

## Ensuring Fairness in Land Acquisition for Public Road Construction: A Case Study of Badung Regency

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### Abstract

#### Article History:

Submitted:

22-08-2024

Received:

05-10-2024

Accepted:

13-01-2025

#### Keywords:

land; street; public; fairness

Land acquisition problems in public interest development raise various psychosocial problems in the community so psychosocial aspects must be taken into account along with the role of independent assessment experts and procurement management needed so that the community can receive compensation from the release of their land. The purpose of the author's analysis is related to the land implementation acquisition in Badung Regency and how to resolve land acquisition rejection disputes in Badung Regency. The author uses an empirical legal research method that has a function in showing the real law that exists in people's lives. The results of the study are on land acquisition for public interest for road construction in Badung Regency using the Land Acquisition Procedures and Procedures in accordance with Law Number 2 of 2012, where Badung Regency, especially the Public Works and Spatial Planning Agency of Badung Regency, Highways Sector as an Agency that requires land on a Small Scale, submits a Work Plan that is in accordance with the Badung Regency Medium-Term Development Plan and the existence of land acquisition and rejecting the compensation value has the right to reject land acquisition by filing an objection to the legal institution, namely the State Administrative Court and the District Court in the rejection, in resolving the rejection dispute, Badung Regency in resolving the dispute by means of Litigation and Non-Litigation.

### 1. Introduction

The position of land is important in human life and is a treasure that can be used to support human life in the future.<sup>1</sup> As a hereditary and valuable asset, both religiously and economically, land and the objects on it and the natural resources contained therein are the common property of the Indonesian nation which must be protected and maintained.<sup>2</sup> In development efforts related to the implementation of government, development for the public interest is very necessary for the use of land with procurement implementation by prioritizing the principles contained in the Basic Law and national land law<sup>3</sup>, including the principles of

<sup>1</sup> Fitria Dewi Nafisa, "Penerapan Tertib Administrasi Dalam Pengadaan Tanah Demi Kepentingan Umum Yang Berlandaskan Keadilan," *PERAHU (Penerangan Hukum) Jurnal Ilmu Hukum* 11, no. 2 (2023): 95–111, <https://doi.org/10.51826/perahu.v0000.000>.

<sup>2</sup> H M Arba, *Hukum Pengadaan Tanah Untuk Kepentingan Umum* (Sinar Grafika (Bumi Aksara), 2021).

<sup>3</sup> Eltinus Omaleng dan Eriyantouw Wahid, "Land Procurement for Public Utility Development in Mimika District, Papua Based on Law Number 2 of 2012 Regarding Land Procurement for Public Interest in The Autonomy Era," *Journal of Social Science* 3, no. 2 (26 Maret 2022): 324–40, <https://doi.org/10.46799/jss.v3i2.322>.

humanity, justice, benefit, certainty, openness, agreement, participation, sustainability, and harmony in accordance with national and state values.<sup>4</sup>

Land acquisition is accompanied by the release of land owned by the people which can cause disputes that end up at least being resolved in court, disputes in land acquisition are caused by sharp differences in compensation for land acquisition where the government considers that the compensation given to the community is in accordance with applicable law while on the other hand the community affected by land acquisition feels that the compensation for land acquisition given is unfair.<sup>5</sup> The land used as a public facility is state land, procurement is not complicated, namely, the government can directly apply land rights that can be used for development, but due to the limited land owned by the government, land is needed from the community to facilitate the development process for the public interest.<sup>6</sup> The state's power as the regulator of natural resources contained within its territory at the highest level is strengthened in the Basic Agrarian Law, Article 2 paragraph (2).<sup>7</sup> In the case of procurement of land for development purposes for the public interest based on the use of the budget for payment of compensation for land rights owners in accordance with the provisions of the Minister of Finance Regulation No. 58/PMK.02/2008.<sup>8</sup> Development projects held to build infrastructure to facilitate activities oriented towards the public interest today require the availability of land quickly.<sup>9</sup> based on Government Regulation Number 39 of 2023 concerning the Implementation of Land Acquisition for Development in the Public Interest, according to the government, it has the authority to control land ownership rights from the government as development in government projects.<sup>10</sup>

This study aims to analyze based on the theory of justice, the theory of dispute resolution whether the Procedure in the implementation of land acquisition for development in the public interest has reflected justice for the community in accordance with the laws and

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<sup>4</sup> Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum Di Dalam Pengadaan Tanah Untuk Pembangunan* (Sinar Grafika (Bumi Aksara), 2020).

<sup>5</sup> Debby Khristina, Kurnia Warman, dan 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 (3 September 2020): 285, <https://doi.org/10.18415/ijmmu.v7i8.1877>.

