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Reconstructing Land Compensation Models for National Vital Objects

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Abstract

This study examines compensation arrangements for land acquisition involving National Vital Objects (NVOs), which often create legal complexities in public interest development projects. It aims to formulate an ideal compensation model that ensures legal certainty. Using normative legal research with statutory and conceptual approaches, the study finds that Article 36 of Law Number 2 of 2012 provides compensation in the form of money, replacement land, resettlement, share ownership, or other mutually agreed forms. However, these provisions do not adequately accommodate the unique characteristics of NVO assets. Infrastructure projects frequently intersect with NVOs, creating risks of operational disruption and reduced public services. Accordingly, this study proposes compensation through replacement assets with equivalent or improved functions, construction of substitute facilities by the implementing agency, and systemic compensation for potential public service losses. These reforms are essential to strengthen legal certainty and protect both state and public interests.

1. Introduction

For the Indonesian people, land is understood as a gift from Almighty God, the utilization of which must be directed toward achieving the greatest possible prosperity of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Land rights constitute land controlled by the State, although such control is indirect because certain parties possess legal rights over the land. If those rights are revoked, the land reverts to direct State control. In this regard, the government possesses the authority to regulate and reorganize land use within its territory in accordance with public interests and prevailing laws and regulations.[1] Accordingly, the implementation of land acquisition by the State essentially represents the exercise of the State's right of control over land, carried out to support national development and ultimately realize the public interest and the welfare of society.

Land acquisition for development in the public interest constitutes one of the essential instruments for implementing national development. From the perspective of Indonesian positive law, land acquisition is defined as the activity of providing land by granting proper and fair compensation to entitled parties. This definition is expressly stipulated in Article 1 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Land acquisition refers to the process of obtaining land after providing reasonable compensation to parties relinquishing or transferring their rights over land, buildings, crops,

[1] Suyadi, Yagus and Risahlan Rafsanzani, "Penguasaan Tanah oleh Negara Perspektif Hukum Positif dan Hukum Islam", *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 1 (2023): 47-68, https://doi.org/10.14421/al-mazaahib.v11i1.3073.

and other objects related to the land.[2] Therefore, land acquisition is not merely an act of expropriation by the State, but rather a legal process regulated by statutory provisions aimed at maintaining a balance between developmental interests and the protection of the rights of landowners.

Nevertheless, the implementation of land acquisition in practice frequently gives rise to various dynamics and conflicts, particularly those stemming from differing perceptions between the government as the development organizer and entitled parties as holders of land rights. For entitled parties, land is often perceived not only as an economic asset but also as possessing historical, spiritual, and even vital significance. In contrast, the government views land as a strategic resource that must be optimally utilized to support development. Agrarian conflicts in Indonesia arise from various causes. First, there are vertical conflicts between the government and the community. Second, there are horizontal conflicts occurring among members of society themselves or between governmental institutions.[3] Such tensions have rendered land acquisition a critical issue because, on the one hand, development must not be obstructed, while on the other hand, the rights of landowners must remain protected and fulfilled.

Land acquisition cannot be separated from the concept of compensation, which is founded upon the principle that land ownership and land rights are constitutionally guaranteed. The right to landforms part of economic, social, and cultural rights protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Indonesia ratified through Law Number 11 of 2005 concerning the Ratification of the ICESCR.[4] Consequently, when land is utilized for public purposes, the rights of landowners must be respected through the provision of proper and fair compensation. The concept of compensation is rooted in the principle of human rights protection. The right to property ownership is guaranteed under Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Therefore, compensation constitutes a logical consequence of the State's obligation to respect the property rights of citizens when their land is utilized for the public interest.

Within the framework of land acquisition law, compensation is understood as proper and fair reimbursement granted to entitled parties during the land acquisition process. This definition is stipulated in Article 1 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. A fair compensation system constitutes an essential

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[2] K Harjono, Dhaniswara, "Tanggung Jawab Penilai dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum", *Jurnal Hukum Indonesia* 2, no. 1 (2023): 14–24, https://www.researchgate.net/publication/373392789_Tanggung_Jawab_Penilai_dalam_Pengadaan_Tanah_bagi_Pembangunan_untuk_Kepentingan_Umum.

[3] Wahyuningsih, Aprillia, "Pencegahan Konflik Agraria dalam Proses Pembangunan Ibu Kota Negara: Pengadaan Tanah Berkeadilan", *Lex Renaissance* 7, no. 4 (2022): 675-90, https://doi.org/10.20885/JLR.vol7.iss4.art1.

[4] Kurniawan, Arief et al, "Resitusi Tanah yang Dikuasai Negara untuk Kepentingan Proyek Kawasan Inti Pusat Pemerintah Ibu Kota Nusantara dalam Perseptif Hak Asasi Manusia", *Mahkamah: Jurnal Riset Ilmu Hukum* 3, no. 1 (2026): 47-55, https://doi.org/10.62383/mahkamah.v3i1.1408.

element of legal protection over land rights.[5] Fundamentally, both the form and amount of compensation should reflect not only the economic value but also the non-economic value of the land subject to acquisition. The concept of compensation also encompasses the principle of equality between the government and society. Deliberations regarding compensation must provide legal protection and ensure justice through reasonable valuation, fulfilment of citizens' rights, and respect for humanitarian considerations in the relinquishment of land rights. Such measures are indispensable in achieving legal protection and substantive justice.[6] Accordingly, the State must not impose its will in determining the form and amount of compensation but is obliged to employ a deliberative mechanism involving the entitled parties.

