



Expansion of Parties Entitled to Receive Safekeeping of Compensation for Losses in Land Acquisition

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Abstract

This study examines the expansion of those entitled to the safekeeping of compensation under Article 89 paragraph (3) of PP (Government Regulation) on Land Acquisition and its effects. Land acquisition is based on the state's right to control and the government's provision of land for compensation. The district court can serve as a repository for compensation funds, allowing for their secure management and distribution. As a result of the amendment included in Article 89 paragraph (3) PP on Land Acquisition, compensation is also granted to unidentified persons, which can be understood as land parcels whose owners are unidentified. This study takes a statutory and philosophical approach to normative juridical research. Based on the findings of this study, it is clear that the amendment to PP on Land Acquisition Article 89 paragraph (3) is to include land parcels for which the rightful owners cannot be located. The planned expansion is counter to Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, together with UUPA (Basic Agrarian Law) and Land Acquisition Law, which establishes the state's power to control. Furthermore, from the perspective of its development, it shows that the government cannot expand the PP on Land Acquisition provisions outside the Land Acquisition Law. Since those three values – justice, certainty, and benefit – were left out of the law's formulation, the expansion in Article 89(3) of PP on Land Acquisition did not serve the goal of lawmaking.

I. Introduction

The Indonesian government, as a proponent of the welfare state ideology, must take an active role in ensuring the well-being of its citizens.¹ The basic concept of a welfare state in Indonesia is stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Because Indonesia is also a constitutional state, the state's active participation in ensuring its citizens' well-being confers upon the government the ability to regulate any area that has any influence on its citizens' well-being, so long as it

¹ I Made Fajar Pradnyana, "Analisis Putusan Mahkamah Konstitusi Nomor 34/PUU-XI/2013 Terkait Peninjauan Kembali Perkara Pidana" (Universitas Udayana, 2022).

does so in accordance with existing laws (*rechtstaat*).² The land sector, in particular, plays a crucial role in bringing about the well-being of society as a whole. The demand for land permeates every facet of human existence. Governmental entities require land for a variety of reasons; for instance, public highways connecting different parts of town are essential to the functioning of the local economy. According to Article 33, paragraph 3 of the 1945 Constitution of the Republic of Indonesia, all Indonesians agree that it is the state's responsibility to regulate this aspect of land and give the state authority in the form of the state's right to control over the land and water and the natural resources contained therein in order to advance the prosperity of the people. To fulfill its constitutional duty, the government is tasked with maintaining order, and Law No. 5 of 1960, Concerning Basic Agrarian Law (UUPA), provides further regulation of land's legal characteristics.

The state's exercise of its power, for example, in land problems, must nonetheless take into account human rights and be founded on statutory norms. It cannot be done arbitrarily solely for purposes of welfare. Among the features of the *rechstaat*, according to Julius Stahl, is a government that respects the rule of law and guarantees its citizens basic freedoms.³ Then, Law Number 2 of 2012, on Land Acquisition for Development in the Public Interest (hereinafter abbreviated as the Land Acquisition Law), was drafted with reference to these clarifications and views as its inspiration. The public interest is strongly tied to the pressing need to control land acquisition due to the disparity between the amount of land available and the amount of land the community requires for development.⁴ By using the Land Acquisition Law, the government can acquire land from private owners in exchange for just compensation.

A rule of law must adhere to the criteria set out by Julius Stahl, including a hierarchical organization of legal principles.⁵ Hans Kelsen's viewpoint, as expressed through *stufentheorie*, may be used to establish a hierarchy in the application of legal norms. According to Maria Farida Indrati, the Indonesian legal system is, in theory, multi-tiered and layered, with several groups where different norms are created, applied, and predicated on one another, all the way down to the fundamental standard, Pancasila.⁶ When drafting legal rules, it's important to keep both the rules' intended purpose and their place in the existing legal structure in mind. According to Rismawati, the three basic validity values of a legal norm being produced are the values of justice, benefit,

² I Nyoman Dharma Wiasa, I Wayan Parsa dan I Gusti Ayu Putri Kartika, "MODEL OF NATIONAL HEALTH INSURANCE ARRANGEMENTS BASED ON JUSTICE AND SOCIAL WELFARE," *International Journal of Multicultural and Multireligious Understanding* 9, no. 2 (February 2, 2022):701-710, <http://dx.doi.org/10.18415/ijmmu.v9i2.3511>

³ Achmad Irwan Hamzani, "MENGAGAS INDONESIA SEBAGAI NEGARA HUKUM YANG MEMBAHAGIAKAN RAKYATNYA," *Yustisia* 3, no. 3 (April 21, 2019): 137-42, <https://doi.org/10.20961/YUSTISIA.V3I3.29562>.

⁴ Luh Dita Yanti and I Gusti Agung Mas Rwa Jayantiari, "Perolehan Tanah Oleh Bank Tanah Melalui Pembelian," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 11, no. 2 (July 20, 2022): 351-65, <https://doi.org/10.24843/JMHU.2022.V11.I02.P09>.

