

Creating a Model of Land Procurement in Order to Support and Accelerate Infrastructure Development

Nurhayati. A^a, ^aUniversitas Dharmawangsa, Medan, Indonesia, Email: nurhayatijb@yahoo.co.id

In human life, land is a place for humans to live and continue their lives. The dynamics of development cause the need for land to increase while on the other hand the supply of land is very limited. The government needs land for infrastructure development for social purposes, while land rights holders are in dire need of compensation money to buy land and rebuild their homes. Indonesia is a State of Law (Rechtsstaat), which upholds deliberation for consensus, and justice occupies a very important position. This aspect of deliberation must be realised, otherwise it will cause prolonged conflict. In the implementation of community land rights, taking is often carried out arbitrarily, without justice and is detrimental to the community due to compensation. Islamic law in implementing the procurement / release of land rights using the system of buying and selling is beneficial and fair for the community.

Key words: *Land, regulations, justice, compensation money.*

Introduction

The relationship of the Indonesian people to land is a lasting relationship as stated in Article 1 paragraph (3) of Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles of 1960 No.104. L.N Republic of Indonesia, Additional L.N No.2034 (hereinafter UUPA No.5 of 1960). "Land is an object of economic value, as well as magical-religious-cosmic, in the view of the Indonesian Nation, it also often provides vibrations in peace and often creates obstacles in the implementation of development" (Salindeho, 1987). In human life, the existence of land is inseparable from all acts of humanity itself, because land is a place for humans to live and continue their lives (Sutedi, 2009). Land is an economic object (Salindeho, 1987). Land is the main capital, and for the largest part of Indonesia, land is the only capital (Van Dijk, 2010).

The most important thing is land. A human cannot live without land (Projodikoro, 2017). Land is "the surface of the earth where the State can be given various rights to the surface of the earth called land" (Ckairuddin, 1985). The next definition of land proposed by Abdurrahman is "a place to live for mankind in addition to being a source of life for those who make a living through farming (Abdurrahman, 1984). According to Fairuz Abadi in Al-Qamus Al-Muhith the definition of "land" is: "with something low or below (the opposite of something high, for example: the sky); something that can foster something else or something that can fertilise something (Abadi, 2004). A similar definition was raised by Al-Raghib al-Ashfahani (Al-Ashfahani, 2004).

To maintain a balance and as a guarantee between the various interests above, the existence of regulations for the procurement / release of land rights is very important for the Government and the community. Regarding this, the Government has issued Law No. 2 of 2012 concerning Land Procurement for Development for Public Interest (henceforth Law No.12 of 2012), and Presidential Regulation of the Republic of Indonesia Number. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest (Perpres No. 71 of 2012) and amendments to Perpres No. 71 of 2012. The first amendment to Perpres No. 40 of 2014 was set on April 24, 2014, the second amendment to Perpres No. 99 of 2014 was set on September 15, 2014, the third amendment to Presidential Decree No. 30 of 2015 was set on March 17, 2015, and the fourth amendment to Presidential Decree No. 148 of 2015 was set on December 28, 2015. The Government has also issued Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of the Assessment and Handling of Land Cases (henceforth Regulation of the Head of BPN RI No.3 of 2011), and Head Regulation National Land Agency of the Republic of Indonesia Number 5 of 2012 Concerning Technical Guidelines for the Implementation of Land Acquisition (henceforth Regulation of the Head of BPN RI No.5 of 2012).

Definition of land acquisition in Law No.12 of 2012 and Presidential Regulation no. 71 of 2012 Article 1 paragraph (2), reads: "Land Acquisition" is the activity of providing land by providing appropriate and fair compensation to the parties entitled. "Compensation" is an appropriate and fair compensation to the parties entitled to the land acquisition process, as stated in Article 1, paragraph 10. Perpres No. 71 of 2012 Article 1 paragraph (9) states: "Waiver of rights" is: the activity of terminating legal relations from parties entitled to the State through the ministry (amendment to the fourth Presidential Regulation No. 148 of 2015). Article 1 paragraph (6) of Presidential Regulation No. 71 of 2012: Public interest is the interest of the Nation, the State and society that must be realised by the Government and used as much as possible for the prosperity of the people. Article 33, paragraph 3 of the 1945 Constitution states: the earth and water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people. Article 33 paragraph (3) clearly contains a very basic

constitutional mandate, namely that the arrangement and use of land must be able to bring as much prosperity to the people as possible.

Article 1 of UUPA No.5 of 1960 states: all Indonesian people are the unity of the motherland of all Indonesian people who are united as the Indonesian Nation. Article 6 UUPA No. 5 of 1960 formulated the nature of individual rights to land according to the concept of the LoGA, or the concept of national land law, namely: all land rights have a social function with the understanding that all land in the territory of the Republic of Indonesia belongs to everyone, and if the State requires land for community interests, the landowners must be willing to give up their land by giving compensation. From the rationales above, the problems that can be identified in this study are: "How to Create a Model of Land Procurement Based on Islamic Law and Justice to Support and Accelerate Infrastructure Development".