Furthermore, within the context of national development, there exists a category of infrastructure possessing an exceptionally strategic and crucial position for the survival of society, the nation, and the State, known as National Vital Objects (Object Vital Nasional). In general terms, National Vital Objects refer to locations or assets of paramount importance to the State and may also be regarded as national resources.[7] Pursuant to Article 1 of Presidential Decree Number 63 of 2004 concerning the Security of National Vital Objects, National Vital Objects are defined as areas or locations, buildings or installations, and/or business entities that concern the livelihood of the people, the interests of the State, and/or strategic sources of State revenue.

This definition is also reflected in Minister of Industry Regulation Number 76 of 2024 concerning Procedures for the Designation and Evaluation of National Vital Objects in the Industrial Sector, Minister of Energy and Mineral Resources Regulation Number 48 of 2018 concerning the Designation of National Vital Objects in the Energy and Mineral Resources Sector, as well as various ministerial regulations governing National Vital Objects under the authority of respective ministries. In general, National Vital Objects encompass the sectors of energy, transportation, telecommunications, finance, healthcare, and other sectors of vital significance.

National Vital Objects (hereinafter referred to as Obvitnas) constitute critical components of the State that play an essential role in national economic development and in safeguarding the livelihood of the people, particularly when facing threats or disturbances.[8] From these definitions, it can be understood that National Vital Objects possess strategic values extending far beyond mere economic assets. They serve as the backbone of national life

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[5] Siburian, Febiola and Elvira Fitriyani Pakpahan, "Perlindungan Hukum Terhadap Pemegang Hak atas Tanah dalam Pelaksanaan Ganti Kerugian Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum (Studi Putusan Nomor: 95/Pdt.G/2021/Pn.Kis)", *Jurnal Hukum Lex Generalis* 6, no. 9 (2025): 1-20, https://ojs.rewangrencang.com/index.php/JHLG/article/view/1760.

[6] Rakhmatullah, Bha'iq Roza et al, "Perlindungan Hukum bagi Pemilik Hak atas Tanah dalam Pelaksanaan Musyawarah Ganti Rugi Pengadaan Tanah", *SALAM: Jurnal Sosial dan Budaya Syar-i* 10, no. 3 (2023): 683-698, https://doi.org/10.15408/sjsbs.v10i3.32114.

[7] Raadani, Muhammad et al, "Pengamanan Terhadap Obyek Vital Negara di Sulawesi Tenggara (Studi di Direktorat Pengamanan Obyek Vital Polda Sultra)", *Sultra Law Review* 06, no. 02 (2024): 3544-3556, https://jurnal-unsultra.ac.id/index.php/sulrev/article/view/1170.

[8] Maryam, Euis et al, "Peran Unit Pam Obvit Polres Bogor dalam Pengamanan Obyek Vital Nasional Sektor Industri PT Indocement Tunggal Prakarsa Bogor Berdasarkan Perkap No. 13 Tahun 2017", *Karimah Tauhid* 4, no. 4 (2025): 2412-2423, https://doi.org/10.30997/karimahtauhid.v4i4.15905.

and therefore require special attention, protection, and preservation. Any disruption to National Vital Objects has the potential to generate national instability. Consequently, every development policy implemented within the framework of land acquisition for development in the public interest that traverses National Vital Objects must consider the continuity and sustainability of their vital functions.

National Vital Objects in Indonesia are categorized into several types based on the strategic sectors or ministries/agencies responsible for their administration. The principal sectors classified as National Vital Objects include the following:

1. Energy and Mineral Resources Sector;
2. Transportation Sector;
3. Telecommunications and Information Sector;
4. Financial and Banking Sector;
5. Health and Public Service Sector;
6. Defence and Security Sector.

The foregoing categorization demonstrates that National Vital Objects perform multidimensional functions encompassing economic, social, political, and defence aspects. The fundamental purpose underlying the regulatory framework governing National Vital Objects is to minimize, and where possible prevent, disturbances and threats that could result in humanitarian disasters, disruptions to governmental functions, and threats to national security and defence.[9] Accordingly, land acquisition activities that intersect with or affect areas designated as National Vital Objects must be conducted with prudence, strategic consideration, and due regard for maintaining the continuity of their functions.

The urgency of safeguarding the operation of National Vital Objects cannot be underestimated. Such objects constitute part of the nation's critical infrastructure, namely systems and assets whose disruption, even to a limited extent, may trigger significant cascading effects across multiple sectors.

For example, if electricity transmission networks, which serve to distribute electrical energy generated by power plants, are disrupted by the construction of other infrastructure projects traversing them, electricity distribution across extensive areas may be interrupted. A notable example is the large-scale blackout that occurred in the Greater Jakarta area and parts of West Java on 4 August 2019. The power outage persisted for more than twelve hours in several regions and had widespread consequences for public infrastructure, including mass transportation services such as the Mass Rapid Transit (MRT) system, cellular communication networks, and water distribution systems. The primary cause of the blackout was reportedly a disturbance affecting the 500-kilovolt Extra High Voltage Overhead Transmission Line (SUTET) connecting Ungaran and Pemalang, which triggered a cascading interruption of

[9] Soesanto, Edy et al, "Pengaruh Sistem Pengamanan Objek Vital, File dan Cyber Terhadap Manajemen Sekuriti pada PT Freeport Indonesia", *ORAPI: Journal of Research and Publication Innovation* 1, no. 2 (2023): 251-260, https://jurnal.portalpublikasi.id/index.php/JORAPI/article/view/197.

electricity supply due to insufficient redundancy within the interconnected system.[10] The resulting domino effect disrupted social activities, halted industrial operations, impaired healthcare services, and potentially threatened public security. Similar consequences may arise when major transportation routes, such as ports or airports, are disrupted, thereby impeding national logistics distribution. Within this context, ensuring the uninterrupted operation of National Vital Objects must constitute a primary concern.