⁵ Moch Gandi, Nur Fasha, and Retno Saraswati, "Politik Hukum Penghapusan Hak Gugat Administratif Pada Persetujuan Lingkungan Dalam Sistem Hukum Nasional," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (May 31, 2022): 256-79, <https://doi.org/10.14710/JPHI.V4I2.256-279>.

⁶ Indrati S., M.F. Ilmu Perundang-Undangan (Jenis, Fungsi dan Materi Muatan). Yogyakarta: Kanisius, 2021.

and legal certainty. These values may be derived from Gustav Radbruch's perspective.⁷ Therefore, the Land Acquisition Law and the technical rules to execute the Land Acquisition Law must be drafted with consideration given to the existing legal framework and the goals of enacting the law in mind.

The Land Acquisition Law is a primary example of the government's use of coercion to deliver land for development in the public interest, with the necessity to pay persons who are lawfully entitled to property taken by the government. Not all landowners will willingly give up their rights in response to a coercive initiative, even if the government provides enough pay to make it worthwhile. Consequently, Article 42 of the Land Acquisition Law, which is one of the Law's substantive components, governs the process for awarding compensation through safekeeping in the district court. If the party entitled to compensation objects to the district court's or Supreme Court's determination of the kind and/or amount of compensation to be paid; Neither the location nor the survival of the individual entitled to compensation can be ascertained; and if the object in question is the subject of an ongoing legal fight, a confiscation by a government official, or is being held in judicial custody, this provision allows for the safekeeping of compensation. The government will restore the land to its original owners after it has been compensated.

Law 11 of 2021, an act relating to Job Creation, amends the Land Acquisition Law in several significant respects. However, the fundamental criteria for the safekeeping of compensation as laid down in Article 42 of the Land Acquisition Law remain unaltered. A Constitutional Court's judgment ruled that changes should be made to the act relating to Job Creation . If no changes are made to the act relating to Job Creation within two years of the judgement being announced, the Constitutional Court's ruling will become final and binding. Perppu (Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation) was issued in place of the act relating to Job Creation after it was axed in its whole (hence referred to as "Job Creation Perppu"). Prior to its repeal through the Job Creation Perppu, the act relating to Job Creation was implemented by Government Regulations and Ministerial Regulations. These rules will continue in force unless they directly contradict Article 184 of the Job Creation Perppu, in which case the latter will apply. One of the act relating to Job Creation implementing rules referred to is Government Regulation Number 19 of 2021, Concerning the Implementation of Land Acquisition for Development in the Public Interest (hereinafter abbreviated as "PP on Land Acquisition").

Concerns about the security of compensation have been raised by the establishment of PP on Land Procurement. This difficulty arises because Paragraph 3 of Article 89 of the PP on Land Acquisition stipulates that compensation may be paid even if the party entitled to compensation cannot be determined. By using the words "unknown entitled person," the government may be able to compensate the owner of a parcel of property whose identity is unknown or uncertain at the time the acquisition is being put into effect. In actuality, it is quite probable that the land parcels will not have a known owner. The government and the land agency find it difficult to release the rights to the land parcels since the Land Acquisition Law does not stipulate such terms. To address this

⁷ Shinta Dewi Rismawati, "MENEBAK Keadilan Sosial Dengan Hukum Progresif di Era Komodifikasi Hukum," *Jurnal Hukum Islam* 13, no. 1 (December 7, 2015): 1-12, <https://doi.org/10.28918/JHI.V13I1.485>.

issue, policymakers loosened up the PP on Land Acquisition's already lax safeguards for securing compensation payments.

From a legal standpoint, the remedy proposed by modifying Article 89 paragraph (3) of PP on Land Acquisition to broaden the requirements for the agreement for safekeeping of compensation is not a viable option. According to Article 33, paragraph 3, of the 1945 Constitution of the Republic of Indonesia, the state has the ultimate power over all land. This authority is granted in the form of the right to manage the state. This authority derives from the vested national rights of the state. The State, by virtue of its authority to govern, may manage this territory for the benefit of its citizens.⁸ The creation of the concept of "state land," which, according to Article 1 point 8 of PP on Land Acquisition, is defined as "land that is not tied to or has no contact with any party," is a manifestation of the state's authority to govern. According to Hans Kelsen's *stufentheorie*, legal standards are ranked in a hierarchy, with lower-ranked norms having no bearing on higher-ranked norms. According to Article 89, paragraph 3 of the PP on Land Acquisition, the PP on Land Acquisition is a legal derivative of the Land Acquisition Law, therefore its contents must not control novel subject matter or be in contradiction with the Law on Land Acquisition. When considered in conjunction with the idea of the state's right to govern, which was the impetus for the Land Acquisition Law, this provision mandates that the state pay compensation for a territory that should have been developed as state land. However, due to the nature of a Government Regulation, which may not enlarge the contents of the primary statute, expansion through PP on Land Acquisition should be prohibited. It is important to examine the increase in Article 89(3) PP on Land Acquisition in light of its original intent. Justice, legal clarity, and practicality, as articulated by Gustav Radbruch, are the three pillars upon which norm formation rests. Given that Article 59 of the Land Acquisition Law establishes the state or regional revenue and expenditure budget as one of the sources of money for land purchase, the design of Article 89 paragraph (2) PP on Land Acquisition may lead to unfairness and disuse in land acquisition. If land whose owners are unknown or untraceable leads to injustice or a loss in economic opportunity for the general populace, then it should be designated state land and the owners should be compensated. It becomes unclear who is entitled to compensation, raising the question of who should accept it. The expansion of Article 89 paragraph (2) PP on Land Acquisition merely mandates compensation for land parcels when the entitled person is unknown, but the government has no legal authority to control the technical aspects of taking compensation from unknown entitled individuals. It creates ambiguity for those tasked with carrying out land acquisition as a normative practice.

