



## Reconstruction of Public Interest Interpretation in Land Acquisition for Tourism Areas Under Indonesia's Post-Job Creation Law Framework

Azna Abrory Wardanaa; Imam Koeswahyono; Iwan Permadi; Ngesti Dwi Prasetyo

Faculty of Law, Universitas Brawijaya, Indonesia

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### **Abstract**

Land is a fundamental resource crucial to economic and social activities. Land ownership and utilization policies directly impact its value, production potential, and social justice. One perspective holds that property rights protect vulnerable groups, ensuring their safety from displacement. In Indonesia, land regulation is grounded in Article 33, paragraph (3) of the 1945 Constitution, which mandates state control over land to yield the greatest benefit for the people. However, the enactment of Law No. 6 of 2023 has broadened the definition of "public interest," raising concerns about its effects on land acquisition in tourism areas. This study explores the legal framework governing land acquisition and the shifting meaning of public interest, especially in the post-Omnibus Law era. Employing a normative legal research approach with a descriptive qualitative method, this study utilizes secondary data to analyze emerging regulatory challenges. The findings indicate that the wide interpretation of public interest could lead to potential misuse, impacting local communities and indigenous groups. Strengthening regulatory oversight and ensuring community participation in decision-making are crucial for balancing national development goals with social and environmental sustainability. In the long term, revising Law No. 6 of 2023 is essential to provide better legal protection for affected communities, prevent excessive land commercialization, and uphold the principles of agrarian justice. This research provides a critical perspective on the evolution of land policy, stressing participatory governance and legislative reform to enhance protection for all stakeholders involved.

**Keywords:** *Land Policy; Public Interest; Land Acquisition*

### **Introduction**

Land is a crucial resource that profoundly impacts societies' economic, social, and political landscape. The existence of land is essential for sustaining life and achieving well-being, both individually and communally (Sumardjono, 2008). In the context of the social sciences, land is often discussed as a central factor in development, wealth distribution, and societal relations. The evolution of land distribution and its impact on development has been a subject of extensive research. Land is a fundamental material resource and the primary platform for economic and social activities (Bening & Rafiqi, 2022). Land use policies and plans define how land should be utilized, directly affecting its value

and productive potential. Property rights over land reflect the ability to extract value based on socially acceptable and productive uses.

Land ownership, a fundamental aspect of human civilization, has long been a topic of intense discussion and debate, with varied perspectives and complex implications. The issue of land ownership is central to any discussion on planning and land use policies, as it directly affects the value and utilization of land, a primary material resource for economic and social activities (Sumardjono, 2008). One perspective argues that property rights are the solution, protecting society's most vulnerable sections. However, others maintain that property rights are the root cause of the marginalization of the disadvantaged.

Indonesia has its own policy to regulate land ownership rights (Meckelburg & Wardana, 2024). Constitutionally, the agrarian foundation in Indonesia is derived from Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (in Indonesian called "UUD NRI 1945") (Atmaja & Erliyana, 2024), which states that *"The earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."* The principles outlined in Article 33 serve as the philosophical foundation for land regulation in Indonesia, which was formally established through Law Number 5 of 1960 on Basic Agrarian Regulations, commonly referred to as the Basic Agrarian Law (UUPA) (Yonatan & Nugraha, 2021).

The legal principle in Article 33 grants the state authority to regulate land use policies to ensure equitable distribution and sustainable utilization. This authority is implemented through various laws, such as the Basic Agrarian Law (UUPA) and sectoral regulations governing land acquisition, zoning, and environmental sustainability. However, challenges arise in balancing economic development with social justice and ensuring environmental protection (Hariram et al., 2023), particularly in cases where land acquisition for public purposes affects local communities (Widiyono & Khan, 2023). Constitutional alignment requires transparent governance, fair compensation, and legal certainty to protect public interests and individual rights (Widiyono & Khan, 2023).

One way to acquire land is through purchase (buying and selling transactions), where landowners willingly transfer their rights in exchange for compensation. However, PTUP (Land Registration for Public Use) is another method used for land acquisition. PTUP is a legal procedure that allows the state or government to designate land for public purposes, ensuring its availability for infrastructure, social facilities, or other development projects that benefit society. Specific laws and policies often regulate this mechanism to promote fairness, transparency, and compliance with constitutional principles. While PTUP facilitates development, it also requires careful consideration of landowners' rights, including proper compensation and resettlement when necessary, to avoid social and economic disruptions.

The PTUP process is typically conducted for infrastructure development or large projects involving land use, such as constructing roads, bridges, ports, airports, public facilities, or other projects that positively impact the broader community. The interpretation of Article 33, paragraph (3) of the 1945 Constitution about land acquisition shows that public interest must encompass elements that support collective prosperity as a part of human rights or constitutional rights (Harisman, 2021), not just the interests of a few parties. The preservation and responsible management of land for public interest is a critical aspect of urban and rural development, as it ensures the equitable distribution of resources, promotes sustainable practices, and enhances the overall well-being of communities. In many developing countries, the complexities of land governance often lead to inefficiencies, tenure insecurity, and conflicts, which can hinder progress towards sustainable development (Awuah & Abdulai, 2022).

