



**The Right Of Ownership By The State In The Acceleration Of Public Infrastructure Development  
(A Philosophical Study of Land Ownership Rights by the State in the Convergence of Justice and Legal Certainty)**

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**ABSTRACT**

Article 33 paragraph (2) and (3) of the 1945 Constitution explains that the Right to Control is the only material right that is explicitly granted by the Constitution to the Indonesian state. In this case the order as mandated by the 1945 Constitution contains a state of action, the will to be in accordance with its purpose. The problem is whether the state has gone through the confusion and laws and regulations that have regulated the implementation of these orders as guidelines in making policies so that they can achieve their goals. In this regard, even though the state has the right to control land, there are right of the people whose land is affected by public infrastructure development projects, namely in the form of compensation. For this reason, this study examines in depth philosophical analysis regarding land right by the state in terms of providing public infrastructure in terms of the principles of justice and principle of legal certainty

**Keyword:** Land rights, State power, Acceleration of public infrastructure, Compensation

**INTRODUCTION**

Infrastructure is the driving wheel of economic growth. From public and private financing allocation, infrastructure is seen as the locomotive of national and regional development. From a macroeconomic perspective, the availability of infrastructure services influences the marginal productivity of private capital. In contrast, in the context of microeconomics, the availability of infrastructure services affects the reduction of production costs.[1] Infrastructure also has an important influence on improving the quality of life and human welfare, including increasing the value of consumption, increasing labor productivity and access to employment, as well as increasing real prosperity and realizing macroeconomic stability, namely fiscal sustainability, credit market development, and its impact on the labor market. So much and the magnitude of the role of infrastructure that a study conducted in the United States [2] shows that the rate of return on infrastructure investment on economic growth is 60%.[3] Discussing public infrastructure security threats and so on. The land also has the value of social justice for all the people and favors the people. The values are basic standards [4] or basic norms [5] for the Indonesian people to act and behave and to serve as a guideline and basis for laws and regulations in the land sector. Judging from the national development goals, Indonesia adheres to the type of welfare state. Concerning development efforts and aspirations for the welfare of the people, a statutory regulation is drafted which aims to provide land for the implementation of development in order to increase the welfare and prosperity of the nation, state, and society while still guaranteeing the legal interests of the parties entitled to it.[6] This regulation is Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest (LN. 2012-

22, TLN. 5280). Then these provisions were updated through Government Regulation 19 of 2021 concerning implementing Land Acquisition for Development in the Public Interest. Government Regulation 19 of 2021 was born as an implementing regulation for the unification of laws regarding work creation, namely implementing the provisions of Article L23, Article 173, and Article 185 letter b of Law Number 11 Year 2020 concerning Job Creation. Then followed by the issuance of Government Regulation 42 of 2021 concerning the Ease of National Strategic Projects.

The basis for the birth of the provisions mentioned above is none other than the slump in infrastructure development in Indonesia, both before and after the economic crisis, not only caused by internal factors, such as the lack of government budget in the development sector, but also by external factors. Often, we hear of cases of infrastructure development being threatened with failure due to being hampered by land acquisition.[7]

Article 33, paragraphs (2) and (3) of the 1945 Constitution reads: "Earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people. "The two paragraphs of the Constitution give the state a right called the Right of Control. The Right to Master or sometimes called the State Controlling Rights (HMN), is the only material right that the Constitution explicitly grants to the Indonesian state.[8] In this case, the Commandment, as mandated by the 1945 Constitution, contains a state of action, the will to be following its purpose. The problem is: has the state, through the Constitution and existing laws and regulations, regulating the implementation of the order as a guide in making policies so that its goals can be achieved? The 1945 Constitution needs to provide more provisions regarding the meaning and substance of the state's right to control natural resources, especially land. The authentic explanation is contained in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

An understanding of the meaning and substance of the state's right to control land is needed in the BAL.[9] Based on meaning and substance, a description of the exercise of state authority in terms of regulation, management, and supervision of land tenure by the state, government bodies as well as communities, and individuals can be put forward so that it can be seen whether the description of management and supervision arrangements is following the meaning and substance of the Constitution. 1945.[10]

