



# Ratio Legis of Land Procurement Arrangement for Toll Roads Construction Toward Society 5.0

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**Abstract.** The massive development of communication and information technology has influenced human life; therefore, humans need to adapt to these changes. Through a system that connects the virtual and physical worlds, Society 5.0 offers a human-centered economy that strikes a balance between social issues and economic advancement. The building of toll roads, which stand for "tax on location," is another aspect of crucial infrastructure and a current priority for national growth. This paper elaborates on the Ratio Legis for land procurement arrangement of toll road construction toward Society 5.0. This research method uses normative juridical with a conceptual approach. The result is legal availability of land during the land acquisition process for development is ensured by Law Number 2 of 2012, which regulates land acquisition for development in the public interest. It assures owners of land rights that their property will be fairly compensated if it is seized for public use. The use of the Land Acquisition Information System (SIPT) application, which has the capability as a media for controlling and storing documents and archives of land acquisition implementation activities, is expected to be a solution in the context of accelerating and solving land acquisition document archiving problems, especially in supporting the era of industrial development 4.0 towards society 5.0.

**Keywords:** Land Acquisition, Toll Road, Society 5.0.

## 1 Introduction

Development and management of toll road infrastructure determine regional economic development, improving the community's quality of life and the environment. To minimize the gap between needs and existing services, the government should always strive to improve services to the community. Toll road construction is intended to achieve an even distribution of development and its results, as well as regional balance development with due regard for justice. This can be achieved by fostering a road network with funds from road users. Toll road implementation aims to increase service delivery and distribution efficiency. This policy is necessary to promote economic growth, especially in areas of high development.

The existence of land acquisition regulations for the construction of toll roads must be based on. The principles of benefit, welfare and justice. It means that the construction of toll roads will provide direct or indirect benefits and broad benefits for people's lives. In addition, it can facilitate transportation facilities to access haul routes as accommodation and make it easier to meet community needs, which in the end, is for the community's welfare.

According to Maria Sumardjono, land acquisition activities involve the interests of two parties: government agencies needing land and communities requiring land for development activities. Land, as a basic human need, embodies economic, social and cultural rights. The land acquisition must be carried out through a process that ensures no "forced will" of one party against another. Considering that the community must give up their lands for development activities, it must be guaranteed that their socioeconomic welfare will not deteriorate; at least, it must be the same as before others used the land <sup>1</sup>.

Over the past five years, the government has prioritized infrastructure development evenly in various parts of Indonesia. The multiple infrastructures that have been built range from roads, bridges, dams, housing, drinking water supply, sanitation, irrigation, and infrastructure facilities, including the construction of toll roads. In 2020 the PUPR Ministry received a budget allocation of IDR 100.59 trillion or only 57% of the proposed budget of IDR 176 trillion. In 2021, the absolute ceiling for the Ministry of PUPR was Rp. 152.1 trillion, and the realization is Rp. 143.5 trillion. With that much budget, it is hoped that infrastructure development, especially the construction of toll roads, will impact the Indonesian economy in the future. The construction of toll roads has now reached 2,042 km<sup>2</sup> <sup>2</sup>.

The development of toll road infrastructure remains a priority for the government to realize a process of equalizing prosperity throughout Indonesia. This infrastructure development requires land and can be implemented through a land acquisition to develop public interests. This has been regulated through Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. These laws and implementing regulations aim to facilitate the land acquisition process for developing various kinds of infrastructure in Indonesia, including the construction of toll roads.

In its implementation, even though it has been regulated through Law Number 2 of 2012 along with five Presidential Regulations (Perpres) as derivative regulations, many loopholes still hinder the implementation of land acquisition. Obstacles in the implementation of land acquisition, including a) the location determination issued by the Governor not following the local, regional spatial plan is not supported by preliminary data, as well as the approval of the rightful party, which results in rejection in the implementation of land acquisition. b) implementation in the regions for the National Strategic Project (PSN) needs to be improved because it needs to include the type of public interest. Therefore land acquisition cannot be carried out by Law Number 2 of 2012, c) if a consignment is made at the District Court (PN), some are rejected because there needs to be more time <sup>3</sup>.

Based on these facts, it is necessary to explain and analyze how the ratio legis of land acquisition arrangements for toll road construction towards society 5.0 is in overcoming the problem of land acquisition for public purposes

## **2 Result and Discussion**

### **2.1 Land Procurement for Toll Road Construction**

Development has various forms and types to develop public good or public interest. Growth for the public interest is one of the bases for the government to legitimize it in the context of carrying out the land acquisition. This is because the government needs land to realize development in all fields, while the availability of land is increasingly limited.

