

Enhancing deliberation in land acquisition for public interest: Realizing a responsive Agrarian Legal Policy grounded in justice

Muchamad Satria Endriana

Doctoral Program, Faculty of Law, Universitas Diponegoro (Indonesia).

E-mail: muchamadsatriaendriana@gmail.com. ORCID: 0009-0004-2058-5648.

Yusriyadi

Faculty of Law, Universitas Diponegoro (Indonesia). E-mail: yusriyadi@lecturer.undip.ac.id.

ORCID: 0000-0002-9560-6683.

Ana Silviana

Faculty of Law, Universitas Diponegoro (Indonesia). E-mail: anasilviana@lecturer.undip.ac.id.

ORCID: 0009-0001-2655-5886.

Abstract: This research examines the implementation of deliberation in determining the form and amount of compensation in land acquisition for public purposes and the Legal Politics of Deliberation in ideal land acquisition for public development. This paper aims to understand the implementation of deliberation in determining the form and amount of compensation in land acquisition for public purposes and the efforts to optimize the Legal Politics of Deliberation in ideal land acquisition for public purposes. This research is based on the constructivist paradigm with a socio-legal approach method. The authors find that the implementation of deliberation in determining the form and amount of compensation in land acquisition is merely procedural and requires optimization of the legal politics of deliberation regarding ideal land acquisition for public purposes, conducted with caution based on Pancasila values.

Keywords: Deliberation. Land Acquisition. Compensation. Legal Politics. Public Interest.

Summary: Introduction – Research methods – Ensuring fair and land acquisition for public development: Principles, practices, and challenges in Indonesia – Alternative Dispute Resolution for agrarian conflict in Indonesia – Navigating land acquisition for public interest: Legal frameworks, consultation, and challenges in Indonesia – Consultative processes in Agrarian Law politics: Enhancing participation and justice in land acquisition – Reinstating Pancasila values: Ensuring Justice and people's rights in land acquisition consultations – Conclusion – References

Introduction

Land carries substantial significance and value in the existence of human beings. It functions as the primary residence for the majority of the human population,

providing a means of sustenance for those involved in farming or gardening and finally serving as the ultimate resting place for the departed.¹ The importance of land for human existence is multifaceted.² First and foremost, from an economic perspective, land functions as a productive resource that has the potential to generate wealth and success. Furthermore, from a political standpoint, land ownership can significantly influence an individual's role in shaping societal decision-making processes. Furthermore, from a cultural perspective, it can ascertain the social standing of its possessor. Furthermore, land possesses profound significance, as it serves as the final resting place for all individuals.

In antiquity, human factions were eager to engage in conflicts with one another in order to assert their territorial claims.³ The winners of these conflicts would acquire dominion over the territory, while the losers would be compelled to surrender it and seek new land elsewhere. Land has a vital role in the existence of living organisms, especially people, to the extent that every piece of land must be passionately protected, even if it means sacrificing lives. According to Wignjodipoero, this can be attributed to two factors: Nature: Land is the sole asset that remains unchanging in its state, irrespective of conditions, and may even become more beneficial. The land has multiple functions, including providing a place for people to live, supporting life, serving as a burial site, and housing the guardian spirits and ancestors of the community.⁴

Indonesia's land policy is based on its constitution, specifically Article 33 paragraph (3) of the 1945 Constitution. This article requires the state to use land and natural resources in a way that benefits the Indonesian people the most, which includes allocating land for development purposes. In addition, land policy is governed by Law Number 5 of 1960, which is commonly referred to as the Basic Agrarian Regulations.⁵

Development as a deliberate endeavour carried out by a nation, state, and government to accomplish national objectives through organised progress and transformation towards a contemporary society.⁶ Legal politics are essential in the context of legal matters throughout the reform era. It refers to the official policy direction established by the state. The democratic political structure of the

¹ Abdurrahman, *Masalah Pencabutan Hak-Hak Atas Tanah Dan Pembebasan Tanah Di Indonesia*, Seri Hukum Agraria (Bandung: Alumni, 1983).

² Heru Nugroho, *Menugaskan Kekuasaan Negara* (Yogyakarta: Muhammadiyah University Press, 2021).

³ Suroyo Wignyodipuro, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: Haji Masagung, 1987).

⁴ Rosalina Rosalina, "Eksistensi Hak Ulayat Di Indonesia", *SASI* 16, no. 3 (September 30, 2010): 44–51, <https://doi.org/10.47268/sasi.v16i3.786>.

⁵ Try Widijono and Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law", *Law Reform* 19, no. 1 (2023): 128–47, <https://doi.org/10.14710/lr.v19i1.48393>.

⁶ Lukman, "Pengembangan Masyarakat Sebagai Konsep Dakwah", *Jurnal Bina Ummat: Membina dan Membentengi Ummat* 2, no. 02 (June 25, 2020): 21–44, <https://doi.org/10.38214/jurnalbinaummatidnatsir.v2i02.49>.

reform era requires the creation of laws that are adaptable and responsive. Law, sometimes regarded as a “tool”, encapsulates the fundamental principle of legal supremacy, providing direction and guidance in the pursuit of national objectives.⁷

Infrastructure development necessitates the use of land; hence, the government is required to either supply land or obtain it for public use.⁸ Nevertheless, the state’s access to state-owned land is restricted, leading it to obtain land that is owned by the community, regardless of whether it is governed by customary law or other rights specified in the Basic Agrarian Law.⁹

This scenario gives rise to divergent interests between the government, which requires property for development, and the community (comprising individuals or groups) who own or have control over the land. Land acquisition must comply with the legal principles of public interest to prevent infringement upon the rights of landowners. The regulation governing land acquisition is Law Number 2 of 2012, which specifically addresses the acquisition of land for public development purposes.¹⁰

Property acquisition is a governmental process of obtaining property for development, primarily for public use. The process of land acquisition entails discussions between the entities in need of land and the individuals or organisations that possess the rights to the property that is necessary for development purposes. According to Article 19, paragraph (1) of Law Number 2 of 2012, Legal Negotiation Politics is governed by the requirement of public consultations for development plans. These consultations aim to reach an agreement among the relevant parties regarding the placement of the development plans.¹¹

These public consultations provide a forum for stakeholders to foster mutual comprehension and consensus in the process of acquiring land for public development. The statement emphasises the significance of legal negotiation politics in the process of acquiring land, not only as a required procedure but also as a method for parties to come to agreements in the event of disagreements or conflicts over land. Negotiations are voluntarily performed between parties of equal standing, free from any external pressure.¹²

⁷ Moh Mahfud MD, *Politik Hukum Di Indonesia*, Cetakan ke-10 (Depok: Raja Grafindo Persada, 2020).

⁸ Paul N Balchin, David Isaac, and Jean Chen, *Urban Economics: A Global Perspective* (Bloomsbury Publishing, 2019).

⁹ Natasha Meutia Emilia, “Pelaksanaan Pengadaan Tanah Untuk Kepentingan Umum Di Atas Objek Tanah Dengan Luasan Kurang Dari 5 Hektar Dan Dibebani Hak Tanggungan (Studi Kasus Pada Pembangunan Gis 150 Kv Grogol Ii)”, *Indonesian Notary 3*, no. 4 (2021): 438–59.

¹⁰ Siti Nur Faida Said and Irwansyah Irawansyah, “Land Acquisition by the Government and the Impact for the Community”, *Papua Law Journal* 3, no. 2 (2019): 117–33, <https://doi.org/10.31957/plj.v3i2.788>.

¹¹ Dendy Laksana Wirakusuma and Sri Setyadji, “Perlindungan Hukum Terhadap Pemegang Hak Pengelolaan Tanah Atas Dampak Pengadaan Tanah Oleh Negara”, *Jurnal Sains Riset* 13, no. 2 (September 30, 2023): 476–92, <https://doi.org/10.47647/jsr.v13i2.1622>.

¹² Lawrence Susskind, *Using Assisted Negotiation to Settle Land Use Disputes* (Cambridge: Lincoln Institute of Land Policy, 1999).

Nevertheless, in reality, the land purchase procedure is not always ideal. Many negotiations are ceremonial and lack effective execution, resulting in disputes over land rights between communities with land rights and parties interested in acquiring land.¹³ Article 28H, paragraph (4) of the 1945 Constitution affirms the state's recognition of individual rights, namely the right to private ownership. This provision emphasises that such ownership cannot be unlawfully seized by any party, highlighting the state's respect for land ownership rights.¹⁴

Several examples of agrarian cases regarding land acquisition for public development include: Land Acquisition for Infrastructure development of an alternative road in Gumingsir Village, Wanadadi District, Banjarnegara Regency; Land Acquisition for the construction of the Jombang-Mojokerto toll road in Watudakon Village, Jombang Regency; Land Acquisition for the construction of the Cisumdawu toll road; Land Acquisition for Public Interest Development in the Oil and Gas Sector; Land Acquisition for the construction of the Krian Legundi Bunder toll road in Gresik Regency, East Java; Land Acquisition for the construction of the Batang-Semarang toll road; Land Acquisition for the public interest development of the Manado-Bitung toll road in Manado City; Land Acquisition for the construction of the Bener Dam in Purworejo; Land Acquisition for the development of the Yogyakarta International Airport in Kulon Progo Regency; and Land Acquisition for the construction of an alternative road in Mekarsari Village, Suela District, East Lombok Regency.