Understanding the meaning and substance of the state's right to control over land is essential to rectify the authority that has existed so far in regulating, managing/managing, and supervising to avoid confusion and arbitrariness.[11] Likewise, in the current era, demanding political affirmation of land law in laws and regulations and the attitude of the Government to ensure accelerated increase in prosperity by taking into account regional aspects, pluralism of legal communities including customary law communities, and guarantees of legal protection for holders of land rights. In facing the free market era of the 21st century, demanding legal readiness in every field of development [12] because development in itself contains significant changes, which include changes in economic structure, changes in the physical area, changes in natural resources and the environment, changes in technology and changes in the value system, the people may be left behind.[13]

In short, according to the BAL, the state's right to control land means the state's right to regulate and manage land, not the right to own land. The UUPA concept is influenced by customary law, which does not recognize absolute/absolute individual property rights over land, and only recognizes communal rights over land. UUPA does recognize that the law that applies to earth, water, and space in Indonesia is customary law as the original law of the Indonesian people (article 5 and General Explanation Part III (1) UUPA).[14]

In this regard, even though the state has the right to control land, as the author has described above, there are rights of the community whose land is affected by a public infrastructure development project, namely in Compensation. However, in the effort to develop the project, land acquisition and Compensation will undoubtedly be solved. The current land acquisition mechanism can be grouped into 2 (two) categories when viewed from the aspect of the development (project) owner and the interests of the development, namely land acquisition for public purposes carried out by the Government and land acquisition for private interests carried out by individuals or companies. The regulation governing the mechanism for land acquisition for public purposes that has been in force until now is Law no. 20/1961 concerning Revocation of Land Rights and Objects on it, Presidential Decree No. 55/1993 concerning Land Acquisition for the Implementation of Development in the Public Interest, and the Minister of Agrarian

Affairs/Head of BPN No. 1 of 1994 concerning Provisions for Implementation of Presidential Decree No. 55 of 1993. The mechanism for land acquisition for private interests is regulated by PERMENEG AGRARIA/Head of BPN No. 2 of 1999 concerning Location Permits and several technical regulations issued by the Minister of Agrarian Affairs/Head of BPN, which support the implementation of location permits.

Specifically for land acquisition for public purposes carried out by the Government, RI Presidential Decree No. 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest clearly states that the scope of development for the public interest is only limited to development activities carried out and subsequently owned by the Government and not used for profit. However, some people's perceptions still indicate a desire to get the maximum benefit from land acquisition activities and eventually sometimes cause problems in the form of land disputes.[15]

Problems arising in acquiring land belonging to communities affected by infrastructure development projects generally start from conflicts, disagreements, and disagreements regarding the amount of Compensation given by the perpetrators of land acquisition. What is more, if the landowner knows in advance that their land will be used as an infrastructure project, they will immediately increase the selling price of their land.[16] The issue of land compensation is the most sensitive component in the land acquisition process.[17]

Compensation can be provided as money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties. The form of Compensation, independently or as a combination of several forms of Compensation, is given following the value of the Compensation, which is the same nominal value as determined by the Appraiser. In the deliberations, the executor of the land acquisition will prioritize the provision of Compensation in the form of money.

Let us stand on Article 34, paragraph (3) Law Number 2 of 2012. The value of Compensation based on the Appraiser's assessment (appraisal team) results form the basis for deliberations on determining Compensation. The appraisal team needs to have the authority to determine the compensation value because the results of the appraisal team's assessment only serve as the basis for the land agency in deliberations with land rights owners to determine the compensation value.

As explained in the previous paragraph, article 1 point 2 of Law Number 2 of 2012 states that Land Acquisition provides land by providing proper and fair Compensation to those entitled. Compensation is proper and fair to the entitled party in the land acquisition process. The entitled party is the party that controls or owns the land acquisition object. From the previous, where land has a social function, and there is a guarantee of individual rights, it is binding on the provision of Compensation for land used in the public interest. For this reason, this research seeks to analyze more philosophically in depth the right to control land by the state in terms of the provision of public infrastructure in terms of the principles of justice and the principle of legal certainty. In addition, this research seeks to provide a model of equitable Compensation for land rights used by the state to benefit public infrastructure development.