The purpose of land acquisition in the public interest is to provide land for the implementation of infrastructure development in order to improve the welfare and prosperity of the Nation, the State and the community, while ensuring the legal interests of the entitled parties (Article 2 of Presidential Regulation No. 71 of 2012). Land acquisition for public use is carried out through the planning stage, preparation and implementation, and the submission of results.

The process of implementing land acquisition is determined by the Presidential Regulation. No. 71 of 2012: to acquire land for the implementation of development in the public interest. Article 1 paragraph (22) of the fourth amendment to Perpres No. 148 of 2015 states the unit task force (SATGAS) formed by the ministry to assist in the implementation of land acquisition for development in the public interest, compile a land acquisition plan proposal based on: Regional spatial planning (Article 3 paragraph (1) letter a) and regency / city spatial planning (Article 4 letter c) Perpres No. 71 of 2012. The purpose and objectives as well as plans in land acquisition must be explained to the community landowners whose land will be released, for example: the release of the land for infrastructure development plans, the location of the land to be released, the land area needed, general description of the land status, the construction implementation period, the estimated land value and, importantly, the budgeting plan and compensation to be paid to the land owner by the Government (Tarmizi et al, 2016). Dasrin (1993) states that in order to find out the legal framework for land acquisition, the means adopted in obtaining land for development purposes must pay attention to the status of the required land rights, the status of those who need land and whether or not the landowners are willing to release their land rights. A community member who has land must realise that the use of his land is not for his own interests but community interests or public interests. Land in Indonesia is owned by citizens, is controlled by the Government for the greatest prosperity of the people.

Literature Review

Land Procurement and Release According to National Agrarian Law

The definition of land acquisition is the activity of providing land by providing proper and fair compensation to the entitled parties. This is regulated in Law No.12 of 2012 and Presidential Decree No. 71 of 2012 Article 1 paragraph (2). Human life really needs land. A problem that is always discussed in land law is the "problem of taking land rights" belonging to the community for the purposes of infrastructure projects for social purposes. One of them is land acquisition by the Government, who is to carry out development activities by providing compensation to the people who own land. In the implementation of land acquisition by the Government, problems often arise. This is due to the increasing need for land for development, while land supply is very limited. One need will reduce the needs of the other (Sydorov, 2020). The conflict between the need for land by the community for settlement and the need for land by the Government for the implementation of infrastructure development is often a problem that interferes with community relations with the Government, and often becomes a prolonged conflict.

Land acquisition in LoGA No 5 of 1960 has been determined and operationalised through Article 18 Loga No 5 of 1960, which reads: For the public interest, including the interests of the Nation and the State as well as the common and people's interests, land rights can be revoked by providing appropriate compensation and in accordance with the law.

Land Acquisition

Article 1 paragraph (9) of Presidential Regulation No. 148 of 2015 (fourth amendment): Relinquishment of land rights is an activity of terminating legal relations from parties entitled to the State through the ministry. Article 96 paragraph (1): the release of the land acquisition object right is carried out by the party entitled to the State in the presence of the head of the local land office. Paragraph (2): the release of the land acquisition object right as referred to in paragraph (1) is made in the minutes of the release of the object right land acquisition (Perpres No. 71 of 2012). Implementation of the relinquishment of land rights is one way to release the legal relationship to the land held by the owner which causes the abolition of the land rights (Mony, 2020). The activity of terminating legal relations from parties entitled to the State is related to the acquisition of land for infrastructure development in the public interest by providing appropriate and fair compensation in the land acquisition process.

Indemnification for Land

The actual land was not given to individuals personally. Someone selling his land does not mean he sells his property, but he only sells services to maintain the land that has been controlled. The state or government must respect the rights granted to its citizens to the land. These rights must be protected by a law that guarantees justice (Wibisono 2019). Ownership of land that has long been controlled is not necessarily given to the Government even for the construction of a project that is in the public interest. The implementation of land acquisition cannot be separated from what is called compensation. Article 1 paragraph (10) of the Law. No. 2 of 2012 and Presidential Regulation No. 71 of 2012 proscribes a fair and equitable replacement to those entitled to the land acquisition process. Provision of compensation can be given in the form of money, replacement land, resettlement, share ownership or other forms agreed on by both parties (Article 74 of Presidential Regulation No. 71 of 2012).

Land acquisition is carried out by the Head of the Land Office as referred to in Article 1 paragraph (2), Regulation of the Head of the Republic of Indonesia BPN RI No. 5 of 2012, so that the composition of the membership of the implementing task force (SATGAS) or the land acquisition committee.