In Indonesia, the Basic Agrarian Law was enacted over 60 years ago as a crucial step towards agrarian reform. However, it has not had a substantial effect thus far. In the year 2022, there were a total of 212 agrarian disputes, which indicates a 2.36% rise compared to the previous year's 207 conflicts. The year-end report for 2022 by the Agrarian Renewal Consortium, launched in Jakarta on Monday, January 9, 2023, emphasises the growing number of agrarian conflict cases. This year-end report centres on agrarian problems encountered by communities, particularly farmers, and the several initiatives undertaken by the government during 2022.¹⁵

The plantation sector had the highest number of agrarian conflict instances (99), followed by infrastructure (32), property (26), mining (18), forestry (24), military facilities (7), agriculture/agribusiness (2), and coastal and small island areas (5). Agrarian conflicts in Indonesia have impacted a total land area of 1.04 million

¹³ Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum Di Dalam Pengadaan Tanah Untuk Pembangunan* (Jakarta: Sinar Grafika, 2020).

¹⁴ Kukuh Fadli Prasetyo, "Two Ideas of Economic Democracy: Contextual Analysis on Role of Indonesian Constitutional Court as a Guardian of Democracy", *Indonesia Law Review* 9, no. 1 (2019): 86–105, <https://doi.org/10.15742/ilrev.v9n1.357>.

¹⁵ Yanis Maladi, "Reforma Agraria Berparadigma Pancasila Dalam Penataan Kembali Politik Agraria Nasional", *Mimbar Hukum – Fakultas Hukum Universitas Gadjah Mada* 25, no. 1 (2013): 27–41.

hectares (ha), affecting 346,402 households across 459 areas. The regions with the highest number of agrarian disputes were West Java (25), North Sumatra (22), East Java (13), West Kalimantan (13), and South Sulawesi (12). North Sumatra had the highest number of agrarian conflicts, covering an area of 215,404 hectares. In 2022, the Agrarian Renewal Consortium documented a total of 497 instances of criminality faced by activists advocating for land rights throughout the entire country. This result represents a substantial surge in comparison to 150 cases reported in 2021 and 120 cases reported in 2020. Dewi Kartika, the Secretary-General of the Agrarian Renewal Consortium, asserted that the government, at both the federal and regional levels, has not implemented any substantial or fundamental alterations in addressing and resolving agrarian conflicts. The government's response has been feeble and sluggish in curbing the escalation of violence.^{16 17}

The objective of this research is to examine the utilisation of negotiations in deciding the structure and magnitude of compensation in land acquisition for public purposes and to establish an optimal framework for legal negotiation strategies in the context of land purchase for public reasons.

Research methods

This research method utilises a multidimensional approach that is based on multiple complementary conceptual frameworks. Firstly, Stand Point examines legal science by considering two perspectives: normative and reality-oriented. The normative approach examines law as a normative entity that supports ideals, while the reality perspective examines the application of law in actual settings. The researcher, taking on the position of an impartial observer, undertakes the duty of observing and comprehending both perspectives equitably.

Furthermore, the constructivist paradigm offers a philosophical basis that presents law as a subjective and contextual social construct rather than an absolute truth. In this framework, the research seeks to reconstruct current understandings of law through the use of hermeneutic and dialectical methodologies, with the goal of reaching a consensus and producing informative and meaningful research findings.

The selected study Type is a non-doctrinal legal study that focuses on comprehending law within empirical and social frameworks. The socio-legal technique

¹⁶ Pradipta Pandu, "Konflik Agraria Meningkat Sepanjang 2022, Kemauan Politik Kunci Penyelesaian", Kompas.id, January 9, 2023, <https://www.kompas.id/baca/humaniora/2023/01/09/konflik-agraria-me ningkat-sepanjang-2022-kemauan-politik-jadi-tumpuan-penyelesaian>.

¹⁷ Alie Zainal Abidin and Lely Indah Mindarti, "Policy Evaluation of the Land Registration System in Malang City", *Journal of Law and Sustainable Development* 12, no. 1 (2024): e2694–e2694, <https://doi.org/10.55908/sdgs.v12i1.2694>.

used entails analysing the text and application of laws in everyday life, using frameworks from both the legal and social sciences.

Additionally, regarding Research Methodology, data is acquired through fieldwork and literature study, encompassing both primary and secondary sources. Afterwards, a qualitative analysis is performed, taking into account validity through data triangulation techniques and talking with peer researchers to ensure the correctness and trustworthiness of the research findings.

Ensuring fair and land acquisition for public development: Principles, practices, and challenges in Indonesia

Land acquisition is a process that involves a sequence of acts with the goal of obtaining land by offering compensation.¹⁸ Another viewpoint posits that land acquisition refers to any endeavour focused on obtaining land by offering recompense to the lawful proprietors. The process often entails the relinquishment or conveyance of land entitlements. The process of releasing or transferring land rights involves legally separating the landholder from the land they own and giving compensation through negotiated means. Hence, when carrying out land acquisition for public purposes, it is crucial to initiate negotiations with landowners to separate them from the land they hold legally.¹⁹

The government has implemented Law Number 2 of 2012, which deals with the acquisition of land for development projects that serve the public interest. According to Article 2 of this law, land acquisition is defined as the process of providing land to the proper parties by offering them fair and just compensation.²⁰

Presidential Regulation Number 71 of 2012 on the Execution of Land Acquisition for Development Purposes for Public Interest states that land acquisition is the process of obtaining land by offering equitable and lawful compensation to legitimate owners. In addition, Presidential Regulation Number 30 of 2015, the Third Amendment to Presidential Regulation 71 of 2012, and Presidential Regulation 148 of 2015, the Fourth Amendment to Presidential Regulation Number 71 of 2012, stipulate that land acquisition necessitates the provision of equitable and impartial compensation to the lawful parties involved.²¹

¹⁸ Suhartoyo Suhartoyo, "Analisis Terhadap Penetapan Nilai Ganti Untung Pengadaan Tanah Untuk Kepentingan Umum Dalam Pembangunan Jalan Tol", *Administrative Law and Governance Journal* 4, no. 2 (2021): 326–38, <https://doi.org/10.14710/alj.v4i2.326–338>.

¹⁹ Sutedi, *Implementasi Prinsip Kepentingan Umum Di Dalam Pengadaan Tanah Untuk Pembangunan*.

²⁰ Surjanti and Rendra Eka Sanjaya, "Pemberian Ganti Rugi Terhadap Tanah Yang Terkena Pembangunan Jalan Umum Di Kabupaten Tulungagung", *Yustitiabelen* 6, no. 2 (2020): 1–15, <https://doi.org/10.36563/yustitiabelen.v6i2.242>.

²¹ Meka Azzahra Larasati and Suparjo Sujadi, "Implications of the Law of Land Acquisition for Development in the Public Interest on Land Acquisition Conflict Resolution", *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 2 (2021): 281–96, <https://doi.org/10.56087/aijh.v24i2.286>.

John Salindeg²² and other scholars have stated that the concept of “provision” of land may be found in Minister of Home Affairs Regulation No. 15 of 1975, which specifically addresses the procedures for land acquisition. The phrase “acquisition” of land is mentioned in Minister of Home Affairs Regulation No. 2 of 1985, which outlines the procedures for obtaining land for development projects in district areas. Both phrases aim to procure or obtain land for government use in accordance with government initiatives.

Land acquisition, as defined by Imam Koeswahyono,²³ is a lawful process conducted by the government to obtain land for particular objectives. This is done by offering compensation to the landowner, whether they are individuals or legal entities, in accordance with specific protocols and predetermined sums. Maria Sumardjono²⁴ defines land acquisition as a governmental process of obtaining land for development goals, particularly for public use, primarily through negotiations between the land-seeking party and the landowner.

The implementation of Law Number 2 of 2012 concerning Land Acquisition for Development Purposes for Public Interest is important to facilitate land acquisition activities based on many definitions and terms related to land acquisition. Adhering to the principles mentioned in Article 2 of this law is of utmost importance during the land acquisition process. These principles include Humanity, Justice, Utility, Certainty, Transparency, Agreement, Participation, Welfare, Sustainability, and Harmony.^{25 26}

Adhering to these standards guarantees that all impacted communities experience the advantages of land acquisition. Boedi Harsono²⁷ outlines six fundamental legal principles that must be taken into account while acquiring land: Land ownership and utilisation by individuals must be based on legal justification. All land rights, whether obtained directly or indirectly, stem from national legislation. The acquisition of land rights must be carried out through agreements between the necessary parties in accordance with the applicable rules. Typically, landowners cannot be compelled to give up their land. In situations where it is necessary, if attempts at negotiation are unsuccessful in reaching an agreement, the government

²² John Salindeg, *Masalah Tanah Dalam Pembangunan* (Jakarta: Sinar Grafika, 1987).