<sup>6</sup> Dhaniswara K. Harjono, "Tanggung Jawab Penilai Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum," *Jurnal Hukum Indonesia* 2, no. 1 (January 29, 2023): 14–24, <https://doi.org/10.58344/jhi.v1i2.7>.

<sup>7</sup> Sigit Supto Nugroho et al., *Pokok-Pokok Hukum Agraria Indonesia* (Penerbit Lakeisha, 2022).

<sup>8</sup> Nurdiana Lestari, Weny Almoravid Dunga, and Suwitno Yutye Imran, "Perlindungan Hukum Terhadap Ganti Rugi Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Journal of Comprehensive Science (JCS)* 2, no. 6 (June 5, 2023): 1544–52, <https://doi.org/10.59188/jcs.v2i6.374>.

<sup>9</sup> Dilla Nandya Oksitania, Erlina B, dan Yulia Hesti, "The Analysis of Consincing Money Deposits in The State Court As A Form of Accountability of Land Liberation Land Loading In Sumatera Toll Road In Kalianda State Court," *Jurnal Hukum Sasana* 7, no. 1 (27 Mei 2021): 70–78, <https://doi.org/10.31599/sasana.v7i1.491>.

<sup>10</sup> Z. Zainuddin, "The Legal Due Diligence of Land Acquisition for the Public Interest: A Critical Review," *SIGn Jurnal Hukum* 4, no. 1 (20 Juni 2022): 46–57, <https://doi.org/10.37276/sjh.v4i1.159>.

regulations and the wishes of the community.<sup>11</sup> In addition, analyzing the causes of the rejection of compensation and the assessment method of the Independent Assessment Team (Appraisal), as well as what efforts were taken by the Land Acquisition Committee.<sup>12</sup> This research is different from previous research, namely the Implementation of Land Acquisition for Public Interest (Case Study of Land Acquisition for the Construction of the Semarang - Solo Toll Road, Boyolali Regency Section), discussing the implementation of land acquisition for public interest development with an area of less than 1 hectare and the determination of compensation for land acquisition for development in the public interest with an area of less than one hectare in the city of Tangerang.<sup>13</sup> The second study is entitled Consignment Compensation in Land Acquisition for Public Interest According to Presidential Regulation Number 71 of 2012 in Meranti Islands Regency which discusses the implementation of compensation for land acquisition for the construction of Domestic/International Passenger and Cargo Ports in Dorak, Meranti Islands Regency and the factors that inhibit the implementation of consignment compensation for land acquisition for the construction of Domestic/International Passenger and Cargo Ports in Dorak, Meranti Islands Regency.<sup>14</sup> The third study entitled Land Acquisition for Development in the Public Interest with Justice (Ngawi - Madiun Toll Road) which discusses the Rejection of Compensation and Efforts Taken by the Land Acquisition Committee in Land Acquisition for Development in the Public Interest (Ngawi-Madiun Toll Road) and land acquisition for development in the public interest in the construction of the Ngawi Madiun Toll Road reflects justice.<sup>15</sup> The thing that differentiates the previous research from this research is related to the procurement of land for road construction as a public facility in Badung Regency, namely related to how the Badung Regency government builds public facilities related to using community land.

## 2. Methods

The type of research used is empirical legal research. Empirical law that this research will analyze and examine the application of law in reality in society.<sup>16</sup> Conducting research

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<sup>11</sup> I Wayan Kartika Jaya Utama dkk., "Implications Of Control Of Coastal Lands By Foreigners In The Tourism Business," *Protection: Journal Of Land And Environmental Law* 1, no. 2 (30 November 2022): 78–85, <https://doi.org/10.38142/pjlel.v1i2.472>.

<sup>12</sup> Sudjito Sudjito, "Maladministration In Land Acquisition Of Public Interest (Case Study: Solo-Yogyakarta Highway Project)," *Jurnal Dinamika Hukum* 23, no. 1 (28 April 2023): 89, <https://doi.org/10.20884/1.jdh.2023.23.1.3436>.

<sup>13</sup> Nanik Sutarni, "Legal Protection Factors for Owner of Land Right in the Land Procurement That Is Still Not Giving Justice (Legal Case Study on Semarang-Solo Freeway Construction in Boyolali Regency)," in *Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/assehr.k.201209.360>.

<sup>14</sup> Siti Rodhiyah, "Konsinyasi Ganti Kerugian Dalam Pengadaan Tanah Untuk Kepentingan Umum Menurut Peraturan Presiden Nomor 71 Tahun 2012 Di Kabupaten Kepulauan Meranti" (Universitas Islam Riau, 2021).