The task force (SATGAS) or land acquisition committee is tasked with helping to expedite the release of land rights by acting as a moderator to bridge the interests of those who need land with those who own the land or the holder of land rights. A SATGAS moderator does not have the authority to enforce their decisions regarding the form and amount of compensation to parties who are landowners or holders of land rights. The implementation of land acquisition must carry out public consultation, which is a process of dialogic communication or consultation between interested parties in order to reach an understanding and agreement in the planning of land acquisition for development in the public interest (Article 1 paragraph (8) of Presidential Regulation No. 71 of 2012). Task forces (SATGAS) and those who have the right directly determine the form of compensation that has previously been assessed by a public appraiser, who has obtained permission from the minister of finance to provide valuation services based on the appraisal service valuation results. The task force is a unit formed by the ministry to assist in the implementation of land acquisition (Article 1 paragraph (22) amendment to four Perpres No. 148 of 2015). They do not determine compensation, nor does the public appraiser whose task is only to assess the price of compensation. The provisions of compensation must be preceded by a process of public consultation or deliberation. In the practice of giving compensation for land, it is often done in the form of money.

Basis for Land Acquisition Regulations

From the contents of article 18 of UUPA No. 5 of 1960 was born the provision regarding the taking of land owned by the community, that is, Law No. 20 of 1961 concerning revocation of rights to land and the objects that are on it (henceforth Law No. 20 of 1961). At the same time was Article 18 UUPA No. 5 Year 1960 and Presidential Instruction No. 9 of 1973 concerning the Implementation of the Revocation of Rights to Land and the Objects which are above it (hereinafter Inpres No. 9 of 1973). From Article 18 of BAL No. 5 of 1960 and Law No. 20 of 1961, the government issued Law No. 20 of 1961 and Presidential Instruction No. 9 of 1973. The Government then issued Minister of Home Affairs Regulation No. 15 of 1975 concerning Provisions Regarding the Procedure for Land Acquisition (hereinafter PERMENDAGRI No. 15 of 1975). This regulation is a procedure for land acquisition for the interests of the Government / private sector. Born after the enactment of Permendagri No.15 in 1975 was Keppres No. 55 of 1993 concerning Land Acquisition for the Implementation of Development in the Public Interest (hereinafter Perpres No. 55 of 1993. After Presidential Decree No. 55 of 1993 was declared null and void, there was Presidential Regulation No. 36 of 2005 dated May 3, 2005, Concerning Land Procurement for the Implementation of Development in the Public Interest (hereinafter Perpres No. 36 of 2005). Perpres No. 36 of 2005 was then amended to Perpres Number 65 of 2006 dated June 5, 2006 concerning Amendment to Perpres No. 36 of 2005 Concerning Procurement of Land for Implementation of Development in the Public Interest (hereinafter Perpres No. 65 of 2006). In 2012 the Government passed a Republican Law, namely Law No. 2 of 2012, regulations for the implementation of land acquisition from the law, as well as Presidential Regulation No. 71 of 2012 and changes to Perpres No. 71 of 2012. The first amendment to Perpres No. 40 of 2014 was set on April 24, 2014, the second amendment to Perpres No. 99 of 2014 was set on 15 September 2014, the third amendment to Perpres No. 30 of 2015 was set on March 17, 2015. Amendments to the four Perpres No. 148 of 2015 was set on December 28, 2015. Perpres No. 71 of 2012 Article 125, states: When this presidential regulation comes into force, Perpres No. 36 of 2005 as amended by Presidential Decree No. 65 of 2006 and its implementing regulations, are revoked and declared invalid except for the land acquisition process as referred to in Article 123 of Perpres No. 71 of 2012.

Method

This is a descriptive study with a Normative Law approach. Normative research is also called doctrinal law research. The normative model has a focus on the law as a set of rules that are certain, with a scope of universal applicability, and the process of running such laws must be in accordance with the logic that has been previously established (Yahya et al, 2018). This approach does indeed have a practical purpose for the purpose of making decisions. This model measures everything (symptoms, events) with rules through certain logical processes such as legal interpretation, legal refinement, or legal construction. Thus, according to the model of

this approach it seems that everything can be predetermined with certainty. The location of this research is the Medan City area. This city is the centre of the North Sumatra Regional Level I Government, which is one of the 25 Level II Regions in North Sumatra with an area of about 265.10 km². It directly borders the Deli Serdang Regency, North, South, West and East. Most of the area of Medan City is low land which is a meeting place of two important rivers namely the Babura river and Deli river.