²³ Imam Koeswahyono, “Melacak Dasar Konstitusional Pengadaan Tanah Untuk Kepentingan Pembangunan Bagi Umum”, *Jurnal Konstitusi* 1, no. 1 (2008): 1–19.

²⁴ Maria S. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya* (Jakarta: Penerbit Buku Kompas, 2008).

²⁵ Nurnaningsih Nurnaningsih, “Legal Interpretation of Regulation Law No. 2 of 2012 Concerning Land Acquisition for Development In The Public Interest”, *Veteran Law Review* 6, no. Special Issues (2023): 70–84, <https://doi.org/10.35586/velrev.v6iSpecialIssues.5761>.

²⁶ Muhtadi et al., “Public Interest Development in Indonesia: Considerations Regarding Land Acquisition and Its Impact on the Environment”. *International Journal of Sustainable Development & Planning* 17, no. 8 (2022): 2585–91, <https://doi.org/10.18280/ijsdp.170827>.

²⁷ Budi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya* (Jakarta: Djambatan, 2003).

(specifically, the President of the Republic of Indonesia) has the authority to forcibly acquire the required land without the consent of the landowner by revoking their rights. Whether through mutual agreement or revocation of rights, individuals who give up their land must receive equitable compensation in the form of monetary compensation, facilities, and alternative land, ensuring that their social and economic circumstances do not worsen. Individuals who are requested to surrender their land for development projects possess the entitlement to receive safeguarding from the local government.²⁸

Maria Sumardjono²⁹ highlights that land acquisition entails the concerns of two entities: government agencies seeking land and communities whose land is necessary for development. Given that land is an essential requirement for human existence and encompasses economic, social, and cultural rights, the acquisition of property should be carried out in a manner that guarantees the absence of any force from either side involved.

Given that communities are required to surrender their property for development, it is crucial to ensure that their socio-economic well-being does not decline and remains at a minimum level that is equal to their former state. Hence, the process of acquiring land must strictly comply with the following fundamental principles: Humanity: Ensuring the equitable safeguarding and upholding of the human rights and dignity of all individuals, including citizens and residents, in Indonesia. Protocol: Carrying out all land procurement operations in accordance with the agreements made between the party requiring land and the landowners. Execution of physical development activities is contingent upon the establishment of agreements and the provision of pay. Benefit: The purchase of land is anticipated to have favourable effects on the party requiring the land, the communities affected, and society as a whole. The entire community should experience the advantages of development initiatives. Justice entails offering harmed populations adequate compensation to fully restore their socio-economic situations, returning them to their previous state. This compensation should account for both tangible and intangible damages. Ensuring compliance with legislation when conducting land acquisition, guaranteeing that all parties have a clear understanding of their rights and responsibilities. Transparency involves disseminating information to impacted communities regarding the project and its consequences, compensation methods, construction timelines, plans for relocating residents (if necessary), and alternative locations.

²⁸ Embun Sari et al., "Comparison of Land Law Systems: A Study on Compensation Arrangements and Reappraisal of Land Acquisition for Public Interest between Indonesia and Malaysia", *International Journal of Criminology and Sociology* 10 (April 2021): 872–80, <https://doi.org/10.6000/1929-4409.2021.10.103>.

²⁹ Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya*.

Additionally, it includes informing people about their rights to voice objections. Participation: Engaging all stakeholders throughout the whole process of land acquisition (including planning, execution, and evaluation) to foster a sense of ownership and reduce community resistance; Equality: Ensuring equitable treatment for both the entity seeking land and the community impacted by the land acquisition process. Reducing adverse effects and guaranteeing the ongoing well-being of society and the economy; Welfare: Ensuring that the process of acquiring property for development benefits both the legal owners and the larger community. Sustainability refers to the practice of ensuring that development operations are carried out in a manner that can be maintained over the long term, with the aim of achieving the desired goals.

The occurrence of land acquisition for public development projects in Indonesia, including the Mesuji conflict, the Batang power plant construction, and the ongoing agrarian conflict in Wadas Purworejo Village, brings attention to the difficulties and disputes that arise between landowners and the government. These stories demonstrate the significance of following correct protocols in land acquisition to avoid undesirable outcomes. The process of negotiating the type and quantity of compensation in land acquisition should not be treated as a mere formality, as exemplified by the recent agrarian conflict in Wadas Village, which was highlighted in the media two months ago.

Originally, this was a component of the National Strategic Project, specifically the implementation of the Bener Dam building in 2017. The government intended to utilise andesite material sourced from the hills of Wadas Village. The disagreement originated from the government's proposal to commence open-pit mining for andesite rocks near the village, specifically for the purpose of constructing the Bener Dam. In February 2022, the community, expressing their disagreement with the project, organised rallies that escalated into violent incidents and resulted in arrests by the authorities.

The government's mining activities in Wadas Village continued despite the conflict, justified by the goal of national development. The government should have established appropriate channels for negotiation with the impacted communities. Individuals who have experienced the loss of their means of earning a living and the disruption of their residences should get appropriate compensation to improve their quality of life.

Alternative Dispute Resolution for agrarian conflict in Indonesia

Land disputes typically occur as a result of various factors, such as inadequate regulations, conflicting regulations, unresponsive land officials, inaccurate or incomplete data, erroneous land records, limited human resources allocated to

resolving disputes, improper land transactions, applicant misconduct, or overlapping authority due to settlements made by other institutions. In less developed regions, the resolution of land disputes is typically facilitated by esteemed community members, such as traditional leaders, tribe chiefs, village heads, or clan leaders. Furthermore, community leaders play a crucial role in determining how land is allocated and supervised by local inhabitants. The reason for this is that local traditional leaders usually possess data pertaining to the land within their specific jurisdictions, which includes details about the quantity, boundaries, and local utilisation of the property. While the documentation of land data is infrequent, the traditional leaders are knowledgeable about the historical ownership of land in their areas. The community leaders' understanding of the historical record of land ownership, bolstered by the strong confidence and unity of their constituents, is what guarantees that the decisions taken by traditional leaders in settling land disputes are followed by all parties concerned.³⁰

Based on the year-end report of the Agricultural Reform Consortium, the majority of violence in agricultural conflicts in 2013 was carried out by the Police, with 47 incidents. The company security forces were responsible for 29 incidents, while the Indonesian National Army had nine incidents. Agrarian conflicts mostly revolve around matters of authority and governance. Therefore, agrarian conflicts pose significant challenges for a nation and its entire populace. Resolving these conflicts is a challenging task due to the multitude of vested interests involved. To attain social justice for all members of Indonesian society, it is necessary to make ongoing endeavours to address and settle agrarian issues.³¹

Many people claim that conversations concerning law typically arise when there is a dispute between two parties, which is subsequently settled with the assistance of a third party. In a legal system, the judge in a court of law is a third party that can help resolve conflicts. During a legal procedure, judges serve as impartial individuals and render decisions on the disputes that emerge. Conflicts that are brought before the judiciary will acquire legal authority through enforceable rulings, obliging both parties involved in the conflict to comply with them. The judge's ruling is contingent upon the procedural steps completed in the judicial process. Indonesia has specific legislation in place regarding the procedures for settling disagreements through the judiciary. The judge's duty is facilitated by legal professionals and specialised mediators who handle various legal issues, allowing judges to effectively carry out their responsibilities and generate The crux of comprehending agrarian conflicts

³⁰ Mudjiono, "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan", *Jurnal Hukum Ius Quia Iustum* 14, no. 3 (2007): 458–73.

³¹ Suwardi, *Pembaharuan Sistem Hukum Agraria Di Indonesia* (Surabaya: Narotama University Press, 2022).

resides in our consciousness, specifically in recognising the crucial significance of land as a fundamental natural asset that supports nearly all facets of existence.

The land is categorised under private law in the Civil Code. However, in actuality, land regulation is significantly impacted by government activity. The fundamental legislation that governs land law regulation in Indonesia includes Article 33 Paragraph (3) of the 1945 Constitution, the Decree of the People's Consultative Assembly of the Republic of Indonesia No. IV of 1973 regarding the Outline of State Policy, Article 2 Paragraph (1) of the Land Law, and various implementing regulations. Land dispute resolution is typically handled not only by the District Court but also by the State Administrative Court. It is worth noting that land conflicts often have criminal components, which can lead to the involvement of criminal law in the resolution process.