<sup>15</sup> Putri Lestari, "Pengadaan Tanah Untuk Pembangunan Demi Kepentingan Umum Di Indonesia Berdasarkan Pancasila," *SIGN Jurnal Hukum* 1, no. 2 (March 20, 2020): 71–86, <https://doi.org/10.37276/sjh.v1i2.54>.

<sup>16</sup> I Wayan Kartika Jaya UTAMA and Made WIRYANI, "Independent Development Model for Village Land Asset Management In Segara Kodang by Sesetan Village," *Protection: Journal Of Land And Environmental Law* 1, no. 3 (March 31, 2023): 198–206, <https://doi.org/10.38142/pjlel.v1i3.851>.

with officials who have authority in the process of implementing land acquisition in Badung Regency.

### 3. Results and Discussion

#### 3.1. Optimizing Land Acquisition for Road Development: Public Interest Case Study in Badung Regency

In land acquisition where agencies need to make land acquisition planning a primary priority related to medium-term development plans, strategically, work plans of other agencies. The provisions in Article 7 paragraph (1) state that Land Acquisition for Public Interest is carried out in accordance with Regional Spatial Plan, National/Regional Development Plan, Strategic Plan and Work Plan of each Agency that requires land. Then the provisions in Article 11 paragraph (1) state that Land Acquisition for Public Interest as referred to in Article 10 must be organized by the Government and the land is then owned by the Government or Regional Government. One element in the implementation of development that cannot be avoided is the problem of the need for land where later the community can realize development.<sup>17</sup>

The existence of land acquisition is often used to provide land for many purposes, both public interests and private interests that are not public. The land used for development is land that has mostly been utilized/used, controlled, and owned by individuals, customary law communities, or legal entities.<sup>18</sup> In essence, land acquisition is a government action to obtain land for public interest which is carried out based on deliberation to reach an agreement regarding the release of rights and compensation before the revocation of rights is carried out, where after deliberation there can be a basis for payment of compensation to the land owner.<sup>19</sup>

The provisions of Article 15 of Law 2 of 2012 on land acquisition planning documents that have been prepared based on a feasibility study include socio-economic surveys, location feasibility, analysis of development costs and benefits for the region and community, preparation of planning documents carried out with agencies that require land together with related agencies or institutions that have been appointed. Based on the results of the interview with the Public Works and Spatial Planning Service of Badung Regency represented by I Putu Teddy Widnyana as the Head of the Road and Bridge Development Section, he explained that the implementation stage of land acquisition follows the instructions of the Head of the National Land Agency in accordance with Law 2 of 2012, which is carried out by the Badung Regency government starting from the planning, preparation, implementation, and submission stages.

In land acquisition, location determination still refers to the Regional Spatial Plan (RTRW), which is a spatial planning document that regulates land use in an area. The specified location requires paying attention to the National or Regional Development Plan, Strategic

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<sup>17</sup> Julianti Sembiring et al., "Analisis Perlindungan Hukum Terhadap Kepemilikan Hak Atas Tanah Bagi Kepentingan Umum," *Jurnal Relasi Publik* 2, no. 1 (2024): 63-78, <https://doi.org/https://doi.org/10.59581/jrp-widyakarya.v2i1.2075>.

<sup>18</sup> Westi Utami and Sarjita, "Pengadaan Tanah Di Indonesia Dan Beberapa Negara Dari Masa Ke Masa" (Yogyakarta: STP Press, 2021).

<sup>19</sup> Roosdiana Harahap, "Kebijakan Ganti Rugi Pengadaan Tanah Untuk Kepentingan Umum Dengan Berlakunya Undang-Undang Cipta Kerja," *Al-Qisth Law Review* 7, no. 1 (August 7, 2023): 88, <https://doi.org/10.24853/al-qisth.7.1.88-131>.

Plan, and Work Plan for agencies that require land for agency interests. The National or Regional Development Plan is a planning document that regulates national or regional development priorities within a certain period. The Strategic Plan includes broader government policy directions.

Based on the Interview Results with the MBPRU and Partners Land Appraisal Team as the Badung Regency Land Appraisal Team in South Kuta District represented by Anak Agung Putu Arshana Diputra said that the land appraisal carried out was based on SPI (Indonesian Appraisal Standards), the appraisal method used was Fair Replacement Value (NPW). The owner's interest is a price that has been set according to the price that has been adjusted to the property with consideration of extraordinary elements in the form of Non-Physical Losses which give rise to actions to take over the rights to the Property which are the result of a combination of physical losses and non-physical losses to the object being assessed. This combination is the sum of the Market Value indication of physical losses plus the value indication of non-physical losses, in general, there are 3 (three) main approaches used in the assessment process, namely the market approach, the income approach, and the cost approach.