Results and Discussion

Result

The Process of Exemption of Land Rights

The author has begun several studies on the taking of community land rights carried out by the Government for the sake of infrastructure development. Starting from 1984/1985 until 2016, these studies are guided by or based on the regulations that are in force at the time. All case study research involve road widening projects that have been carried out in Medan with the aim to accelerate development infrastructure. Some of the studies that the author has carried out in Medan City. **Case I:** In 1984/1985 the implementation of land acquisition for Halat Road, Pasar Merah Barat Subdistrict and Maksum II City, Medan City. At the time the applicable regulation was PERMENDAGRI No. 15 of 1975. Implementation of land acquisition for this Halat road is widening the road in the public interest, the process of carrying out land acquisition in the first stage of the land acquisition committee through the Pasar Merah Barat office and Maksum II Medan office, inviting people (community whose land is planned to be released) to come to the Pasar Merah Barat Kelurahan office to listen to the explanation from the land acquisition committee. This occurred without a negotiation process regarding compensation issues and what will be compensated, which actually has been regulated in Article 3 PERMENDAGRI No. 15 of 1975. The committee's tasks contained in letters b and c are to hold negotiations with the holders of land and building / plant rights, and (c) estimate the amount of compensation that will be paid to the rightful person. What is expected by the rights holders from the land acquisition committee is very disappointing news for all people whose land is affected by the acquisition, because their lands are not compensated (not paid) due to insufficient funds provided by the Central Government. This is the reason the land acquisition committee on the land acquisition of residents of Jalan Halat paid only for what is on the land such as buildings, bridges, house fences etc, while the land was not paid for at all. The government has PERMENDAGRI No. 15 of 1975 concerning Provisions Regarding the Procedure for Land Acquisition, which is for the purpose of land acquisition. However, in Case I, community lands did not receive compensation. Where is justice for the community?

Case II: In March 1998, the Medan City Government formed a land rights release committee. The Decree of the Pertiwi Jalan Widening Project Committee. 821-2 / 3951 / SK / 1998 to release community lands around Jalan Pertiwi Kelurahan Binjai, Medan Denai District, Medan City at that time involved Keppers No. 55 of 1993. The relinquishment of land rights proceeded smoothly because the relinquishment of land rights was the desire of the community, who appealed to the Regional Government to widen roads in the Jalan Pertiwi area. Unfortunately, the committee stated the price of compensation for land and anything that was on the land such as buildings, bridges, house fences and others had been determined by the committee for releasing land rights without consultation, even though it was clearly stipulated in Article 9 Keppers No. 55 of 1993. This states: land acquisition for the implementation of development in the public interest is carried out through consultation. In this case the committee does not carry out a deliberation process and the community must accept with surrender the compensation price set by the committee. Compensation is not in accordance with the wishes of the community or justice.

Case III: Project 1: The Decree of Medan Mayor Number 593.83 / 1626.K / 2010 regarding the determination of the amount of compensation for land, buildings and plants for the purpose of road construction through Jalan Iskandar Muda in Sei Village, as well as Putih Timur II Medan Petisah District Medan City.

Project 2: Medan Mayor Decree Number 593.83 / 1628.K / 2010, regarding the determination of the amount of compensation for land, buildings and plants for the construction of the Fly Over Guaranteed Ginting in Kwala Bekala Village, Medan Johor District, Medan City.

Project 3: Medan Mayor Decree Number 593.83 / 1860.I / 2010, regarding the determination of the amount of compensation for land, buildings and plants for public use, the construction of access roads in and out of the location of the vegetable terminal segment II in Lau Cih and Sidomulyo, Medan Tuntung District, Medan City.

The acquisition and release of land rights carried out for widening the road from 3 projects are included in the category of small-scale land acquisition. The process of implementing the release of land rights of the 3 projects mentioned above runs very against the implementation of deliberations in order to determine the amount of compensation among the holders rights with the committee.

Case IV: Widening Jalan Karya Wisata (starting from Jalan Karya Kasih to Jalan Eka Warni) is located in Pangkalan Masyhur Village and Kelurahan Gedung Johor, Medan Johor District. It occurred through the Decree of the Mayor of Medan Number 593 / 259.K / 2017 Regarding the Implementation Team of Land Procurement Activities for Development in the Public Interest in the City Government of Medan. This road widening is carried out through III stages:

phase I 2014 42 parcels, 2015 84 parcels, namely Jalan Karya Wisata until the intersection of Jalan A.H. Nasution and up to Jalan Karya Kasih. Phase II of 2016 112 parcels, namely Jalan Karya Wisata up to Jalan Karya Kasih and until Jalan Eka Warni. Phase I and II have been completed with payment of compensation for land, buildings and plants in accordance with the deliberation process between the SATGAS party and the landowner. Phase III planning is carried out in 2017 around Jalan Eka Sama, Jalan Karya Wisata and Jalan Karya Jaya. In 2014 the Medan City Government spent Rp. 100 M for operational costs of widening the road in Medan City, namely the widening of Jalan Karya Wisata (starting from Jalan Karya Kasih to Jalan Eka Warni) Jalan Eka Sama, Jalan Karya Wisata, and Jalan Karya Jaya, which are located in Pangkalan Mashyur Village and Kelurahan Gedung Johor, Medan Johor District, Jalan Muhtar Basri, and around the Pancing Road. The release of land rights (vacant land) for victims of the Aksara Market fire, Pasar Rakyat Jalan Ledda Sojono included the bridge road.