The District Court or the State Administrative Court often resolves fewer land issues compared to the number of disputes submitted before each court. Moreover, only a limited number of court decisions can be carried out. As a result, a significant amount of land is left unattended, and ownership status becomes ambiguous. According to Article 4 Paragraph (2) of the Law on the Supreme Court of the Republic of Indonesia, the land dispute settlement procedure in judicial institutions shall be characterised by promptness, simplicity, and cost-effectiveness. The purpose of this is to guarantee that neither the opposing parties nor the community engaged in property disputes face any disadvantages or financial burdens in their efforts to seek legal clarity regarding the disputed land. Extended resolution periods and intricate administrative protocols will solely contribute to the escalation of land conflicts. Furthermore, there exists a disparity between the perspectives of judges and the viewpoints of opposing parties on their court proceedings.

To effectively resolve land conflicts, it is recommended that mediation be employed as a method to attain a mutually beneficial outcome for all parties concerned. Mediation is an expedited and cost-effective method that enhances the availability of justice for individuals by facilitating the discovery of mutually agreeable solutions to conflicts and assuring fairness. Integrating mediation into court processes can effectively handle the backlog of cases in court and enhance the functions of non-judicial institutions for resolving disputes, in addition to the adversarial court process. Individuals who feel wronged and desire to regain their entitlements must follow the appropriate protocols, which may involve legal action or alternative methods of resolving conflicts. They should refrain from taking issues into their control. The process of resolving a legal dispute commences with initiating a lawsuit with the appropriate court. The process of resolving legal disputes through the judiciary consists of three distinct stages: initiation, determination, and

implementation.³² Every level necessitates a considerable duration, entails high costs, and encompasses intricate processes. Critiques of litigation institutions have emerged due to increasing expectations for expediency, confidentiality, productivity, and efficacy, as well as the need to preserve relationships among opposing parties. In reality, courts are perceived as being sluggish, costly, inefficient in their use of resources, time-consuming, and frequently unable to reach mutually beneficial resolutions. Alternative dispute resolution has gained significant recognition, particularly in the business sector, where there is a need for effectiveness, secrecy, the maintenance of cooperative relationships, non-rigid methods, and resolutions that prioritise fairness. An alternate option is mediation, which is best pursued prior to the commencement of litigation in a court of law.

Mediation, as defined by Black's Law Dictionary, is a non-binding conflict settlement procedure that involves the intervention of a neutral third party. The mediator's role is to assist the disputing parties in reaching a mutually acceptable solution. Mediation is a process in which a third party is engaged to assist in resolving a disagreement. The job of the mediator is to provide advice and guidance, but they do not have the power to make decisions to end the issue. According to the definition provided, mediation is a type of alternative dispute resolution that takes place outside of the court system. Mediation aims to resolve conflicts between involved parties by employing an unbiased and impartial third party. Mediation can facilitate the attainment of a lasting and sustainable peaceful agreement since it places all parties on an equal footing, without either party emerging as a winner or loser (win-win solution). During the process of mediation, the parties involved in the dispute take an active role and possess complete authority to make decisions. The mediator lacks decision-making power and serves solely to facilitate the mediation process in order to help the parties reach a peaceful agreement.³³

Chapter III of Supreme Court Regulation Number 1 of 2008 delineates the various phases involved in the mediation process. Article 13 outlines the procedure for submitting case summaries and specifies the time frame for the mediation process. Article 14 outlines the mediator's power to deem a mediation procedure unsuccessful if a party or its legal representative fails to attend two consecutive mediation sessions. Article 15 delineates the responsibilities of the mediator in managing a mediation procedure. According to Article 16, the mediator has the authority to request the assistance of one or more specialists in a certain area under specific conditions. Article 17 elucidates the successful attainment of agreements

³² Indriati Amarini, "Court Connected Mediation: Civil Dispute with A Local Society Cultural Approach", *Jurnal Dinamika Hukum* 20, no. 1 (2021): 256–73, <https://doi.org/10.20884/1.jdh.2020.20.1.2599>.

³³ Reko Dwi Salfutra and Rio Armanda Agustian, "Alternatif Penyelesaian Konflik Agraria (Suatu Telaah Dalam Perspektif Reforma Agraria Dan Pembangunan Berkelanjutan)", vol. 1, 2019, 1–17, <https://www.prosiding.fh.ubb.ac.id/index.php/prosiding-serumpun/article/view/14>.

during a mediation procedure, whereas Article 18 deals with the inability to achieve the desired aims in the mediation process. Article 19 delineates the distinction between mediation and litigation.

The regulation that governs mediation for land disputes is Regulation Number 21 of 2020, which was issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. This rule permits the initiation of mediation by government entities, such as ministries, regional offices, or municipal offices within their respective areas of authority, as well as by people or institutions, upon the request of the parties involved in the dispute. Participation in parties is obligatory during the mediation process, although solicitors or proxies may represent parties if they are unable to attend in person after receiving three valid invitations. Mediation may entail the involvement of specialists and pertinent organisations. Once an agreement is reached, the specific conditions are recorded in a settlement agreement, which is subsequently filed with the District Court to establish the settlement officially. If mediation is unsuccessful, the governing authority will exercise its jurisdiction to make the final decision.

Navigating land acquisition for public interest: Legal frameworks, consultation, and challenges in Indonesia

According to Article 33, paragraph (3) of the 1945 Indonesian Constitution, “The land and water and the natural riches therein are controlled by the State and are utilised to the greatest extent possible for the welfare of the people”. Article 2 of the Basic Agrarian Law elaborates on Article 33, paragraph (3) of the 1945 Indonesian Constitution by emphasising that the Right of Control is not ownership.³⁴

In practice, land acquisition laws do not entirely satisfy landless people. Existing laws still hinder development plan execution. Thus, Law Number 2 of 2012 on Land purchase for Development for Public Interest solved the sluggish land purchase for infrastructure development problem.³⁵

The land purchase remains problematic and does not guarantee a land clearance timeframe. The President issued Presidential Regulation Number 71 of 2012, amended by Presidential Regulation Number 99 of 2014, and Presidential Regulation

³⁴ Suparto, “Interpreting The State’s Right to Control In the Provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia”, *UIR Law Review* 4, no. 2 (October 25, 2020): 1–8, [https://doi.org/10.25299/uirlrev.2020.vol4\(2\).6889](https://doi.org/10.25299/uirlrev.2020.vol4(2).6889).

³⁵ Debby Khristina, Kurnia Warman, and Hengki Andora, “Deposit of Compensation in Land Acquisition for the Construction of the Padang-Pekanbaru Toll Road in Public Interest”, *International Journal of Multicultural and Multireligious Understanding* 7, no. 8 (2020): 285–309, <https://doi.org/10.18415/ijmmu.v7i8.1877>.

Number 40 of 2014 on the Implementation of Land Acquisition for Development for Public Interest to implement Law Number 2 of 2012 on land clearance technicalities.³⁶

Public interest land purchase requires equitable remuneration to landowners and their assets. As the land demander, the government must fulfil this communal entitlement. Many compensation issues arise between the government and impacted communities, resulting in losses for both parties.

The state consults to show goodwill toward constitutional property rights. Article 28H, paragraph (4) of the 1945 Indonesian Constitution reads, "No one can arbitrarily revoke individual property rights". The constitutional protection of land acquisition emphasises the noble value of consultation to avoid landholder property rights breaches. Fairness in consultation should include respecting citizens' fundamental land rights.³⁷

Consultation involves listening, offering, and receiving perspectives to establish a voluntary and equal agreement on compensation and other land purchase concerns. However, consultations are often ineffective since the parties participating are not equal, leading to directive behaviour.

Maria Sumardjono³⁸ states that even if formal consultations match the requirements, pressure-influenced conclusions cannot be called an agreement because they involve coercion from one party to force the other to comply. Under duress, the agreement is made. The involvement of non-committee members further obscures the consultation process.

Experience suggests that consultations focus more on formalities or processes. For a consultation to result in an agreement, the parties must be equal and consult without coercion. Article 2(f) of Law No. 2 of 2012 defines "the principle of agreement" as land acquisition through negotiations without force to establish a mutual agreement. All land acquisitions are based on an agreement between the landowner and the landowner. Physical development activities can only be done with an agreement and pay.

Consultation represents respect, especially agreement. All parties must be equal in consultations. No compulsion, fraud, error, or abuse of circumstances should occur during consultation. The consultation process is like negotiating in an agreement, where parties try to compromise to reach a win-win outcome.

Law No. 2 of 2012 implements consultations in two parts. The initial step is public consultation to determine the development site. Its implementation lasts 90

³⁶ Muhammad Hero Soepeno, Revy SM Korah, and Presly Prayogo, "Role of Assessment Team in Land Procurement as One of the Reference Determination of Land Prices by the North Sulawesi Regional Government", *Journal of Law, Policy and Globalization* 79 (2018): 168–79.

³⁷ Hasan Basri et al., "Legal Reconstruction Of Compensation System 'Proper' And 'Fair' In Land Acquisition For General Interest", *Journal of Positive School Psychology* 6, no. 10 (2022): 3483–87.

