

THE LEGAL PARADIGM OF LAND ACQUISITION FOR THE DEVELOPMENT OF THE CAPITAL OF THE NUSANTARA

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ABSTRACT

Law Number 3 of 2022 concerning the State Capital was established to realize the goals of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia. This study aims to determine the procedure for acquiring land in the IKN area and to analyze whether the regulations governing land acquisition in the IKN area have accommodated protection of local people's human rights. This research is a type of normative legal research, namely legal research conducted by researching and reviewing laws and regulations, using a statute approach and a conceptual approach. Data collection techniques are carried out by collecting primary legal data and secondary legal data. The results showed that the land acquisition procedure in the IKN area consisted of 2 (two) mechanisms, namely by releasing forest areas and through land acquisition mechanisms. The regulations governing the acquisition of land have not fully accommodated the human rights protection of the local community.

Keywords: Land Acquisition, Capital of the Archipelago, Human Rights

INTRODUCTION

On February 15, 2022, President Jokowi issued a new regulation in the form of a law, namely Law Number 3 of 2022 concerning the State Capital. The purpose of the Act was formed to realize the goals of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely:

1. Protect the entire Indonesian nation and the entire homeland of Indonesia;
2. Promote the general welfare;
3. To educate the nation's life;
4. Implement world order based on freedom, eternal peace and social justice.

The relocation of the capital city is not new, the plan for this relocation has been started since 2019. On August 16, 2019 President Joko Widodo asked the DPR RI for permission to move the capital city from Jakarta to Kalimantan. This capital relocation aims to:¹

¹ <https://politik.brin.go.id/kolom/pemilu-partai-politik-otonomi-daerah/diskursus-politik-hukum-pemindahan-ibu-kota-negara-tinjauan->

1. Creating activities for equitable development and economic justice;
2. Reducing the burden of problems on the island of Java, especially the overpopulated city of Jakarta;
3. Realizing safe, modern, sustainable and resilient IKN;
4. Creating a new civilization as a representation of the nation's progress with the concept of a modern, smart and green city.

One of the factors driving the plan to relocate the IKN of the Republic of Indonesia is the socio-economic and population gap. The uneven distribution of the population causes the increase in development to be concentrated in Java. Data from research by the National Research and Innovation Agency shows that around 57.4% of Indonesia's population is concentrated in Java, 17.9% in Sumatra, 7.31% in Sulawesi, 5.81% in Kalimantan, and 5.5% in Bali and Nusa Tenggara, and 2.61% in Maluku and Papua.²

Geographically, the IKN area is located in the north of Balikpapan City and south of Samarinda City. The area of IKN is approximately 324,331 hectares with a composition of approximately 256,142 hectares of land area and 68,189 hectares of marine waters. While administratively the IKN area is located between 2 (two) regencies, namely North Penajam Paser Regency and Kutai Kartanegara Regency, while land planning in the IKN area is divided into several parts, namely:

1. IKN Development Area (KPIKN), with an area of approximately 199,962 hectares;
2. IKN area (KIKN), with an area of approximately 56,180 hectares; and
3. Central Government Core Area (KIPP), with an area of approximately 6,671 hectares.

The implementation of land development in IKN certainly requires careful land acquisition so that development can run smoothly and with minimal conflict. In accordance with Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest that land acquisition is based on the principles of humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability and harmony.³ So that land acquisition carried out in the IKN area must also continue to consider these principles so that later there will be respect and protection for the landowner community, especially indigenous peoples because IKN is built in an area where most of the land has the status of customary land.

[pembentukan-undang-undang-dalam-studi-kebijakan-publik/](#) diakses pada tanggal 08 Juli 2022 pukul 11.01 WIB

² Lampiran II UU Nomor 3 Tahun 2022 tentang IKN

³ Pasal 2 UU No. 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum.

While on the other hand the development of the IKN area causes fluctuation and problems from various elements of society. The problems are in the form of first, there is an indication of overlap between land for IKN development with plantations, mining and settlements in customary areas. This overlap certainly has the potential to trigger disputes and conflicts in the future. Second, the development of the IKN area has the potential to displace the order and life of indigenous peoples. Third, the lack of involvement of indigenous peoples in the acquisition of their land. Most of the land for IKN development is in forest areas inhabited by customary law communities. Land for indigenous peoples is a lebensraum or living space for them.

Based on the description that has been described in the introduction above, the problems are what is the procedure for land acquisition in the IKN area? And have the regulations governing land acquisition in the IKN area accommodated the protection of the human rights of the local community?

