

Reconstructing Land Acquisition Law for Indonesia's National Strategic Projects

Rosmidah¹, Supeno², Sitta Saraya³, Rian Saputra⁴, Seguito Monteiro⁵

¹Faculty of Law, Universitas Jambi, Indonesia, Email: rosmidah@unja.ac.id

²Faculty of Law, Universitas Batanghari, Indonesia, Email: supeno@unbari.ac.id

³Faculty of Law, Universitas Selamat Sri, Indonesia, Email: sittalaw@gmail.com

⁴Faculty of Law, Universitas Slamet Riyadi, Indonesia, Email: riansaputra@unisri.ac.id

⁵Fakuldade Direito, Universidade Dili, Timor-Leste, Email: seguito.monteiro@undil.edu.tl

Abstract

National Strategic Projects have accelerated infrastructure development but have also exposed a structural tension between development imperatives, state authority, and the constitutional protection of affected communities. Existing land acquisition governance tends to treat project designation and procedural compliance as sufficient grounds for acquisition, while substantive scrutiny of public interest, indigenous rights, participation, compensation, and socio-ecological consequences remains fragmented. This study aims to reconstruct the legal framework of land acquisition for National Strategic Projects (PSN) by establishing a constitutionally grounded model that reconciles development with social justice and rights protection. Using normative legal research with statutory, conceptual, and case approaches, the study applies systematic, conceptual, and teleological legal interpretation. The principal novelty of this study is the Constitutional Justice-Based Land Acquisition Model, which seeks to redesign the legitimacy framework of land acquisition rather than merely improve existing procedures. The model introduces a Constitutional Public Interest Test as a substantive threshold; mandatory Indigenous Rights Screening; meaningful participation and Free-Prior-and Informed-Consent (FPIC); replacement-cost compensation and livelihood restoration; integrated social-ecological assessment; effective remedies from the outset; independent review; and post-acquisition restoration monitoring. Critically, PSN status is reconceptualized as creating a rebuttable presumption of public interest rather than serving as conclusive justification for compulsory land acquisition. The model therefore transforms land acquisition from a project-oriented land delivery mechanism into a form of constitutional, rights-based, and sustainable land governance.

Keywords: *Indigenous Rights; Land Acquisition; Public Interest Test.*

1. INTRODUCTION

Infrastructure development has emerged as a key policy instrument employed by states to stimulate economic growth, enhance regional connectivity, and reinforce national competitiveness amid the dynamics of globalization.¹ Over the past two decades, large-scale infrastructure development has become an increasingly prominent development strategy in many developing countries, particularly across Asia, Africa, and Latin America. However, the acceleration of such development has also generated increasingly complex legal challenges,

¹ Rebecca Meckelburg and Agung Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia," *Land Use Policy* 137 (February 2024): 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>.

particularly concerning land acquisition, the protection of land rights, environmental sustainability, and respect for the rights of indigenous and customary law communities.²

This development indicates that land acquisition is no longer merely an administrative mechanism for securing land for development but has also become a constitutional issue involving human rights protection, good governance, and environmental justice.³ This paradigm shift suggests that the success of infrastructure development should be measured not solely by the speed of project completion but also by the state's capacity to balance development interests with the protection of citizens' constitutional rights.

This paradigm shift has contributed to the development of rights-based land governance, an approach that treats the protection of land rights as an integral component of sustainable development. Under this approach, state acquisition of land is legitimate only when undertaken in accordance with the principles of legality, proportionality, meaningful public participation, transparency, accountability, and the provision of fair compensation.⁴ Accordingly, public interest should not be construed merely as an instrument for advancing economic development but as a normative standard that also safeguard the constitutional rights of affected communities, environmental sustainability, and social justice.⁵ This shift reflects a broader transformation in modern land acquisition law, from a development-oriented paradigm toward a constitutional and human rights-based framework of land governance.

Indonesia has experienced a similar dynamic through the implementation of National Strategic Projects (Proyek Strategis Nasional (PSN)), which have been positioned as key instruments for accelerating national development. Following the adoption of various regulatory frameworks governing PSN, particularly after the enactment of the Job Creation Law and its implementing regulations, the government has sought to expedite licensing processes, land acquisition, and project implementation to promote investment and stimulate economic growth.⁶ Normatively, these policies are intended to accelerate development in pursuit of public welfare. Yet, this acceleration has also been accompanied by agrarian conflicts, land rights disputes, community objections to project-site determinations, inadequate recognition of the rights of indigenous and customary law communities, and criticism of the increasingly broad interpretation of public interest in land acquisition.⁷

This situation demonstrates that successful development depends not merely on the effectiveness of investment-oriented regulatory frameworks but also on the capacity of the legal system to balance development interests with the protection of citizens' constitutional rights. This tension reveals a fundamental paradox in Indonesia's legal

² Rosmidah Rosmidah et al., "De Facto Expropriation and Substantive Justice in Certified Land Ownership within Strategic Energy Areas," *Substantive Justice International Journal of Law* 8, no. 2 (December 17, 2025): 107–25, <https://doi.org/10.56087/substantivejustice.v8i2.486>.

³ Andi Dimah Laila Nurfaiah and Tjempaka Tjempaka, "Legal Protection for Buyers of Joint Assets Sold Without Wife's Consent," *Substantive Justice International Journal of Law* 6, no. 2 (October 4, 2023), <https://doi.org/10.56087/substantivejustice.v6i2.256>.

⁴ Willy Naresta Hanum and Muhamad Nafi' Uz Zaman, "Existence of Human Rights Protection in Land and Mining Conflicts: Evidence from Indonesia," *Journal of Law, Environment and Justice* 2, no. 3 (December 2, 2024): 285–306, <https://doi.org/10.62264/jlej.v2i3.107>.

⁵ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

⁶ Eko Nuriyatman et al., "Shifting Regulatory Paradigms in the Political Development of National Environmental Law," *Indonesian Journal of Environmental Law and Sustainable Development* 5, no. 1 (June 30, 2026): 133–66, <https://doi.org/10.15294/ijel.v5i1.34498>.

⁷ Rosmidah et al., "Can Electronic Land Rights Registration Help Prevent Land from Mafia Practices?," *Jambe Law Journal* 7, no. 2 (December 31, 2024): 539–58, <https://doi.org/10.22437/home.v7i2.375>.

policy on land acquisition.⁸ On the one hand, Article 33(3) of the 1945 Constitution of the Republic of Indonesia mandates the state to exercise control over the earth, water, and natural resources for the greatest possible prosperity of the people.

The same Constitution also guarantees legal certainty, protection of property rights, recognition of indigenous and customary law communities, the right to a good and healthy environment, and the protection of human rights. Accordingly, the doctrine of State Control over Land cannot be interpreted as granting the state absolute authority to expropriate land, rather, it should be understood as a constitutional mandate that must be exercised within the limits imposed by constitutional rights, the rule of law, and the principles of proportionality and public interest.⁹ Where such a balance is not achieved, land acquisition risks transforming from an instrument of development into a source of protracted agrarian conflict. This view is further supported by recent scholarship indicating that the expansion of the concept of public interest has shifted the orientation of development toward investment interests, thereby widening the potential for conflict among the state, corporations, and affected communities.¹⁰

The literature on land acquisition for public purposes has expanded considerably in recent years, particularly amid the proliferation of large-scale infrastructure projects across developing countries. Land acquisition is increasingly understood not merely as an administrative consequence of development but also as a manifestation of power relations among the state, market actors, and communities in determining access to and control over agrarian resources.¹¹ From this perspective, public interest can no longer be regarded as a neutral legal concept but rather as a dynamic legal-political construct shaped by the prevailing development orientation of the state. This transformation has positioned land acquisition law as a site of contestation among competing interests, particularly investment interests, the protection of land rights, and the state's constitutional obligation to advance social justice.