In practice, the implementation of land acquisition for development in the public interest frequently intersects with National Vital Objects. The construction of toll roads, railway networks, irrigation systems, and energy infrastructure often traverses areas that have been designated as National Vital Objects. Such circumstances give rise to unique legal and practical challenges. On the one hand, new infrastructure projects are intended to serve the public interest, for instance by connecting strategic economic regions through toll roads. On the other hand, the existence of National Vital Objects affected by such development cannot be disregarded. For example, the relocation of gas pipelines or electricity transmission networks due to toll road construction entails enormous financial costs, significant technical risks, and the potential disruption of energy services if not properly managed.

Issues also arise regarding the appropriate form of compensation for National Vital Objects affected by land acquisition. Whereas privately owned land may be compensated through monetary payment, replacement land, or resettlement, questions arise concerning National Vital Objects that possess strategic value and vital functions. Can monetary compensation adequately replace the strategic significance and operational functions of electricity transmission networks or energy installations? Furthermore, how can the principles of utility, justice, and legal certainty be ensured under such circumstances?

Against this background, the author considers it necessary to undertake a more comprehensive examination of the forms of compensation applicable to National Vital Objects affected by land acquisition for development in the public interest. Specifically, the question arises as to whether the provisions of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest are adequate to accommodate such exceptional circumstances, or whether more specific regulatory arrangements are required.

This issue is highly relevant because scholarly discourse on land acquisition has thus far predominantly focused on the legal relationship between the State and individual rights holders, whereas the legal implications arising from land acquisition projects that traverse National Vital Objects have received little to no attention. Yet, this issue is particularly pressing given the role of National Vital Objects as one of the fundamental pillars of national stability. Accordingly, this research possesses a distinctive character by addressing a subject that has not been extensively examined, namely the legal implications arising when land acquisition for development in the public interest affects National Vital Objects.

Substantively, numerous studies concerning land acquisition have been conducted. However, these studies have primarily focused on different issues. First, the study conducted by I Gusti Ayu Kade Harry Adhisukmawati, I Gusti Ayu Ketut Rachmi Handayani, and Lego

[10] Purify, Aura et al, "Potensi Ancaman Hibrida Perang Siber dan Perubahan Iklim Terhadap Infrastruktur Vital dan Ketahanan Nasional", *JURNAL ELEKTROSISTA* 12, no. 2 (2025): 144-49, https://doi.org/10.63824/jtep.v12i2.324.

Karjoko (2023) examined the justice aspects underlying the regulation and mechanisms of compensation in land acquisition for development in the public interest.[11] Second, the research undertaken by Annisa Berliani, Sudi Fahmi, and Ardiansah (2024) analysed the provision of compensation in land acquisition for public purposes in Indonesia and evaluated whether such compensation fulfils the principle of justice.[12] Third, Aga Prasdhana and Miftakhul Huda (2024) focused on the implementation of compensation mechanisms under Law Number 2 of 2012 and the legal remedies available when landowners reject the form and/or amount of compensation determined.[13]

These previous studies have concentrated primarily on the relationship between the State and society in the context of land compensation. None of them specifically addresses compensation in the exceptional circumstances where land acquisition for development in the public interest intersects with National Vital Objects. In such situations, however, the legal issues become considerably more complex, involving not only the interests of individuals and the State, but also the strategic national interests embodied in National Vital Objects themselves.

The objective of this study is not merely normative in nature, insofar as it seeks to analyse the existing legal framework but is also oriented toward practical solutions capable of providing tangible benefits for the development of agrarian law and the implementation of land acquisition for development in the public interest in Indonesia. According to John W. Creswell (2012), the purpose of qualitative research generally encompasses information regarding the principal phenomenon under investigation, the research participants, and the research setting, while the output of qualitative research is descriptive in nature.[14] Accordingly, this study seeks to ensure that the form of compensation applicable in the context of land acquisition projects affecting National Vital Objects can be formulated by taking into account the Theory of the Objectives of Law, namely justice, legal certainty, and utility, thereby preventing prolonged conflicts and avoiding greater losses for both the State and land rights holders.

The objectives of this research arise from the practical reality that land acquisition involving National Vital Objects frequently generates new legal and operational challenges. Government institutions or business entities responsible for development projects often prioritize project acceleration, whereas the operators or managers of National Vital Objects place greater emphasis on maintaining operational continuity. In the absence of an appropriate

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[11] Adhisukmawati, I Gusti Ayu Kade Harry et al, "Aspek Keadilan Pengaturan Pemberian Ganti Rugi dalam Pengadaan Tanah untuk Pembangunan bagi Kepentingan Umum", *Proceeding Legal Symposium* 1, no. 1 (2023): 1-17, https://doi.org/10.18196/pls.v1i1.101.

[12] Berliani, Annisa et al, "Pemberian Ganti Kerugian atas Pembebasan Tanah untuk Kepentingan Umum di Indonesia dalam Perspektif Keadilan", *Collegium Studiosum Journal* 7, no. 1 (2024): 253-271, https://doi.org/10.56301/csj.v7i1.1338.

[13] Prasdhana, Aga and Miftakhul Huda, "Pelakasanaan Ganti Rugi Pengadaan Tanah Menurut Undang-Undang Nomor 2 Tahun 2012", *UNES Law Review* 6, no. 3 (2024): 8203-8211, https://www.review-unes.com/law/article/view/1710.