In this land acquisition assessment, the Cost Approach with the Depreciated Replacement Cost Method (DRC) is considered the most appropriate assessment approach and method, factors that affect the Asset Value in the future with fairly good conditions and regional arrangements in the area where the asset is located, Environmental analysis and several buildings such as hotels, hospitals, ITDC and so on. Then after the land acquisition is carried out, the committee grants land rights to agencies that need it. Agencies that need development that is carried out after the handover of results in a situation that is carried out impromptu and social conflicts can be carried out immediately after the issuance of the Location Determination, Agencies in need of land can still carry out development even though there are objections or lawsuits in Court.

From the planning stage, the agencies that need it still refer to the Regional Spatial Plan by considering other aspects, then, the Regent's Decree is made, namely the Determination of Location, and the preparation stage is carried out socialization to affected residents until deliberation and negotiation, in the implementation of land acquisition in Badung Regency. In the assessment of compensation using the Appraisal Assessment Team which is carried out through a tender process for services first, the assessment carried out by the Appraisal Team is the basis of Nomitanti Data which is made if an agreement is not reached, Badung Regency will deposit compensation through the court or by consignment. After this process, a Deed of Release of Rights is made by a Notary.

Based on the results of the interview with the National Land Agency of Badung Regency represented by Mr. Anak Agung Putu Agung Artha Wibawa as Head of the Land Acquisition and Development Section, stated that the stages of land acquisition implementation in Badung Regency, procedures and methods refer to Law Number 2 of 2012, where in this case the Agency that requires land in its procurement, the procedures and methods are clearly stated starting from planning to the final stage of handing over the results of land acquisition. In land acquisition, what usually becomes an obstacle is the rejection of the compensation given which is considered not in accordance with what the residents want, in addition to the inhibiting

factor is the negotiation process which takes quite a long time, the types of compensation are also included in the law, starting from compensation in the form of money, land, resettlement, shares, or agreed upon by both parties.

Based on the results of the interview with Mr. I Wayan Ronta as a community who agrees with the impact of land acquisition in South Kuta District, Badung Regency, Mr. I Made Ronta is a community who agrees with the land acquisition in Badung Regency. Mr. I Made Ronta said that for the sake of the nation and state, he is ready to provide land to the state if the land is needed, especially regarding the public interest for tourism in Badung Regency. The steps given in the procedure and implementation of land acquisition are in accordance with providing an opportunity for the community to provide opinions and negotiations in the procurement process, in addition, economic factors also affect the land acquisition, only I Made Ronta admitted that the process until the certificate was made was quite a long process carried out by the Badung Regency Government.

Based on the results of the interview with Mr. I Wayan Kerta as a Community Affected by Land Acquisition in South Kuta District, he is a community that agrees to the land acquisition in Badung Regency. He also said that this land acquisition is for the public interest of tourism in Badung Regency. The steps given in the procedure and implementation of land acquisition are in accordance with providing an opportunity for the community to provide opinions and negotiations in the procurement process, in addition, economic factors also affect the impact of the land acquisition, only I Wayan Kerta asked for the arrangement of the area to continue, by the Badung Regency Government.

### 3.2. Resolving Compensation Disputes in Land Acquisition for Road Construction

Land acquisition is the implementation of land procurement which aims to provide fair and equitable compensation the rightful owner so that the compensation value is above market price because there must be a guarantee that the rightful party will get better benefits, can improve their standard of living when compared to being sold in general.<sup>20</sup>

Public consultation on development plans is carried out within a maximum of 60 (sixty) working days. If there are parties who object to the location plan, a public consultation will be held again with the objecting parties within a maximum of 30 (thirty) working days.<sup>21</sup> Land acquisition regulations regulate the principles as the basis for implementing land acquisition for development purposes. The provisions of Article 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest are stated as land acquisition used for public interests.<sup>22</sup>

Dispute resolution consists of two methods, namely through litigation (court) and non-litigation (outside the court). In the process of dispute resolution through litigation is the last means (*ultimum remidium*) for the disputing parties after the settlement process through Non-

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<sup>20</sup> Yagus Suyadi, *Tindak Pidana Pelayanan Pertanahan Dan Pengadaan Tanah Untuk Pembangunan Kepentingan Umum* (Sinar Grafika, 2024).

<sup>21</sup> Asri Sarif, Rahman Hasima, and Ayib Rosidin, "Penyelesaian Konflik Pengadaan Tanah Untuk Kepentingan Umum," *Halu Oleo Law Review* 6, no. 1 (2022), <https://doi.org/http://dx.doi.org/10.33561/holrev.v6i1.23061>.