Projects implemented by the Government are certain to use lands owned by many communities are often carried out arbitrarily and without justice, harming the community. By implementing regulations made by the State, which are all considered legal for reasons of public interest, the contents of Article 6 of the BAL, which states that all land in Indonesia functions socially, disregard justice and the fate of people whose land was taken by the Government. The government feels their position is higher than the community. According to the Government, the people should say thank you to the Government who has deigned to provide compensation.

Land Case Settlement Process

The implementation of land acquisition by the Government causes many cases of land in people's lives. This is due to a conflict of interest between the holder of land rights and the Government as the executor of the land acquisition. As a result of a conflict of interest, an impact on land conflicts or disputes disrupt the peace of the community. From some of the author's research results and several land acquisition cases that occurred in Medan in particular, and in North Sumatra in general, the causes of conflicts or land disputes usually stem from the first problem: people do not want to give up their land because they do not understand the social function of land, the importance of infrastructure development, or comprehensive legal counselling, especially in agrarian law. Second: compensation provided by the Government to the community whose land is affected by infrastructure development, does not match the price value or does not rely on the local general price at the time of release.

One of the BPN RI's strategic activities is the acceleration of resolution of land cases, based on the Regulation of the Head of the National Land Agency of Republic of Indonesia No. 3 of 2011. The management of the study and handling of land cases is one of the functions of the National Land Agency of the Republic of Indonesia. This is in order to cope with disputes, conflicts and land cases and realise policies for justice and people's welfare. Article 26

paragraph (1) handling land cases is intended to provide legal certainty over the authority, ownership of the use of land.

As explained above:

Case 1 Settlement: In 1984/1985 the land that was released by the Government was not paid at all, only what was on the land was paid for, such as buildings, bridges, fences, etc. Pay for buildings, bridges, fences houses and others features, such as trees, was relatively cheap and involved very tough negotiations. Settlement of Case II: the Committee compensation for land and anything that is on the land such as buildings, bridges, house fences and others was determined by the committee for the release of land rights without deliberation. The price of compensation for land is Rp. 40,000., Per m2. Price for compensation of buildings Rp. 200,000 Per m2 (see the condition of the building).

Case III Settlement: Although the deliberation to determine the amount of compensation, between the rights holders and the committee was very tough, the committee gave compensation that was agreed on by both parties over several meetings. The price of compensation for land is Rp. 4,500,000., Per m2. Price for compensation of buildings Rp. 1,000,000., Per m2 (see the condition of the building).

Case IV Settlement: From the results of the interview conducted by the author with the landowners, the meeting had been held several times, and the landowners were very aware of the importance of widening the road. They were willing to accept the compensation price that had been decided.

Implications of Taking Land Rights on

a. Law

The regulations for the acquisition/release of land rights require public consultation/deliberation, but in reality, the SATGAS /committee sets the price of compensation for land rights. The SATGAS / committee is not authorised to set compensation prices for land rights without deliberation, so in this case they are considered to have violated the law, and their actions have also harmed the community. After community lands are released for infrastructure development, it will cause differences in the size of the land owned by the community due to the release of land rights. This situation will cause problems for the community due to the obligation to make land certificates (certificates from BPN) by registering land (Government Regulation of the Republic of Indonesia No. 24 of 1997 concerning Land Registration). Do they have enough funds to register the land? Besides, they also have to buy land and fix the house for their next life. Other things that are the cause of land conflicts include overlapping, regulations and institutions that deal with land-related fields.

b. The Economy

The limited area of available land is not proportional to population growth which results in land becoming an economic commodity. When land has become an economic commodity, the imbalance of the structure of ownership of land is a result and has an influence on people's lives, because capital parties will more easily obtain ownership / control of land (through buying and selling and so on) compared to small communities.

c. Social

The social impacts and environmental impacts, due to land acquisition, include questions regarding whether the compensation they have received is sufficient to meet their standard of living, what their new land status will be, whether they will get a decent living in a new area, and how people will fare in the future after their land has been taken by the Government. In reality, the taking of land rights will add to the poor in our beloved country of Indonesia.

d. Political.

Crisis/loss of trust in leaders in this country: leaders make promises at the time of the General Election, and the community will collect on promises when the leaders have sat as their representatives. What is the welfare of the people? and where is the upholding of justice? The promises made to the community are unfulfilled. Justice is difficult to uphold, and justice does not side with small communities. The law points down.

e. Culture /Legal Culture

The change in the cultural values of the community alters the view of law enforcement in daily life, especially regulations relating to land. The legal culture of implementing regulations must be demonstrated / practiced in the midst of society.

