his theory of interest group pluralism, public policy should reflect the results of interactions and compromises between various interest groups in society (Dahl, 1961). Public involvement has implications for two important things: (1) Improved policy quality because policies are not only based on technocratic considerations, but also take into account the values, norms and interests of the community. UNDP emphasises that public participation can enrich the substance of policies with information that the government may not have; (2) Strengthened legitimacy and social acceptability because policies formulated by listening to public aspirations tend to be more widely accepted, thereby reducing resistance and potential conflicts.

In the context of land acquisition, for example, substantive participation can prevent disputes and accelerate development. On the other hand, public participation is not merely a procedural ritual or formality in public consultation, but a mechanism for transforming aspirations into policies that are oriented towards the public interest (Wahyudi & Nazri, 2023). Thus, public input should not be treated as mere 'side notes', but must be substantially accommodated in policy formulation. As stated by Jürgen Habermas through deliberative democracy, legal legitimacy can only be achieved if legal norms arise from a rational and

inclusive communication process. Therefore, healthy public participation must open up a space for deliberation where every voice, especially from directly affected groups, is processed and internalised into policy concepts. Based on the above reasons and examples from countries such as India and the Philippines, it is important for Indonesia to consider and include independent organisations and civil society or community groups in the preparatory team for the land acquisition process for public purposes. This is to prevent agrarian conflicts and facilitate agreements with landowners.

IV. Conclusion

Based on the above description, it can be concluded that public consultation in land acquisition for public purposes is an important instrument that bridges national development interests with the protection of community rights to land, as stipulated in Law No. 2 of 2012 in conjunction with Law No. 6 of 2023 and its implementing regulations. Normatively, regulations have positioned public consultation as a dialogical mechanism that prioritises the principles of transparency, participation, and justice. However, in practice, it is often reduced to a top-down administrative formality that lacks substance. Furthermore, the government and the community are in an unequal position when public consultation is carried out. Therefore, it is necessary to reposition and strengthen the role of public consultation through the affirmation of procedural standards, transparency of information, and effective objection mechanisms so that public consultation truly functions as a means of democratisation in development management, strengthens policy legitimacy, and minimises the potential for agrarian conflicts in the community.

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