The Indonesian people understand that land has the highest position in Indonesian society. The land is the capital of life and livelihood as well as the basis of life, so if the land is needed for development, it will cause a quick reaction from the community in the form of rejection, resistance, and even lawless actions and cases arising in court. This condition often occurs when the government requires land for public purposes. The government is very aware of this, but on the other hand, the government always needs land to develop for the welfare and prosperity of all Indonesian people.

The term "land acquisition" was legally recognized for the first time since the issuance of Presidential Decree No. 55 of 1993 concerning Land Acquisition for Implementation of Development in the Public Interest. According to Budi Harsono, "Land acquisition is a legal action in the form of releasing the legal relationship that originally existed between the right holder and the necessary land, by providing compensation in the form of money, facilities or otherwise, through deliberations to reach an agreement between the land owner and the party who needs it."<sup>4</sup>

As a juridical basis for implementing land acquisition in Indonesia, in 2012, the government enacted Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. The provisions of Article 1 number 2 define land acquisition as follows "Land acquisition is the activity of providing land by providing proper and fair compensation to the entitled party." The entitled party is the party that controls or owns the land acquisition object. Objects of Land Procurement are land, above-ground and underground space, buildings and plants, objects related to land, or other things that can be appraised. Based on this understanding, land acquisition consists of the following elements: a) Legal actions in the form of relinquishing land rights to become state land; b) Relinquishment of land rights for public purposes; c) Legal actions are based on deliberation and voluntarism; d) Accompanied by fair and proper compensation.

Land procurement for the development of public interest contains several principles that must be considered and adhered to so that its implementation achieves the goal of maximizing the prosperity of the people, including:

#### **1. Principles of Deliberation.**

Even though the land acquisition is held in the public interest, its implementation must be based on deliberations between the government agency building it and the land owner or authority. Thus, there is no land acquisition without consideration. Therefore, land acquisition is based on an agreement. Without an agreement, in principle, there

will be no land acquisition. The agreement referred to is an agreement regarding the location of the land pawnshop and the form and amount of compensation.

## **2. Principle of Public Interest.**

Land acquisition is only carried out for the public interest. Suppose the development activity is not in the public interest. In that case, the person concerned must take care of his interests by contacting the land owner directly, without the help of a committee. Therefore, the notion of public interest is essential to be emphasized in the law.

## **3. Principle of Releasing or Surrendering Land Rights.**

Land acquisition cannot be forced, so its implementation must be based on releasing land rights from the right holders. Land acquisition can only be carried out if the right holder is willing to give up his rights to break the legal relationship between him and his land and then hand it over to the state for development. This willingness is usually stated after the person concerned has received proper compensation according to the agreement. If there are rights holders who voluntarily provide land for development without payment, such land acquisition is carried out through the transfer of rights. So there is no land acquisition like that done through the transfer of ownership.

## **4. Principle of respect for land rights.**

Every land acquisition must respect the existence of ownership of the land that will be used as a place of development. Every land right, whether certified or not or is customary land, must be respected. No matter how small, people's rights to the land must be respected.

## **5. Principle of Compensation.**

Land acquisition is obligatory based on providing appropriate compensation to the right holders based on an agreement in the principle of deliberation. This means that determining the form and amount of payment is also an essential aspect of land acquisition; compensation must be able to improve people's welfare

## **6. Principles of Spatial Planning.**

Development for the public interest is intended for the greatest possible prosperity of the people, so its implementation must comply with the spatial layout plan of the local area

Implementation of land acquisition for the construction of toll roads, the Governor, together with agencies that require land, announce the determination of the construction location for the public interest. The announcement will notify the public that construction will be carried out in the said location for the public interest. Determining the construction site for the appropriate party's public interest can only transfer their land rights to the agency that needs the land through the land agency. So based on the determination of the location of the development for the public interest, the agency that requires land submits the implementation of Land Procurement to the Land Agency.



In principle, land acquisition for toll road construction is carried out by the Land Agency, which can involve or coordinate with the provincial or district/city government in its implementation. Implementation of Land Procurement as referred to includes:

### **1. Inventory and Identification of Control, Ownership, Use, and Utilization of Land**

The aim is to find out the Entitled Parties and Land Acquisition Objects. Inventory and identification results contain a list of nominated Entitled Parties and Land Acquisition Objects. The entitled party includes the name, address and occupation of the party who controls/owns the land. Land Procurement Objects have a location, area, status, and land use and utilization type.