The administrative dimension of land provision for national strategic development is also significant. Wahyudi demonstrates that the provision of land for nationally strategic development is closely connected to spatial planning and administrative authorization, particularly where village-controlled land assets are involved. This indicates that the acceleration of strategic projects cannot be separated from the legality of administrative authority, land status, and the regulatory requirements governing the use or transfer of land.¹²

The Indonesian government has redefined the meaning of public interest within its land acquisition policy, thereby broadening the state's legal authority to acquire land for strategic development projects.¹³ The redefinition of public interest has facilitated the acceleration of infrastructure development while also potentially intensifying social

⁸ Iwan Permadi, Weny Almoravid Dunga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (December 23, 2024): 30–54, <https://doi.org/10.33756/jlr.v7i1.24930>. Ibu Kota Nusantara (IKN

⁹ Rosmidah Rosmidah and Dony Yusra Pebrianto, "Transparency Principle on Land Acquisition for Agrarian Justice," *Jambe Law Journal* 3, no. 1 (November 29, 2020): 83–101, <https://doi.org/10.22437/jlj.3.1.83-101>.

¹⁰ Bakhrul Amal, Yusriadi Yusriadi, and Ana Silviana, "Evolving Notions of Public Interest: A New Perspective on Land Acquisition in Indonesia," *Indonesia Law Review* 14, no. 2 (2024): 73–84, <https://doi.org/https://doi.org/https://doi.org/10.15742/ilrev.v14n2.5>.

¹¹ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

¹² Wahyudi Wahyudi, "KEDUDUKAN HUKUM TUKAR MENUKAR TANAH ASET DESA BAGI KEPENTINGAN STRATEGIS NASIONAL," *Mendapo: Journal of Administrative Law* 4, no. 1 (February 22, 2023): 46–62, <https://doi.org/10.22437/mendapo.v4i1.23237>.

¹³ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

conflicts by expanding the state's role in securing land for strategic development and investment.¹⁴ The fundamental problem of land acquisition in Indonesia therefore lies not only in administrative procedures, but also in the legal-political framework underpinning the expansion of state authority to define and interpret public interest.

These findings are further corroborated by Agung Wardana and Dzaki Aribawa Darmawardana, who demonstrate that PSN operate through mechanisms of exclusion that disproportionately affect communities with limited bargaining power. Their study identifies four principal mechanisms through which such exclusion is produced: market mechanisms, regulatory mechanisms, legitimization, and the exercise of state power.¹⁵ Accordingly, agrarian conflicts arising from strategic projects should not be understood merely as failures of legal implementation, but also as potential structural consequences of a regulatory framework that grants the state broad discretion to define development as serving the public interest while providing insufficient safeguards for affected communities.

Existing Indonesian legal scholarship has predominantly focused on the legal protection of affected communities in the context of land acquisition,¹⁶ particularly the balance between state authority and individual property rights. This body of scholarship emphasizes that land acquisition for public purposes must comply with the principles of legality, the social function of land rights, legal certainty, and fair compensation. However, most existing studies focused on legal protection as a matter of normative implementation, and devote insufficient attention to the transformation of public interest as a legal construct within Indonesia's broader legal politics of national development.

Taken together, these studies indicate that the existing literature can be broadly grouped into three principal strands. The first strand focuses on the political economy of land acquisition and the expansion of state authority in the implementation of strategic development projects.¹⁷ The second strand focuses on the protection of land rights through compensation mechanisms and the assurance of legal certainty.¹⁸ The third strand focuses on the social impacts and agrarian conflicts arising from the implementation of PSN.¹⁹ Although these three strands of scholarship have contributed significantly to the development of Indonesian agrarian law, they have yet to develop a comprehensive legal reconstruction model that systematically integrates the doctrine of State Control over Land, public interest, constitutional land rights, and the protection of indigenous and customary law communities within a coherent normative framework.

Although previous studies have made significant contributions to the development of land acquisition law in Indonesia, an important academic gap remains. The studies by Meckelburg and Wardana have demonstrated how the redefinition of public interest has expanded the legitimacy of state intervention in land acquisition for strategic

¹⁴ Irene Eka Sihombing and Jimi Rambo R. Arranchado, "Land Acquisition Law in Indonesia: Between Legal Certainty and Substantive Injustice," *Jurnal Media Hukum* 33, no. 1 (May 26, 2026): 40–59, <https://doi.org/10.18196/jmh.v33i1.27205>.

¹⁵ Agung Wardana and Dzaki Darmawardana, "PEMBANGUNAN SEBAGAI PROSES EKSKLUSI: KAJIAN HUKUM DAN EKONOMI-POLITIK ATAS PROYEK STRATEGIS NASIONAL," *Jurnal Hukum & Pembangunan* 54, no. 2 (June 30, 2024), <https://doi.org/10.21143/jhp.vol54.no2.1580>.

¹⁶ Aarce Tehupeiry et al., "Land Acquisition for Public Interest: Balancing State Control and Individual Property Rights," *Jurnal Hukum* 40, no. 2 (December 23, 2024): 174, <https://doi.org/10.26532/jh.v40i2.40736>.

¹⁷ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

¹⁸ Wardana and Darmawardana, "PEMBANGUNAN SEBAGAI PROSES EKSKLUSI: KAJIAN HUKUM DAN EKONOMI-POLITIK ATAS PROYEK STRATEGIS NASIONAL."

¹⁹ Tehupeiry et al., "Land Acquisition for Public Interest: Balancing State Control and Individual Property Rights," but it often causes disputes over land rights and compensation when governments acquire land for economic and infrastructural projects.

development through a political economy perspective.²⁰ Other scholarship has primarily focused on the recognition and protection of the rights of indigenous and customary law communities, including customary land rights (hak ulayat), as well as the development of equitable compensation mechanisms.²¹ However, existing scholarship has yet to formulate a comprehensive legal reconstruction model that systematically integrates the doctrine of State Control over Land,²² the concept of public interest, constitutional land rights, and the protection of indigenous and customary law communities within a coherent normative framework specifically designed to govern land acquisition for PSN.

This gap has significant theoretical and practical implications. From a theoretical perspective, existing scholarship has yet to explain how the doctrine of State Control over Land should be operationalized within a modern land acquisition regime consistent with the rule of law, human rights protection, democratic governance, and sustainable development. From a practical perspective, the existing land acquisition regulatory framework remains predominantly oriented toward expediting land provision, thereby failing to establish a proportionate balance among development interests, legal certainty, substantive justice, and socio-ecological sustainability.

The recurrence of agrarian conflicts demonstrates that the fundamental problem lies not merely in regulatory implementation, but in the normative architecture of the land acquisition regime itself. Addressing this gap, this article proposes a constitutional reconstruction of the legal framework governing land acquisition for PSN. Unlike approaches that focus primarily on procedural refinement or compensation mechanisms, the proposed reconstruction reconfigures the underlying paradigm of land acquisition by integrating five interrelated principles: State Control over Land as a constitutional mandate; public interest grounded in social justice; the protection of constitutional land rights; the recognition and protection of the rights of indigenous and customary law communities; and sustainable development. This integrated framework is proposed as a constitutional model of land acquisition that seeks to reconcile the state's development mandate with the protection of individual and collective rights, while promoting legal certainty, substantive justice, and socio-ecological sustainability.