METHOD

This research is a type of normative legal research, namely legal research conducted by researching and reviewing laws and regulations, using a statute approach and a conceptual approach.⁴ The problems that have been formulated are answered with a statute approach to examine all laws and regulations related to the problems (legal issues) faced. After the problem is analyzed with relevant laws and regulations, then in accordance with the conceptual approach approach to be used as the basis for building legal arguments used in resolving legal issues faced with answers (solutions).⁵ Data collection techniques are carried out by collecting primary legal data and secondary legal data. The primary legal data collection used by researchers is the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960, Law Number 2 of 2012, Law Number 3 of 2022 and other regulations related to research issues. The secondary legal data used are books, research results, legal journals, newspapers, internet media, papers and other sources related to land issues (1).

ANALYSIS

1. Land Acquisition Procedures in the IKN. Area Most of the land in IKN has the status of forest. The total land area that will be needed to build the IKN is

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Ctk. Kesepuluh, Kencana, Jakarta, 2015, hlm. 172-173.

⁵ *Ibid*, hlm. 172-173.

2,311.09 Ha, of which 50.84 Ha is located in the forest area.⁶ The development of the IKN area is carried out in 5 (five) stages, namely:

1) Stage 1

The development of the IKN area in phase 1 will be carried out in the period from 2022 to 2024. The government's focus at this stage in terms of social aspects are:⁷

- a. Resolution of overlapping land ownership issues, construction of public facilities (traditional halls, public spaces), involvement of local communities and relevant stakeholders in the process of identifying cultural heritage assets, developing local community capacity and economic opportunities for vulnerable groups, community involvement in watershed management;
- b. increasing the capacity of local educational institutions to prepare skilled local workers according to the interests of investors in economic clusters, as well as developing world-class educational and research institutions.

Meanwhile, in the field of infrastructure and the environment, the priorities at this stage are:

- a. construction of some toll roads to support IKN;
- b. construction of Integrated Waste Management Sites (TPST), Waste and B3 Waste Management, Retention Ponds, SPAM in Some KIPPs;
- c. electricity supply facilities are available to serve IKN residents;
- d. the Sepaku Semoi dam, the Sepaku River Intake and its raw water transmission network;
- e. Main urban macro drainage system;
- f. ICT infrastructure development: Telecommunication Main Network, BTS, interconnection network and High Voltage Transmission Network;
- g. facilities of worship, education, health/fitness, trade, akamin to support offices and housing.

2) Stage 2

The development of the IKN area in phase 2 is carried out in the period from 2024 to 2029 in the form of targets for primary and secondary public transportation facilities that are ready to be used. From the social aspect, the government targets in Phase 2 are still the same as in Phase 1, namely:

- a. resolution of overlapping land ownership issues, construction of public facilities (custom halls, public spaces), involvement of local communities and relevant

⁶ <https://www.atrbpn.go.id/kolom-agraria/detail/247/pengadaan-tanah-untuk-membangun-ibu-kota-nusantara-ikn> diakses pada tanggal 21 Juni 2022 pada pukul 12.23 WIB

⁷ Lampiran II UU No. 3 Tahun 2022

- stakeholders in the process of identifying cultural heritage assets, developing local community capacity and economic opportunities for vulnerable groups, community involvement in watershed management;
- b. increasing the capacity of local educational institutions to prepare skilled local workers according to the interests of investors in economic clusters, as well as developing world-class educational and research institutions.
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- a. resolution of overlapping land ownership issues, construction of public facilities (custom halls, public spaces), involvement of local communities and relevant stakeholders in the process of identifying cultural heritage assets, developing local community capacity and economic opportunities for vulnerable groups, community involvement in watershed management;
- b. increasing the capacity of local educational institutions to prepare skilled local workers according to the interests of investors in economic clusters, as well as developing world-class educational and research institutions.

Meanwhile, from the aspect of infrastructure and the environment, the focus of the government in Phase II are:

- a. construction of VVIP Airport;
- b. increasing the installed capacity of the Sepaku Semoi Dam and the Intake of the Sepaku River;
- c. IPAL to serve the existing operating area;
- d. development of an integrated data center to support city management services (government, public, and business) or smart city backbone;
- e. addition of urban amenities (secondary and tertiary services) to support public activities, work, business, and city tourism.