In light of the foregoing, this research will outline the issue of how to increase the amount of compensation as set forth in Article 89 paragraph (3) PP on Land Acquisition and the legal ramifications of doing so. The goal of this study is to examine the issues and draw conclusions about the legal implications of the expansion of safekeeping of compensation under Article 89 paragraph (3) PP on Land Acquisition.

Research that has encountered the same issue is discussed in this article. Among the papers cited is one from 2012 titled "Legal Politics of the Formation of Land Acquisition

⁸ Andria Jayanti, *Hak Pengelolaan Lahan Untuk Investasi: Instrumen Dan Model Perlindungan Hukum* (Yogyakarta: Genta Publishing, 2020).

Laws for Public Interests" by Sulasi Rongiyati.⁹ This study investigates the difficulty in establishing legal certainty and respect for community rights by balancing the negotiating positions of land rights holders and organizations that need land. Second, there is the 2018 study "Land Acquisition for Implementation of Development in the Public Interest" by Abuyazid Bustomi.¹⁰ The study's primary goal is to have a substantive discussion on the framework for and practice of public-interest land acquisition. The third research, from 2020 and titled "Land Acquisition for Development in the Public Interest in Indonesia Based on Pancasila" by Putri Lestari.¹¹ Putri Lestari's dissertation is about the valuation of things taken as part of a land purchase. In contrast to the other three studies, this one focuses on the extension of compensation safekeeping under Article 89 paragraph (3) PP on Land Purchase and the legal repercussions of the expansion, rather than just discussing land acquisition for development in the public interest.

2. Research Methodology

Using both a conceptual and a statutory approach, this study falls under the category of normative legal research. This study draws on a number of primary and secondary legal sources, including the 1945 Constitution of the Republic of Indonesia, the UUPA, the Land Acquisition Law, and the PP on Land Acquisition. Methods of description, building, interpretation, argumentation, and systematization will be applied to the aforementioned legal texts.

3. Results and Discussion

3.1 Expansion of Parties Entitled to Receive Safekeeping of Compensation for Losses in Land Acquisition

Hans Kelsen's *Stufentheorie* postulates that there is a hierarchy of legal norms, with lower-ranking norms deriving their authority, legitimacy, and foundation from higher-ranking norms. On the other hand, a higher-level norm derives its authority and foundation from a higher-level norm all the way down to the fundamental norm, which is not itself derived from any higher-level norms. Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation in Indonesia (hereinafter abbreviated as "UUP3") is where this approach is enshrined by the Indonesian government. As a result of these clauses, the order of precedence for Indonesian legal regulations is as follows: a. The 1945 Constitution of the Republic of Indonesia; b. The Decree of the People's Consultative Assembly; c. Laws/Government Regulations in Lieu of Laws; d.

⁹ Sulasi Rongiyati et al., "POLITIK HUKUM PEMBENTUKAN UU PENGADAAN TANAH UNTUK KEPENTINGAN UMUM," *ADIL: Jurnal Hukum* 3, no. 1 (May 17, 2012): 73-92, <https://doi.org/10.33476/AJL.V3I1.835>.

¹⁰ Abuyazid Bustomi, "Kepentingan Umum Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum," *SOLUSI: Jurnal Fakultas Hukum Universitas Palembang* 16, no. 3 (September 1, 2018): 241-252, <https://doi.org/10.36546/SOLUSI.v16i3.119>.

¹¹ Putri Lestari, "Pengadaan Tanah Untuk Pembangunan Demi Kepentingan Umum Di Indonesia Berdasarkan Pancasila," *SIGn Jurnal Hukum* 1, no. 2 (March 20, 2020): 71-86, <https://doi.org/10.37276/SJH.V1I2.54>.

Government Regulations; e. Presidential Decree; f. Provincial Regulation; and g. Regency/City Regional Regulations, with Pancasila as the basic norm.

