

# Land Acquisition for the purpose of Low-Income Housing by applying the Concept of 3 in 1 in Land Acquisition

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This research aims to examine land acquisition for the purpose of Low Income Housing conducted by the regulation of land acquisition for private interest. By deploying socio-legal and normative studies, it shows that there is still legal uncertainty in society because the development of Housing is not included in the types of public interests stipulated in Article 10 Law No. 2 of 2012 on Land Acquisition for Development based on Public Interest. Therefore, in practice there are still some issues which private participants encountered in the process of land acquisition for the use of development.

**Key words:** *Land Acquisition, Low Income Housing, Concept of 3 in 1 in Land Acquisition.*

## Introduction

Indonesia is an agriculturally based country (Lailatussyukriah, 2015), therefore land is essential part of people's life in order to achieve prosperity in any field and basic capital for the development of the nation, therefore utilization must be for the benefit of the population (Mulyadi, 2017). Hence, legal certainly is inevitable because land is the main aspect of development (Sudjowo Marsoem, 2015). Therefore, in national development land must be provided in accordance with legislation.

Land is a very essential aspect of society which impacts the whole nation. Therefore, any land issues would definitely have implications towards the whole country (Suparjo, dkk, 2015). Putting aside the perspective of legal politics of land in Indonesia, it is important to achieving prosperity for Indonesia's population . In order to achieve that goal, Law No. 5

1960 comprises of principles of land mastery and utilization of land in order to support the development of economy, industry and other sectors (Nurhasan, 2012).

Beneficial law as stated by Max Weber, “ shall create good bureaucracy which will develop positive investment as well”. This means that policy, institution, and good procedure in land also would create and provide welfare to the people, and vice versa, if the law and policy is deficient it will also create inefficient bureaucracy, and obviously will bring negativity to investment as well as creating injustice in society (Jarot, 2015). In order to achieve beneficent law and justice to all, the process of land acquisition in general classified into 2 (two) sections, first, land acquisition by the government for public interest and second, land acquisition for private interest which includes commercial, non-commercial or non-social sectors.

Land acquisition for private interest aims to create profit , so the benefits will only be enjoyed by certain select parties . For example, in real estate, low income housing, industrial area, tourism, golf park, private universities, and many others which eventually only gain profit for themselves. Land acquisition for private interest is conducted directly, between land owners and interested parties based on mutual agreement.

Land acquisition for the development of low-income housing is conducted based on the provisions concerning land acquisition for the use of private interest. This is due to the fact that the development of low-income housing is not included in the types of public interests according to Article 10 Law Number 2 of 2012 on Land Acquisition for Development based on Public Interest.

To help private entity and interested parties in the realisation of justice, legal certainty and beneficial principles, the author suggests guidelines to better understand the process of land acquisition for the use of development. The guidelines formulated by the author in Concept 3 in 1 in Land Acquisition which considers the needs of people to benefits from a better understanding of land law and its bureaucracy. The concept of 3 in 1 in land acquisition in land procurement for development is a process which runs from start to finish or from upstream to downstream which comes to the formulation of 3 (three) points, which are 1) start: land permit (location permit), 2) decision: land mastery (the exchange of rights), and 3) product: land certification (Development Rights).

## **Research Method**

This paper uses a socio-legal and normative research method, and the process of the completion of this paper is as follows:

- a. Problem identification
- b. Data collection: Primary and secondary data
- c. Analysing fact and legislations
- d. Providing discussions and results
- e. Conclusion

## **Results and Discussion**

### ***Land Permit***

Land permit is the starting point in the land acquisition for development. The development of low-income housing firstly needs a location permit. The process of synergising land mastery for public interest is completed by spatial planning and the issuing of a location permit. The issuing of a land permit through a co-ordination process among related institutions also included a review process to check any aspects such as creation. So then, it would be in accordance with spatial planning, land availability, development prospect and synced [unclear word] to the public interest (Mohammad, 2015).