3) Stage 3

The development of the IKN area in phase 2 is carried out within the period 2030 to 2034. The focus of development carried out by the government in terms of infrastructure is to complete a mass public transportation system, wastewater treatment plant (IPAL), drinking water treatment plant (IPAM), facilities supporting sponge cities, waste processing, adding digital amenities, and urban areas. Meanwhile, from the social aspect, development in stage 3 still has the same focus as stage 1 and stage 2.

4) Stage 4

Phase 4, in 2035-2039, is the development of the education and health sectors as well as the completion of the construction of regional railways and multipurpose dams. The focus of development from the social aspect at this stage is:

- a. Strengthening community socio-cultural resilience, developing IKN in accordance with spatial plans, developing green and sustainable economic policies for new sectors;
- b. Increasing the capacity and competitiveness of world-class educational and research institutions.

Meanwhile, the development targets in the infrastructure and environment sectors are:

- a. Regional railway development to support IKN;
- b. WWTP expansion;
- c. Additional capacity;
- d. Identification of potential and design of multipurpose dams;
- e. Addition of digital and urban amenities for implementing smart city solutions.

5) Stage 5

Stage 5 in 2040-2045 is marked by sustainable industrial development and stable population growth. The government's focus in the social sector is:

- a. Strengthening the socio-cultural resilience of the community, developing IKN in accordance with the spatial plan, developing green and sustainable economic policies for new sectors;
- b. Capacity building and competitiveness World-class educational and research institutions.

The legal umbrella for land acquisition in the IKN area is based on Presidential Regulation Number 65 of 2022 concerning Land Acquisition and Land Management in the Capital of the Archipelago. This Presidential Regulation was signed on April 18, 2022. Land acquisition in the IKN area is carried out through 2 (two) mechanisms, namely through the mechanism of releasing forest areas and through the mechanism of land acquisition.

1) Land Acquisition through Forest Area Release Mechanism

The development of the IKN area is prioritized to be carried out over forest areas where there is no land control and ownership. This is intended to avoid potential conflicts that arise in the future. Land acquisition through the mechanism for releasing forest areas is carried out by taking into account and providing protection for community land tenure, individual rights or communal rights of indigenous peoples. Land released from forest areas is industrial forest plantations (HTI) in forest areas that have been converted into convertible production forests (HPK). The release of forest areas into areas for IKN development is submitted to the Ministry of Environment and Forestry (KLHK). The procedure for submitting the release of forest area for IKN development is proposed by the Head of the Archipelago Capital Authority to the Minister of Environment and Forestry. Within a period of 3 (three) months after receiving the application, the Minister of Environment and Forestry must notify the Head of the IKN Authority whether or not the application is complete or not.

2) Land Acquisition through Land Procurement Mechanism

a. Land Acquisition through Land Acquisition Mechanism for Development in Public Interest

Land acquisition for the development of the IKN area refers to the provisions in Law no. 11 of 2020 concerning Job Creation, Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, Government Regulation Number 19 of 2021 concerning Implementation of Land Procurement for Development in the Public Interest and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency The Republic of Indonesia Number 19 of 2021 concerning Provisions for the Implementation of PP 19 of 2021 concerning the Implementation of Land Procurement for Development in the Public Interest.

Land acquisition in the IKN area is carried out through the following stages:

1) Planning Stage

At the planning stage, the IKN Authority Agency as the party who needs land immediately makes a Land Procurement Planning Document (DPPT). If the Authority Body has not been formed, the DPPT is made by the Ministry of Public Works and Public Housing (Ministry of PUPR). The DPPT submitted shall at least contain:

- a). the aims and objectives of the development plan;
- b). conformity with the Regional Spatial Planning and National and Regional Development Plans;

- c). land location;
- d). the required land area;
- e). general description of land status;
- f). estimated time of implementation of Land Procurement;
- g). estimated timeframe for development implementation;
- h). estimated land value; and
- i). budget plan.

2) Preparation Stage

At this stage the agency that requires land (Head of the IKN Authority, if it has not yet been formed then the one who acts as the Agency Requiring Land is the Governor of East Kalimantan or the Regent of North Penajam Paser and the Regent of Kutai Kartanegara) to form a Preparation Team no later than 5 (five) days after the DPPT is received. . This preparatory team is tasked with:

- a). implement the Notification of the Development Plan;
- b). carry out initial data collection on the location of the development plan;
- c) carry out the Public Consultation on the development plan;
- d) prepare the Determination of Development Locations;
- e) announce the determination of the location of development for the public interest.
- f) carry out other tasks related to the preparation of land acquisition for development in the public interest.