An understanding of these normative tiers might show that one legal rule is dependent on another. The concept of a welfare state, which is discussed in the fourth paragraph of the Preamble, impacted the drafting of Article 27 (2), Article 33, and Article 34 of the 1945 Constitution of the Republic of Indonesia. This exemplifies the fact that the concept of a welfare state is embedded in Indonesia's founding document. The welfare state developed in the nineteenth century as a reaction to the failings of classical liberalism and capitalism and the idealization of the thesis that the best government is the one that controls as little as possible championed by the "night watchman state" (*nachtwachtersstaat*) (the best government is the least government). Watts, Dalton, and Smith were only developing a concept that has been around for some time when they echoed Jeremy Bentham in saying that it is the government's job to provide the greatest happiness (welfare) for the greatest number of its people.

If one holds this view, then the state must be responsible for the well-being of all its citizens. As a means of carrying out these duties, the people of Indonesia consented to provide the state authority, which is fundamentally the right of the country, giving rise to the right to govern the state.¹² As a result of its authority over the government, the state also has jurisdiction over the earth, its water supply, and whatever natural resources it may exploit. State control over land may be seen as a means to ensure the prosperity of its citizens, given the essential role land plays in the development process. Article 18 of the UUPA, which describes the state's ownership rights, provides evidence of this. The Constitutional Court made a ruling that divided the state's power to regulate into five categories: (1) policy (2) management activities (3) establishing (4) management and, (5) supervision.¹³

In Article 28H, the right to prosperity – which includes the right to a decent place to live and to own property – is guaranteed by the state, as stated in paragraphs (1) and (4). Such assurances are philosophically bound up with the state's power to exert authority over its citizens. As a philosophical matter, the rights of the Indonesian people are the most prestigious land tenure rights in the world. Simply said, the Indonesian country cannot manage all land for the goal of people's prosperity. By granting the state the right to control, the Indonesian people delegated authority over the nation's rights.¹⁴ The state has the power to control land and its distribution, use, and development for the benefit of its citizens. It can also establish and enforce rules regarding the legal standing of individuals and their interactions with the land, as well as the legal standing of any land-related transactions they may engage in.

¹² Nina Amelia et al., "IMPLIKASI PENAFSIRAN HAK MENGUASAI NEGARA OLEH MAHKAMAH KONSTITUSI TERHADAP POLITIK HUKUM AGRARIA PADA PULAU-PULAU KECIL DI INDONESIA," *Law Review* 19, no. 2 (November 29, 2019): 170-202, <https://doi.org/10.19166/LR.V0I2.1874>.

¹³ Tjok Istri Putra Astiti et al. "IMPLEMENTASI PASAL 33 AYAT 3 UUD 1945 DALAM BERBAGAI PERUNDANG-UNDANGAN TENTANG SUMBERDAYA ALAM," *Jurnal Magister Hukum Udayana* 4, no. 1 (Mei 25, 2015): 69-81, <https://dx.doi.org/10.24843/JMHU.2015.v04.i01.p05>.

¹⁴ Urip Santoso, *Hukum Agraria: Kajian Komprehensif* (Jakarta: Kencana, 2017).

With a growing population comes a greater need for public services and facilities to ensure everyone can live comfortably. The issue is that this growth is not matched by a constant amount of available land. In light of this issue, the state is obligated to take management action by exercising its power of control and reclaiming the land rights it had previously provided to its citizens for development in the public good. Since constitutionally secured private property rights are fundamental human rights, the state must uphold their protection. Therefore, the state must compensate landowners when seizing private property.

Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia emphasizes Indonesia's status as a rule of law state in addition to its status as a welfare state. Since it has been officially acknowledged as a country based on the rule of law, Indonesia is under greater pressure to ensure that its citizens' rights are protected and that the government follows the law. According to Ridwan HR, these are some of the hallmarks of a rule-of-law state.¹⁵ This is why the government enacted the Land Acquisition Law, which makes the concept of land acquisition official policy. Before the Land Acquisition Law was enacted in 2012, land acquisition was governed by Presidential Decree Number 55 of 1993 regarding Land Acquisition for the Implementation of Development in the Public Interest (henceforth "Keppres 55/1993"). Following the end of the New Order and the beginning of reform, the government's land acquisitions were governed by Presidential Regulation No. 35 of 2005 and Presidential Regulation No. 65 of 2006 concerning Land Acquisition for Implementation of Development (together referred to as the "Land Procurement Regulation"). To adhere to the aforementioned argument would be to violate the most basic human right to privacy enjoyed by people via the state's purchase of private property. It is thus suggested that the Act's ultimate legislative product control the expropriation activities. In response to this problem, the Land Acquisition Law was drafted to outline procedures for acquiring land.