### **2. Compensation Assessment.**

Article 31 Law no. 2 of 2012 states that the Land Agency determines an Appraiser following statutory provisions. Then the land agency announces the appraiser assigned to carry out the appraisal of the land acquisition object. The appointed appraiser must be responsible for the assessment that has been carried out. Violation of the appraiser's obligations regarding the assessment that has been carried out may be subject to administrative and/or criminal sanctions.

The appraisal of the amount of compensation by the appraiser is carried out in plot per plot of land, including a) land; b) above-ground and underground space; c) buildings; d). plant; e) objects related to land; and/or f) other losses that can be assessed. The value of compensation assessed by the appraiser is the value at the time of the announcement of the determination of the construction location for the public interest. The amount of the compensation value based on the results of the appraiser's assessment is submitted to the land agency with an official report. The value of compensation based on the results of the appraiser's assessment becomes the basis for deliberations on determining compensation.

In Article 35 of Law Number 2 of 2012, it is stated that if, in the case of specific land parcels affected by land acquisition, there are remnants which can no longer be functioned following their designation and use, the entitled party may request a complete replacement of the land parcel. What is meant by "no longer able to function" is a plot of land that can no longer be used by its original designation and use, for example, a residential house divided so that part of it cannot be used as a residential house. In this regard, the party who controls/owns the land may request compensation for the entire amount.

### **3. Deliberation on the Determination of Compensation.**

The land agency conducts deliberations with the entitled party within a maximum period of 30 (thirty) working days from the appraisal results from the appraiser submitted to the Land Agency to determine the form and/or amount of compensation based on the results of the compensation assessment. The results of the agreement in the deliberations become the basis for granting compensation to the entitled party, which is contained in the minutes of the agreement. In the event that there is no

agreement regarding the form and/or amount of compensation, the parties are entitled to submit an objection to the local district court no later than 14 (fourteen) working days after deliberation on the determination of compensation.

The District Court decides on the form of compensation amount within a maximum period of 30 (thirty) working days from the receipt of the objection. As a consideration in deciding on the amount of compensation. Parties who object to the district court's decision regarding the amount of compensation within a maximum period of 14 (fourteen) working days may submit an appeal to the Supreme Court of the Republic of Indonesia. In this case, the Supreme Court must render a decision within 30 (thirty) working days from when the cassation request is received. District court/Supreme Court decisions that have obtained legal force remain the basis for paying compensation to the party filing the objection.

Suppose the Entitled Party rejects the form and/or amount of compensation, but does not submit an objection within 14 (fourteen) days after deliberation on the determination of compensation due to law. In that case, the Entitled Party is deemed to have accepted the form and amount of the compensation.

**4. Compensation can be in form of a) money, b) replacement land, c). resettlement; d). shareholding; or e). other forms agreed by both parties.**

. Land procurement for the construction of toll roads, including development activities for the public interest, must be continuously pursued in line with the increase in population and prosperity. In general, the development of toll roads is a vital requirement as the primary support for economic dynamics and activities, both at the central and regional levels, and regional development, as well as being the central supporting infrastructure for the national economy. Toll roads also have strategic benefits, namely creating large-scale jobs, increasing the use of domestic resources, and increasing the real sector by creating a multiplier effect for the national economy. Based on the paper submitted by the Directorate General of Highways at the Group Discussion Forum (FGD), road infrastructure in Indonesia has an essential role in the national transportation system by serving around 92% of passenger transport and 90% of freight transport on the existing network.

The characteristics of land acquisition for toll road construction include:

1. The existence of toll roads and their concessions are regulated by law. Based on the regulations in force, ownership and rights to operate toll roads rest with the government. In addition to bearing the cost of land acquisition, the government can also give authority to a state enterprise to manage toll roads, including building, maintaining and operating activities. With the government's approval, state business entities that are given the power to use toll roads can cooperate with investors in whole or in part in the operation of toll roads.
2. Toll roads have reliable quality, are free of obstacles and toll road users must pay tolls. In general, toll roads have high technical reliability. If toll roads are adequately maintained and repaired, then toll roads will function and have a very long technical life. Periodic maintenance and repairs are required for toll road

bodies, for example, resurfacing pavement or replacing some components in toll bridges experiencing wear and tear.