3) Implementation Stage

The implementation stage is carried out by the Minister of Agrarian Affairs and Spatial Planning/Head of BPN RI. At this stage, the Ministry of Agrarian Affairs and Spatial Planning/Head of BPN RI forms a Land Procurement Implementation Committee. At this stage the activities carried out include:

- a) inventory and identification of control, ownership, use, and utilization of land;
- b) assessment of Compensation;
- c) deliberation on Determination of Compensation;
- d) payment of Compensation;
- e) release of Agency Land.

The amount of compensation paid is determined based on the results of the assessment from the Land Appraisal Team conducted field by parcel of land, which includes:

- a) land;
- b) above ground and basement;
- c) buildings;
- d) plants;
- e) objects related to land; and/or

f) other losses that can be assessed, which are non-physical losses that can be equated with the value of money, for example losses due to loss of business or work, costs of moving places, costs of changing professions, and the value of residual property.

Compensation is given to the subject of the right/entitled party, namely the owner, ruler, user and user of the land which includes:

- a) holders of land rights;
- b) holders of management rights;
- c) nazhir for waqf land;
- d) the holder of the old written evidence;
- e) customary law communities;
- f) parties who control State Land in good faith;
- g) the holder of the basic control over the land; and/or
- h) owners of buildings, plants, or other objects related to land.

4) Result Submission Stage

At the stage of submitting the results, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency shall:

- a) Submission of proceeds to agencies requiring land (Ministry of Public Works and Public Housing or IKN Authority);
- b) Land certificate resulting from land acquisition.

b. Direct Land Procurement

Article 10 of Presidential Regulation 65 of 2022 states that in the context of efficiency and effectiveness, land acquisition in the IKN area can be carried out through direct land acquisition with the entitled party. The land acquisition can be done through buying and selling, grants, voluntary release, ruislag or other agreed methods.

2. Land Management at IKN in Efforts to Provide Human Rights Protection

Land procurement for the development of IKN areas must still be guided by the regulations governing land acquisition. Each stage must take into account the precautionary principle, the provision of fair compensation by deliberation on the form of compensation from the land acquisition process, stages and measurable completion times. If there are parties who refuse the amount of compensation, the compensation will be entrusted to the court (consignment) so that land acquisition can continue and development can continue.

Land resulting from the release of forest area and land acquisition in the IKN area will be determined as:

- 1) State Property

Is land related to the administration of government. The status of this land is a Right of Use which will be granted to the IKN Authority and/or the ministry/institution.

2) ADP(Asset in Operation) IKN

Land designated as ADP is granted Management Rights to the IKN Authority Agency. The IKN Authority which is given the authority of Management Rights has the authority to:

- a. Develop a plan for the designation, use and utilization of land in accordance with the RTR and the IKN Master Plan as well as the details of the IKN Master Plan;
- b. Using and utilizing all or part of the Land with Management Rights for their own use or in collaboration with other parties;
- c. Determine the annual mandatory tariff and/or money.

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The development of the IKN area is partly on customary land inhabited by around 21 indigenous peoples. Indigenous peoples have a strong relationship with their land. Because land for them is a lebensraum or living space, it means that

their lives depend on their traditional living space which includes forests, rice fields, gardens, rivers and the sea. When indigenous peoples lose their land, it's the same as losing their place of life so that if allowed to continue their lives will be marginalized and displaced by migrants.

Although the existence of indigenous peoples has been explicitly mentioned in Article 21 of Law Number 3 of 2022 which in essence states that spatial planning, land and transfer of rights to land, the environment, disaster management and security defense in IKN areas are carried out with due regard to and providing protection of individual rights or communal rights of indigenous peoples and cultural values that reflect local wisdom. The provisions in the law should be followed up by issuing laws or regional regulations that specifically regulate the existence of indigenous peoples. The new provisions are a form of the government's commitment to protect the rights of indigenous peoples in the development of IKN. The existence of this regulation is expected to regulate in detail the procedures and mechanisms for recognizing the rights of indigenous peoples with various evidences of land ownership.

CONCLUSION

IKN development activities are a shared responsibility so that what is a priority for the government we must support together. In general, the procedure for acquiring land for IKN development as stated in Law Number 3 of 2022 and also Presidential Regulation Number 65 of 2022 consists of 2 (two) mechanisms, namely by releasing forest areas and through land acquisition mechanisms. The regulations governing land acquisition have not fully accommodated the human rights protection of the local community.

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