## RESEARCH METHODS

The method used in this research is qualitative research, with a normative legal approach (normative juridical). This research is used to explore the facts of the application of the law so that it can classify problems and find solutions to these problems.

## RESULTS AND DISCUSSION

### 1. The Right to Dominate Land controlled by the state for public benefit

Article 33, paragraph 3 of the 1945 Constitution states that land, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The word "controlled" here implies that being controlled by the state does not mean that the state itself is in power. However, it implies that the state's power lies in making regulations whose goal is for the smooth running of the economy, where these regulations prohibit weak people from being trampled on by strong (capitalized) people. Besides that, another meaning contained in Article 33, paragraph 3 is that the position of the people is the most important of the interests of individuals. This is also emphasized in Law Number 5 of 1960 concerning Basic Agrarian Rules (UUPA) in Article 2 paragraph (2), namely the right to control by the state here is given the authority to:

1. Regulate and administer the designation, use, supply, and maintenance
2. Determine and regulate the rights that can be fulfilled over (part of) the earth, water, and space
3. Determining and regulating legal relationships between people and legal acts concerning the earth, water, and space

The conclusion is that according to the UUPA, the right to control by the state means the state's right to regulate and manage land and does not mean the right to own land. Article 6 of the BAL states that land rights controlled by the state have a social function. Land that has a social function has a social function when it comes to the interests of the people. This social function requires a balance between individual interests and the interests of many people (generally). The existence of a balance between the two interests is expected to achieve justice and prosperity for all people.[18] One of the goals contained in the 1945 Constitution is to promote the welfare of the Indonesian people, and one of the goals is to carry out development in various fields, including development for the public interest. The land is an essential aspect of development efforts, but the problem is that the amount of land controlled by the state is limited. Based on these conditions, the government began to conduct land acquisition by using the land of individuals or legal entities controlled by land right to meet the need for accelerated land development for public (public) infrastructure.

Procurement for the implementation of development for the public interest can be done in two ways: relinquishment of land rights and revocation of land rights. Relinquishment of rights is a means to obtain community-owned land rights through deliberations by providing appropriate compensation.[19] While the revocation of land rights is a means to obtain land rights from the community in the form of forced efforts after deliberations for consensus have yet to meet common ground.[20]

Apart from the UUPA regulating land acquisition, according to current developments, land acquisition is also regulated in Law no. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. And Regulation of the Government of the Republic of Indonesia Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest

According to Article 1 number 2 of Law No. 2 of 2012, land acquisition is providing land by providing proper and fair compensation to the rightful party. Land acquisition is a legal action carried out by the government to obtain land for specific interests by providing compensation to the owner (either an individual or a legal entity) in the form of an amount of money, replacement land, resettlement, or other forms agreed by both parties.

Nature often interferes with human interests in earthquakes, floods, hot mud, tsunamis, landslides, storms, etc. However, interference or danger to human interests also comes from humans themselves (*homo homini lupus*: one human being is a wolf to another human being), fraud, theft, hit and run, infidelity, adultery, kidnapping, murder, violence, and so on. Because human interests are constantly disturbed by the dangers around them, humans want protection against their interests, not to be disturbed by the various dangers. People want to live peacefully. Humans need protection for their interests. Then it was created protection of interests in the form of social norms, including legal rules.[21]

Besides protecting human interests against the dangers that threaten them, the rule of law also regulates the relationship between humans. By regulating relations between people and creating order or stability, conflicts or disturbances of these interests can be prevented or overcome. In regulating human relations, the law also enhances or develops these human relations [22]

The public interest is that the interest must fulfill its designation, and the benefits must be felt in the sense that it can be felt by the community as a whole and/or directly. Land acquisition is aimed at the public interest. The broad public interest is the interest of the State which includes personal and group interests. In other words, the public interest concerns the majority of society.[23]