[14] Safarudin, Rizal et al, "Penelitian Kualitatif", *Innovative: Journal of Social Science Research* 3, no. 2 (2023): 9680-9694, https://j-innovative.org/index.php/Innovative/article/view/1536.

compensation mechanism, this conflict of interests may hinder development and potentially jeopardize national security.

Furthermore, this study aims to fill the gap in legal scholarship concerning land acquisition projects that intersect with National Vital Objects. Existing legal studies have predominantly focused on land acquisition for public purposes in general, without distinguishing circumstances involving National Vital Objects. Therefore, this research is expected to provide both academic and practical contributions toward the development of a more responsive regulatory framework.

Moreover, this study seeks to formulate an ideal model of compensation in the context of land acquisition for development in the public interest, particularly where such projects affect National Vital Objects, to provide legal certainty for all parties involved and potentially affected. This objective represents the culmination of the overall analytical framework, as the study not only examines the existing legal norms and identifies their limitations, but also endeavours to propose a more appropriate conceptual framework capable of serving as a practical solution. Based on the foregoing discussion, this study formulates the following research question: What form of compensation can ensure justice, utility, and legal certainty in the implementation of land acquisition for development in the public interest that affects National Vital Objects.

2. Methods

This study employs normative legal research. Normative legal research primarily emphasizes the statutory approach, giving rise to the paradigm that such research focuses on the analysis of legislation and legal norms.[15] The primary focus of this study is to examine the regulation governing the forms of compensation under Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest and to assess its relevance in the context of National Vital Objects. Accordingly, the objects of this research consist of legal norms, legal principles, and legal doctrines applicable within the Indonesian legal system. In normative legal research, the choice of legal approach constitutes an essential instrument for directing the course of analysis. The legal approach reflects the perspective adopted by the researcher in examining the legal issues that constitute the focus of the study. The utilization of several legal approaches is necessary to ensure that the analysis is not merely descriptive, but also analytical and solution oriented. According to Solikin (2021), the normative approach views law as a set of norms derived from prevailing legislation and legal principles. Research employing this approach focuses on the examination of legal documents, statutory regulations, and jurisprudence to identify legal principles and formulate ideal legal concepts.[16] Accordingly, this study employs two principal approaches, namely the Statutory Approach and the Conceptual Approach.

In normative legal research, legal materials constitute an equally important element, as they provide the foundation for legal analysis. The use of a combination of primary, secondary,

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[15] Zainuddin, Muhammad and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif dalam Membuktikan Kebenaran pada Penelitian Hukum", *Smart Law Journal* 2, no. 2 (2023): 114-123, https://e-journal.unkaha.ac.id/index.php/slj/article/view/26.

[16] Jamaluddin et al, "Pendekatan Penelitian dalam Kajian Hukum dan Hukum Islam: Normatif, Empiris, dan Pendekatan Hukum Islam", *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 2 (2026): 5311-5316, https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/3859.

and tertiary legal materials enables researchers to obtain a more comprehensive and in-depth understanding of the legal issues under examination, thereby enhancing the quality, validity, and relevance of the research findings.[17] Accordingly, the legal materials analysed in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials

3. Results and Discussion

3.1 Regulation of the Forms of Compensation under Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest constitutes a significant milestone in Indonesia's land law system, as it comprehensively regulates the mechanism by which the State acquires land for the benefit of society at large. The enactment of this law was long anticipated because previous regulations were considered inadequate in ensuring justice for parties whose land rights were affected. Accordingly, the law was expected to provide greater legal protection and to satisfy the sense of justice of individuals whose land must be relinquished for development purposes.[18] The principal objective of the law is to achieve a balance between the interests of national development and the protection of landowners' rights.

Legal protection for holders of land rights within the framework of land acquisition for development in the public interest aims primarily to safeguard human rights that may be adversely affected by the actions of other parties. Such protection seeks to ensure that landowners can enjoy all rights guaranteed by law, thereby rendering legal protection a series of legal safeguards that must be provided by the legal system.[19] Article 1 paragraph (2) of Law Number 2 of 2012 defines land acquisition as the activity of providing land through the granting of proper and fair compensation to entitled parties. Furthermore, Article 9 paragraph (1) of the same law emphasizes that the implementation of land acquisition must guarantee the interests and welfare of communities affected by development activities. Pursuant to Article 36 of Law Number 2 of 2012, compensation may take the following forms:

1. Monetary Compensation

   Compensation in the form of monetary payment is generally regarded as the most practical and efficient mechanism, as affected parties may utilize the funds as capital to improve their living conditions.[20] Nevertheless, from the perspective of justice, monetary compensation carries the risk of failing to replace non-economic values, including social

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[17] Sulung, Undari and Mohamad Muspawi, "Memahami Sumber Data Penelitian: Primer, Sekunder, dan Tersier", *Edu Research: Jurnal Penelitian Pendidikan* 5, no. 3 (2024): 110-116, https://iicls.org/index.php/jer/article/view/238?__cf_chl_tk=etcgh2Scn8mmD6VZey_.nFYuGTuHgbovH6W3NUeeSqE-1781629419-1.0.1.1-0chXvrzdyxEv4Dntu97G4CcRlz_U6jU93Hqh92AVa7I.

[18] Suwardi and Widyawati Boediningsih, "Kajian Pengadaan Tanah untuk Pembangunan Kepentingan Umum", *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum* 2, no. 5 (2023): 471-79, https://doi.org/10.55681/seikat.v2i5.940.