³⁸ Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya*.

days. The second step is compensation consultation. The National Land Agency and entitled parties shall consult within 30 days after receiving the evaluation results.

Presidential Regulation No. 65 of 2006 on land acquisition for public interest development states, "Land acquisition is any activity to obtain land by providing compensation to those who release or surrender land, buildings, plants, and other objects related to the land". As stated above, land acquisition involves compensating owners of land, plants, buildings, and other land-related goods. Article 1, number 11 of Presidential Regulation No. 65 of 2006, defines *compensation* as the replacement for physical and non-physical losses caused by land acquisition, buildings, plants, and other objects related to the land that can improve the socio-economic level before land acquisition.^{39 40}

Presidential Regulation No. 65 of 2006 states that land rights, structures, plants, and other land-related objects be compensated for land acquisition under Article 11. Legally eligible landowners or endowment land custodians receive recompense. According to Presidential Regulation No. 65 of 2006, compensation for land acquisition for public interest development can be money, replacement land, resettlement, a combination of two or more of the above, or other forms agreed upon by the parties.⁴¹

According to Article 15 of Presidential Regulation No. 65 of 2006 on land acquisition for public interest development, compensation is based on the Tax Object Sales Value or the actual value considering the current Tax Object Sales Value based on the committee's Land Price Appraisal Institution or Team. The regional building agency's estimated building value. Regional agriculture apparatus-regulated plant value. The form and quantity of compensation or calculating method are deliberate. Considerations for considerations include Article 11 of Presidential Regulation No. 65 of 2006, which states that the Land Acquisition Committee decides the form and amount of compensation if the land rights holder and the government institution and local government requiring land reach an agreement. If negotiations fail, the land acquisition committee determines the compensation and deposits it with the district court, whose jurisdiction covers the land. Depositing

³⁹ Rebecca Meckelburg and Agung Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia", *Land Use Policy* 137 (February 1, 2024): 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>.

⁴⁰ Rizky Amalia, "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Penetapan Ganti Rugi Terkait Dengan Pengadaan Tanah Untuk Kepentingan Umum", *Yuridika* 27, no. 3 (2012): 267–80, <https://doi.org/10.20473/ydk.v27i3.301>.

⁴¹ Natasha Marcella Geovanny, Marchelina Theresia, and Devina Felicia Widjaja, "Analysis of Revocation of Land Rights by the Government Reviewed from the Concept of Loss", *Cepalo* 3, no. 2 (November 25, 2019): 63–70, <https://doi.org/10.25041/cepalo.v3no2.1845>.

compensation with the district court or consignment goes against land acquisition standards.⁴²

Presidential Regulation No. 36 of 2005 and Presidential Regulation No. 65 of 2006 define deliberation as listening, giving and receiving opinions, and a willingness to reach an agreement on the form and amount of compensation and other land acquisition issues based on voluntariness and equality between the parties owning land, buildings, plants, and other land-related objects and the party requiring them. To determine the form and amount of compensation, the Government Institutions requiring land, land rights holders, and owners of buildings, plants, and other objects related to the respective land meet at a location determined by the Committee. The Committee Chairman leads debates. If the number of land rights holders and owners of buildings, plants, and other items associated with the land prevents efficient deliberation, partial or appointed representatives can be used. The Committee decides whether to hold deliberations on a rotating basis or with representatives based on the number of participants, the amount of land needed, the types of related interests, and other factors that can help while still considering the land rights holders' interests.

After Law No. 2 of 2012 on land acquisition for public interest was passed, Presidential Regulation No. 71 of 2012 stated that "Land acquisition is the activity of providing land by providing fair and just compensation to the entitled party". Suppose an agreement is not reached during deliberations on the form and amount of compensation. In that case, the Land Acquisition Committee will deposit the compensation with the chairman of the District Court in the jurisdiction of the public interest development location. Now, land acquisition issues can be directly related to the land acquisition process from planning to delivery, and property acquisition requires notifying the community whose property and structures are being acquired. In public interest land purchase planning, parties must communicate and deliberate to reach a consensus. The agreement achieved in deliberations in paragraph (1) is used to compensate entitled parties. According to Article 37 paragraph (1), the entitled party may object to the local district court within 14 working days of the compensation deliberation if there is no agreement on the form and amount of compensation.⁴³ Within 30 working days of receiving the objection, the District Court decides on compensation form and amount. The

⁴² Are S Hutagalung and Triska Sationo, "Consignment in Land Acquisition", *Indonesian Journal of International Law* 8, no. 1 (2010): 128–48, <https://doi.org/10.17304/ijil.vol8.1.253>.

⁴³ MG. Thesa Deta Murbasasi and Lego Karjoko, "The Mechanism of Establishing Compensation in Land Procurement of the Construction of the Kulon Progo Yogyakarta Solo Toll Road in Klaten District", *IJRAEL: International Journal of Religion Education and Law* 1, no. 2 (2022): 135–42, <https://doi.org/10.57235/ijrael.v1i2.140>.

party appealing the district court's ruling in paragraph (2) has 14 working days to appeal to the Supreme Court of Indonesia.⁴⁴

The Supreme Court must rule within 30 working days after receiving the cassation appeal. The District Court/Supreme Court's final and legally binding ruling determines the objecting party's compensation. Suppose the entitled party rejects the form and amount of compensation but does not object within the timeframe specified in Article 38 paragraph (1). In that case, the party is presumed to have accepted the compensation as stated in Article 37, paragraph (1).⁴⁵ The main obstacle to property purchase discussions is residents' refusal to have their land razed. A Deliberation Forum without eroding landowner confidence is vital. Local governments and agencies are expected to contact landowners with sincerity when building double-track railway lines. Community voices must be heard. Their expectations and government promises. It goes beyond hearing the Subdistrict Government. Socialising with the government's techniques and promoting the double-track railway project is not enough. This forum should be a community sitting forum, especially with landowners, not just a formality.

Consultative processes in Agrarian Law Politics: Enhancing participation and justice in land acquisition

Law politics, as defined by Mahfud MD,⁴⁶ refers to the formulation and implementation of legal policies by the government at a national level. It involves analysing how politics influences the creation and enforcement of laws by evaluating the power dynamics involved. Agrarian Law refers to legislation that pertains to the ownership, use, and distribution of agricultural land and resources. Politics encompasses the legislative framework and official directives that pertain to the formation or modification of laws, with the aim of achieving the state's objectives in the agricultural sector. Article 33, paragraph (3) of the 1945 Constitution establishes the constitutional foundation for the development of national law and policy, specifically in relation to agrarian law. This article mandates the state to guarantee that land, water, and natural resources are under state control and utilised to the fullest extent possible for the benefit of the entire population.⁴⁷

⁴⁴ Sudjito, "Maladministration In Land Acquisition Of Public Interest (Case Study: Solo-Yogyakarta Highway Project)", *Jurnal Dinamika Hukum* 23, no. 1 (2023): 89–110, <https://doi.org/10.20884/1.jdh.2023.23.1.3436>.

⁴⁵ King Faisal Sulaiman and Iwan Satriawan, "Land Dispute Settlement Post Law No. 2 of 2012; Glagah Village Case Study Related to Nyia Airport", *Indonesia Private Law Review* 2, no. 2 (December 31, 2021): 109–24, <https://doi.org/10.25041/iplr.v2i2.2328>.

⁴⁶ MD, *Politik Hukum Di Indonesia*.

⁴⁷ Diyan Isnaeni, "Kebijakan Landreform Sebagai Penerapan Politik Pembaharuan Hukum Agraria Yang Berparadigma Pancasila", *JU-Ke (Jurnal Ketahanan Pangan)* 1, no. 2 (2017): 83–97.

The Agrarian Law recognises the presence of several rights, including those of the nation, customary rights, individual rights, and legal entity rights. These rights are all defined by Article 6, which asserts that all land rights entail social obligations. The positioning of the Indonesian nation as the beneficiary of divine favour over the territory of Indonesia suggests that the land of Indonesia is collectively owned by all elements of the nation, thereby granting every citizen equal rights and responsibilities in the conservation, utilisation, and distribution of Indonesian land. According to Article 9, paragraph (2) of the Agrarian Law, all Indonesian citizens, regardless of gender, have an equitable chance to acquire land rights and derive advantages from it for themselves and their families. Agrarian law politics is intrinsically linked to the implementation of the Property Acquisition Law. Boedi Harsono⁴⁸ asserts that the process of acquiring property for public development is contingent upon four key factors: The legal status of the land in question, whether it is classified as state land or community-owned land with unique rights; The legal standing of the party seeking land; The assignment of land to be obtained; and The disposition or reluctance of the land-owning community to relinquish the land (in relation to the consultation process between the two parties).⁴⁹

These laws align with the second principle of Pancasila, which promotes fairness and civilised behaviour towards others. This includes acknowledging and respecting others as equals. Moreover, according to Article 11 paragraph (2) of the Agrarian Law, variations in socioeconomic circumstances and legal requirements of the population are taken into account as long as they are essential and do not contradict national interests. This is done to safeguard the interests of economically disadvantaged groups. This essay encompasses profound theological and social-ethical principles, particularly its emphasis on the existence of several realities in human existence. The Agrarian Law in Indonesia has offered equal rights and possibilities to every citizen in regard to land ownership. However, the outcomes may vary. The inevitability of the establishment of powerful economic conglomerates and vulnerable economic entities cannot be denied. The clause of “safeguarding the interests of socioeconomically disadvantaged groups” is a legal standard imbued with humanitarian principles.