In Presidential Decree No. 65 of 1993, public interest cannot be said to be specific. Public interest as a concept goes with the establishment of the State. The State was formed in the public interest, and law is the primary means of realizing this public interest. Presidential Decree No. 36 of 2005 states that public interest is the interest of most layers of society. This presidential regulation mentions the characteristics of activities for the public interest. Namely, the public interest is development activities owned and carried out by the government and are non-profit. In Article 1, number 6 of Law Number 2 of 2012 and Presidential regulation Number 1 . of 2012,

Article 1, number 6, namely public interest is the interest of the nation, State, and society which must be realized by the government and used as much as possible for prosperity.

## **2. Compensation for Land Procurement for Public Interests**

### **a. Definition of Compensation**

Compensation is the most critical aspect of land acquisition in the development of public interest. Compensation is an effort to realize respect for the rights and interests of individuals sacrificed for the public interest. It can be called fair if it does not make people more affluent or, conversely, does not make them poorer than their original State.

Law Number 2 of 2012 in Article 1 point 10 states: "Compensation is a proper and fair compensation to the entitled party in the process of land acquisition,

In order to feel fair to shareholders, specific criteria should be applied objectively, with predetermined standards. In addition, the final determination of the amount of Compensation must be reached by deliberation between the rights holder and the agency that requires the land.

### **b. Types and Forms of Compensation**

Based on Article 36 of Law Number 2 of 2012, Compensation can be given in the form of:

1. Money;
2. replacement land;
3. Resettlement
4. Share ownership; or
5. Other forms agreed upon by both parties.

The Presidential Regulation does not further elaborate on the form of non-physical Compensation. Non-physical losses include loss of jobs, lines of business, sources of income, and other sources of income that impact the decline of one's level of well-being.

Complementarity to physical Compensation. Fair Compensation is when the condition after expropriation is equal to the previous situation. Besides that, there is a guarantee for the survival of evicted people. Presidential regulations governing land acquisition for the benefit of.

Compensation is generally interpreted as compensation for losses incurred due to default, but compensation in the land acquisition process is a proper and fair compensation to the rightful party in the land acquisition process. Losses are divided into 2 (two) types, namely material losses and immaterial losses.

Material losses are losses that essentially can be valued in money, while immaterial losses are losses that in principle cannot be valued in money. If viewed from this understanding, compensation for land acquisition is included in material losses. The form of compensation according to civil law is divided into 3, the first is in kind, namely in kind, that is, damaged objects are replaced with new objects, the second is in the form of surrogate, where damaged objects are replaced with similar objects, and the last is in the form of money, namely things that are usually compensation. usual loss. However, sometimes you also have to pay attention to immaterial losses or non-physical losses, such as loss of sources of income, loss of access to public services.

## **3. Determination Compensation**

Determination of the amount of compensation is carried out by an appraisal team appointed by the land agency in accordance with Law Number 2 of 2012 and forms the basis of deliberations for determining compensation. Compensation as referred to in Law Number 2 of 2012 is a proper and fair compensation to the entitled party in the land acquisition process.

In Law Number 2 of 2012 Article 34 paragraph (1) states: "The value of the loss assessed by the appraiser as referred to in Article 33 is the value at the time of the announcement of the determination of the construction location for the public interest as referred to in Article 26".

Appraisers who have been appointed by the land agency must be responsible To assessment which already executed and if there is a violation, administrative and/or criminal sanctions will be imposed in accordance with the provisions of the laws and regulations. In accordance with Article 33 of Law No. 2 of 2012 the assessment of the amount of compensation is carried out in areas per plot of land, including:

- a. Land
- b. Above ground and underground spaces
- c. Building
- d. Plant
- e. Things related to land and or
- f. other disadvantages that can be assessed

In land parcels affected by land acquisition there are residues that cannot be re-functioned, so the party is entitled to request full compensation for the land parcel.