Against this background, this study pursues four objectives: (1) to analyze the constitutional foundations of land acquisition within Indonesia's legal system; (2) to examine the transformation of public interest in the regulatory framework governing PSN following the reforms introduced by the Job Creation Law; (3) to identify the normative deficiencies underlying land acquisition conflicts in PSN implementation; and (4) to formulate a constitutional reconstruction model for land acquisition that reconciles national development interests with the protection of citizens' constitutional rights, particularly the rights of indigenous and customary law communities.

This study employs normative legal research using statutory, conceptual, and case approaches. The primary legal materials comprise the 1945 Constitution of the Republic of Indonesia; Law No. 5 of 1960 on Basic Agrarian Principles; Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest, as amended by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022

²⁰ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

²¹ Pahlefi et al., "Harmonization of Customary Law and Investment Policy in Indonesian Indigenous Natural Resource Governance," *Trunojoyo Law Review* 8, no. 2 (May 29, 2026): 345–84, <https://doi.org/10.21107/tlr.v8i2.33687>.

²² Azna Abrory Wardana et al., "Reconceptualization of Land Acquisition Regulations for Tourism Village Development Based on the Principle of Public Interest," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (August 15, 2025): 405–28, <https://doi.org/10.29303/ius.v13i2.1809>.

on Job Creation as Law; its implementing regulations; and relevant decisions of the Constitutional Court. Secondary legal materials consist of Scopus-indexed journal articles, scholarly books, and policy documents concerning land acquisition and PSN. The materials are analyzed qualitatively through systematic, conceptual, and teleological legal interpretation to formulate a legal reconstruction of land acquisition that ensures legal certainty, justice, and the protection of citizens' constitutional rights.

This article develops a conceptual framework that positions State Control over Land as the constitutional foundation of land acquisition and operationalizes it through a conception of public interest grounded in social justice. This principle is subsequently constrained by the protection of constitutional land rights, the recognition of the rights of indigenous and customary law communities, and the principle of sustainable development. The integration of these five elements provides the normative foundation for reconstructing land acquisition law in a manner that balances the requirements of national development with the protection of community rights. Accordingly, the reconstruction model proposed in this study is oriented not merely toward expediting land provision, but also toward achieving constitutional justice and sustainable development.

2. ANALYSIS AND DISCUSSION

2.1. Constitutional Foundation of Land Acquisition in Indonesia

Land acquisition within the Indonesian legal system cannot be understood merely as an administrative mechanism for securing land for development. Rather, it constitutes an instrument of public law through which the doctrine of State Control over Land (Hak Menguasai Negara (HMN)) is exercised, as provided under Article 2 of Law No. 5 of 1960 on the Basic Agrarian Law and rooted in the constitutional mandate of Article 33(3) of the 1945 Constitution of the Republic of Indonesia. From the perspective of constitutional and agrarian law, this authority does not confer ownership of land upon the state, but instead constitute public authority to regulate and administer the allocation, use, supply, and maintenance of land and other agrarian resources, as well as the legal relationship arising in relation to them, for the greatest possible prosperity of the people.²³ This conception affirms that every land acquisition measure must be exercised within the framework of a rule of law state,²⁴ respect citizens' constitutional rights, and remain subject to the principles of proportionality, legality, and governmental accountability.

Land acquisition forms part of Indonesia's national agrarian law framework, which seeks to reconcile the public interest with the protection of land rights, including through the principle that all land rights have asocial function, as stipulated in Article 6 of Law No. 5 of 1960. Land acquisition concerns not only the mechanisms for the relinquishment of transferring land rights and providing compensation but also as the protection of constitutional and human rights, social justice, and the rights of indigenous and customary law communities affected by development.²⁵ The evolution of land law demonstrates a paradigm shift from a development-oriented approach toward rights-

²³ Wardana et al.

²⁴ Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya (Land in the Perspective of Economic, Social, and Cultural Rights)* (Jakarta: Kompas, 2008).

²⁵ Yesi Nurmantiyas Sari, Rizal Nugroho, and Al Khanif, "Land Acquisition for Public Interests: A Review from the Human Rights Context," *Indonesian Journal of Law and Society* 1, no. 1 (March 30, 2020): 23, <https://doi.org/10.19184/ijls.v1i1.16757>.

based land governance, under which the protection of land rights, meaningful public participation, transparency, accountability, and substantive justice constitute essential conditions for the legitimacy of land acquisition in the public interest.

The constitutional foundation of Indonesia's agrarian legal framework is rooted in Article 33(3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the earth, waters, and natural resources contained therein are controlled by the state and utilized to the greatest possible extent for the prosperity of the people. This constitutional mandate provides the philosophical and juridical basis for Indonesia's national agrarian legal system, under which the state acts not as the owner of agrarian resources, but as the holder of public authority to regulate their use in pursuit of social justice, public welfare, and sustainable development.²⁶

This constitutional provision is further operationalized through Article 2 of Law No. 5 of 1960 on Basic Agrarian Principles, which confers upon the state the authority to regulate the allocation, utilization, availability, and preservation of land, as well as legal relations concerning land, in pursuit of the greatest possible prosperity of the people. According to Boedi Harsono, the doctrine of State Control over Land constitutes a form of public mandate rather than state ownership, exercised to regulate the utilization of land for the greatest possible prosperity of the people.²⁷ This interpretation is further affirmed by Constitutional Court Decisions No. 001-021-022/PUU-I/2003 and No. 3/PUU-VIII/2010, which recognize state Control over Land as a constitutional mandate encompassing regulatory, administrative, managerial, policy making, and supervisory function in relation to agrarian resources.

The phrase "controlled by the state" should not be construed as granting the state ownership over all land within the territory of Indonesia. The Constitutional Court has consistently construed State Control over Land as a constitutional mandate encompassing five public functions: *regelendaad*, *bestuursdaad*, *beheersdaad*, *beleidsdaad*, and *toezichthoudensdaad*. These functions must be exercised exclusively in pursuit of the greatest possible prosperity of the people and may not be used to expand state power at the expense of the private rights of individuals and communities (Constitutional Court Decision No. 3/PUU-VIII/2010).

This interpretation is further reinforced by Maria S.W. Sumardjono, who emphasizes that State Control over Land constitutes an instrument of public law subject to the rule of law, human rights protection, and the social function of land rights, and therefore cannot be invoked to justify arbitrary state action against holders of land rights.²⁸ This approach is consistent with the development of modern agrarian law, which places the protection of land rights at the core of rights-based land governance and requires the exercise of State Control over Land to remain constrained by citizens' constitutional rights.

From a broader normative perspective, the meaning of public benefit may also be assessed through the capacity of land governance to generate collective welfare rather than merely individual or project-based economic gains. Elfia et al. demonstrate that customary land and inherited assets can be transformed into collectively productive resources that contribute to the welfare of the wider community through a *maqāsid-*

²⁶ Boedi Harsono, *Hukum Agraria Indonesia : Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Djambatan, 2003).

²⁷ Harsono.

²⁸ Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya (Land in the Perspective of Economic, Social, and Cultural Rights)*.

based framework.²⁹ This perspective suggests that public interest in land acquisition should be assessed not only by the formal classification of a project but also by the distribution and sustainability of the benefits generated for affected and surrounding communities.