[19] Mahardika, I Made Andi Putra et al, "Pengadaan Tanah untuk Pembangunan Shortcut Berdasarkan Undang-Undang Nomor 2 Tahun 2012 di Desa Antosari Kecamatan Selemadeg Barat Kabupaten Tabanan", *Jurnal Konstruksi Hukum* 4, no. 3 (2023): 294-300, https://doi.org/10.22225/jkh.4.3.8047.294-300.

[20] Aldi, Muhammad et al, "Urgensi Pengaturan Ganti Kerugian dalam Bentuk Uang Terkait Penyelenggaraan Pengadaan Tanah", *Yurijaya: Jurnal Ilmiah Hukum* 5, no. 2 (2023): 65-76, https://doi.org/10.51213/yurijaya.v5i2.106.

attachment, access to livelihoods, and the symbolic significance of customary land when the object concerned is associated with indigenous communities. In practice, determining the amount of compensation often gives rise to controversy due to differences in valuation methods. The use of the Tax Object Sales Value (Nilai Jual Objek Pajak or NJOP) as a basis for assessment, or variations in market assumptions, may result in situations where compensation considered "proper and fair" in numerical terms is not necessarily perceived as just by affected parties.

2. Replacement Land

   This form of compensation prioritizes livelihood values and community continuity over financial liquidity. For individuals whose livelihoods depend upon a particular location, the provision of suitable replacement land may preserve socio-economic sustainability. Where compensation takes the form of replacement land, its provision must be completed within a maximum period of six months.[21]

3. Resettlement

   Resettlement refers to the process of providing substitute land to entitled parties at another location based upon agreements reached during the land acquisition process.[22] Ideally, resettlement should involve more than merely providing housing; it should also accommodate access to public services, economic facilities, and social networks. Nevertheless, its success ultimately depends upon adequate technical planning and financial resources.

4. Share Ownership

   Compensation through share ownership refers to the granting of equity participation in the development project undertaken for the public interest and/or its management, based upon an agreement among the parties concerned.[23] This model reflects a modern approach, enabling landowners to participate economically in projects that acquire their land, such as those implemented under Public-Private Partnership (PPP) schemes. In principle, this mechanism has the potential to align long-term interests.

5. Other Forms Agreed upon by the Parties

   Other forms of compensation agreed upon by both parties may include combinations of two or more forms of compensation.[24] As stipulated in the elucidation

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[21] Kurnianingsih, Desi Cicawati et al, "Analisis Perlindungan Hukum dan Pemberian Ganti Rugi bagi Pemegang Hak atas Tanah dalam Proyek Pembangunan Waduk Berdasarkan Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum", *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (2025): 2353-2361, https://doi.org/10.62976/ijijel.v3i3.1276.

[22] Pujiriyani, Dwi Wulan, "Pengadaan Tanah dan Problem Permukiman Kembali: Skema Pemberdayaan untuk Perlindungan Masyarakat Terdampak", *BHUMI: Jurnal Agraria dan Pertanahan*, no. 40 (2018): 633-648, https://jurnalbhumi.stpn.ac.id/index.php/JB/article/view/195.

[23] Subekti, Rahayu, "Kebijakan Pemberian Ganti Kerugian dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum", *Yustisia* 5, no. 2 (2016): 376-394, https://doi.org/10.20961/yustisia.v5i2.8754.

[24] Kasenda, Dekie GG, "Ganti Rugi dalam Pengadaan Tanah untuk Kepentingan Umum", *Jurnal Morality* 2, no. 2 (2015): 122-141,

of Article 36(e) stipulates that "other forms of Compensation agreed upon by both parties may consist, for example, of a combination of two or more forms of Compensation as referred to in letters (a), (b), (c), and (d)." Phrase "other forms agreed upon by the parties" should not be interpreted broadly beyond the forms expressly enumerated in the law. Rather, it refers to combinations of monetary compensation, replacement land, resettlement, and share ownership.

This limitation serves a normative purpose, namely, to maintain legal certainty and to prevent the emergence of forms of compensation lacking legal basis or potentially disadvantaging one of the parties. Consequently, agreements involving forms of compensation outside those expressly recognized by the law cannot constitute a valid legal basis within the framework of land acquisition for development in the public interest.

The provisions of Article 36 of Law Number 2 of 2012 provide flexibility for both the government and landowners to determine the most appropriate form of compensation in accordance with the characteristics and economic value of the land being acquired. From a legal perspective, these forms of compensation also reflect the principle of distributive justice. This principle aims to promote social balance, reduce inequality, and ensure that individuals are afforded opportunities to achieve prosperity according to their capacities and needs.[25] As the organizer of development, the State bears responsibility for ensuring that no party suffers disproportionate losses because of development undertaken for the public interest.

Law Number 2 of 2012 does not regard compensation merely as economic remuneration; rather, it serves as an instrument for reconciling two potentially conflicting objectives, namely facilitating public development and protecting the rights of landowners. The statutory recognition of various forms of compensation including monetary payment, replacement land, resettlement, share ownership, and other mutually agreed arrangements provides a legal foundation for shifting the focus from purely financial compensation toward more contextual and equitable forms of compensation.

Although Law Number 2 of 2012 has established a comprehensive normative framework for land acquisition, its implementation continues to face various challenges, particularly concerning the valuation of land and infrastructure designated as National Vital Objects (NVOs). Pursuant to Presidential Decree Number 63 of 2004, a "National Vital Object" is defined as "an area/location, building/installation, and/or business that concerns the livelihood of the public, the interests of the State, and/or a strategic source of State revenue."