#### 4. Principle of Justice.

For Gustav Radbruch, justice has several meanings, namely: (a) justice is interpreted as a personal trait or quality, subjective justice as secondary justice is a stance or attitude, views and beliefs that are directed to the realization of objective justice as primary justice. (b) the source of justice comes from positive law and legal ideals, (c) the essence of justice is equality.[24] Gustav Radbruch's theory of justice is oriented towards legal objectives. In theory, he said that it is necessary to use the priority principle of the three basic values that are the goal of law. This is because in reality, legal justice often collides with expediency and vice versa. Among the three basic values of the purpose of the law, in the event of a collision, someone must be sacrificed. For this reason, the priority principle used by Gustav Radbruch must be implemented in the following order: (a) legal justice, (b) legal benefits, (c) legal certainty.[25] The ideal judge's verdict is when it contains elements *gerechtigheit* (justice), *zweckmassigkeit* (Utilization), and *rechtssicherheit* (legal certainty) personally.[26]

The characteristic or nature of fair can be summarized as follows: fair(just), legal (legal), lawful (lawful), neutral (impartial), equal rights (equal), eligible (fair), morally reasonable (equitable), morally right(righteous). From the above understanding it turns out that the notion of justice has a double meaning in which the differences between one and another are vague or very small. This nuance needs to be understood and paid attention to when the nature of justice is to be applied, for example in the expression of a just and prosperous society or a just person. Ulpianus' opinion (200 AD), which was later taken over by the law book of Justinian, said that justice is a steady (patterned) will to give to each part of it. (*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*) [27]

Justice in the ideals of law, which is the struggle of humanity, evolves following the rhythm of time and space, from the past to the present without stopping and will continue until humans are no longer active. Humans as creatures created by God consisting of spirits and bodies have strong feelings and thoughts both are spiritual powers, where feelings can function to control rational decisions so that they run on moral values such as good and bad, because what can determine good and bad is taste.[28]

In the context of the principle of justice in land tenure by the State, the provision of compensation is a problem that often occurs because people sometimes feel that it has not been implemented, the principle of justice when the State uses or controls their land for reasons of public interest. In Presidential Decree Number 55 of 1993, concerning Land Acquisition for Implementation of Development for Public Interests, Article 12 states that compensation in the context of land acquisition is given for: (a) land rights, (b) buildings, (c) plants, (d) objects related to land. Furthermore, Article 13 describes the forms of compensation in the form of: (a) money, (b) buildings, (c) resettlement, (d) a combination of two or more forms of compensation as referred to in letters a, b and c, and (e) other forms agreed by the parties concerned. There is no other explanation regarding other forms of compensation based on the Presidential Decree. Based on Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development for Public Interests, Article 13 describes the form of compensation can be in the form of (a) money, and/or, (b) replacement land, (c) resettlement. Whereas in Government Regulation No. 19 of 2021 concerning Land Acquisition for Implementation of Development for Public Interest, compensation in the form of: (a) money, and/or (b) replacement land, (c) resettlement, (d) share ownership, or (e) another form agreed by both parties.

Based on the description above, it can be seen that the rules regarding the form of loss have several differences between the various regulations, besides that there are also the same forms of loss and even though Presidential Decree Number 55 of 1993 and Presidential Regulation

Number 36 of 2005 are no longer valid, the historical course of various laws and regulations - The law regarding the form of loss shows that the government is not consistent in including the form of compensation in the form of "another form agreed by both parties". In addition, there is a form of loss in the form of share ownership, which previously did not exist as a form of loss. The confirmation regarding the preferred form of loss is stated in Article 77 of Government Regulation Number 19 of 2021, that compensation is prioritized in the form of money.