The legitimacy of land acquisition for development depends on its implementation within a framework that protects community rights and subjects the exercise of public interest claims to the principle of proportionality. This interpretation confirms that State Control over Land is fundamentally a constitutional instrument for advancing social justice, rather than a source of unlimited state authority to appropriate the rights of individuals and communities. Accordingly, land acquisition policies must strike an appropriate balance between national development interests and the protection of citizens' constitutional rights, as guaranteed by Article 28H(1), Article 28D(1), and Article 33(3) of the 1945 Constitution of the Republic of Indonesia.

Land acquisition must be undertaken in accordance with the principles of legality, proportionality, transparency, accountability, legal certainty, and meaningful public participation, all of which constitute fundamental requirements under Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest and Law No. 30 of 2014 on Government Administration. As emphasized by Irene Eka Sihombing and Jimi Rambo R. Arranchado, the legitimacy of land acquisition depends not solely about formal compliance mechanisms, but also on the capacity of the legal framework to ensure substantive justice, safeguard the constitutional rights of affected communities, and balance development interests with the rights of landholders.³⁰

A similar position is advanced by Bakhrul Amal, Yusriadi, and Ana Silviana, who contend that the expanding scope of public interest must remain subject to the rule of law and human rights protections to prevent its use as a legal justification for predominantly investment-driven interests.³¹ The doctrine of State Control over Land is further operationalized through Law No. 5 of 1960 on Basic Agrarian Principles, which establishes that all land rights embody a social function, as stipulated in Article 6.

This provision demonstrates that Indonesia's agrarian legal system does not regard land rights as absolute but as rights whose exercise is subject to their social function and constitutional objective of promoting the greatest possible prosperity of the people.³² This conception is a defining feature of Indonesia's national agrarian law, under which individual land rights are exercised within a framework of social responsibility rather than understood as purely individual and unrestricted propriety rights.³³ Accordingly, the social function of land rights constitutes a fundamental legal principle that limits the exercise of land rights where necessary to prevent conflicts with the public interest, while preserving their private character.

²⁹ Elfia Elfia et al., "Institutionalizing Maqāsid Hifz Al-Naṣl within the Minangkabau Inheritance Framework," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (December 28, 2024): 193–222, <https://doi.org/10.18326/ijtihad.v24i2.193-222>.

³⁰ Eka Sihombing and R. Arranchado, "Land Acquisition Law in Indonesia: Between Legal Certainty and Substantive Injustice."

³¹ Amal, Yusriadi Yusriadi, and Ana Silviana, "Evolving Notions of Public Interest: A New Perspective on Land Acquisition in Indonesia."

³² Muslim Lobubun, Iryana Anwar, and Ahmed Mohamed Barak, "Pancasila and Justice for Shared Land: Sustainable Communal Governance in Indonesia's Forest Areas," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 30, 2025, 227–48, <https://doi.org/10.24090/volksgeist.v9i1.16024>.

³³ Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 30, 2023): 89–102, <https://doi.org/10.24090/volksgeist.v6i1.7867>.

The doctrine of the social function of land rights is not intended to subordinate individual rights automatically to the public interest but rather to require a proportionate balance between individual rights and legitimate societal interests within the framework of the rule-of-law. Accordingly, restrictions on land rights may be imposed only on the basis of law, for a legitimate public interest purpose, through fair procedures, and accompanied by adequate compensation and respect for citizens' constitutional rights. From this perspective, the social function of land rights does not extinguish land rights, but determines how such rights may be exercised in a manner consistent with the principles of social justice and human rights protection.

This interpretation is consistent with Constitutional Court Decisions No. 001-021-022/PUU-I/2003 and No. 3/PUU-VIII/2010, which affirm that the exercise of State Control over Land must always be directed toward protecting the constitutional rights of communities and must not be transformed into an instrument for legitimizing arbitrary state action. Contemporary developments in agrarian law further indicate that the social function of land rights is no longer understood merely as a limitation on individual rights but also as a legal principle that support agrarian justice, the protection of indigenous and customary law communities, and sustainable development.

The implementation of Article 33(3) of the 1945 Constitution should be directed toward socially just land governance, requiring the exercise of State Control over Land to extend beyond asset accumulation and purely economic considerations towards ensuring equitable access to land, the protection of communal rights, and long-term environmental sustainability.³⁴ The social function of land rights serves as a constitutional instrument for balancing national development interests with the protection of land rights holders and the pursuit of social justice, a fundamental objective of Indonesia's agrarian legal policy.

2.2. Transformation of Public Interest after the Job Creation Law

The concept of public interest provides a constitutional basis upon which the state may, subject to legal and constitutional safeguards, restrict individual land rights. Within agrarian legal theory, however, public interest cannot be regarded as an absolute concept; it must instead be construed within a constitutional framework that balances the exercise of state authority, the protection of citizens' rights, and the constitutional objective of advancing public welfare.³⁵ Land acquisition can be legitimate only where it genuinely serves demonstrable public needs, is conducted through fair procedures, and provides adequate safeguards for the rights of affected communities. Public interest should therefore not be reduced to an administrative justification for state intervention; rather, it constitutes a constitutional principle that constrains the exercise of state power in acquiring land. Its meaning and scope are not static but are continually shaped by prevailing political configuration and development policy.³⁶ In the early period following the enactment of the Basic Agrarian Law, land acquisition was conceived primarily as an instrument of public law aimed at fulfilling the state's public service obligations through the provision of land for facilities serving the broader public. At that time,

³⁴ Widyarini Indriasti Wardani et al., "Between Constitutional Mandate and Asset Accumulation: Governance Failure Typologies in Indonesia's Land Bank Agency," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 9, no. 1 (June 30, 2026): 249–70, <https://doi.org/10.24090/volksgeist.v9i1.16067>.

³⁵ MUHAMMAD AKIB et al., "CONSTITUTIONALISM IN LAND ACQUISITION FOR PUBLIC INTEREST: A COMPARISON BETWEEN INDONESIA, RUSSIA AND SEVERAL OTHER COUNTRIES.," *Russian Law Journal* 11, no. 5s (April 7, 2023), <https://doi.org/10.52783/rj.v11i5s.932>.

³⁶ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

the scope of infrastructure regarded as serving the public interest was largely confined to public roads, reservoirs, dams, irrigation networks, ports, airports, government hospitals, public schools, defense and security facilities, places of worship, and other public service facilities that were essentially non-profit-oriented.

The legitimacy of state intervention in land acquisition was grounded not primarily in investment interests or economic growth but in the need to fulfill the social rights of the people through the provision of public services as part of the state's constitutional obligations. This conception indicates that the relationship between the state and land was initially structured primarily around public-service functions rather than the commercial exploitation of agrarian resources.³⁷ The evolution of national development policy since the era of economic liberalization has marked a significant paradigm shift.

From the issuance of Presidential Regulation No. 36 of 2005, subsequently amended by Presidential Regulation No. 65 of 2006, to the enactment of Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest, the scope of public interest has undergone a substantial expansion. This shift was further intensified by Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as Law, together with its implementing regulations, which facilitated land provision for PSN. As a result, the concept of public interest, initially framed primarily in terms of public service provision, has progressively expanded to encompass investment facilitation, strategic infrastructure development, and broader national economic interests.³⁸

This shift demonstrates that the legal policy governing land acquisition is no longer shaped solely by the doctrine of the social function of land rights, but is also influenced by the need to enhance economic competitiveness and attract investment within the broader framework of national development. This shift became more pronounced following the enactment of Law No. 11 of 2020 on Job Creation, which was subsequently replaced by Law No. 6 of 2023, together with its various implementing regulations. These regulatory reforms expanded measures to facilitate investment, including the simplification of licensing procedures, the acceleration of land acquisition, the establishment of the Land Bank, and the introduction of legal mechanisms supporting the implementation of PSN.