The National Agrarian Law recognises the role of custom and religion in the formation of the Constitution of 1960, as stated in the "Opinion" letter which states that, in connection with the above considerations, there must be a National Agrarian Law based on customary law. Article 5 of the 1960 Act in this law and in other legal regulations refers to all things respecting the elements of religion.

Discussion

The purpose of the Perpres. No. 71 of 2012 and amendments in the Republic of Indonesia are for the implementation of land acquisition. This regulation was born because of the limited availability of land for infrastructure development in the public interest. To acquire or control these lands it is necessary to provide compensation to those entitled to the land, and allow the task force to assist in the implementation of land acquisition. Understanding public interest in Article 1 paragraph (6) of the Law. No. 2 of 2012 and Presidential Decree No. 71 of 2012 and

its changes must be realised by the Government and used as much as possible for the prosperity of the people (general). "The definition of social functions according to Leon Duguit is: there are no subjective rights (subjectif recht) ... there are only social functions" (Parlindungan, 1998).

The granting of compensation to the public is often impartial and does not protect the rights of the community. Intimidation by the Government, forces the community to accept compensation determined unilaterally from the committee. The application of some regulations regarding land acquisition in the midst of the community actually has not created justice. In taking the rights to community land, the Government uses the words "compensation or compensation" in the applicable regulations. The use of the words "compensation or compensation" is sure to cause harm in the midst of the community. The words compensation or compensation create an understanding that the compensation will still create losses for the community who own the land. The number of land cases in the form of land disputes and conflicts has the potential to create social unrest. Land disputes and conflicts will become obstacles in the development program in the midst of the community. Settlement of land disputes and conflicts can be done through legal channels (litigation), namely settlement through the State court. This has not been fully able to fulfil the sense of justice that is desired/expected by the community. Indonesian people have long felt uncomfortable and disappointed with the performance of the judiciary. To realise the tranquillity of the State and avoid prolonged conflict and create justice for the community, a quick, precise and complete solution through non-litigation (non litigation) with the principle of win/win needs to be developed. The latest news at the moment (2019) is that the Medan City Government is discussing plans to build a "toll road" within the city of Medan in order to reduce congestion. It is estimated to take up to 7 trillion funds and will be built in 2020, and a feasibility test has been started for the construction of the toll road. For the planned implementation of this toll road, land will be required for development. This project will require a lot of land owned by the people of Medan City, because all areas in Medan City have been filled with people of Medan City. Will the Government in developing this toll road project be guided by regulations regarding land acquisition using a method that provides compensation in the land acquisition process?

The aim of this research is to answer how to create a model of land acquisition based on Islamic Law and justice to support and accelerate infrastructure development. Indonesian Islamic (fiqh) law does not have a specific and detailed regulation governing the acquisition / release of land rights and compensation for land. Islamic law regulates how to obtain rights by a. buying and selling, b. exchange, c. infaq, d. shodaqoh, e. gift, f. endowment, g. inheritance, h. grant, i. zakat and j. ihyaul mawat (Alabij, 1992). Islamic law has regulations governing the taking of land rights by the Government for development in the public interest. For example: "In the time of the Prophet Muhammad, when the Prophet Muhammad was about to establish the Prophet's

Mosque, he had bought a resident's land (As'ad bin Zurarah, the land of orphans and some grave musrikrikin that have been damaged)" (As-Suyuthi, 1988). "During the widening of the Prophet's Mosque in 17 H ... At the time of the Caliph Umar ra, Umar bought all of the property around the mosque except the Apostles' 'widows' houses to expand the mosque" (As-Suyuthi, 1988). Umar bought Safwan bin Umayyah's house to be used as a place of detention for people who committed crimes (Zahrah, 2016). A large fort was also built around the mosque (Khan, 1998). During the Umayyad Years 86 H s. 96 D and 705 M s.d. 715 AD, the government of the Caliph Al-Walid bin Abdul Malik ordered the acquisition of lands around the Nabawi Mosque for the widening of the mosque by way of compensation or sale and purchase (Al-Huni, 1979). The process of delivering land rights for public purposes have been carried out according to Islamic Law by the Prophet Muhammad and Caliph Umar ra, as well as other Caliphs by buying community land for development in the public interest. According to Islamic Law, in taking the rights to the community's land, what is used is the law of buying and selling, as was done by the Prophet Muhammad and the Caliph of the Khalifah. This way of buying and selling is very beneficial for the people to create justice/prosperity and remain far from conflict.

