

# ECONOMIC ANALYSIS OF LAW ON THE INDONESIA'S LAND ACQUISITION FOR PUBLIC INTEREST REGULATION

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**ABSTRACT:** *The process of acquiring land for the public interest involves complex interest configurations, necessitating careful attention to prevent any harm to any parties involved. Indonesian land acquisition law recognizes two ways of acquiring land for public purposes relinquishment of rights and revocation of rights. Using a conceptual and statutory approach, the research results show that the two methods of land acquisition have a tendency towards Kaldor-Hicks efficiency, with a difference in the release of land rights. Social costs, which take the form of community resistance and conditions of socio-economic decline in the community after land acquisition, can be reduced as small as possible, but transactional costs in the form of compensation payments tend to enlarge. When revoking land rights, transactional costs in the form of compensation payments can be reduced as small as possible so that social costs, which take the form of community resistance and conditions of socio-economic decline in land-owning communities after land acquisition, have the potential to grow.*

**Keywords:** Economic analysis, land acquisition, public law interests.

## 1. INTRODUCTION

Economic development is an important issue that is the focus of government policies throughout the world. [1] One form of development is physical/infrastructural development that can be utilized by the community in general. [2] This, of course, requires land as the construction location.

Regulations on land acquisition for public purposes in Indonesia regulate two methods of land acquisition as follows: First, land acquisition in the public interest, this can be done by relinquishing land rights, as regulated in Law Number 2 of 2012 concerning land acquisition for development in the public interest, and secondly, land procurement. In the public interest, this can also be done by applying for revocation of land rights to the president as regulated in Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects on It.

The current reality is that land acquisition regulations for the public interest in their implementation are prone to conflicts of interest and conflict.[3] The impacts arising from land acquisition for public purposes include 1). Public unrest.[4] 2). Negative perceptions give rise to horizontal conflicts between citizens and vertical conflicts between citizens and state officials.[5] 3). Economic impacts in the form of reduced income, shifts in livelihoods, decreased levels of wealth, and guaranteed education of family members who own land rights. [6] 4). Environmental impacts include a decrease in air quality, noise, road damage, and a decrease in several river hydrological components." [7].

The economic impact is one of the impacts that cannot be avoided, so an economic analysis of the law on land acquisition for public purposes is important. This article will provide further analysis of this issue.

## 2. METHOD

The method used in this writing is doctrinal research, with a statute approach to the problem and a conceptual approach [8]. The analysis of legal materials is carried out in two stages. First, utilizing presentation and analysis of the content (structure) of applicable law, systematization of the legal phenomena presented and analyzed, and interpretation and assessment of applicable law. [9] Then, in the second step, in the analysis of legal materials, the Regulatory Impact Assessment (RIA) method is used [10].

## 3. DISCUSSION

The right to be protected by law—the right to own property—is a basic right recognized and regulated in the 1945 Constitution. Owners of land rights are guaranteed by the constitution [11] to receive legal protection. [12] The protection of human rights [13] for land owners is interesting if it is linked to Article 33 paragraph (3), of the 1945 Constitution [14], which confirms that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Article 33 needs to be given special attention because it has a very big influence on the realization of social welfare. Different from the "welfare states" run by various countries in Europe, which rely heavily on taxes, Indonesia is blessed by God with abundant natural resources. Therefore, apart from coming from taxes, Indonesia's welfare state can also come from the state's ability to manage natural resources.

The provisions of Article 33, paragraph (3), of the 1945 Constitution give rise to the right to control the state [15], which is further elaborated by Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles, which stipulates that the right to control the state gives the state the authority to regulate and carry out the allocation, use, supply, and maintenance of earth, water, and space, including land. The provisions on state control rights underlie the juridical side of land acquisition for public purposes employing revocation of rights [16], whose mechanism is regulated in Law No. 20 of 1961 and the release of rights by Law No. 2 of 2012.

The MK's interpretation of the meaning of being controlled by the state is that the state has the authority, namely to regulate, manage, and supervise. The regulatory function is through provisions made by the legislature and regulations by the executive; the management function is by issuing or revoking permits; the management function is carried out by the executive by utilizing its control over natural resources for the greatest prosperity of the people; and the supervisory function is to supervise and control so that its implementation is correct for the greatest prosperity of the people. This means that the right to control the state, as stated in Article 2, paragraph (2), of the UUPA, which contains three authorities, must include the functions of regulation, administration,

management, and supervision [17]. This includes land acquisition for public purposes.

When procuring land for public purposes, what needs to be paid attention to is that land acquisition is construction and will depend on four things, namely: the legal status of the available land (regarding the land as state land or land belonging to the community with certain rights), the legal status of the party who needs the land (the government, certain government institutions, or private parties), the designation of the land that will be controlled (to build for the public interest or private business), and whether or not there is a willingness of the people who own the land to hand over the land (about the deliberation process between the two parties) [18].

These four things will also relate to the form of legal protection for the community in land acquisition because there will be differences between the parties who need the land and the use of the land to be controlled for the benefit of the government, which tends to act based on public law, and private parties who act based on private law. Legal protection for the community regarding land acquisition by local governments in the context of public law should properly take into account the economic impact.