From a normative perspective, these reforms in land acquisition policy were intended to strengthen legal certainty and improve the effectiveness and efficiency of land provision for development in the public interest, as provided,³⁹ under Law No. 2 of 2012. At the substantive level, these regulatory developments have expanded the interpretive scope of public interest, rendering the boundary between public-service-oriented development and investment-driven development increasingly blurred. This development has prompted criticism that the concept of public interest has undergone a paradigmatic shift from public service toward investment-driven development, potentially weakening the protection afforded to the rights of affected communities in land acquisition processes.

The expansion of the concept of public interest cannot be separated from the changing orientation of Indonesia's national development policy, particularly during

³⁷ Maria S.W. Sumardjono, *Tanah: Dalam Perspektif Hak Ekonomi Sosial Dan Budaya*, Cet. 1 (Jakarta: Yayasan Pustaka Obor Indonesia, 2008).

³⁸ Eko Nuriyatman et al., "Shifting Regulatory Paradigms in the Political Development of National Environmental Law.

³⁹ Dedy Hernawan, "PENGADAAN TANAH DENGAN CARA JUAL BELI OLEH INSTANSI PEMERINTAH MENURUT PASAL 33 AYAT (3) UUD 1945," *LITIGASI* 16, no. 1 (January 22, 2016), <https://doi.org/10.23969/litigasi.v16i1.53>.

the administration of President Joko Widodo, when land acquisition was increasingly positioned as a key instrument for accelerating large-scale infrastructure development and investment.⁴⁰ During the Jokowi administration, the meaning and scope of public interest in Indonesia's land governance were redefined amid increasing social conflicts and intensified contestation over land rights and access to land. From a critical political economy perspective, this redefinition reflects a shift in the state's role from that of a regulator seeking to balance development interests with community rights toward that of a more active facilitator of land acquisition for investment and strategic development. In this context, the Indonesian state has been characterized as the largest and most powerful actor in land acquisition for investment purposes.

This transformation demonstrates that the legal construction of public interest does not necessarily translate into the equitable realization of public welfare. Development projects formally classified as serving the public interest may nevertheless generate structural disparities between development objectives, the protection of land rights, and the socio-economic position of affected communities.⁴¹ Land acquisition can no longer be assessed solely in terms of administrative compliance and compensation but must also be evaluated in lights of the legitimacy of development objectives, the quality of meaningful public participation, the distribution of development benefits, and the protection of communities displaced from their land. This reality underscores the need to reconstruct the concept of public interest around a stronger commitment to substantive justice.

The exercise of state authority in land acquisition cannot be justified solely by the formal exercise of governmental powers or by the designation of a project as serving the public interest; rather, its legitimacy must also be assessed in terms of demonstrable public benefit, the protection of land rights, and substantive justice for affected communities.⁴² This tension is also evident in the institutional configuration of Indonesia's land governance. Mahfud, Djohan, and Malik demonstrate that the Land Bank's authority contains a structural tension between facilitating investment requiring extensive land resources and pursuing agrarian reform based on justice and equitable land ownership.⁴³

The legitimacy of state intervention in land acquisition also has a political dimension. Fauzi et al. demonstrate that agrarian conflicts may become politically contested when affected communities perceive limited representation and inadequate protection of their land rights. Their fiqh siyasah analysis emphasizes that political legitimacy cannot be determined solely by procedural or electoral success, but must also reflect justice (*`adl*), public welfare (*maṣlaḥah*), and meaningful representation.⁴⁴ Applied to PSN land acquisition, this perspective reinforces the proposition that designation as a National Strategic Project cannot, by itself, establish the existence of a substantive public interest.

⁴⁰ Meckelburg and Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia."

⁴¹ Dinda Novianti, Adi Sulistiyono, and Sapto Hermawan, "Legal Protection For Land Rights Holders Upon Disposal Of Land Rights For Public Interest (Case Study Of Depok Toll Road Land Acquisition)," *International Journal of Educational Research & Social Sciences* 5, no. 6 (December 26, 2024): 969–73, <https://doi.org/10.51601/ijersc.v5i6.906>.

⁴² Novianti, Sulistiyono, and Hermawan.

⁴³ Muh Afif Mahfud, Naufal Hasanuddin Djohan, and Muhammad Fahad Malik, "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review* 6, no. 2 (July 22, 2024): 240–63, <https://doi.org/10.33756/jlr.v6i2.24166>.

⁴⁴ Agus Machfud Fauzi et al., "Politicisation of Agrarian Legal Conflict as Political Capital: A Fiqh Siyasah Perspective," *De Jure: Jurnal Hukum Dan Syar'iah* 18, no. 1 (May 19, 2026): 126–49, <https://doi.org/10.18860/j-fsh.v18i1.41410>.

Public interest must be demonstrated through equitable benefits, protection of affected rights, and meaningful participation in decision-making.

Their analysis indicates that the expansion of state authority over land may produce distributive injustice when investment facilitation is prioritized over the interests of economically disadvantaged landholders. This finding reinforces the need to construe State Control over Land as a constitutionally limited public mandate rather than an unrestricted instrument for facilitating development or investment. In this context, where land acquisition primarily benefits business interests or particular economic groups while land rights holders bear the loss of land, livelihoods, and access to their living spaces without receiving commensurate benefits, the exercise of State Control over Land raises questions of constitutional legitimacy because it may depart from the constitutional purposes underlying the state's authority over land.

The designation of a project as a National Strategic Project does not, in itself, establish that the requirements of public interest have been satisfied. The legitimacy of land acquisition must still be assessed on the basis of demonstrable public benefits, proportionality between the development objectives and the burdens imposed on affected communities, protection of land rights, and an equitable distribution of development benefits.⁴⁵ Accordingly, State Control over Land in the context of land acquisition should not be construed as a source of unrestricted state power to appropriate land but as a constitutional mandate requiring the state to ensure that land use for development genuinely advances public prosperity and does not become a legal instrument for legitimizing private interests or capital accumulation at the expense of communities' constitutional rights.⁴⁶

Land acquisition becomes increasingly complex when PSN are located in areas traditionally occupied and controlled by indigenous or local communities, as land in such contexts is not merely an economic asset but is also closely connected to community identity, livelihood sustainability, and social and cultural relations.⁴⁷ Accordingly, monetary compensation alone may not always be sufficient to redress the full range of losses resulting from the loss of land and living space, particularly where land acquisition affects customary land rights and the livelihood sustainability of indigenous communities.

From the perspective of modern land acquisition law, the principle of full replacement cost should be complemented by asset replacement, relocation, and livelihood restoration mechanisms. Compensation should therefore not be limited to replacing the economic value of land, but should also ensure the restoration of the living conditions and livelihoods of affected communities. Accordingly, justice in land acquisition for PSN requires a shift from a predominantly land-value-based compensation paradigm toward one centered on rights-restoration and livelihood-sustainability, particularly for indigenous and customary law communities whose identities and livelihoods are closely connected to customary land.

⁴⁵ Irna Rudiana, Amiludin, and Dwi Nur Fauziah Ahmad, "Implementasi Teoritik Dan Praktik Asas Tujuan Hukum Pada Penyelenggaraan Pengadaan Tanah Untuk Kepentingan Umum Dalam Proyek Strategis Nasional," *Jurnal Inovasi Dan Kreativitas (JIKA)* 2, no. 2 (January 12, 2023): 15–32, <https://doi.org/10.30656/jika.v2i2.5734>.