Article 1 No. 1 Regulation of Minister of Agrarian and Spatial Planning/National Land Department (PMATR/BPN) further explains the nature of location Permits: “A location permit is a permit which is given to the company (private) to use land for the purpose of investment which is also applied as a permit for the transfer of rights , and for using the land for the purpose of investment (Jarot, 2016).

According to Spatial Planning Region, land which may be chosen in a location permit is essentially subject to the use of planning and investment projects that may be conducted by the company according to accepted investment planning .

In Article 3 of the Regulation of the Head of National Land Department (Perkaban) No. 2 of 2012 on Technical Consideration of Land in the Issuing of Location Permit, Location Determination, and Permission on the Change of Land Use, it is stated that a location permit may be created if it is not contradictory to several considerations including not sacrificing public interest, not causing harm to the neighbourhood, in accordance with the principles of sustainability, , justice and in corresponding with the law.

Furthermore, Article 5 of PMATR/BPN No. 5 of 2015 emphasizes that “ allocation permit is issued for tenure for 3 years.” A location permit must be finished during this term (3 years). If it fails, then the location permit could be extended for 1 (one) year if the land that has been given reaches 50% or more in size as appointed by the Location Permit.

In case the land which has been given is 50 % less than the total size appointed in the location permit, the location permit cannot be extended. Therefore, these provisions are applied:

1. Land that is used for planning of investment with adjustment to the size of development that is one land.
2. Land acquired could also be acquired by the location permit holder towards the land between the initial land, therefore it would be considered as one entity.

Article 10 PMATR/BPN No. 5 of 2015 emphasizes the Procedure of a Location Permit as follows:

1. As a minimum, the submission of location permits consist of the details of the applicant, company, land that requested and previewed the whole project;
2. A location permit is issued based on technical considerations of the land which consists of land mastery and technical details including spatial planning which incorporates current rights of land mastery , physical assessment, land use, as well as land availability;
3. Letter of decision issued for Location Permit signed by Regent/Major, for the issuing of a Location Permit across regency/city in one province which shall be signed by the Governor. Meanwhile, issuing the Location Permit issued across the province, shall be signed by the Minister for Agrarian and Spatial Planning/National Land Department.

Based on Article 12 of PMATR/BPN No. 5 of 2015, the Rights and Obligations of Location Permit Holder are as follows:

- a. The Location Permit’s holder is allowed to free the land included in the Location permit from the rights and interests of other parties based on an agreement with rights’ holders or another party who has an interest in the sale and purchase, compensation, consolidation or other method in accordance with the law.
- b. Before the said land is freed by the Location permit’s holder, all rights and interests of other parties which exist for the land are not diminished and their rights are still acknowledged, including the authority in accordance with the law owned by the rights’ holders of the land for the use and purpose of the land for themselves or their business in line with spatial planning and authority to transfer to others .

- c. The location permit's holder is obliged to respect the interest of other parties using the land who have not yet freed, it is possible lessen the accessibility of the community around the location, and protect the public interest.
- d. After the said land is freed from other rights and interests, the location permit's holder could be given rights to the land which give them rights to use the land in accordance with the needs for planning of the investment project.

### ***Land Mastery***

Land mastery for the activities of land acquisition for the development of low-income housing is at crossroad. Mastery of the land is conducted by the developer of the low-income housing itself as the party who needs the land.

The developer of the housing estate as the party who needs the land for sale and purchase, compensation, consolidation or other method in accordance with the law with the community who has the land without process/stages of the land acquisition for public interest as stipulated by Article 13 of Law No 2 of 2012 on Land Acquisition for Development based on Public Interest.

Sales and purchase, compensation, consolidation or other methods in accordance with the law are legal activities of rights transfer from the community as the land owner to the Developer of low-income housing as the party who needs the land. The transfer of rights is held among both parties in front of the Land Deed Making Authority (Pejabat Pembuat Akta Tanah/PPAT) as the official who has the authority in issuing the Land Deed as proof that there has been a certain legal action (sale-purchase, exchange, etc.) concerning rights to the land or ownership rights upon a condo which taken as a basis for change of land registration data based on the said legal action. The role of PPAT is to issue a deed of transfer rights (sale-purchase deed or other deed) as official proof of transfer of rights. PPAT has a working area of regional level two. Before the sale-purchase takes place, PPAT would firstly explain the procedure and requirements which need to be conducted as well as the sale-purchase or other legal action of transfer of rights. Other interests are to be handed out with the official certificate before the checking the correspondence between technical and juridical data between the certificate and land booking at the Land Office.