While Law Number 2 of 2012 recognizes five forms of compensation, its normative framework does not specifically distinguish ordinary land from strategically significant NVO assets. The existing forms of compensation remain principally oriented toward replacing the economic value of acquired land and related interests, rather than addressing the strategic functionality and systemic consequences of relocating NVO infrastructure. In practice,

https://scholar.google.co.id/citations?view_op=view_citation&hl=id&user=MIZwSZAAAAAJ&citation_for_view=MIZwSZAAAAAJ:u5HHmVD_uO8C.

[25] Arifin, Muhammad Zainul et al, "Membumikan Teori Negara Kesejahteraan dalam Penguatan Dana Desa untuk Pengentasan Kemiskinan Menurut Keadilan Distributif", *Journal of Law and Social Society* 1, no. 2 (2024): 29-42, https://doi.org/10.70656/jolasos.v1i2.158.

financial compensation may not guarantee continuity of public services where suitable replacement land is strategically difficult to obtain, such as the relocation of PLN substations or Pertamina pipeline networks affected by competing infrastructure development. These circumstances demonstrate that the five forms of compensation are primarily designed for ordinary land acquisition and have yet to comprehensively accommodate the distinctive characteristics, strategic functions, and potential losses associated with NVOs.

3.2 The Compensation Mechanisms under Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest Have Not Fully Accommodated Objects Classified as National Vital Objects.

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest has not yet been fully capable of accommodating the distinctive characteristics of compensation for land or assets classified as National Vital Objects (NVOs). This limitation arises from the fact that National Vital Objects possess strategic functions closely related to the public interest, such that the losses incurred are not merely physical or economic in nature, but also immaterial and systemic. For example, when land acquisition for toll road or high-speed railway projects affects areas occupied by power plants or electricity transmission networks which form part of the National Vital Objects the resulting compensation issues extend beyond the physical value of land and buildings to encompass potential disruptions to public service systems. Consequently, the forms of compensation and related mechanisms should be designed to ensure the continuity of National Vital Objects.

Neither Law Number 2 of 2012 nor its implementing regulations, namely Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest and Government Regulation Number 39 of 2023 concerning Amendments to Government Regulation Number 19 of 2021, provide forms of compensation and mechanisms for addressing losses associated with National Vital Objects. Rather, these regulations merely prescribe forms and procedures for compensation based on economic valuation conducted by independent appraisers. In the context of National Vital Objects, however, losses cannot be assessed solely through an economic approach, as they also involve strategic values and considerations of national security.

Like the provisions contained in Law Number 2 of 2012, a textual interpretation of Article 76 of Government Regulation Number 39 of 2023 reveals that the regulation explicitly enumerates the available forms of compensation, namely monetary compensation, replacement land, resettlement, share ownership, and other forms agreed upon by both parties. Furthermore, Article 83 paragraph (1) of Government Regulation Number 19 of 2021 stipulates that compensation in the form of "other arrangements agreed upon by the parties" may consist of a combination of two or more forms of compensation referred to in Article 76 paragraph (1) subparagraphs (a) to (d). Like the elucidation of Article 36 of Law Number 2 of 2012, these provisions establish normative boundaries by clarifying that "other forms" do not constitute independent categories but rather combinations of the forms of compensation already recognized by law. Consequently, the phrase "other forms" is not unlimited in scope but remains subject to the same valuation criteria and procedural requirements applicable to the existing forms of compensation.

Within the framework of contextual interpretation, three interpretative doctrines are particularly relevant. First, the doctrine of noscitur a sociis provides that the meaning of a

word must be understood considering its association with surrounding terms. Second, the doctrine of ejusdem generis implies that general expressions must be interpreted as belonging to the same class as the specific expressions preceding them. Third, the doctrine of expressum facit cessare tacitum signifies that express statutory provisions preclude the implication of matters not explicitly stated. For instance, where legislation refers to "traders, skilled workers, laborers, or any other persons," the expression "any other persons" must be interpreted as referring to persons belonging to the same category as those specifically enumerated.[26]

Applying the doctrine of expressum facit cessare tacitum, the elucidation of Article 36 letter (e) of Law Number 2 of 2012 and Article 83 paragraph (1) of Government Regulation Number 19 of 2021 demonstrates that the phrase "other forms" is expressly confined within the existing statutory framework and does not constitute an open-ended basis for introducing new forms of compensation. Rather, it refers only to combinations of the forms of compensation already recognized by law. Accordingly, Indonesian positive law limits the interpretation of "other forms" to combinations of the compensation mechanisms enumerated in Article 36 letters (a) through (d) of Law Number 2 of 2012, namely monetary compensation, replacement land, resettlement, and share ownership. Consequently, functional compensation specifically designed to preserve the strategic function and continuity of National Vital Objects cannot be accommodated within the category of "other forms" without exceeding the existing statutory construction. Its incorporation therefore requires legislative amendment to establish an explicit legal basis for compensation tailored to the distinctive characteristics and strategic functions of National Vital Objects.

This interpretative limitation is consistent with the principles of Indonesian agrarian law and broader public interests. Indonesian agrarian law recognizes the social function of land rights as one of its fundamental pillars. Consequently, any transfer or relinquishment of land rights for public purposes must continue to safeguard the interests of landowners and affected communities. Therefore, compensation mechanisms serve not merely as technical instruments but as legal means of maintaining equilibrium between public interests and private rights. The requirement that compensation values be determined through independent appraisal reinforces this objective by ensuring that the implementation of "other forms" of compensation does not conceal economic losses suffered by entitled parties.