⁴⁶ Humas Mahkamah Konstitusi RI, "Rezim Perizinan Pertambangan Minerba Mencerminkan Hak Menguasai Negara," Mahkamah Konstitusi, 2026, <https://www.mkri.id/berita/rezim-perizinan-pertambangan-minerba-mencerminkan-hak-menguasai-negara-25431>.

⁴⁷ Iwan Permadi et al., "Resolving Disputes Arising from Land Acquisition for Public Purposes Involving Indigenous Peoples in the Nusantara Capital Region," *Journal of Law and Legal Reform* 5, no. 2 (2024): 705–48, <https://doi.org/https://doi.org/10.15294/jllr.v5i2.731>.

In the author's view, the fundamental problem within the land acquisition regulatory framework does not lie in the absence of a legal basis, but in the insufficiently defined constitutional limits and substantive parameters for determining public interest. The existing regulatory framework places greater emphasis on procedural compliance and the acceleration of land acquisition than on assessing the legitimacy of a project's objectives, demonstrable public benefits, necessity, proportionality, protection of constitutional rights, recognition of indigenous and customary law communities, and ecological sustainability. This condition risks reducing public interest to an administrative determination by the government, particularly through the PSN designation, whereas in a democratic state governed by rule-of-law, public interest should be treated as a constitutional concept subject to objective assessment and judicial scrutiny.

On this basis, a Constitutional Public Interest Test is necessary as a normative instrument to ensure that every land acquisition measure serves legitimate public purposes, generates demonstrable public benefits, satisfies the requirements of necessity and proportionality, and does not unduly impair the constitutional rights of affected communities or environmental sustainability. Accordingly, the reconstruction of land acquisition law following the Job Creation Law should alter its orientation from only accelerating development and investment toward ensuring that development is constitutionally legitimate. Such reconstruction should also reaffirm that State Control over Land does not constitute an absolute power to acquire land, but rather a constitutional mandate to govern and utilize land for the greatest possible prosperity of the people.

2.3. Constitutional Problems of Land Acquisition in National Strategic Projects

The primary issue of land acquisition for PSN is not only sticking in the state's authority to own land but in the constitutional limits governing the exercise of that authority. State control over agrarian resources must be linked toward the greatest possible prosperity of the people, as mandated by Article 33(3) of the 1945 Constitution of the Republic of Indonesia. Such authority should be exercised within a rule-of-law framework that guarantees legal certainty, property rights protection, respects human rights, and the recognition of indigenous and customary law communities' rights.

State Control over Land does not constitute unlimited power or a "blank cheque" to acquire land but rather a form of public authority whose exercise is constrained by constitutional purposes, the principle of proportionality, and the protection of land rights holders.⁴⁸ The redefinition of public interest during the Joko Widodo administration expanded the legal basis of state-led land acquisition and, in some contexts, was associated with social conflicts escalation and intensified contestation over land-use rights, as well as access to land. Accordingly, the basis of land acquisition for PSN should be determined not solely by the state's formal authority or by the a project's designation as serving the public interest but also by whether the project satisfies constitutional objectives, protects affected rights, and generates demonstrable public benefits. Land acquisition for PSN should therefore be treated as a conditional and reviewable restriction on property rights, rather than as an automatic consequence of a project's designation as a PSN.

The second problem concerns about the normative construction of public interest. Land acquisition law should not only identify the types of development that qualify as serving the public interest; it must also emerge substantive parameters for assessing

⁴⁸ Tehupeiory et al., "Land Acquisition for Public Interest: Balancing State Control and Individual Property Rights."

the basis of restrictions on land rights. Law No. 2 of 2012 provides the legal basis and mechanisms for land acquisition for development in supporting the public interest. Nevertheless, existing scholarship indicates that its implementation continues to face a gap between formal legal certainty and substantive justice for land rights holders and affected communities.⁴⁹ The determination that a project serves the public interest should not rest solely on normative classification or administrative designation but should also involve an assessment of demonstrable public benefits, the proportionality of restrictions on rights, the distribution of development benefits and burdens, and the protection of affected communities.⁵⁰

Accelerated development and land acquisition may strengthen the state's bargaining position while reducing public deliberation to an administrative formality if adequate participatory safeguards are absent. The fundamental issue is therefore not only how land is acquired, but also who defines public interest, what substantive criteria govern its determination, and how restrictions on land rights can be reviewed. PSN status should not conclusively establish the existence of public interest because strategic designation is a policy determination, whereas public interest requires substantive constitutional justification based on demonstrable public benefits, distributive justice, proportionality, and rights protection. Accordingly, land acquisition law should shift from a project-based to a rights-based conception of public interest. This shift must also address structural bargaining inequalities by ensuring access to information, meaningful deliberation, and fair compensation for affected communities.⁵¹

These problems become more echoed in the implementation of PSN, as disputes concern not only the amount of compensation but also the identification of eligible recipients, the recognition of land rights, and the ability of affected communities to sustain their livelihoods after losing access to their land. Fauzi's study further positions social justice as a normative foundation for compensation in PSN land acquisition, suggesting that compensation should not be understood solely as a payment obligation, but as an instrument for preventing the burdens of development from being disproportionately borne by particular communities.⁵²

Compensation remains a major challenge in PSN land acquisition and should be assessed from a justice-based perspective rather than merely through administrative payment compliance. Accordingly, *musyawarah* should be re-conceptualized from a predominantly procedural requirement into a process of meaningful deliberation supported by access to information, legal assistance, transparent compensation assessment, genuine participation, and effective objection mechanisms. The issue is more complex when PSN affects land traditionally occupied or controlled by indigenous and customary law communities, whose claims and interests may derive not only from formal titles but also from ancestral rights, communal tenure, customary institutions, and socio-cultural ties to their territories. Articles 18B(2) and 28I(3) of the 1945

⁴⁹ Muslimah Hayati et al., "Reconstructing Justice in Land Acquisition for Public Interest in Indonesia from the Perspectives of Legal Pluralism Werner Menski," *SASI* 32, no. 2 (June 28, 2026): 148–62, <https://doi.org/10.47268/sasi.v32i2.3599>.

⁵⁰ Lerri Pattra, Nurhasan Ismail, and Richo Andi Wibowo, "National Strategic Projects and Compensation Issues in Land Acquisition in Indonesia," *Jurnal Hukum Dan Peradilan* 14, no. 1 (March 31, 2025): 1–28, <https://doi.org/10.25216/jhp.14.1.2025.1-28>.

⁵¹ Muchamad Satria Endriana, Yusriyadi, and Ana Silviana, "Enhancing Deliberation in Land Acquisition for Public Interest: Realizing a Responsive Agrarian Legal Policy Grounded in Justice," *Revista Brasileira de Alternative Dispute Resolution* 6, no. 12 (2024): 159–85, <https://rbadr.emnuvens.com.br/rbadr/article/view/233>.

⁵² Fahrul Fauzi, "Social Justice: The Basis for Implementing Compensation in Land Acquisition for The National Strategic Projects in Indonesia," *BHUMI: Jurnal Agraria Dan Pertanahan* 7, no. 1 (2021): 14–27, <https://jurnalbhumi.stpn.ac.id/index.php/JB/article/view/452>.

Constitution therefore require the state to recognize and safeguard these communities and their traditional rights.