In accordance with Article 1 point 2 of the Land Acquisition Law, land acquisition is the process of transferring ownership of land to the rightful owner in exchange for just compensation. The public interest necessitates land purchase for development purposes. Academics have argued for years about what constitutes "public interest" in land acquisition. According to Arif Budiman's studies, the term "general interest for the broad audience" seems straightforward at first appearance, but it might lead to confusion if used literally in practice. This is due to the fact that both the number and the term "many individuals" have numerical connotations. Therefore, it may be deduced that the purpose of the many is that there should be a greater number of persons acquiring property for the public good than enjoying its advantages.¹⁶ A definition of "public interest" was then formulated by the government in Article 1 point 6 of the Land Acquisition Law together with Perppu Cipta Kerja, which states that "public interest" refers to the interests of the nation, state, and society that must be realized by the government and used to the greatest extent possible for the prosperity of the people. Article 10 of the Land Acquisition Law also includes government rules specifying what kinds of development qualify as serving the public interest. The government then

¹⁵ Ridwan H.R., *Hukum Administrasi Negara* (Jakarta: Rajawali, 2018).

¹⁶ Nyoman Arif Budiman, "PENERAPAN PRINSIP KEPENTINGAN UMUM TERHADAP KEBERADAAN TANAH TERLANTAR DI INDONESIA," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 6, no. 3 (December 20, 2017): 383-403, <https://doi.org/10.24843/JMHU.2017.V06.I03.P09>.

extended this in the Job Creation Perppu, increasing the number of public interest developments from 18 to 24.

To recap, in theory, the state must compensate those who are legally entitled to land acquisition in a fair and just manner. In Article 1 paragraph 3 of the Land Acquisition Law, the government lays forth who is considered the entitled party. The land acquisition object's controller or owner is the entitled party. Land rights holders, management rights holders, *nadzirs* for *waqf* land, owners of former customary land, communities governed by customary law, parties who control state land in good faith, holders of basic control over land, and/or owners of buildings, plants, or other objects related to land are all described in the government's elucidation of Article 40 of the Land Acquisition Law to ensure fairness and transparency.

According to Article 13 of the Land Acquisition Law, there are four main steps involved in acquiring land for public use: (1) planning, (2) preparation, (3) implementation, and (4) results delivery. In fact, Jarot Widya Muliawan's research simplifies the land acquisition process into just three steps: the beginning stage, represented by land permits (location determination), the middle stage, represented by land tenure aspects (relinquishment of rights), and the final stage, represented by land certification aspects (completion) (usage rights).¹⁷ According to Article 13 of the Land Acquisition Law, the process consists of four distinct phases, each of which is described below:

- a. Phase one is the planning phase, during which the land-needing agency is mandated to draft a land acquisition strategy in accordance with the spatial plan and development goals. A land acquisition planning document outlining the proposed action is drafted and presented to the governor.
- b. The second phase is the planning phase, during which the governor's planning team works with the land-needing agency to inform the affected community that a development plan is in the works for their area. This is also the time when preliminary information is gathered about the site of the development plan, such as that which is pertinent to the entitled party and the subject of land acquisition. The agency needing the property will do the data collecting and then invite the proper party to the public consultation. Public discussions are held to gain the consent of the entitled parties for the development plan's location. The governor's later issuing of a location determination will be based on the terms of this agreement.
- c. The land agency will carry out the third step, known as implementation, in compliance with the requirements outlined in the site determination decision letter. The next steps are for the land agency to do an inventory and identify the tenure, ownership, use, and utilization of the property; evaluate compensation; have conversations about how compensation will be determined; give compensation; and release land from agency control.

¹⁷ Jarot Widya Muliawan, "CARA MUDAH PAHAMAI PENGADAAN TANAH UNTUK PEMBANGUNAN MELALUI KONSEP 3 IN 1 IN THE LAND ACQUISITION / HOW TO EASILY UNDERSTAND LAND PROCUREMENT FOR DEVELOPMENT USING 3 IN 1 IN THE LAND ACQUISITION CONCEPT," *Puslitbang Hukum Dan Peradilan Bekerja Sama Dengan Ditjen Badimiltun* Vol 1 No 2 (2018) (2018): 163-182, <https://doi.org/10.25216/peratun.122018.163-182>

- d. The last phase involves the transfer of acquired land to the organization that has identified its use.

The community's acceptance of the building site design is contingent on their acceptance of the value or quantity of compensation, and here is where tensions develop. Article 6 of the UUPA indicates that the state is prepared for this issue by stressing that every land right provided by the state is tied to a social function. As a result, land ownership, which might take the form of property rights, can be distorted by social functions that are intrinsically linked to people's prosperity. Article 42 of the Land Acquisition Law establishes a system for safekeeping compensation for losses, which is the sort of deviation alluded to.