According to Plato, justice is a reflection of individual order, and describes harmonious justice. According to Apeldorn as a supporter of Mixed Theory which includes ethics (justice) and usability. So the purpose of the law must be achieved if the law must fulfill a sense of justice and be useful for the community. In the 20th century (law and living humanism, law and justice), as stated by Kranenburg, among others, that justice is a balance between rights and obligations, as well as as stated by Prof. Dr. Mochtar Kusumaatmadja that justice is a condition in which the values reflect -values that grow and develop together with the community.[29]

With the authority of the state to control land for development purposes, the principle of justice should be the basis for the government in producing norms for the form of compensation that reflect the balance between the rights and obligations of the people on one side and the government on the other. Providing fair compensation reflects the values that grow and develop together with the community. The form of compensation can develop into other forms, not rigid due to developments in science and information technology, but should be determined with clear indicators and criteria as well as a strong legal basis. In the end justice and legal certainty become a meeting point, when determining the form of compensation. Likewise in the meaning of "public interest", the principle of justice is prioritized followed by the principle of legal certainty, so that land control by the State in accelerating development and public infrastructure can be carried out properly. If Radbruch said that priority is needed in determining legal objectives, then justice and legal certainty have an unequal position, but the use of these two principles is equally important in the context of land tenure by the State for the public interest, in order to achieve development goals and aspirations for people's welfare. So that the use of these two principles as a broad foundation in giving birth to legal norms in the context of land tenure by the State for the public interest, is at one meeting as convergence,

## 5. Principle of Legal Certainty

Laws and regulations governing land rights by the State have been regulated starting from the 1945 Constitution in Article 33 paragraph (3): the earth and water contained therein are controlled by the State and used for the greatest prosperity of the people. There is the word "controlled" which can be ambiguous, because the word "controlled" can be interpreted only by the state itself which is in power, even though the meaning of the word "controlled" is the importance of the position of the people as the most important position and the existence of state power in making laws and regulations. invitation for the smooth running of the economy. Legislation that relates further to the right to control land by the State is contained in Law Number 5 of 1960 concerning the BAL, which can be concluded in Article 2 paragraph 2 that the State does not have the right to own, but the right to control by the State means the right of the State to regulate and manage the land.

Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest and subsequently the government issued Government Regulation Number 9 of 2021 concerning Implementation of Land Procurement for Development for Public Interest. The definition of public interest is the interests of the nation, state and society which must be realized by the government and used as much as possible for prosperity. There are different definitions of general understanding in various laws and regulations that are still and have been in effect in Indonesia. For example, in Law Number 20 of 1961 concerning Revocation of Land Rights and Objects on it, the public interest includes the interests of the nation and the State as well as the common interests of the people, as well as the interests of development. Whereas in Presidential Regulation Number 36 of 2005 concerning Land Acquisition for Implementation of Development, what is meant by public interest is the interest of the majority of layers of society.

According to the teachings of Natural Law, initially there were no objects that could be owned by people individually, then individuals made distributions to each other through agreements to own these objects. Objects that can be privately owned become private property and objects that cannot be owned individually are forced to be owned collectively as the property of the community or the State. Objects that cannot be personally owned become *res extra commercium*

which cannot be traded.[30] *Res extra commercium* used for: (a) sacred interests (*res sacrae*), (b) the interests of the State (*res publicae*), (c) public interest (*res communes*), (d) maintained and maintained by the State (*res nullius*). Thus, it can be understood that the meaning of "in the public interest" has been carried out for a long time, coloring and influencing Roman law.

Meaning for the public interest which is the reason the State can control the land, in various laws and regulations with the use of different sentences so as to provide different interpretations as well. In order to achieve the principle of legal certainty, a consistent formulation is required. The meaning for the public interest must be in line with the precepts of Pancasila which animate the 1945 Constitution. The values contained in the Populist precepts Led by Wisdom in Deliberation/Representation include: prioritizing the interests of the State and society, not imposing will on other people, prioritizing deliberation in making decisions for the common interest, the State is for the benefit of all the people. In addition, the meaning for the public interest is certainly in line with the fifth precept of Pancasila, whose values include: fair regulations in all areas of life, especially in the political, economic and socio-cultural fields, respect for the rights of others, and love for progress and development (1). The values contained in the second precept, namely the recognition of human dignity and rights with all its basic rights and obligations, as well as the values in the third precept of Pancasila, namely love for the motherland and nation, all of which of course must be a soul of meaning for "the public interest". The principle of legal certainty begins a rule or the beginning of a rule. Principle is a beginning or origin. Principles or principles when connected with law, what is meant by principle is the truth that is used as a basis for thinking and reasons for opinions, especially in law enforcement and implementation. The legal principle is a broad basis for the birth of legal norms. Likewise, the principle of legal certainty is the *Ratio legis* birth of legal norms.[31] The reason for the law is the reason why legal norms exist. The principle of legal certainty in its relevance to the right to control land by the State gave rise to the norm that land control by the state should be carried out by providing certainty of the rights and obligations of the community whose land is used for public purposes so that the community feels that they have legal certainty for the actions of the State.