The checking process of the land certificate at the National Land Office by PPAT the purpose of which is to know that the object of sale-purchase is not under dispute, insurance, seizure and blocking from the other party. Whereas if notes exist in the land book at BPN then the seller shall firstly clear those notes. If the notes are blocked then they should be taken off the notes. Without this process, the sale-purchase cannot proceed.

Other documents that must be submitted to PPAT include a Letter of Notification for Land and Building Tax (Surat Pemberitahuan Pajak Terhutang Pajak bumi dan Bangunan/SPPT PBB) and proof of payment. The submission of SPPT PBB before the other sale-purchase also needs to make sure that there are no arrears for PBB and counting the fee and taxes are the obligation of both parties, whereas the counting of fees can be done based on Tax Object Value (Nilai Jual Objek Pajak/ NJOP).

The parties' documents need to be submitted to the PPAT before the signature of sale-purchase deed conducted, the purpose is for PPAT to prepare the sale-purchase deed, so then the designated date for the signature can be completed in a short time.

In practice, there are often mechanisms other than the legal action of transfer of rights. The other mechanism is release of rights, however in itself it's a mechanism for transfer of rights in land acquisition for the public interest. Article 1 No. 9 of Law No. 2 of 2012 on Land Acquisition for development based on Public Interest emphasises that the "Release of rights is a conduct of termination of legal relationship from the owner to the Government through Land Institution," In addition, UUPA also determines that "release of rights is conducted when/if the right's holder of the land is no longer qualified". Therefore, the correct mechanism is the transfer of rights, through sale-purchase, compensation, exchanges, or other means which are consistent with the law.

### ***Land Certification***

Land certification is the final stage, or product. At this point, the Institutions which are needing land could create the product from the process of mastery or land acquisition for the purpose of private interest. This product has a certificate of building rights (Hak Guna Bangunan/HGB). The regulations to do certification on the land resulting from land acquisition for private interest as stated in Article 7 of PMATR/BPN No. 5 of 2015 further emphasize that "the Land which is received must be registered to the local Land Office. Thus, a private party which has already mastered the land shall apply for certification of building rights to the official (Head of Regency Land Office).

Status right of HBG since UUPA maintained that private entity could not own the land with ownership rights. Hence, the transfer of rights through sale-purchase, compensation, exchanges or other forms in accordance with the law cannot be interpreted as transfer of ownership from the community to the private entity. The fact was that the land transferred to the state land was then registered as HGB with the private entity, thus it could build or has buildings on the said land.



The gains of HGB by legal entity according to Annex II Regulation of Head of National Land Department Republic of Indonesia No. 1 of 2010 on Service Standard and Land Regulation are as follows:

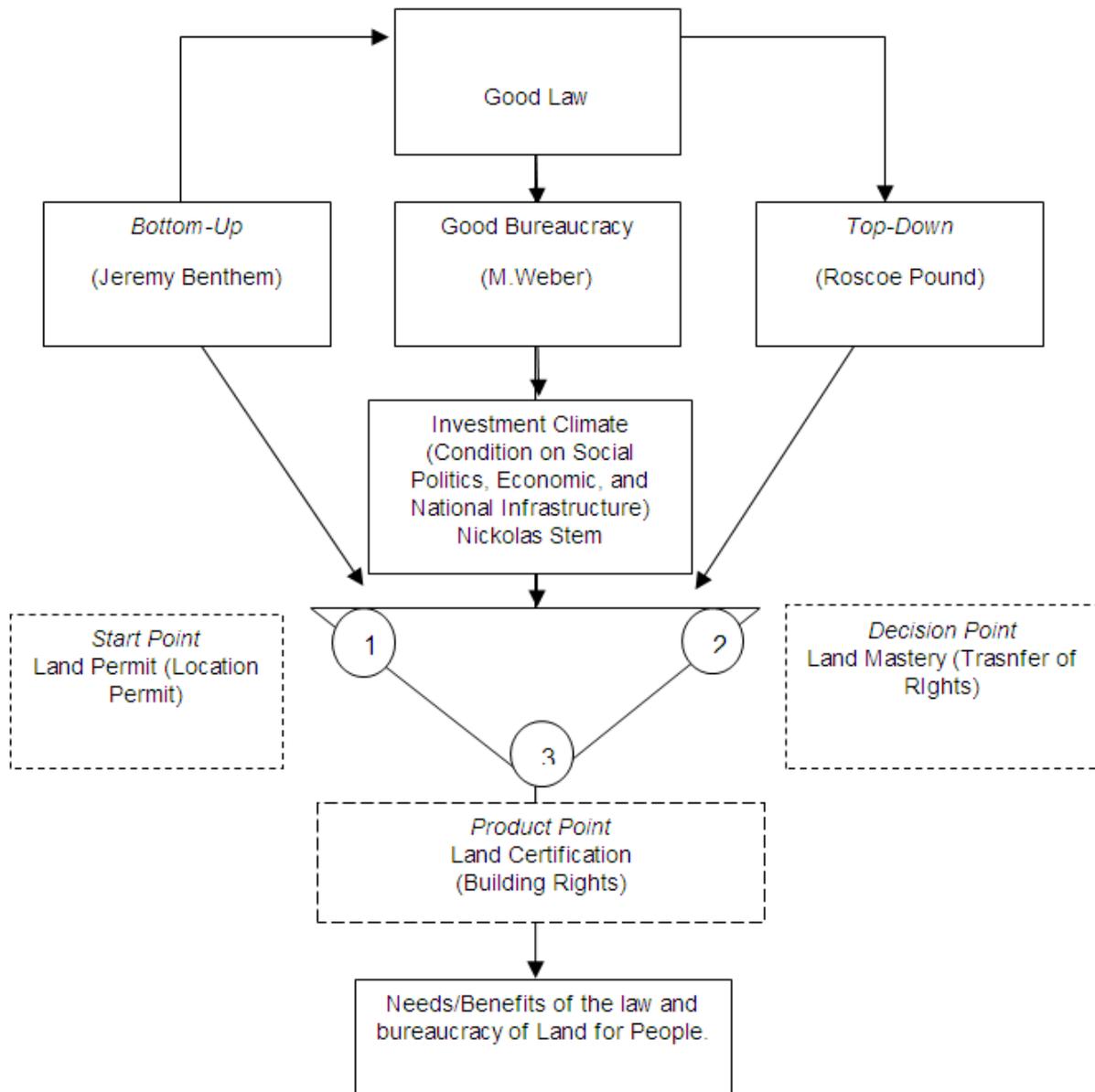
<sup>1</sup>Article 13 of Regulation of the Ministry for Agrarian and Spatial Planning/Head of National

Legal Basis	Requirements	Fee	Time	Description
1. Law No. 5/1960 2. Law No. 11/1992 3. Law No. 21/1997 jo. Law No. 20/2000 4. Law No. 28/2004 5. Law No. 25/2007 6. Law No. 40/2007 7. GR. No. 48/1994 jo. GR. 79/1996 8. GR No. 40/1996 9. GR No. 24/1997 10. GR No. 13/2010 11. PD No.32/1979 12. PMNA/K BPN No.3/1997 13. PMNA/K BPN No.2/1999 14. PMNA/K BPN No.3/1999 15. PMNA/K BPN No.9/1999 16. Reg. of KBPN RI No. 3/2006 17. Reg. of KBPN RI No. 4/2006 18. Reg. of KBPN RI No. 7/2007	1. Registration form that is filled and signed by applicant or holder of authority. 2. Letter of Authority 3. Copy of applicant's ID or holder of authority which is already checked at counter. 4. Copy of List of Company, Deed of Founding which is already checked by counter. 5. Location Permit or Letter of Permission for the appointment of land. 6. Proposal/Plan of Land development. 7. Copy of SPPT PBB of the year that has been matched with the actual by counter officer, proof of (SBB (BPHTB) and payment proof of submission (in the right registration) 8. Attach the proof of SSP/PPh based on applicable laws.	In line with the Government Regulation on type and tariff of state income from non-tax applied for National Land Department Republic of Indonesia.	a. 38 days no more than 2.000 m2 b. 57 days no more than 2.000 m2 till 150.000 m2 c. 97 day no more than 150.000 m2	Registration form consisting of: 1. Personal Details 2. Size, position and purpose of land that is not under any dispute. 3. Statement stating that it is physically mastered.  Notes: 1. The deadline for the completion of the payment according to the Decree is not included 2. The deadline needed for delivery is not included from the Regional Office to BPN RI and vice versa.