There is a similarity between the legal provisions governing the implementation of land acquisition / release according to Islamic Law and National Agrarian Law. There are substantial similarities between the two laws: First, the implementation of procurement / release of land rights in Islam is regulated in Islamic Law, and the procurement / release of land rights in the National Agrarian Law is regulated in Presidential Regulation. No. 71 of 2012. Second: in Islamic Law and National Agrarian Law the Government is the measure in the implementation of the release of land rights. In Islamic Law, it was carried out by the Prophet Muhammad and the Caliphs at the time they were leaders (the Government). Third: the procurement / relinquishment of land rights have the principle of public interest or *maslahah al-ummah* (benefit). Land acquisition / relinquishment of land rights must be prioritise the public interest, and not seek profit or be commercialised personally. Fourth: between the two laws above is the existence of "gifts" (money) to the owner of the land rights whose land is taken for public purposes.

The Government's efforts in the future must create or change regulations on land registration to a model of land acquisition based on Islamic law, which is just, prosperous for the community, and eliminates or avoids poverty by removing the words "replace loss or compensation" with the phrase "buying and selling.". The government in determining the sale and purchase of land must rely on "the basic price set periodically by a committee as referred to in PERMENDGRI No. 15 of 1975 for an area according to the type of use (Salindeho, 1987). The provision of land prices also must be appropriate at the time of taking community land rights. Implementing a system of buying and selling means the Government will buy community lands at the value of the local price at the time these lands are released in the public

interest or for infrastructure development. This will ensure benefits for the community and lead to a better, more decent, prosperous, and just life. There will no longer be lasting conflicts, and the taking of land rights will not add to the poor in this country (Nnurlina, 2019). The role of the Government in the future is very important to form and create a law on Land Procurement for Development in the Public Interest that creates justice and prosperity for the people and the country, which is safe and secure as this beloved Indonesian Nation aspires to be.

Conclusion

1. At present the Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest has been formed and is in force. RI No.22 additional LN. RI of 2012 No. 5280 carries out Article 53 paragraph (3), that is, the provisions concerning the mechanism for the implementation of land acquisition funding for public purposes, as well as Article 59 of this Law, which involves further provisions concerning the implementation of land acquisition for development in the public interest, as regulated by Presidential Regulation. These considerations need to stipulate Presidential Regulation of the Republic of Indonesia Number. 71 of 2012 and its amendments concerning the Implementation of Land Procurement for Development in the Public Interest and its amendment to replace the old regulation, namely Presidential Regulation No. 36 of 2005 dated May 3, 2005, Regarding Land Acquisition for Implementation of Development in the Public Interest. Perpres No. 36 of 2005 was changed to Perpres Number 65 of 2006 dated 5 June 2006 concerning Amendments to the Presidential Regulation No. 36 of 2005 concerning Land Acquisition for Implementation of Development in the Public Interest.
2. There is a similarity between the legal provisions governing the implementation of compensation according to Islamic Law and National Agrarian Law. There are substantial similarities between the two laws: first, the implementation of the taking of land rights and rules according to Islamic Law and National Agrarian Law; second, in Islamic Law and National Agrarian Law, the Government's role is carried out by the Prophet Muhammad and the Caliphs. Land acquisition/release of land rights also involves principles of public interest or *maslahah al-ummah* (benefit) of the public interest. Between the two laws above, money is also given to the owner of the land rights whose land is taken for public purposes.

Recommendation

1. It is expected that in the future the Government must strive to create, form, or change regulations on land registration with a model of land acquisition regulations that are based on Islamic law and are, therefore, just and prosperous for the community. They will also eliminate or avoid poverty as well as prolonged conflict by removing the word "compensation or compensation" with the phrase "sale and purchase" as has been implemented in Islamic Law.



2. The government in determining the sale and purchase of land must rely on the local general price that is the price of buying and selling at the time. It is not allowed to set the price of land without deliberation.

REFERENCES

- A, Nurhayati. 2016. Comparative Study of Compensation for Land Against From the Perspective of Islamic Law and National Agrarian Law, Medan: Pustaka Bangsa Press.
- Abadi, Muhammad ibn Ya'qub Fairuz. 2004. Al-Qamus Al-Muhith, Beirut: Dar Al-Kutub Al-Ilmiyyah.
- Abdurrahman. 1994. Land Procurement for Development Implementation in the Public Interest, Bandung. Citra Aditya Bakti.
- Alabij, Adijadi, 1992. Land Representation in Indonesia in Theory and Practice, Cet. to. 2, Jakarta: Rajawali Pres.
- Al-Ashfahani, 2004. Al-Raghib, Al-Mu'jam Mufradat Li Al-Fazh Al-Qur'an, Beirut: Dar Al-Kutub Al-Ilmiyyah.
- Al-Huni, 1979. Faraj Muhammad, Al-An-Nuzum Al-Idariyah Wa Al-Maliah Fi-Ad-Daulah Al-Arabiyah Al-Islamiyah, Cairo: University of Al-Syarikah Al-Amanah Musyawarah.
- Ali Khan, Majid, 1998. The Pious Calips, Kuala Lumpur: Isnamic Book Trust Publisher.
- As-Suyuthi, Jalaluddin, 1988. Date Al-Khulafa, Beirut: Dar Al-Fiqh.
- Dasrin, 1993. Governmental Agency Land Procurement Procedures, Jakarta: BPN Library.
- Dijk, R.van. 2010. Introduction to Customary Law in Indonesia, (translated by A.Soekardi) third edition, Bandung's gravenhage, Vorkrink-van Hoeve year.
- Mony, S., & Ramachandran, N. (2020). Values-Based Control in Land Acquisition for Infrastructure Projects. In *Innovation, Technology, and Market Ecosystems* (pp. 283-304). Palgrave Macmillan, Cham.
- Nasution, Chairuddin.K, 1985. The Content of Agrarian Law II. Medan: Fac. UISU Law.
- Nurlina, Hanuma, N , Safuridara, 2019. Analysis of Structural Poverty Trend Among Rice Farmers in East Aceh Regency, Indonesia. *Global Business & Finance Review*, 24(1). 71-79
- Parlindungan, A.P, 1998. Commentary on the Basic Agrarian Law. Bandung: Mandar Maju Publisher.
- Projodikoro. 2017. Civil Law Regarding the Right to Objects, Jakarta: PT. Intermasa.