According to John Rawls' theory of justice, public policies should be structured in such a manner that they provide the greatest benefit to those who are most disadvantaged. Within Rawlsian theory, two principles are particularly relevant: the principle of equal liberty for every individual and the difference principle, which prioritizes benefits for the least advantaged groups.[27] In this context, when institutions responsible for managing National Vital Objects for example, PT PLN (Persero) are required to relinquish part of their land or facilities for development projects undertaken in the public interest, compensation should take

[26] Askarial, "Interpretasi atau Penafsiran Sebagai Metode Penemuan Hukum", *MENARA Ilmu* XII, no. II (2018): 15–25, https://jurnal.umsb.ac.id/index.php/menarailmu/article/view/506.
[27] Arianto, Yolanda Felicia et al, "Konsep Keadilan Restoratif dalam Perspektif Teori Keadilan John Rawls", *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humanioral* 3, no. 1 (2025): 1-19, https://journal.forikami.com/index.php/nusantara/article/view/957.

into account not only the economic value of the assets but also their strategic functions and the operational recovery costs that may arise.

Furthermore, Jeremy Bentham's utilitarian theory is equally relevant, as the fundamental objective of land acquisition for development in the public interest is to maximize societal welfare. Utilitarianism, as an ethical theory, considers actions to be morally desirable insofar as they produce utility, benefits, and advantages, while actions resulting in suffering and losses are regarded as undesirable.[28] Nevertheless, the pursuit of public benefits should not come at the expense of national security or the continuity of vital national functions. Accordingly, compensation for National Vital Objects should strike an appropriate balance between the interests of national development and the imperatives of national security and operational sustainability. The forms of compensation currently recognized under Indonesian law remain inadequate to guarantee the continuity of the operation of National Vital Objects when they are affected by land acquisition for development in the public interest.

In general, several forms of difficulties arise in the application of positive law, including the absence of legal norms, vague legal formulations, conflicts between legal norms, and outdated legal provisions.[29] From this analysis, it becomes evident that the absence of specific provisions governing the forms and mechanisms of compensation applicable to National Vital Object assets under Law Number 2 of 2012 and its implementing regulations has created a legal vacuum (rechtsvacuum). This condition necessitates legislative reform to provide special treatment for strategic State assets, thereby ensuring the realization of the principles of legal certainty (Rechtssicherheit) and balanced protection of the public interest.

3.3 Compensation Mechanisms Capable of Ensuring Justice, Expediency, and Legal Certainty in Land Acquisition for Development in the Public Interest Affecting National Vital Objects

Within the context of national development involving land acquisition in areas designated as National Vital Objects (NVOs), the ideal form of compensation should embody the three fundamental values formulated in Gustav Radbruch's theory of law, namely justice (gerechtigkeit), expediency or utility (zweckmäßigkeit), and legal certainty (rechtssicherheit). These three values serve as balancing principles between individual interests, public interests, and the interests of the State. Radbruch's hierarchy of legal values justice, legal certainty, and expediency remains highly relevant in resolving contemporary legal conflicts, particularly those concerning transitional justice and the protection of human rights.[30]

First, from the perspective of justice, the value of gerechtigkeit constitutes the principal foundation of every land acquisition process, particularly when the affected assets are National Vital Objects. According to Gustav Radbruch, justice represents the most fundamental aspect of law and should occupy the highest position among legal values. He regarded justice as an absolute value that must serve as the primary consideration in the

[28] Pratiwi, Endang at al, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum?", *Jurnal Konstitusi* 19, no. 2 (2022): 268-293, https://doi.org/10.31078/jk1922.
[29] Suhartono, Slamet, "Hukum Positif Problematik Penerapan dan Solusi Teoritiknya", *DiH: Jurnal Ilmu Hukum* 15, no. 2 (2019): 201-211, https://doi.org/10.30996/dih.v15i2.2549.
[30] Anisyaniawati et al, "Konsep Hukum dan Keadilan dalam Pemikiran Gustav Radbruch", Praxis: *Jurnal Filsafat Terapan* 2, no. 01 (2025): 1-15, https://journal.forikami.com/index.php/praxis/article/view/954.

formulation and application of law. Such a conception encompasses both formal and substantive justice.[31]

Within the framework of Indonesian positive law, justice is reflected in the requirement to provide "fair and just compensation" to entitled parties, as stipulated under Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. However, in cases involving National Vital Objects, the notion of fairness cannot be confined solely to the market value of land and buildings. Rather, it must also encompass the strategic functions and social significance attached to such assets. For instance, where land acquisition disrupts the operation of the national electricity system, compensation should include the costs of relocating installations, reconstructing substitute facilities, and compensating for potential losses in public services. Accordingly, compensation may take the following forms:

1. provision of replacement land possessing equivalent strategic value;
2. construction of substitute facilities by the implementing agency responsible for the development project; and
3. functional compensation, namely compensation for the loss of public service functions or the disruption of vital national systems.

Accordingly, justice should no longer be understood merely as a balance of material values, but rather as the restoration of the social and economic functions that have been lost. In Radbruch's conception, justice must always occupy a superior position over other legal values, since without justice law would lose its moral legitimacy. Consequently, compensation mechanisms that focus exclusively on monetary values while disregarding strategic functions would be inconsistent with the principle of substantive justice.