Constitutional Court Decision No. 35/PUU-X/2012 further reinforces the constitutional protection of indigenous and customary law communities by limiting the extend to which customary forests may be treated as part of state forest and by reaffirming the constitutional recognition of customary rights. Accordingly, the absence of formal certification should not, by itself, extinguish customary land rights, although their legal recognition may remain subject to the applicable constitutional and statutory requirements. Administrative recognition should provide legal certainty and protection for existing rights, rather than determine whether such rights exist. This position is consistent with Fahmi et al., who find that Indonesian law substantially recognizes indigenous peoples' collective rights to land and traditional territories in line with international standards.⁵³

Land acquisition conflicts should also be understood within the broader context of legal pluralism, where state law interacts with customary and religious norms governing land ownership and social relations. Land disputes involving customary communities cannot be resolved solely through formal legal rules but require an approach that also takes account of the social, customary, and normative values attached to land and territorial relationships. This perspective is relevant to PSN land acquisition because the legitimacy of state intervention should also consider the normative and social relationship between affected communities and their land.⁵⁴

In practice, large-scale land acquisition projects, including the development of Indonesia's new capital city (IKN), continue to face challenges concerning recognition of indigenous land rights, compensation, relocation, and cultural protection, revealing a gap between normative recognition and effective protection. Accordingly, before an area subject to indications of customary tenure is designated as a PSN site, the state should conduct systematic identification, verification, and mapping of customary rights and territories,⁵⁵ together with the formal determination of the status of indigenous and customary law communities and their customary territories through transparent and participatory processes. Land acquisition undertaken before these processes are completed risks being substantively defective, as the state has not adequately established the rights holders, the land subject to customary tenure, or the constitutional implications of the proposed acquisition.⁵⁶ Accordingly, PSN development should no prioritize project certainty at the expense of legal certainty regarding affected rights. Instead, it should be grounded in a "constitutional rights first" approach, under which the identification, recognition, and protection of the rights of indigenous and customary law communities' precede the exercise of state authority to acquire and use affected land.

The justice dimension of compensation has long constituted one of the central problems in Indonesian land acquisition. Sahnan, Fathoni, and Salat demonstrate that land acquisition for public development may formally comply with the applicable legal

⁵³ Chairul Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (November 8, 2023): 1019–64, <https://doi.org/10.15294/jils.v8i2.68419>.

⁵⁴ Abdul Syatar et al., "Revitalizing the Paoppangi Tanah Customary Sanction in Sulawesi, Indonesia: A Fiqh Jināyah Perspective," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (December 31, 2025): 257–78, <https://doi.org/10.18326/ijtihad.v25i2.257-278>.

⁵⁵ Pahlefi et al., "Harmonization of Customary Law and Investment Policy in Indonesian Indigenous Natural Resource Governance."

⁵⁶ Pahlefi, Eko Nuriyatman, and Lili Naili Hidayah, *Sumber Daya Alam Dalam Perspektif Hukum Adat* (Jakarta Selatan: Damera Press, 2023).

framework while still failing to satisfy substantive justice for affected landholders, particularly when the form and amount of compensation do not adequately reflect their actual interests and welfare. This finding reinforces the argument that compensation in PSN land acquisition should not be treated merely as a procedural consequence of compulsory acquisition, but as an essential component of substantive justice and rights protection.⁵⁷

Compensation in land acquisition for PSN cannot be reduced to the economic value of land, as land loss may also entail the loss of housing, livelihoods, productive assets, social networks, and economic security. An empirical study of land acquisition for Yogyakarta International Airport found that adverse impacts on local livelihoods persisted five years after compensation was received, indicating that monetary compensation alone does not necessarily restore affected communities to their pre-acquisition living conditions.⁵⁸ The standard of compensation justice should therefore extend beyond market value to encompass livelihood restoration, particularly for communities that lose their economic base due to PSN development. A social justice perspective further requires that the burdens of development not be disproportionately imposed on communities in socio-economically vulnerable positions.

Meaningful public participation in land acquisition is a substantive condition of decision-making legitimacy, not merely an administrative requirement. Deliberation (*musyawarah*) concerning the form and amount of compensation should extend beyond procedural compliance through stronger deliberative mechanisms that enable affected communities to meaningfully influence decisions affecting their land rights. Recent findings on PSN also reveal a normative gap when project acceleration and changes in territorial status are not accompanied by adequate protection of collective rights. Accordingly, meaningful public consultation and community deliberation should form an integral part of the legal legitimacy of land acquisition.⁵⁹ Community participation should not be assessed merely by attendance at deliberative forums but by the effective ability of affected communities to access information, raise objections, influence decisions, and represent their interests on an equitable basis.

In indigenous and customary territories, participation standards should be strengthened through the principle of Free, Prior and Informed Consent (FPIC), as the acquisition of customary land affects collective rights, community identity, and long-term sustainability. Studies on PSN indicate continuing challenges in recognizing indigenous land rights, determining compensation, relocation, and protecting cultural heritage, while research on Indonesian law demonstrates substantial conceptual alignment between national indigenous rights and international standards on indigenous peoples' rights.⁶⁰ Although FPIC has not been explicitly and comprehensively incorporated into Indonesian law, Indonesian legal scholarship increasingly recognizes its relevance as a safeguard against

⁵⁷ Sahnan, M. Yazid Fathoni, and Musakir Salat, "PENERAPAN PRINSIP KEADILAN DALAM PEMBEBASAN TANAH BAGI PEMBANGUNAN UNTUK KEPENTINGAN UMUM," *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 3 (2015): 421–34, <https://doi.org/https://doi.org/10.12345/ius.v3i9.257>.

⁵⁸ Sekar Banjaran Aji and Achmad Firas Khudi, "Indonesia's National Strategic Project, Displacement, and the New Poverty," *Journal of Southeast Asian Human Rights* 5, no. 2 (December 31, 2021): 136, <https://doi.org/10.19184/jseahr.v5i2.23399>.

⁵⁹ Bayu Nando Prayoga, Istilam Istilam, and Shinta Hadiyantina, "Protecting the Right to Village Existence in Indonesia's National Strategic Projects," *International Journal of Business, Law, and Education* 7, no. 1 (June 26, 2026): 1111–24, <https://doi.org/10.56442/ijble.v7i1.1491.PSN>

⁶⁰ Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights." indigenous peoples in Indonesia do not benefit from international norms that have recognised and protected their rights globally. This paper found that the concept of indigenous peoples in Indonesia has similarities and is appropriate to the international instrument (ILO169 and UNDRIP

merely symbolic consultation and as a means of strengthening indigenous communities' meaningful participation in decisions concerning their territories.⁶¹ In customary territories, PSN land acquisition should require prior identification of affected rights, free and informed consultation, and an appropriate mechanism for obtaining indigenous the consent of indigenous communities before decisions producing permanent impacts on their territories are implemented.

Land acquisition for PSN should also be understood as a legal measure with social and ecological consequences, rather than merely a process of transferring control over land. Evidence from the Yogyakarta International Airport (YIA) case shows that the loss of agricultural land and residential plots can reduce communities' access to natural resources, food, income, and social networks, even after compensation has been provided.⁶² These findings show that land acquisition should be evaluated by integrating livelihood sustainability and ecological impacts, rather than separating procedural mechanisms from the obligation to prevent and remedy various impacts on communities and the environment. Accordingly, the legitimacy of PSN development should be grounded in a balance among development interests, environmental protection, and the sustainable livelihoods of affected communities.