Based on Article 76 paragraph (1) of Government Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest, it is emphasized that compensation for entitled parties can be given in the form of money; replacement land; resettlement; shareholding; or other form agreed by both parties.

Even though it is stipulated that compensation for entitled parties can be provided in various forms, in reality, the options for providing compensation are limited to money. Various forms of compensation given to entitled parties or affected parties, whether alone or a combination of several forms of compensation, are given per the value of the compensation, whose nominal value is the same as the value determined by the appraiser. This is interesting if studied with the theory of economic analysis in law.

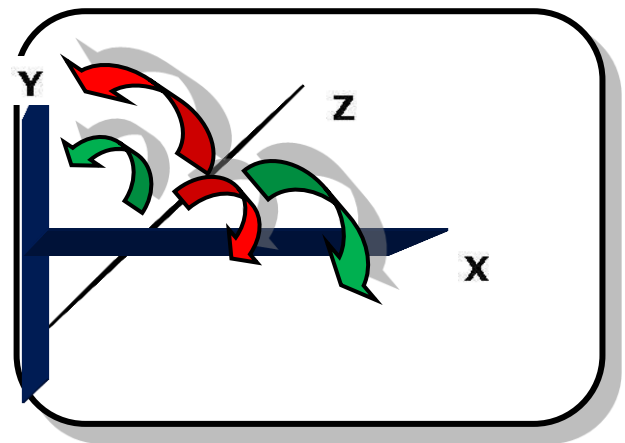
The use of economic analysis theory in law (economic analysis of law) [19], which is the application of economic principles as rational choices to analyze legal issues, As for the relationship with positive analysis from the law, it will relate to the economic consequences that can be predicted to arise if a policy (law) is implemented. Incentives or disincentives that arise from these policies (laws) will receive a reaction from society. From a welfare economics perspective, we will question whether people's ways of achieving what they want are influenced. policies (laws) proposed or legal changes made, resulting in Pareto efficiency, and Kaldor-Hicks efficiency as an efficiency concept plays an important role in this context.

Pareto efficiency will ask whether the policy or legal change makes someone better off without causing someone else to get worse. On the other hand, Kaldor-Hick's efficiency will ask the question of whether the policy or change in law will produce sufficient benefits for those who experience the change so that he can hypothetically provide compensation to those who are harmed by the policy or change in law. This last approach is cost-benefit analysis." [20].

In reality, policies that affect many people will be difficult to implement with Pareto efficiency. Bad things towards other parties will always appear as a default effect even though a change is intended for good. Those who make things better in the Kaldor-Hicks theory, can or in the context of the state's relationship with parties entitled to land acquisition must provide compensation for parties entitled to suffer bad conditions due to existing policies.

Using *Richard Posner's theory* of economic analysis of law, it is very clear that land acquisition cannot be in a position of Pareto efficiency but is in a position of Kaldor-Hicks efficiency (cost-benefit analysis). This means that this will relate to transactional costs (costs incurred for land acquisition) and social costs (the consequences arising from land acquisition can be in the form of resistance from the community whose land will be used as a development site and conditions of socio-economic decline in the community after the land acquisition is carried out).

Using Richard Posner's economic analysis of law theory, the following is a pattern of analysis of two ways of acquiring land for the public interest: either releasing rights or revoking rights.



**Figure 1. Economic analysis of law pattern of land acquisition regulations for public purposes in Indonesia**

The explanation of the figure above is as follows: If it is depicted in a form, it symbolizes the X axis as the method of relinquishing rights and the Y axis as the method of revoking rights. The red arrow is social cost, and the green arrow is transactional cost. The Z axis, as a tool for economic analysis of land acquisition law, will be able to shift towards the X and Y axes according to the method of land acquisition.

In the relinquishment of land rights, the Z axis will move towards the X axis, which means social costs, which take the form of community resistance and conditions of socio-economic decline in the community after land acquisition, can be reduced as small as possible, but transactional costs in the form of compensation payments tend to enlarge.

In the revocation of land rights, the Z axis will move towards the Y axis, which means transactional costs in the form of compensation payments can be reduced as small as possible so that social costs, which take the form of community resistance and conditions of socio-economic decline in land-

owning communities after land acquisition, have the potential to grow.

From this description, it is clear that the method used in land acquisition for public purposes will influence the economic aspects of the community whose land is used in the land acquisition. So, it is hoped that the government will be wiser in choosing the methods it will take in acquiring land for the public interest.

#### 4. CONCLUSION

Economic analysis of the law on land acquisition regulations for public purposes in Indonesia shows that the two methods of land acquisition for public purposes in Indonesia tend to lead to Kaldor-Hicks efficiency, with the distinction that there is a relinquishment of land rights, social costs that take the form of community resistance, and conditions of socio-economic decline in the community after land acquisition can be reduced as small as possible, but transactional costs in the form of compensation payments tend to enlarge. When revoking land rights, transactional costs in the form of compensation payments can be reduced as small as possible so that social costs, which take the form of community resistance and conditions of socio-economic decline in land-owning communities after land acquisition, have the potential to grow.

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