3. The procurement of toll roads is closely related to the national road network development program, which encourages the development of areas around toll roads. In the construction and operation of toll roads, there is the possibility of environmental demands on toll road operators to develop non-toll road networks, road auxiliary buildings and road equipment. These environmental demands significantly affect the operation of toll roads as alternative roads."<sup>5</sup>

## 2.2 Land Procurement for Toll Road Construction

The Unitary State of the Republic of Indonesia is a legal state (*rechtsstaat*), not based on mere power (*machtsstaat*). The conception of a rule of law desired by the founding fathers since the beginning of the struggle for independence can be seen in the basic ideas in the Preamble of the Constitution 1945, namely "independence, justice, humanity and the statement that the state government is obliged to protect the entire nation and all of Indonesia's bloodshed and to promote general welfare". This provides direction and hopes that the law will protect all people, all individuals, from unfair treatment and arbitrary actions. The law will protect every citizen of the nation so that their rights as citizens and human rights are guaranteed.

Based on the form of law can be divided into two, namely:

1. The state of written rule is law in the form of written text which is usually in the form of legislation
2. The state of unwritten rule is law in the form of habits in society that are accepted and obeyed as applicable law.

As a rule-of-law country, Indonesia has legal rules in the form of legislation. This form of legislation serves to regulate society in a better direction. As a country that has chosen the principles of democracy and integrated them with the principles of the rule of law, Indonesia will organize life and life in society, as a nation and as a state using the democratic rule of law. The Indonesian government will build an order for living together within the framework of an Indonesian state that is democratic and based on the rule of law. It means that the Indonesian nation will put democratic principles and legal principles as a mutually symbiotic-mutualistic synergy in realizing the existence of a democratic national legal order in the country <sup>6</sup>.

It is necessary to enact a law on land acquisition for development in the public interest, including toll roads. Law is the legal basis that forms the basis for the implementation of all policies relating to the taking of land by the government for the public interest. In addition, everything that takes citizens' privacy rights must be regulated by law because they need to get approval from the DPR as the people's representative.

The formation of legislation, according to Bagir Manan must be based on a philosophical (*philosophical gelding*), based on sociological (*sociologische gelding*) and based on juridical (*yuridische gelding*). The philosophical foundation means that the law has power if the law is in accordance with the ideals (*rechtsidee*) as the highest positive value. The philosophical elements of the laws and regulations in Indonesia are

formed by taking into account the outlook on life, awareness and ideals of law include mysticism, as well as the philosophy of the Indonesian nation; which originates from Pancasila and the Preamble of Constitution of the Republic of Indonesia 1945.

Juridically, the purpose of establishing Law Number 2 of 2012 are

1. To realize a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to carry out development.
2. To guarantee implementation of development for the public interest, it is necessary to acquire land whose procurement is carried out by prioritizing the principles of humanity, democracy and justice
3. Because the statutory arrangements in the field of land acquisition for development for the public interest have yet to be able to guarantee the purchase of land for development implementation, the government needs to make laws that can accommodate all of this.
4. Indonesia's increasingly high economic growth has had the impact of increasing infrastructure development by both the central and regional governments and can accelerate toll road infrastructure development projects in Indonesia.

The formation of Law Number 2 of 2012 concerning land acquisition for the development of public interests by the purpose of the law itself is to achieve legal certainty. It means providing legal certainty regarding the availability of land in the process of land acquisition for development and providing guarantees to the holders of land rights whose land is taken for public purposes in terms of receiving proper compensation.

In line with the opinion of the Head of the National Legal Development Agency Benny Riyanto, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia explicitly states that the State of Indonesia is a country of laws. The rule of law referred to in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is a state that upholds the rule of law to realize truth and justice. In it, no power cannot be accounted for. Legal development as one of the catalysts for nation-building needs to be supported by a solid national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia <sup>7</sup>.

According to Rouscu Pound's concept of " law as a tool of social engineering," law is the basis for legal reform. It means that legal content material should be able to capture the aspirations of the people who are growing and developing not only in the present but as a basis for anticipating social, economic, political and cultural developments in the future. . Thus the sociological basis illustrates that regulations are formed to meet the needs of society from various aspects. Because legal aspects and other aspects (political, economic, socio-cultural, defence and security) also function as engineering tools for people's lives. The law outlined in statutory regulations can also direct the development of social life by structuring community members' social life.