According to Article 42 of the Land Acquisition Law, safekeeping of compensation can be made if one of the following three conditions is met:

- a. The party entitled to compensation objects to the district court's or Supreme Court's determination of the kind and/or amount of compensation to be paid;
- b. Neither the location nor the survival of the individual entitled to compensation can be ascertained.
- c. If the object in question is the subject of an ongoing legal fight, a confiscation by a government official, or a security deposit at a bank.

It is clear that the state continues to protect human rights in accordance with Article 28H of the Republic of Indonesia's 1945 Constitution, as shown by Article 42 of the Land Acquisition Law. If landowners are not compensated for their loss of use, they may retain certain legal protections even if their land is expropriated for the public benefit. Article 42 of the Land Acquisition Law is reorganized by the PP on Land Acquisition. According to paragraph three of Article 89 of the PP on Land Acquisition, safekeeping of compensation is allowed in the following cases:

- a. The Entitled Party agrees that the District Court may decide the kind and amount of compensation based on the evidence presented;
- b. If the District Court or the Supreme Court makes a final and binding ruling as to the amount of Compensation and the Entitled Party does not contest that decision.
- c. There is a lack of information on the identity and/or location of the Entitled Party;
- d. The objects are still pending legal action; ownership is unclear; formal confiscation occurred; use as security at a financial institution

A criterion for the safekeeping of compensation appears to have been inserted in Article 89 paragraph (3) of the PP on Land Acquisition, which is not specified in Article 42 of the Land Acquisition Law: the party entitled to is unknown. The author contends that the presence of land parcels for which no party entitled to them could be located following an inventory and identification procedure by the land agency is what inspired the creation of this policy. The dilemma of how to give up claims to these plots of

property arises in light of the fact that the rules in place at the time were inadequate to adequately control this matter. Sayyidatul Insiyah once said that the most essential thing is to have clear goals and that everything the government does or does not do is dependent on its decision.¹⁸ Thus, the government handled this issue by regulating that portions of land where the rightful party is unknown might be solved via the safekeeping of compensation, with the purpose of speeding up the execution of land acquisition so as to ensure the prosperity of the people.

In particular, Article 89 paragraph (3) of the PP on Land Acquisition makes clear that there are changes that broaden the requirements for safekeeping of compensation that were not previously specified in Article 42 of the Land Acquisition Law. If there are unclaimed portions of land, the state court will hold them in safekeeping until the rightful owner can be determined, which is the referred-to change. Article 89 paragraph (3) PP on Land Acquisition largely does not exhibit the spirit of the state's authority to control contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia together with Paragraph Two of Article (2) UUPA. In Indonesian philosophy, the people themselves possess control over the earth and the land that makes up Indonesian territory. The Indonesian people have decided to provide the state the power to manage the nation in exchange for the state's promise to work toward its objective of ensuring prosperity for all Indonesians. The state has the right to own land, which comes with the duty to govern its use and provision to the best of its ability for the benefit of the people (which might be seen partly as development in the public interest). Because of the administrative procedures that must be satisfied by everyone who wants to possess land, the state is exercising its authority to govern in this area. Therefore, the state cannot necessarily seize these rights arbitrarily in pursuing growth in the public interest while still adhering to Article 28H of the 1945 Constitution of the Republic of Indonesia. This is why the law provides for compensation to be paid out when land is taken. Compensation for land whose owners or parties not entitled to the land are unknown is, however, a different question. This is because state land, to which no individual legitimately claims any rights, is subject to strict regulations. Property owned by the state is considered a part of the state's power to govern, and there are no provisions that require compensation for taking state-owned land for public development purposes. From what has been described, it appears that Article 89(3) has contradicting concepts, particularly with respect to the right to manage the state as described in Article 33(3) of the 1945 Constitution of the Republic of Indonesia in connection with Article 7 UUPA. Due to this disagreement, an appeal of the PP on Land Acquisition to the Supreme Court may be necessary.

3.2 The Legal Implications of Expansion of Parties Entitled to Receive Safekeeping of Compensation for Losses in Land Acquisition

Using Gustav Radbruch's objective norm creation and the standards-based *Stufentheorie*, this study determines the legal ramifications of the increase of parties entitled to safekeeping of compensation, as set forth in Article 89 paragraph (3) of PP on Land Acquisition. That the theory of levels of norms, according to which a lower-positioned

¹⁸ Sayyidatul Insiyah, Xavier Nugraha, and Shevierra Danmadiyah, "PEMILIHAN KEPALA DAERAH OLEH DEWAN PERWAKILAN RAKYAT DAERAH: SEBUAH KOMPARASI DENGAN PEMILIHAN SECARA LANGSUNG OLEH RAKYAT," *Supremasi Hukum : Jurnal Penelitian Hukum* 28, no. 2 (September 16, 2019): 164-87, <https://doi.org/10.33369/JSH.28.2.164-187>.