Legal certainty (*Rechtszekerheid, legal certainty*) is an important basis in legal action (*rechtshandeling*) and law enforcement (*rechtshandhaving, law enforcement*). It is common knowledge that statutory regulations can provide higher legal certainty than customary law, customary law or jurisprudential law. Legislative legal certainty is not merely placed in its written form. In order to guarantee legal certainty for a statutory regulation, in addition to fulfilling the formal requirements, it must also meet other requirements, namely: clear in its formulation (*unambiguous*), consistent in its formulation, both internally and externally, the use of language that is appropriate and easy to understand [32]

## CONCLUSION

Infrastructure development requires the availability of land, so that the need for state authority to control land so that infrastructure development runs smoothly. Land control by the State means the right of the State to regulate and manage land, not owning land. Compensation for communities whose land has been affected by infrastructure development has so far been regulated in various laws and regulations, but from various regulations that have been and are still in effect, the forms of compensation have similarities and differences.

In the meaning of "for the public interest" there are also various definitions contained in various laws and regulations, even though in order for laws and regulations to guarantee legal certainty, their formulation is clear, unambiguous, consistent and uses language that is appropriate and easy to understand. Justice and legal certainty as the fulcrum for the birth of legal norms of land tenure by the State for the public interest, become principles that eventually meet at a point of convergence.

## SUGGESTION

Compensation should be given in a form that is in accordance with the dynamics of values that live in society and in harmony with the development of science and technology. The provision of forms of compensation is accompanied by clear implementing instructions so that legal certainty and justice can be realized.



The interpretation of the meaning "in the public interest" should be set forth in laws and regulations based on the values contained in Pancasila, in clear and easy-to-understand language.