Second, from the standpoint of expediency (zweckmäßigkeit), law and public policies should be designed to achieve social objectives that generate benefits for the greatest number of people.[32] The ultimate purpose of law is to produce happiness and welfare for society. In this regard, the State and the legal system exist to realize the greatest good for much of the population. In the context of land acquisition affecting National Vital Objects, expediency should be understood as ensuring that development activities proceed smoothly without causing systemic losses to the broader community. A proportionate compensation mechanism would accelerate development while minimizing social conflicts and disruptions to critical infrastructure. Where institutions managing National Vital Objects receive appropriate compensation, relocation or operational adjustments may be carried out efficiently, thereby enabling society to enjoy the benefits of development more rapidly.

Where compensation mechanisms are designed in a realistic and proportional manner, land acquisition processes may proceed effectively without triggering horizontal conflicts. For example, in toll road or dam construction projects affecting national energy facilities, operators

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[31] Anisyaniawati et al, "Konsep Hukum dan Keadilan dalam Pemikiran Gustav Radbruch", Praxis: *Jurnal Filsafat Terapan* 2, no. 01 (2025): 1-15, https://journal.forikami.com/index.php/praxis/article/view/954.

[32] Afdhali, Dino Rizka and Taufiqurrohman Syahuri, "Idealitas Penegakkan Hukum Ditinjau dari Perspektif Teori Tujuan Hukum", *Collegium Studiosum Journal* 6, no. 2 (2023): 555-561, https://doi.org/10.56301/csj.v6i2.1078.

of National Vital Objects such as PT PLN (Persero) and PT Pertamina (Persero) should receive functional compensation enabling them to promptly undertake relocation or operational adjustments without disrupting national energy supplies. From the perspective of expediency, the most appropriate forms of compensation are those that facilitate adaptation and recovery for affected institutions. Such forms include:

1. direct construction of replacement facilities by project developers;
2. provision of ready-to-use substitute assets; and
3. systemic compensation funds intended to cover potential losses in public services.

These forms of compensation not only benefit the recipients but also accelerate the realization of developmental benefits for society at large. Third, from the perspective of legal certainty (rechtssicherheit), Radbruch emphasized that legal certainty constitutes a crucial pillar for maintaining public confidence in legal processes. The central premise of legal positivism provides the logical basis for the emergence of the principle of legal certainty, which is subsequently embodied in positive legislation.[33] Legal certainty requires the existence of clear legal rules, transparent procedures, and reliable mechanisms for dispute settlement. In the context of land acquisition affecting National Vital Objects, legal certainty becomes even more crucial because such cases involve strategic State assets whose disruption may have significant implications for national security and public services.

Although Article 36 of Law Number 2 of 2012 provides several forms of compensation namely monetary compensation, replacement land, resettlement, share ownership, and other forms agreed upon by the parties these provisions remain inadequate for addressing the distinctive characteristics of National Vital Object assets. Existing regulations do not provide detailed mechanisms governing compensation for strategic assets nor do they prescribe technical procedures for implementing such compensation.

Accordingly, amendments to Law Number 2 of 2012 are necessary to specifically regulate both the forms and procedures of compensation applicable to National Vital Objects. Such regulations should include:

1. a comprehensive valuation framework for strategic assets, involving independent appraisers and relevant sectoral technical experts, incorporating operational restoration costs and potential losses arising from disruptions to essential public services;
2. procedures for the provision of replacement facilities;
3. mechanisms for cooperation between project implementing agencies and institutions managing National Vital Objects; and
4. guarantees ensuring operational continuity during transitional periods.

Furthermore, legal certainty also requires the establishment of clear supervisory and accountability mechanisms. In the event of disputes concerning the form or amount of compensation, such disputes should be resolved through the objection mechanisms provided under Law Number 2 of 2012 without unnecessarily obstructing development activities. This

[33] Julyano, Mario and Aditya Yuli Sulistyawan, "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum", *Jurnal Crepido* 01, no. 01 (2019): 13-22, https://doi.org/10.14710/crepido.1.1.13-22.

principle is essential to ensure that legal protection can be maintained without compromising the efficiency of national development.

Accordingly, compensation mechanisms capable of realizing justice, expediency, and legal certainty in the context of land acquisition affecting National Vital Objects should consist of:

1. the provision of replacement assets possessing equivalent or superior functions;
2. the construction of substitute facilities by the implementing agency responsible for the development project; and
3. systemic compensation aimed at addressing potential losses in public service functions.

Through such an approach, land acquisition processes may proceed effectively without jeopardizing the operational continuity of National Vital Objects, while simultaneously ensuring legal certainty and upholding the principles of substantive justice embodied in Indonesian law. Ultimately, compensation should not merely restore the economic value of affected assets but should also preserve their strategic functions and guarantee the uninterrupted delivery of essential public services that underpin national resilience and sustainable development.

4 Conclusions

This study concludes that Article 36 of Law Number 2 of 2012 provides several forms of compensation for land acquisition, including monetary compensation, replacement land, resettlement, share ownership, and other mutually agreed forms, reflecting the principle of distributive justice. However, the existing framework remains inadequate to address compensation for National Vital Objects (NVOs), as it lacks specific provisions and technical mechanisms for strategic assets whose losses extend beyond physical and economic dimensions to include systemic and public service impacts. To strengthen legal certainty, amendments to Law Number 2 of 2012 are necessary to regulate compensation specifically for NVOs, including asset valuation standards, replacement facility procedures, inter-agency coordination mechanisms, and safeguards for operational continuity. Compensation should therefore encompass: (1) replacement assets with equivalent or superior functions, (2) construction of substitute facilities by the implementing agency, and (3) systemic compensation for the loss of public service functions. Such reforms would enable effective land acquisition while preserving the strategic functions of NVOs and ensuring justice, legal certainty, and sustainable public service delivery.

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