Land Department Republic of Indonesia no. 4 of 2017 on the Service Standard of the Ministry for Agrarian and Spatial Planning states that: *“On the day this regulation was entered into force, provisions on service standard in Regulation of Head of National Land Department No. 1 of 2010 on Service Standard and Land Regulation are still enforced as long as they are consistent with Ministry Regulations.”*

In order to get a better and more comprehensive understanding, here is the brief **concept of 3 in 1 in Land Acquisition** in land procurement for development by private sectors as described in the diagram below:

**Diagram of Concept 3.** In 1 in Land Acquisition in land procurement for the use of private interest



## Conclusion

The concept of 3 in 1 in Land Acquisition in land procurement for private interest is the conduct of land procurement from start to finish or from upstream to downstream resulting in three points: 1) start point; permit aspect, 2) decision point; land mastery aspect (transfer of rights), and 3) product aspect; land certification (Building Rights/HGU).

In the land permit stage, the developer of low-income housing needs to apply and get the location permit. The application of location permit which consists at least of the details of the applicant, company, land and preview on the project plan. After he or she gets the location permit then the developer of housing could do the land acquisition.

In Land Mastery, the developer of housing is the party who needs to complete the land acquisition. Thus, it is different from the land acquisition for the public interest which the land acquisition conducted by Head of Land Office. Land Mastery is conducted through transfer of rights by sale-purchase, compensation, exchanges, and other transfer of lands in accordance with the law.

Land Certification is the final stage of this product, which is the certificate of building rights (HGB). The provision to conduct certification as a result of land acquisition for private interest is stated in Article 7 PMATR/BPN No 5 of 2015 "*Land which has been received shall be registered to the Land Office*".

**Table regarding the Difference between Public and Private Interest**

No.	Differences	Public Interest	Private Interest
1.	Use	Public Interest based on Article 10 Law on Land Acquisition	Private Interest (other than public interest as stated in Article 10 Law on Land Acquisition)
2.	Permit	Location Determination (Law No. 2 of 2012)	Location Permit (PMATR/BPN No. 5 of 2015)
3.	Mastery	Release of Right by Compensation	Pemindahan hak melalui Jual-beli, ganti kerugian, tukar-menukar atau cara lain yang disepakati oleh swasta dan pemilik tanah



4.	Authority of Land Acquisition	Land Office	Private actor who needs
5.	Fee	APBN (Peraturan Menteri Keuangan Nomor 13/PMK.02/2013)/APBD (Permendagri Nomor 72 Tahun 2012)	Full covered by the Company
6.	Certificate	Usage Rights	Building Rights

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## **Laws and Regulations**

Law of Republic Indonesia Number 2 of 2012 on the Land Acquisition for the Development Based on Public Interest.

Regulations of Minister of Agrarian and Spatial Planning/National Land Department Number 5 of 2015 on Location Permit.

Regulation of Head of National Land Department Number 2 of 2012 on Technical Consideration in the Issuance of Location Permit, Location Determination and Permission on Change of the Use of Land

Regulation of Ministry of Agrarian and Spatial Planning/Head of National Land Department Number 4 of 2017 on Service Standard of Ministry of Agrarian and Spatial Planning/Head of National Land Department