- Republic of Indonesia. 1960. Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles 1960, 104. L.N Republic of Indonesia, Additional L.N No.2034
- Republic of Indonesia. 1961. Law No. 20 of 1961 concerning revocation of rights to land and objects that are above it, as well as this law as the implementation of Article 18 UUPA No. 5 of 1960
- Republic of Indonesia. 1973. Presidential Instruction No. 9/1973 Concerning the Revocation of Rights to Land and the Objects
- Republic of Indonesia. 1975. Minister of Home Affairs Regulation No. 15 of 1975 concerning Provisions Regarding Land Acquisition Procedures
- Republic of Indonesia. 1993. Keppres No. 55 of 1993, Regarding Land Acquisition for Implementation of Development in the Public Interest
- Republic of Indonesia. 2005. Perpres No. 36 of 2005 dated May 3, 2005, Regarding Land Acquisition for Implementation of Development in the Public Interest
- Republic of Indonesia. 2006. Perpres Number 65 of 2006 dated June 5, 2006 concerning Amendment to Perpers No. 36 of 2005 concerning Land Acquisition for Implementation of Development in the Public Interest
- Republic of Indonesia. 2011. Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of the Study and Handling of Land Cases.
- Republic of Indonesia. 2012. Law No.2 of 2012 concerning Land Acquisition for Development in the Public Interest.
- Republic of Indonesia. 2012. Presidential Regulation Number. 71 of 2012 concerning Implementation of Land Procurement for Development in the Public Interest
- Republic of Indonesia. 2012. Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition.
- Republic of Indonesia. 2014. Perpres No. 40 of 2014 amendments to Perpres No. 71 of 2012 ie the first amendment.
- Republic of Indonesia. 2014. Perpres No. 99 of 2014 the second change was set on September 15, 2014,



- Republic of Indonesia. 2015. Perpres No. 148 of 2015 the fourth amendment was set on December 28, 2015,
- Republic of Indonesia. 2015. Perpres No. 30 of 2015 the third change was set on March 17, 2015,
- Salindeho, Jhon (1987). Land Issues Under Development, Jakarta: Sinar Grafika.
- Source Sampali Climatology Station Medan, 2014-2015.
- Sutedi, Adrian, 2009. Transfer of Land Rights and Registration, Jakarta: Sinar Grafika.
- Suyuthi, Jalaluddin, 1998. Date Al-Khulafa, Beirut: Dar Al-Fiqh.
- Sydorov, Y., Drobush, I., & Hulievska, H. (2020). Agrarian business and human rights: International and national level. *Amazonia Investiga*, 9(25), 403-410.
- Tarmizi, H.B., Daulay, M. 2016. The influence of population growth, economic growth and construction cost index on the local revenue of tax on acquisition of land and building after the implementation of law no. 28 of 2009. *International Journal of Economic Research*. 13(5). 2285-2295.
- The Indonesian Ministry of Religion, 2004. Al-Qur'an Al-Karim and Translation with Transliteration, Semarang: PT Karya Toha Putra.
- Wibisono, H., Isnaeni, H. M., & Prasetyawati, E. (2019). Authorization Entities (Legal Guarantee Review). *International Journal of Multicultural and Multireligious Understanding*, 6(6), 57-63.
- Yahya, I, Hasibuan, R.P.S., & Z.B.Torong (2018). Factors That Influence Success Implementation of Government Accounting Standard Based On Acrual In The Government of The Districts/Cities In North Sumatera Province. *Journal of Management Information and Decision Sciences*. 21(1). 1-14.
- Zahrah, M. Abu, 2016. Khatam Al-Nabiyin Saw, vol. II, Beirut: Al-Maktabah Al-Ashriyah.