Aristotle categorises justice into distributive justice and corrective justice, forming the foundation for all theoretical debates on key matters.⁵⁰ Distributive

⁴⁸ Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya*.

⁴⁹ Kristianingsih Kristianingsih, Litari Elisa Putri, and Nurfauziah Astiqmalia, “Politik Hukum Agraria Dalam Penyelesaian Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum”, *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 18, no. 2 (2020): 67–77, <https://doi.org/10.32528/faj.v18i2.6540>.

⁵⁰ Mariusz Jerzy Golecki, “Synallagma as a Paradigm of Exchange: Reciprocity of Contract in Aristotle and Game Theory”, in *Aristotle and The Philosophy of Law: Theory, Practice and Justice*, ed. Liesbeth

justice pertains to the allocation of resources and services to individuals based on their social standing, as well as ensuring equitable treatment and fairness within the legal system. Distributive justice refers to the principle of justice that governs the allocation of resources and recognition to individuals based on their social position. Everyone is afforded equal and equitable treatment under the law. According to Aristotle, corrective justice requires the establishment of a single and universal standard in the enforcement of laws.⁵¹ This standard is applied when determining the appropriate consequences for an action performed by an individual in relation to others. The norm must be just and enforced without prejudice. The objective is to reinstate what has been deprived of an individual as a result of societal injustice. Corrective justice ensures that one individual's rights do not infringe upon another individual's rights.⁵²

The legal framework governing the process of consulting stakeholders in land acquisition for public purposes is established in Law No. 2 of 2012. The purpose of Land Acquisition is to facilitate Infrastructure Development within the context of regional development. It is the government's responsibility to ensure equitable distribution of prosperity and welfare among the population. Article 33 of the 1945 Constitution delineates the authority of the State in regulating land that is exclusively utilised for the betterment and well-being of the populace. Thus, the community that has their land designated for social uses must willingly relinquish their land rights in favour of the broader community's interests. The community voluntarily transfers its land rights to the government for public use. In return, the government is obligated to give just and suitable compensation in accordance with the relevant rules. Article 18 of the Agrarian Law stipulates that land rights holders have a legal obligation to relinquish their land for public benefit purposes. In return, they are entitled to receive appropriate compensation.

Agrarian Law Politics pertains to the protection of individual land rights and the guarantee of fair compensation, as outlined in Article 28H paragraph (4) of the 1945 Constitution. This article states that every individual has the inherent right to personal property, which any entity cannot unjustly confiscate. This principle ensures that the land rights held by an individual, as defined by the national land law, are safeguarded from any external interference. Likewise, it is impermissible for government to unlawfully and randomly confiscate an individual's land rights.⁵³

Huppens-Cluysenaer and Nuno M.M.S. Coelho (Dordrecht: Springer Netherlands, 2013), 249–64, https://doi.org/10.1007/978-94-007-6031-8_14.

⁵¹ Ernest J. Weinrib, "Corrective Justice", in *The Idea of Private Law*, ed. Ernest J Weinrib (Oxford University Press, 2012), 0, <https://doi.org/10.1093/acprof:oso/9780199665815.003.0003>.

⁵² Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktik)* (Depok: Rajawali Pers, 2018).

⁵³ Sugina Hidayanti, Indra Koswara, and Yopie Gunawan, "The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)", *Legal Brief* 11, no. 1 (2021): 366–78.

The primary objective of land acquisition is to serve the public interest. This process is conducted with fairness and equity, ensuring that land rights are respected in a balanced manner and through consultation. In reality, the ideals of fairness and consultation are frequently treated as mere formalities and fail to be implemented properly, leading to numerous instances of Agrarian Conflict during the process of land acquisition. Consultation plays a crucial role in all stages of land acquisition. If this consultation aspect is not correctly executed, only partially executed, or deliberately altered, the consequences will have a significant impact on the outcomes achieved. The execution of this consultation must be carried out genuinely rather than only being documented as supplemental material and a justification of Indonesia's status as a law-abiding state that values justice and consultation.

Reinstating Pancasila values: Ensuring Justice and people's rights in land acquisition consultations

Pancasila is the primary and ultimate basis of all legal sources in the Indonesian state. It functions as the fundamental principle that shapes the Indonesian people into a nation characterised by high moral values.⁵⁴ The principles encompassed in Pancasila are the principles of Monotheism, Humanitarianism, Solidarity, Democratic Governance, and Fairness. Pancasila can be described as the overarching ideology and worldview of the Indonesian nation. It functions as a guiding principle and point of reference in all aspects of national operations, serving as a unifying force for the country. The values of Pancasila can be further explained as follows: Religiosity can be understood as the conviction in the presence of a supreme deity and the commitment to follow their instructions and avoid their prohibitions. Humanity refers to the acknowledgement of the inherent worth of individuals and the equitable treatment of others, along with the comprehension of cultured individuals who possess ingenuity, emotions, cognition, and convictions.

The concept of national unity refers to the cohesive bond among the people of Indonesia who reside inside the geographical boundaries of the country. The Indonesian nation refers to the collective identity of the people who inhabit the geographical area known as Indonesia. The acknowledgement of Unity in Diversity among different ethnic groups and cultures serves as a guiding principle in promoting national unity. Democracy entails the transfer of state sovereignty to the people. Democratic leadership is a form of governance that is guided by rationality and

⁵⁴ Joko Setiyono and Aga Natalis, "Universal Values of Pancasila in Managing the Crime of Terrorism", *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (July 28, 2023): 48–63, <https://doi.org/10.5130/ccs.v15.i2.8084>.

practicality. Indonesians, both as citizens and members of Indonesian society, hold equal roles, rights, and obligations. Consensus is achieved by engaging in thoughtful discussion among the elected representatives of the people. Social justice is the achievement of fairness and equality for all members of the Indonesian society. Justice in social life encompasses various domains, including ideology, politics, business, social affairs, culture, and national defence and security. The goal is to create a fair and prosperous society in Indonesia that satisfies both material and spiritual needs. This society should ensure equal treatment for all individuals and maintain a balance between individual rights and responsibilities while also respecting the rights of others.⁵⁵

Consultation must be accompanied by awareness and a firm commitment to finding a balance between the government's land requirements and the people's land ownership.

Attaining consensus through consultation is an essential prerequisite in land acquisition, rather than a mere procedural need to be attached to Pancasila. The benchmark is the Application of the People's Consultative Assembly No. II/MPR/1978, which provides guidelines for comprehending and implementing Pancasila. It states that the Indonesian people, as citizens and members of Indonesian society, possess equal positions, rights, and obligations, guided by the Sila of Democracy and the Wisdom of Deliberations/Representation. When individuals exercise their rights, they recognise the importance of consistently taking into account and giving priority to the interests of the State and society.

Given that individuals possess equivalent roles, rights, and responsibilities, it is inherently inappropriate to impose one's will upon others. Deliberations are conducted prior to making decisions concerning shared interests. Attempts are being made to achieve a consensus. The process of reaching a consensus is infused with a sense of camaraderie, which is a defining trait of the Indonesian country. The Indonesian populace demonstrates reverence and adherence to each deliberative choice, thereby necessitating all concerned parties to embrace and execute it with genuine intents and a conscientious mindset. Here, the focus is on prioritising the common good rather than individual or group interests. Discussions in debates are carried out rationally and in accordance with moral principles. Decisions must adhere to moral accountability to God Almighty while safeguarding human dignity and the values of truth and justice. Unity and solidarity should be

⁵⁵ Erik Meza Nusantara, "Relevansi Nilai-Nilai Pancasila Dalam Pemberlakuan Putusan Arbitrase Internasional Di Indonesia", *Jurnal Pembangunan Hukum Indonesia* 6, no. 1 (2024): 1–17, <https://doi.org/10.14710/jphi.v6i1.1-17>.

prioritised for the greater good. During consultations, trust is placed in those who are deemed trustworthy.⁵⁶

The primary focus in consultation is the establishment of genuine dialogue. If the quantity of land rights holders is insufficient for efficient consultation, it is feasible to designate representatives from among the land rights holders who also serve as their proxies. If many consultations are unsuccessful in reaching an agreement, the land acquisition committee is responsible for making choices about the type and amount of compensation. These judgements should consider the desires and goals that have been expressed during the consultations. Hence, it is imperative to enhance the standing of land rights holders in negotiating land purchases for public purposes. This can be achieved by legal education, ensuring openness in land acquisition rules and compensation measures, and fostering political will within the government to uphold individual rights.