Likewise, in regulating land acquisition for the construction of toll roads, it is hoped that it will become a revival point for developing national law in the land sector. Not only accommodating ideological and philosophical interests originating from the

original culture of the Indonesian people, namely Pancasila, but also being able to accommodate advances in information technology in industrial development 4.0 so that we will more easily adapt to the era of society 5.0.

In 2016, the Ministry of Agrarian Affairs and Spatial Planning (ATR)/National Land Agency (BPN) issued a tool to support the accelerated process of implementing land acquisition in the form of an online-based application, namely the Land Acquisition Information System (SIPT) as the latest innovation in the field of land acquisition in Indonesia. SIPT has the capabilities as 1) Media for controlling and storing documents and archives of land acquisition implementation activities, both from the point of view of the head office, regional offices, as well as digital storage of documents and archives of land acquisition activities; 2) functions as internal monitoring media that integrate the implementation of the duties of each office.

Supporting the realization of an intelligent society in welcoming the era of society 5.0 and realizing the SIPT application, there are various arrangements related to land acquisition for public interest with the issuance of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Public Interest. In Article 3 (1) of Government Regulation Number 19 of 2021 regulates the stages of land acquisition for public purposes, including the Inventory and Identification stages by Task Unit A, in charge of collecting physical data on land acquisition objects and Task Unit B in charge of collecting juridical data on procurement objects land and procurement preparation stages through digitization. Digitalization will be easier, faster, transparent and accountable, and the realization of legal certainty in preparing land acquisition for development is in the public interest. It is emphasized again in Article 132 (1) of Government Regulation Number 19 of 2021 states that land acquisition activities for development in the public interest are carried out electronically.

So that the infrastructure that the Ministry of PUPR has built becomes an important momentum to continue the welfare of the Indonesian people, the use of the SIPT application is expected to be a solution in the context of accelerating and solving land acquisition document archive management problems, particularly as a means of supporting the industrial development 4.0 towards society 5.

It is necessary to consider the regulation of land acquisition for the construction of toll roads in the future as part of the regulation of land in Indonesia. There are essential strategic elements, namely:

1. Land acquisition for the public interest is closely related to the progress or improvement of culture, and political development, in this case, the construction of infrastructure facilities and projects that aim to provide significant benefits to the public and are of high financial value.
2. The land acquisition process for the public interest is related to relinquishing and terminating land rights and objects on land from the owner. It will also relate to the life of the owner of land rights and the objects on it, which are fundamental human rights. The element of releasing land for the sake of development for the public interest by the right owner, of course, will be different from the relinquishment of

land rights, which is the will of the right owner if he intends to relinquish his rights in a free transaction.

3. Regarding land acquisition for public interest in Indonesia, there are currently no opportunities for the private sector to be involved, despite the concept and arrangement. As a form of legitimacy for private sector participation in the land acquisition process in the name of public interest.
4. From an economic and political perspective, the background of land acquisition for the public interest, especially the construction of toll roads, can be traced back to the influence and pressure from international parties in formulating and determining policies.

The recommendation that can be given regarding this problem are harmonizing legal regulations by the government relating to land acquisition for toll road construction in order to improve the legal concept of land acquisition for toll road construction so that there are no norm conflicts. Also, preparing government policies that support land acquisition for toll road construction that the government must utilize, community and stakeholders in the era of society 5.0, including Internet of things (IoT), Virtual/Augmented reality and the use of Artificial Intelligence (AI) to find out and identify needs in the implementation of land acquisition for the public interest

### 3 Conclusion

Procurement of land for the construction of toll roads is included in development activities for the public interest; its implementation must continue to be pursued in line with the increasing population, accompanied by increasing prosperity. The establishment of Law Number 2 of 2012 concerning land acquisition for the development of public interests as a juridical basis for the construction of toll roads by the objective of the law itself is to achieve legal certainty. It means providing legal certainty for the availability of land in the process of land acquisition for development and providing guarantees to the holders of land rights whose land is taken for public purposes in terms of receiving appropriate compensation.

The use of the Land Acquisition Information System (SIPT) application which has the capability as a medium for controlling and storing documents and archives of land acquisition implementation activities both from the point of view of the head office, regional offices, as well as digital storage of documents and archives of land acquisition activities. It is expected to be a solution in the context of accelerating and solving the problem of archiving land acquisition documents, especially supporting industrial development 4.0 and society 5.0.

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