standard may not clash with a higher-positioned norm, has been effectively stated in the preceding subsection.¹⁹ Understanding the positional qualities of each standard is the key to identifying the source of the disagreement. One of the features of a Government Regulation is that its provisions or content material cannot add to or subtract from the provisions of the Act which are the parent, as stated by A. Hamid S. Attamimi in his opinion cited by Maria Farida Indrati in her book.²⁰ Furthermore, a Government Regulation cannot add new provisions to the Act that became the parent, nor can it alter the content of the Act in question.²¹

In particular, Article 89 paragraph (3) of the PP on Land Acquisition makes clear that there are changes that broaden the requirements for safekeeping of compensation that were not previously specified in Article 42 of the Land Acquisition Law. If there are unclaimed portions of land, the state court will hold them in safekeeping until the rightful owner can be determined, which is the referred-to change. Article 89 paragraph (3) PP on Land Acquisition largely does not exhibit the spirit of the state's authority to control contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia together with Paragraph Two of Article (2) UUPA. In Indonesian philosophy, the people themselves possess control over the earth and the land that makes up Indonesian territory. The Indonesian people have decided to provide the state the power to manage the nation in exchange for the state's promise to work toward its objective of ensuring prosperity for all Indonesians. The state has the right to own land, which comes with the duty to govern its use and provision to the best of its ability for the benefit of the people (which might be seen partly as development in the public interest). Because of the administrative procedures that must be satisfied by everyone who wants to possess land, the state is exercising its authority to govern in this area. Therefore, the state cannot necessarily seize these rights arbitrarily in pursuing growth in the public interest while still adhering to Article 28H of the 1945 Constitution of the Republic of Indonesia. This is why the law provides for compensation to be paid out when land is taken. Compensation for land whose owners or parties not entitled to the land are unknown is, however, a different question. This is because state land, to which no individual legitimately claims any rights, is subject to strict regulations. Property owned by the state is considered a part of the state's power to govern, and there are no provisions that require compensation for taking state-owned land for public development purposes. From what has been described, it appears that Article 89(3) has contradicting concepts, particularly with respect to the right to manage the state as described in Article 33(3) of the 1945 Constitution of the Republic of Indonesia in connection with Article 7 UUPA. Due to this disagreement, an appeal of the PP on Land Acquisition to the Supreme Court may be necessary.

Article 89, subsection 3, of the PP on Land Acquisition needs to be considered from the standpoint of the substance and the standpoint of the power to form it. whereas

¹⁹ Shinta Agustina, "IMPLEMENTASI ASAS LEX SPECIALIS DEROGAT LEGI GENERALI DALAM SISTEM PERADILAN PIDANA. SEMARANG," *Jurnal Masalah-Masalah Hukum* 44, no. 4 (October 10, 2015): 503-510, <https://doi.org/10.14710/mmh.44.4.2015.503-510>

²⁰ Pery Rehendra Sucipta, "LEX SPECIALIS DEROGAT LEGI GENERALI SEBAGAI ASAS PREFERENSI DALAM KECELAKAAN ANGKUTAN LAUT PELAYARAN RAKYAT," *Jurnal IUS Kajian Hukum dan Keadilan* 8, no.1, (April 10, 2020): 140-150, <https://doi.org/10.29303/ius.v8i1.752>

²¹ Maria Farida Indrati S, *Ilmu Perundang-Undangan (Jenis, Fungsi Dan Materi Muatan)* (Yogyakarta: Kanisius, 2021).

government authority derives from laws and statutes. There are three methods to receive legal power, all of which originate from statutes and regulations: attribution, delegation, and mandate. In theory, attribution of authority refers to the delegation of legislative power to executive agencies. The term "delegation of authority" refers to the process through which one government body gives its powers to another. On the other hand, mandated authority happens when one branch of government gives power to another. According to Article 59 of said law, the original lawmaker delegated authority to develop implementing rules. This would allow the PP on Land Acquisition to be seen as having been established under the attribution power of the Land Acquisition Law. While the government's founding of PP on Land Acquisition provides a basis for its attribution authority, this authority under the rule of law cannot be utilized with complete flexibility because of the necessity to comply with other laws and regulations. When A. Hamid S. Attamimi's assessment of government rules is factored in, it becomes clear that the government has exceeded its attribution power to construct PP on Land Acquisition. This is due to the fact that the term the entitled party is unknown has been introduced to Article 89 paragraph (3) of PP on Land Acquisition, something that has never been specified in the Law on Land Acquisition as the fundamental standard before.

As can be seen from the normative hierarchy stated above, the PP on Land Acquisition is at odds with the primary norm, the Land Acquisition Law. As a matter of fact, the aforementioned content of the PP on Land Acquisition Law is not only in conflict with the Land Acquisition Law but also with the principle of the state's power to control as set out in the Indonesian Constitution. The addition of a new clause to the PP on Land Acquisition without the attribution power assigned to control this topic creates challenges not only in terms of the substance but also in terms of developing norms. In spite of this, the author believes that a closer look at the government's goals in paragraph 3 of Article 89 of PP on Land Acquisition from a legal perspective is still warranted. As discussed in the introduction, Gustav Radbruch claims that there are three fundamental principles in realizing a legal ideal or legal goal. Equality, assurance, and speed are the three principles in question.