By striking a fair balance between land ownership rights and obligations, the aim is to foster shared prosperity. This can only be achieved by, for instance, upholding or reinstating the rights of individuals that have been unjustifiably suppressed or revoked. To achieve this equilibrium, the most practical approach is to regularly and fully enforce agricultural legislation. The implementation of agrarian law should not be carried out in a biased manner, where only certain favourable provisions are put into effect. In contrast, others are ignored or considered insignificant, thus disrupting the interconnected agrarian regulation system.

The implementation of the Law Politics of Consultation in land acquisition has not been effectively achieved due to two main factors. There have been numerous deviations in the implementation of the Agrarian Law and its derivative implementing laws, as required by the Agrarian Law up to this point. Hence, it is imperative to optimise the legal framework governing the process of land acquisition, namely through enhanced oversight of those engaged in such endeavours. Strict adherence to regulations is necessary for the government as the entity responsible for land acquisition. Violators must be promptly and transparently sanctioned and penalised. The revitalization of Pancasila values in the realm of Law Politics of Consultation concerning land acquisition, particularly with regards to the people's rights to land ownership and possession, necessitates the government to exercise prudence in order to ensure planned development and uphold justice for individuals whose land is impacted by projects for public interest. Additionally, it is imperative to conduct evaluations of each completed activity to enhance the effectiveness of subsequent endeavours.

⁵⁶ Sutedi, *Implementasi Prinsip Kepentingan Umum Di Dalam Pengadaan Tanah Untuk Pembangunan*.

Conclusion

The overwhelming emphasis on formalities has impeded the successful implementation of consultation in deciding compensation for public interest objectives, resulting in agricultural conflicts between landholding groups and the government. Moreover, the complete implementation of the legal framework for consultation in land acquisition has been hindered by discrepancies in the enforcement of the Basic Agrarian Law and its subsidiary laws. In order to tackle these problems, it is necessary to enhance the efficiency of the legal framework for consultation by enhancing oversight, enforcing legislation, implementing precautionary principles, and rejuvenating the principles of Pancasila.

Pancasila functions as the fundamental and ultimate underpinning for all legal authorities in Indonesia, molding the nation's identity with elevated ethical principles. The guiding ideology for the Indonesian nation encompasses values of Monotheism, Humanity, Solidarity, Democracy, and Fairness. These principles encompass respect for a supreme deity, recognition of human worth, cohesion among many ethnic groups, democratic rule, and fairness in society. The Indonesian population, in their capacity as both citizens and members of society, possess equal duties, rights, and responsibilities guided by democratic principles and the sagacity of representation.

The primary focus of land acquisition consultation should be to prioritise the attainment of consensus between the government's land requirements and the landowners' rights. This entails authentic discourse, reliance on reliable delegates, and placing collective welfare above personal interests. The process should guarantee sufficient inclusion of land rights holders and take into account their preferences during decision-making. Ensuring equitable outcomes requires empowering individuals with land rights through legal education, transparent regulations for property acquisition, and political will to preserve their rights.

Ensuring a fair distribution of land ownership rights and responsibilities is crucial for promoting collective well-being and fairness. To achieve this, it is necessary to enforce agrarian rules without bias and carry out comprehensive evaluations to improve future efficiency. To ensure planned development and justice for impacted individuals, it is imperative to optimise the legal framework for land acquisition by implementing improved oversight, rigorous adherence to laws, and revitalising Pancasila ideals.

Aperfeiçoamento da deliberação na aquisição de terras para o interesse público: realizando uma política agrária responsável fundamentada na justiça

Resumo: Esta pesquisa examina a implementação da deliberação na determinação da forma e do valor da compensação na aquisição de terras para fins públicos e a Política Jurídica da Deliberação na aquisição de terras ideal para o desenvolvimento público. O objetivo deste artigo é compreender a

implementação da deliberação na determinação da forma e do valor da compensação na aquisição de terras para fins públicos e os esforços para otimizar a Política Jurídica da Deliberação na aquisição de terras ideal para fins públicos. A pesquisa baseia-se no paradigma construtivista com um método de abordagem sociojurídica. Os autores concluem que a implementação da deliberação na determinação da forma e do valor da compensação na aquisição de terras é meramente procedural e exige a otimização da política jurídica da deliberação em relação à aquisição ideal de terras para fins públicos, realizada com cautela e baseada nos valores do Pancasila.

Palavras-chave: Deliberação. Aquisição de Terras. Compensação. Política Jurídica. Interesse Público.

References

Abdurrahman. *Masalah Pencabutan Hak-Hak Atas Tanah Dan Pembebasan Tanah Di Indonesia*. Seri Hukum Agraria. Bandung: Alumni, 1983.

Abidin, Alie Zainal, and Lely Indah Mindarti. "Policy Evaluation of the Land Registration System in Malang City". *Journal of Law and Sustainable Development* 12, no. 1 (2024): e2694–e2694. <https://doi.org/10.55908/sdgs.v12i1.2694>.

Amalia, Rizky. "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Penetapan Ganti Rugi Terkait Dengan Pengadaan Tanah Untuk Kepentingan Umum". *Yuridika* 27, no. 3 (2012): 267–80. <https://doi.org/10.20473/ydk.v27i3.301>.

Amarini, Indriati. "Court Connected Mediation: Civil Dispute with A Local Society Cultural Approach". *Jurnal Dinamika Hukum* 20, no. 1 (2021): 256–73. <https://doi.org/10.20884/1.jdh.2020.20.1.2599>.

Balchin, Paul N, David Isaac, and Jean Chen. *Urban Economics: A Global Perspective*. Bloomsbury Publishing, 2019.

Basri, Hasan, Zainal Asikin, HM Arba, and Widodo Dwi Putro. "Legal Reconstruction Of Compensation System 'Proper' And 'Fair' In Land Acquisition For General Interest". *Journal of Positive School Psychology* 6, no. 10 (2022): 3483–87.

Emiliania, Natasha Meutia. "Pelaksanaan Pengadaan Tanah Untuk Kepentingan Umum Di Atas Objek Tanah Dengan Luasan Kurang Dari 5 Hektar Dan Dibebani Hak Tanggungan (Studi Kasus Pada Pembangunan Gis 150 Kv Grogol Ii)". *Indonesian Notary* 3, no. 4 (2021): 438–59.

Geovanny, Natasha Marcella, Marchelina Theresia, and Devina Felicia Widjaja. "Analysis of Revocation of Land Rights by the Government Reviewed from the Concept of Loss". *Cepalo* 3, no. 2 (November 25, 2019): 63–70. <https://doi.org/10.25041/cepalov3no2.1845>.

Golecki, Mariusz Jerzy. "Synallagma as a Paradigm of Exchange: Reciprocity of Contract in Aristotle and Game Theory". In *Aristotle and The Philosophy of Law: Theory, Practice and Justice*, edited by Liesbeth Huppes-Cluysenaer and Nuno M.M.S. Coelho, 249–64. Dordrecht: Springer Netherlands, 2013. https://doi.org/10.1007/978-94-007-6031-8_14.

Harsono, Budi. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya*. Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya. Jakarta: Djambatan, 2003.

Hidayanti, Sugina, Indra Koswara, and Yopie Gunawan. "The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)". *Legal Brief* 11, no. 1 (2021): 366–78.

Hutagalung, Are S, and Triska Sationo. "Consignment in Land Acquisition". *Indonesian Journal of International Law* 8, no. 1 (2010): 128–48. <https://doi.org/10.17304/ijil.vol8.1.253>.

Isnaeni, Diyan. "Kebijakan Landreform Sebagai Penerapan Politik Pembaharuan Hukum Agraria Yang Berparadigma Pancasila". *JU-Ke (Jurnal Ketahanan Pangan)* 1, no. 2 (2017): 83–97.

Khristina, Debby, Kurnia Warman, and Hengki Andora. "Deposit of Compensation in Land Acquisition for the Construction of the Padang-Pekanbaru Toll Road in Public Interest". *International Journal of Multicultural and Multireligious Understanding* 7, no. 8 (2020): 285–309. <https://doi.org/10.18415/ijmmu.v7i8.1877>.

Koeswahyono, Imam. "Melacak Dasar Konstitusional Pengadaan Tanah Untuk Kepentingan Pembangunan Bagi Umum". *Jurnal Konstitusi* 1, no. 1 (2008): 1–19.

Kristianingsih, Kristianingsih, Litari Elisa Putri, and Nurfauziah Astiqmalia. "Politik Hukum Agraria Dalam Penyelesaian Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum". *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 18, no. 2 (2020): 67–77. <https://doi.org/10.32528/faj.v18i2.6540>.

Larasati, Meka Azzahra, and Suparjo Sujadi. "Implications of the Law of Land Acquisition for Development in the Public Interest on Land Acquisition Conflict Resolution". *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 2 (2021): 281–96. <https://doi.org/10.56087/aijh.v24i2.286>.