These four issues demonstrate that the core problem of PSN land acquisition lies not in the absence of regulation but the imbalance between efficient land delivery and effective rights protection. This imbalance is evident in compensation, public participation, indigenous rights recognition, and socio-ecological safeguards, which may leave affected communities bearing disproportionate development costs while benefits are distributed inequitably. Land acquisition law therefore requires a paradigm shift from land delivery to constitutional land governance, where secure land rights, distributive justice, meaningful participation, livelihood restoration, indigenous rights protection, and ecological sustainability constitute substantive conditions for development legitimacy.

The requirement of meaningful participation is further supported by administrative law scholarship showing that public involvement in spatial and land-use decision-making should not be reduced to formal public consultation.⁶³ Effective participation requires a substantive opportunity for affected communities to influence decisions concerning the use and allocation of land.

2.4. Reconstructing Land Acquisition Law for National Strategic Projects

The novelty of this study lies in the Constitutional Justice-Based Land Acquisition Model, a legal reconstruction framework that conceptualizes PSN land acquisition not merely as a land-delivery mechanism for accelerating development but as an exercise of public authority subject to constitutional limits, substantive justice, rights protection, and socio-ecological sustainability. The model responds to the finding that the redefinition of public interest has expanded the state's legitimacy to acquire land for investment, while designation and compensation mechanisms remain vulnerable to substantive justice deficits.

⁶¹ Hasrin Jamrudin and Yeni Widowaty, "Penguatan Prinsip Free, Prior and Informed Consent (FPIC) Dalam Perlindungan Hak Tanah Masyarakat Adat," *Bina Hukum Lingkungan* 10, no. 2 (February 27, 2026): 249–66, <https://doi.org/10.24970/bhl.v10i2.442>.

⁶² Ekannisa Jasmienne Isworo and Fadjar Hari Mardiansyah, "Dampak Sosial Akusisi Lahan Pembangunan Bandara YIA Terhadap Sistem Penghidupan Masyarakat Lokal," *Jurnal Pembangunan Wilayah Dan Kota* 20, no. 1 (March 31, 2024): 100–112, <https://doi.org/10.14710/pwk.v20i1.52648>.

⁶³ M. Andika, Yolanda Claesa, and Elita Rahmi, "PELINDUNGAN HAK-HAK MASYARAKAT DALAM RENCANA TATA RUANG WILAYAH DI KOTA JAMBI," *Mendapo: Journal of Administrative Law* 2, no. 1 (June 10, 2021): 51–62, <https://doi.org/10.22437/mendapo.v2i1.11450>.

Tabel. Constitutional Justice Based Reconstruction of Land Acquisition Law for PSN

Dimension	Current Framework	Proposed Reconstruction
Public Interest	Project-based classification	Constitutional Public Interest Test
State Control over Land	Acquisition authority	Constitutional public mandate
Indigenous Rights	Administrative recognition	Indigenous Rights Screening
Participation	Procedural consultation	Meaningful Participation
Consent	Not a core requirement	FPIC
Compensation	Assessment of losses	Full Replacement Cost + Livelihood Restoration
Socio-Cultural Losses	Limited recognition	Substantive recognition
Environment	Separate regulatory regime	Integrated into the Public Interest Test
Legal Remedies	Primarily post-decision	Effective Remedy from the outset
PSN Status	Strong legitimacy presumption	Rebuttable Presumption
Oversight	Administrative oversight	Independent Review
Post-Acquisition	Land relinquishment	Restoration and Impact Monitoring

This article proposes a Constitutional Justice Based Land Acquisition Model that reconstructs PSN land acquisition from a project-oriented land delivery mechanism into a rights based constitutional governance framework. The model introduces a substantive Public Interest Test, mandatory Indigenous Rights Screening, meaningful participation and FPIC, full replacement cost and livelihood restoration, integrated social-ecological assessment, and effective remedies throughout the project cycle. Under this model, National Strategic Project status constitutes only a rebuttable presumption of public interest and does not operate as conclusive legal justification for compulsory land acquisition.

The legitimacy of land acquisition also depends upon the availability of effective legal remedies against unlawful or disproportionate exercises of state authority. Elfah, Jiwantara, and Medyantara demonstrate that disputes arising from land acquisition for public purposes may possess both administrative and civil dimensions, requiring accessible mechanisms for affected landholders to challenge governmental decisions and protect their property rights.⁶⁴ Accordingly, judicial review and dispute-resolution mechanisms should not be positioned merely as post-acquisition remedies but as substantive safeguards within the framework of legitimate land acquisition.

⁶⁴ Dani Elfah, Firzhal Arzhi Jiwantara, and Ikang Satria Medyantara, "KOMPETENSI ABSOLUT PERADILAN TATA USAHA NEGARA DALAM MENYELESAIKAN SENGKETA PENGADAAN TANAH BAGI PEMBANGUNAN UNTUK KEPENTINGAN UMUM," *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no. 3 (December 28, 2018): 416, <https://doi.org/10.29303/ius.v6i3.598>.

The protection of land rights also requires an effective and institutionally coherent mechanism for resolving disputes arising from land acquisition. Tambunan et al. demonstrate that agrarian disputes frequently involve overlapping civil, administrative, and even criminal dimensions, which may produce fragmented adjudication and inconsistent outcomes.⁶⁵ From an Islamic legal perspective, land ownership constitutes a protected interest under the principle of *ḥifẓ al-māl*, reinforcing the requirement that land rights be protected through accessible and just dispute-resolution mechanisms. This perspective strengthens the argument that effective remedies and independent review should constitute integral elements of legitimate PSN land acquisition rather than function merely as post-acquisition procedural safeguards.

3. CONCLUSION

The study concludes that the existing legal framework governing land acquisition for PSN remains excessively oriented toward land delivery, project acceleration, and investment efficiency, while the constitutional protection of affected communities has not been adequately integrated into the determination of public interest. The resulting imbalance is reflected in agrarian conflicts, weak meaningful participation, inadequate protection of individual and indigenous land rights, and compensation mechanisms that do not always restore livelihoods. The novelty of this research lies in moving beyond the conventional approach that treats these problems merely as deficiencies in procedure, compensation, or implementation. This study reconstructs the normative foundation of land acquisition by repositioning the State's Right to Control as a constitutionally limited public mandate and redefining public interest as a substantive and reviewable constitutional concept rather than as an automatic consequence of a project's formal designation as a PSN.

Based on this reconstruction, the study proposes the Constitutional Justice-Based Land Acquisition Model, which constitutes the principal novelty of the research. The model integrates five previously fragmented dimensions into a single normative framework: the State's Right to Control as a constitutional mandate; public interest assessed through a Constitutional Public Interest Test; constitutional and indigenous land rights as substantive limitations on state authority; meaningful participation and, where relevant, FPIC as elements of legitimacy; and fair compensation, livelihood restoration, and social-ecological sustainability as conditions of just acquisition. Accordingly, land acquisition for PSN should no be considered legitimate merely because it satisfies formal administrative requirements or concerns a project formally designated as nationally strategic. Its legitimacy must instead be demonstrated through the existence of demonstrable public benefit and compliance with the requirements of necessity, proportionality, rights protection, meaningful participation, and sustainability. This reconstruction provides a concrete normative basis for transforming PSN from a development instrument that primarily ensures the availability of land into an instrument of constitutional, socially just, and sustainable national development.

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⁶⁵ Rico J.R. Tambunan et al., "Justice, Land, and Sharia: Conceptualizing Agrarian Courts in the Settlement of Land Ownership Disputes," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 2 (December 23, 2025): 530–52, <https://doi.org/10.18860/j-fsh.v17i2.32486>.

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