The entitled party claims compensation that has been in safekeeping shall be in accordance with the terms further explained in Article 90 to Article 96 of the PP on Land Acquisition. In accordance with Article 92 of the PP on Land Acquisition, the executor of land acquisition should provide written notification to the sub-district head and *lurah*/village head or other names specified in the PP on Land Acquisition of the absence of the lawful party. If the entitled party can be located, they can apply for their compensation by submitting a cover letter from the chief executor of land acquisition to the district court where the money is lodged. Suppose one examines Article 92 of the PP on Land Acquisition carefully, one would see that it only sets circumstances in the case that the party entitled to the location is unknown, although if the party entitled to is unknown, there is no clear arrangement.

The Ministry of Agrarian Affairs and Spatial Planning issued Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 19 of 2021 concerning Provisions for Implementation of PP on Land Acquisition (hereinafter abbreviated as Permen of Land Acquisition) to regulate further the substance contained in the PP on Land Acquisition so that it can be implemented. Closer analysis reveals that its requirements regarding the safeguarding of compensation are identical to those found in Article 89 paragraph (3) of PP on Land Acquisition, with the

addition of the term the party entitled is not known. As an implementing rule, the Regulation of Land Procurement does not specify how the entitled party would receive the compensation that has been in safekeeping. Article 89, paragraph (3) of PP on Land Procurement is inconsistent with the value of certainty articulated by Gustav Radbruch. Legal certainty is one of the fundamental elements of good administration that should be implemented. The concept of legal certainty states that the administration of the state must prioritize the rules, regulations, decency, and justice are the foundation for all policies. The government hopes to fill the gap in land acquisition regulations with Article 89, subsection 3. Nonetheless, the government doesn't lay out specific plans for how the rules, particularly those in Article 89 paragraph (3) letter c of PP on Land Acquisition pertaining to unknown persons, may be put into practice.

According to Article 52, paragraph 1 of the Land Procurement Law, the money used to buy land must come from the state or regional budget. This pool will compensate all parties impacted by a land purchase. The land whose ownership is unclear shall be released by entrusting compensation to the district court after the creation of Article 89 paragraph (3) PP on Land Acquisition, including when the entitled party is unknown. In reality, state land, which is, in principle, land that is not tied to any rights, is regulated and acknowledged by the government in Article 1 number 8 PP on Land Acquisition. Therefore, the government must instead provide compensation for privately owned property that should be deemed public land but whose owners are unknown. From this, one might infer that the people have granted the state the ability to exercise jurisdiction over land through state control rights, with the ultimate goal of ensuring the prosperity of the people. When the people have a public need for the land, they must instead pay the state out of the money they have collected through state/regional income and spending budgets. This demonstrates that neither fairness nor convenience is characterized by the process of creating Article 89 paragraph (3) letter c.

As can be seen from the normative hierarchy stated above, the PP on Land Acquisition is at odds with the primary norm, the Land Acquisition Law. As a matter of fact, the aforementioned content of the PP on Land Acquisition Law is not only in conflict with the Land Acquisition Law but also with the principle of the state's power to control as set out in the Indonesian Constitution. The addition of a new clause to the PP on Land Acquisition without the attribution power assigned to control this topic creates challenges not only in terms of the substance but also in terms of developing norms.

4. Conclusion

That safekeeping compensation in land acquisition is governed by Article 42 of the Law on Land Acquisition and is granted if the following conditions are met: the party entitled to compensation objects to the district court's or Supreme Court's determination of the kind and/or amount of compensation to be paid; Neither the location nor the survival of the individual entitled to compensation can be ascertained; and if the object in question is the subject of an ongoing legal fight, a confiscation by a government official, or a security deposit at a bank. Through Article 89 paragraph (3) of PP on Land Acquisition, the condition for safekeeping of compensation is expanded by adding the condition if the party entitled is unknown.

An extension of this kind under Article 89, paragraph 3, of PP on Land Acquisition is inconsistent with the law's intended aim and the Indonesian legal system as a whole. This is due to numerous factors, the first being that Article 89 paragraph (3) PP on Land Acquisition contains important information that was not included in the original Article 42 of the Land Acquisition Law. Substantively, it demonstrates that Article 89 paragraph 3 of the PP on Land Acquisition is at odds with the idea of the state's authority to control as outlined in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia and Article 2 paragraph 2 UUPA. Third, land acquisition implementers face legal ambiguity due to the lack of specific arrangements in Article 89 paragraph (3) PP on Land Acquisition. Also, considering the presence of the right to govern the state, whose function is to achieve the welfare of the people, the application of this standard would clash with the ideals of justice and expediency. These factors suggest that should the Supreme Court conduct a judicial review; it may rule that

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