Lukman. "Pengembangan Masyarakat Sebagai Konsep Dakwah". *Jurnal Bina Ummat: Membina dan Membentengi Ummat* 2, no. 02 (June 25, 2020): 21–44. <https://doi.org/10.38214/jurnalbinaummatstidnatsir.v2i02.49>.

Maladi, Yanis. "Reforma Agraria Berparadigma Pancasila Dalam Penataan Kembali Politik Agraria Nasional". *Mimbar Hukum – Fakultas Hukum Universitas Gadjah Mada* 25, no. 1 (2013): 27–41.

MD, Moh Mahfud. *Politik Hukum Di Indonesia*. Cetakan ke-10. Depok: Raja Grafindo Persada, 2020.

Meckelburg, Rebecca, and Agung Wardana. "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia". *Land Use Policy* 137 (February 1, 2024): 107017. <https://doi.org/10.1016/j.landusepol.2023.107017>.

Mudjiono. "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan". *Jurnal Hukum Ius Quia Iustum* 14, no. 3 (2007): 458–73.

Muhtadi, Nia Kurniati, Indra Prawira, and Somawijaya. "Public Interest Development in Indonesia: Considerations Regarding Land Acquisition and Its Impact on the Environment". *International Journal of Sustainable Development & Planning* 17, no. 8 (2022): 2585–91. <https://doi.org/10.18280/ijsdp.170827>.

Murbasasi, MG. Thesa Deta, and Lego Karjoko. "The Mechanism of Establishing Compensation in Land Procurement of the Construction of the Kulon Progo Yogyakarta Solo Toll Road in Klaten District". *IJRAEL: International Journal of Religion Education and Law* 1, no. 2 (2022): 135–42. <https://doi.org/10.57235/ijrael.v1i2.140>.

Nugroho, Heru. *Menggugat Kekuasaan Negara*. Yogyakarta: Muhammadiyah University Press, 2021.

Nurnaningsih, Nurnaningsih. "Legal Interpretation of Regulation Law No. 2 of 2012 Concerning Land Acquisition for Development in The Public Interest". *Veteran Law Review* 6, no. SpecialIssues (2023): 70–84. <https://doi.org/10.35586/velrev.v6iSpecialIssues.5761>.

Nusantara, Erik Meza. "Relevansi Nilai-Nilai Pancasila Dalam Pemberlakuan Putusan Arbitrase Internasional Di Indonesia". *Jurnal Pembangunan Hukum Indonesia* 6, no. 1 (2024): 1–17. <https://doi.org/10.14710/jphi.v6i1.1-17>.

Pandu, Pradipta. "Konflik Agraria Meningkat Sepanjang 2022, Kemauan Politik Kunci Penyelesaian". Kompas.id, January 9, 2023. <https://www.kompas.id/baca/humaniora/2023/01/09/konflik-agraria-meningkat-sepanjang-2022-kemauan-politik-jadi-tumpuan-penyelesaian>.

Prasetyo, Kukuh Fadli. "Two Ideas of Economic Democracy: Contextual Analysis on Role of Indonesian Constitutional Court as a Guardian of Democracy". *Indonesia Law Review* 9, no. 1 (2019): 86–105. <https://doi.org/10.15742/ilrev.v9n1.357>.

Rosalina, Rosalina. "Eksistensi Hak Ulayat Di Indonesia". *SAS/* 16, no. 3 (September 30, 2010): 44–51. <https://doi.org/10.47268/sasi.v16i3.786>.

Said, Siti Nur Faida, and Irwansyah Irwansyah. "Land Acquisition by the Government and the Impact for the Community". *Papua Law Journal* 3, no. 2 (2019): 117–33. <https://doi.org/10.31957/plj.v3i2.788>.

Salfutra, Reko Dwi, and Rio Armando Agustian. "Alternatif Penyelesaian Konflik Agraria (Suatu Telaah Dalam Perspektif Reforma Agraria Dan Pembangunan Berkelanjutan)", 1:1–17, 2019. <https://www.prosiding.fh.ubb.ac.id/index.php/prosiding-serumpun/article/view/14>.

Salindeho, John. *Masalah Tanah Dalam Pembangunan*. Jakarta: Sinar Grafika, 1987.

Sari, Embun, Muhammad Yamin, Hasim Purba, and Rosnidar Sembiring. "Comparison of Land Law Systems: A Study on Compensation Arrangements and Reappraisal of Land Acquisition for Public Interest between Indonesia and Malaysia". *International Journal of Criminology and Sociology* 10 (April 2021): 872–80. <https://doi.org/10.6000/1929-4409.2021.10.103>.

Setiyono, Joko, and Aga Natalis. "Universal Values of Pancasila in Managing the Crime of Terrorism". *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (July 28, 2023): 48–63. <https://doi.org/10.5130/ccs.v15.i2.8084>.

Soepeno, Muhammad Hero, Revy SM Korah, and Presly Prayogo. "Role of Assessment Team in Land Procurement as One of the Reference Determination of Land Prices by the North Sulawesi Regional Government". *Journal of Law, Policy and Globalization* 79 (2018): 168–79.

Sudjito. "Maladministration in Land Acquisition of Public Interest (Case Study: Solo-Yogyakarta Highway Project)". *Jurnal Dinamika Hukum* 23, no. 1 (2023): 89–110. <https://doi.org/10.20884/1.jdh.2023.23.1.3436>.

Suhartoyo, Suhartoyo. "Analisis Terhadap Penetapan Nilai Ganti Untung Pengadaan Tanah Untuk Kepentingan Umum Dalam Pembangunan Jalan Tol". *Administrative Law and Governance Journal* 4, no. 2 (2021): 326–38. <https://doi.org/10.14710/alj.v4i2.326-338>.

Sulaiman, King Faisal, and Iwan Satriawan. "Land Dispute Settlement Post Law No. 2 of 2012; Glagah Village Case Study Related to Nyia Airport". *Indonesia Private Law Review* 2, no. 2 (December 31, 2021): 109–24. <https://doi.org/10.25041/iplr.v2i2.2328>.

Sumardjono, Maria S. *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya*. Jakarta: Penerbit Buku Kompas, 2008.

Suparto. "Interpreting The State's Right to Control in the Provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia". *UIR Law Review* 4, no. 2 (October 25, 2020): 1–8. [https://doi.org/10.25299/uirlrev.2020.vol4\(2\).6889](https://doi.org/10.25299/uirlrev.2020.vol4(2).6889).

Surjanti, and Rendra Eka Sanjaya. "Pemberian Ganti Rugi Terhadap Tanah Yang Terkena Pembangunan Jalan Umum Di Kabupaten Tulungagung". *Yustitiabelen* 6, no. 2 (2020): 1–15. <https://doi.org/10.36563/yustitiabelen.v6i2.242>.

Susskind, Lawrence. *Using Assisted Negotiation to Settle Land Use Disputes*. Cambridge: Lincoln Institute of Land Policy, 1999.

Sutedi, Adrian. *Implementasi Prinsip Kepentingan Umum Di Dalam Pengadaan Tanah Untuk Pembangunan*. Jakarta: Sinar Grafika, 2020.

Suteki, and Galang Taufani. *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktik)*. Depok: Rajawali Pers, 2018.

Suwardi. *Pembaharuan Sistem Hukum Agraria Di Indonesia*. Surabaya: Narotama University Press, 2022.

Weinrib, Ernest J. "Corrective Justice". In *The Idea of Private Law*, edited by Ernest J Weinrib, O. Oxford University Press, 2012. <https://doi.org/10.1093/acprof:oso/9780199665815.003.0003>.

Widiyono, Try, and Zubair Kasem Khan. "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law". *Law Reform* 19, no. 1 (2023): 128–47. <https://doi.org/10.14710/lr.v19i1.48393>.

Wignyodipuro, Suroyo. *Pengantar Dan Asas-Asas Hukum Adat*. Jakarta: Haji Masagung, 1987.

Wirakusuma, Dendy Laksana, and Sri Setyadji. "Perlindungan Hukum Terhadap Pemegang Hak Pengelolaan Tanah Atas Dampak Pengadaan Tanah Oleh Negara". *Jurnal Sains Riset* 13, no. 2 (September 30, 2023): 476–92. <https://doi.org/10.47647/jsr.v13i2.1622>.

Informação bibliográfica deste texto, conforme a NBR 6023:2018 da Associação Brasileira de Normas Técnicas (ABNT):

ENDRIANA, Muchamad Satria; YUSRIYADI; SILVIANA, Ana. Enhancing deliberation in land acquisition for public interest: Realizing a responsive Agrarian Legal Policy grounded in justice. *Revista Brasileira de Alternative Dispute Resolution – RBADR*, Belo Horizonte, ano 06, n. 12, p. 159-185, jul./dez. 2024. DOI: 10.52028/rbadr.v6.i12.ART08.EN.