<sup>22</sup> Oemar Moechthar, Sri Winarsi, and Agus Sekarmadji, *Politik Hukum Pertanahan Indonesia* (Kencana-Prenadamedia Group, 2021).

Litigation has not produced results.<sup>23</sup> The agreement that has been reached is then written down to be signed and implemented by the parties. However, the negotiation process in resolving disputes has several weaknesses, namely when the positions of the parties are not balanced. The strong party will suppress the weak party, then the negotiation process is often slow and can take a long time, then when a party is too hard on its stance.<sup>24</sup>

Based on the results of the interview with the Public Works and Spatial Planning Agency of Badung Regency represented by I Putu Teddy Widnyana as Head of the Road and Bridge Development Section, stated that the stages of land acquisition implementation in Badung Regency, Dispute resolution in land acquisition mainly uses Non-Litigation in its handling, namely Negotiation until all parties agree. If all forms and values of Compensation above are regulated clearly and in detail as described above, then the community affected either directly or indirectly due to land acquisition for development in the public interest will voluntarily relinquish their land rights. As good citizens and with full awareness of their hearts, they are certainly ready to sacrifice for the public interest as long as there is a guarantee of a better and more decent life. Because the demands of the community holding land rights are very simple. Their basic political (negotiation), social, economic and cultural rights are respected and fulfilled. If that has been fulfilled, they will release the land sincerely because they also understand and realize the social function of land and the obligation to support the government in realizing general welfare with social justice and equitable national development, one of which is infrastructure that supports tourism facilities in Badung Regency.

When associated with the Theory of Justice According to Marais SW Sumardjono, it states that justice is not a static concept or an object that can be completely defined, justice is a process, a complex and moving balance between various factors. In relation to the determination of various factors that can affect land prices, these factors will be felt as relatively fair, although they are applied to various subjects in this case land rights holders, the final result does not need to be the same, considering the differences in the situation and condition of each object. The process of determining the amount of compensation for land is not easy, because various factors must be considered and considered in determining the price. These factors are alternative indexes that will be used as considerations for each object and subject of land rights. Thus, the determination of compensation carried out in land acquisition must be able to touch the sense of justice as the holder of land rights so that the holder of rights in releasing his rights does not feel forced but can instead accept it happily.

Based on the results of the interview with Mr. I Wayan Karang Subawa as the Head of Benoa Village, he said that the compensation provided by the Badung Regency Government based on the replacement value from the Assessment Team was in accordance with the assessment standards, only the community wanted a value that might exceed what was expected, such as the value of the batten ceremony which was not in accordance with the wishes of the community. Therefore, specifically in Bali, it is different from other areas in assessing other aspects, of the land acquisition procedure in accordance with applicable laws,

<sup>23</sup> Fahira Nurfayz et al., "Efektivitas Mediasi Dalam Penyelesaian Sengketa Perdata Di Indonesia," *Jurnal Prisma Hukum* 8, no. 6 (2024), <https://jurnalhost.com/index.php/jph/article/view/1272/1725>.

<sup>24</sup> Munir Fuady, *Arbitrase Nasional: Alternatif Penyelesaian Sengketa Bisnis* (Citra Aditya Bakti, 2000).

providing several stages of deliberation and other stages carried out by the Badung Regency government. The settlement of land acquisition conflicts for development where conflicts that arise in community life become an object in land acquisition so that the conflict resolution model can be carried out with 2 approaches, namely penal and non-penal. Non-penal efforts are using problem-solving efforts using a non-judicial approach or in a family manner. While penal efforts are with the principle of problem-solving using the court system.

#### 4. Conclusions

In the implementation stage of land acquisition in Badung Regency, especially the Public Works Department, further extend the time for deliberation and negotiation related to the principles in land acquisition that prioritize agreement, welfare, harmony, and sustainability. In the land acquisition stage, the community asks for assistance, and what are the stages efforts, and factors that can provide a higher compensation value than other aspects and impacts on welfare, in addition to the interests of the state must be acceptable. In the Dispute Resolution Process in Badung Regency, the implementation of land acquisition in Badung Regency must prioritize settlement through negotiation and deliberation to achieve the principles of humanity, benefit, agreement, welfare, sustainability, and harmony, one of the principles of land acquisition is a joint agreement in providing compensation, by setting aside settlement through Consignment or depositing the compensation value in Court.

#### 5. Acknowledgments

The author would like to thank the Notary Masters Study Program, Postgraduate Faculty, Universitas Warmadewa, hopefully, this research will be beneficial for the development of science, especially legal science.

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