## BIBLIOGRAPHY

- Kwik Kian Gie, *Pembiayaan Pembangunan Infrastruktur dan Permukiman*. Materi Kuliah Disampaikan Pada Studium General Institut Teknologi Bandung, Bandung, 2002, hlm 27
- Ashauer, David Alan. *Is Public Expenditure Productive?* *Journal of Monetary Economics*, 1989, hlm. 23. Lihat juga Aschauer, D.A., *Why is Infrastructure Important?* Bank of Boston, Boston., in Munnell, A.H. (ed.), *Is there shortfall in public capital investment? Proceedings of a Conference Sponsored by the Federal Bank of Boston*, Federal Reserve Bank of Boston, Boston, 1990, hlm. 123
- Suyono Dikun, *Infrastruktur Indonesia sebelum, selama, dan pasca krisis*, Kementerian Negara Perencanaan Pembangunan Nasional, Badan Perencanaan Pembangunan Nasional, Jakarta, 2003, hlm. 37.
- Jazim Hamidi, *Revolusi Hukum Indonesia*, Konstitusi Press, Jakarta dan Citra Media, Yogyakarta, 2006, hlm. 63
- Hans Kelsen, *Introduction to the Problems of Legal Theory*, Clarendon Press, Oxford, 1996, *Pengantar Teori Hukum*, Nusa Media, Bandung, 2008, hlm. 95
- Pasal 3 Undang-undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan untuk Kepentingan Umum. *Lembaran Negara Republik Indonesia Tahun 2012 Nomor 22. Tambahan Lembaran Negara Republik Indonesia Nomor 5280.*
- Fahlevandlaw. 2016. *Politik Hukum Pengadaan Tanah Untuk Kepentingan Umum : Antara Manifestasi Keadilan Sosial dengan Kepentingan Pemerintah bagi Pembangunan*, Diakses tanggal 2 Oktober 2022.
- Harsono, Boedi. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Jilid 1 *Hukum Tanah Nasional*. Cetakan Kesebelas Edisi Revisi, Djambatan, Jakarta, 2007, hlm. 66.
- Limbong, Bernhard. *Pengadaan tanah Untuk Pembangunan (Regulasi, Kompensasi, Penegakan Hukum)*. Margaretha Pustaka, Jakarta, 2011, hlm. 82.
- Moh. Mahfud MD., *Membangun Politik Hukum, Menegakkan Konstitusi*, Cetakan Pertama, LP3ES, Jakarta, 2006, hlm. 13-16.
- Sitorus, Oloan, *Pengadaan Tanah untuk Kepentingan Umum*, *Mitra Kebijakan Tanah Indonesia*. Yogyakarta, 1995, hlm 76
- Sri Soemantri M, *Permasalahan Hukum Tata Negara (dan Politik) dalam Perspektif Penelitian, Pengembangan dan Pendidikan Hukum di Indonesia*, (Makalah), FH-UNDIP-DIKTI-DEPDIBUD, Bandung Ambarawa, 1996, hlm. 8.
- Koesnadi Hardjosoemantri, *Hukum Tata Lingkungan*, Cetakan Kedua belas, Edisi Keenam, Gadjah Mada University Press, Yogyakarta, 1966, hlm. 44.
- Suandra, I. Wayan, *Masalah Hak Atas Tanah, Pembebasan Tanah dan Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum*. Citra Aditya Bakti, Bandung, 1996, hlm. 66.
- Umar, Said Sugiharto dkk. *Hukum Pengadaan Tanah (Pengadaan Hak Atas Tanah untuk Kepentingan Umum Pra dan Pasca Reformasi)*. Setara Press, Malang, 2015, hlm. 23
- Ibid.*, hlm. 25
- Aj. A. Simarta, *Ekonomi Pertanahan Dan Properti Di Indonesia Konsep, Faktor, Dan Analisis*, Center for Policy and Implementation Studies (CPIS), Jakarta, 1997, hlm. 22.
- Sudargo Gautama. *Tafsir Undang-Undang Pokok Agraria*. 1984. Bandung : Alumni. Hal. 21
- Soedaryo Soimin. *Status Hak dan Pembebasan Tanah*. 2001. Jakarta : Sinar Grafika. Hal 73.
- Effendi Perangi. *Hukum Agraria di Indonesia Suatu Telaah dari Sudut Pandang Praktisi Hukum*. 1989. Jakarta : Rajawali Press. Hal. 38
- Sudikno Mertokusumo, *Teori Hukum*, Maha Karya Pustaka, Yogyakarta, 2019, hlm 17-19
- Ibid*, hlm 20
- Mudakir Iskandar Syah, *Pembebasan Tanah Untuk Pembangunan Kepentingan Umum*, Jakarta: Jalan Permata Askara, 2010, hlm.11
- Muhammad Ewin, *Filsafat Hukum*, Raja Grafindo, Jakarta, 2012, hlm 123
- Sudikno Mertokusumo *Op cit*, hlm, 26
- Muhammad Erwin, *Filsafat Hukum*, Rajawali Pers, Depok, 2021, hlm 296.
- Ibid*, hlm 297
- Teguh prasetyo, Abdul Halim barkatullah, *filsafat, Teori & Ilmu Hukum*, PT rajagrafindon Persada, Jakarta, 2012
- Hengki Andora, *Penguasaan dan Pengelolaan Tanah pemerintah, Konsep dan Dialektika dalam Sistem Hukum Indonesia*, Rajawali Pers, Jakarta, 2021
- A'an Efendi, et al, *Teori Hukum*, Sinar Grafika, Surabaya, 2016
- R. Otje Salman, *Ikhtisar Filsafat Hukum*, Bandung, hlm 12