PTUP is regulated in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest. This law regulates the procedures for land acquisition for the development of projects of public interest. However, the law has been updated with the enactment of Omnibus Law Number 11 of 2020. With the enactment of the omnibus law system through Law Number 11 of 2020 concerning Job

Creation (Law No. 11 of 2020) (Rafiqi, 2021), there has been a significant change in land acquisition policy. The government has expanded the meaning of "public interest" to provide more flexibility in the development process, especially in supporting investment and accelerating national strategic projects. This expansion of meaning includes additions to Article 10 of Law No. 6 of 2023, namely covering upstream and downstream oil and gas industrial areas; special economic zones; industrial areas; tourism areas; food security areas; and technological water development areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regional-owned enterprises.

This regulatory change has significant legal implications, especially in the principle of "*lex posteriori derogat legi priori*", which means that a newer regulation will override an older regulation if there is a conflict between the two. The other principle, "*lex specialis derogat legi generali*", means that the specific rule overrides the general rule (Bening & Rafiqi, 2022). This principle applies when there is a conflict between a general legal provision and a more specific regulation governing the same subject matter. In such cases, the specific regulation takes precedence to ensure legal certainty and avoid contradictions in interpretation and implementation (Ali et al., 2022). In this case, the provisions of Article 10 of Law No. 6 of 2023 legally replace Article 10 of Law No. 2 of 2012. Therefore, a thorough normative legal study is necessary to understand how this transformation affects land acquisition implementation. The update in Article 10 adds provisions for land acquisition in upstream and downstream industrial areas, special economic zones, industrial zones, tourism areas, food security zones, and technology development areas. Land acquisition in these areas aims to provide land for infrastructure that supports economic growth, competitiveness, and job creation while considering justice and the public interest and involving affected communities.

Tourism area development affects development implementation, community rights protection, and legal certainty. Tourism has become a significant economic driver in many developing countries, potentially contributing to poverty alleviation and sustainable development (Hosseini et al., 2021). However, the extent to which tourism benefits local communities remains controversial. Various studies have highlighted tourism development's positive and negative impacts on local communities. One positive impact is its ability to generate employment and income, providing economic opportunities for local residents and attracting outside investment. This can lead to improved living standards and regional economic growth.

However, uncontrolled tourism development can also cause serious negative impacts, particularly on the environment. Land acquisition for tourism projects often leads to deforestation, loss of biodiversity, and depletion of natural resources, which disrupts local ecosystems (Xu & Hu, 2021). Additionally, large-scale tourism infrastructure projects may contribute to pollution, increased carbon emissions, and excessive water usage, exacerbating environmental degradation (Xu & Hu, 2021). If not managed carefully, tourism-driven land conversion can lead to long-term ecological harm, threatening community livelihoods and sustainable development. Therefore, the "public interest" concept must be interpreted holistically to ensure that land acquisition policies balance economic goals with environmental protection, social justice, and sustainable national development.

Land acquisition supports sustainable economic growth and job creation in the tourism industry. However, this can lead to conflicts with traditional agricultural activities, as tourism development often requires the transformation of rural landscapes. To address this challenge, rural tourism development should prioritize strategic cooperation between tourism businesses and other local organizations based on a comprehensive understanding of the community's needs and resources (Pröbstl-Haider et al., 2014). It aims to enhance tourism while improving infrastructure for broader community benefits. Land acquisition must balance development needs and protect affected communities' rights, ensuring equitable access to economic, social, and cultural benefits while respecting environmental sustainability. It should be carried out transparently, fairly, and with social justice principles in mind.

This study is a legal research using type normative. Peter Mahmud Marzuki explained that legal articles are formulated to identify legal rules, principles, and doctrines to resolve the relevant legal issues (Marzuki, 2017). To reach the purpose of the research, the researcher uses legal materials (Soekanto, 2012). The legal materials used are available to the public. Normative legal research is crucial in examining and understanding the legal landscape, particularly in public policy decision-making. This form of research analyzes secondary legal materials, such as laws, regulations, and judicial rulings, to uncover the underlying principles and norms governing a particular legal issue (Marzuki, 2017).

The approaches used in this study are: (1) Legislative Approach, through this approach, the study examines regulations such as Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) (Suartining & Djaja, 2023). Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest and Law No. 6 of 2023 concerning Stipulation of Government Regulation instead of Law No. 2 of 2022 concerning Job Creation. The main focus is to understand the changes to Article 10 in both laws and their impact on the meaning of public interest; (2) Conceptual Approach, this approach explores the definition and theory of public interest from experts such as Maria S.W. Sumardjono and Erman Rajagukguk. These concepts are used to analyze the relevance and validity of expanding the meaning of public interest in the context of land acquisition, especially for potentially profit-oriented projects such as tourism areas and special economic zones.

The materials collected include regulatory documents, books, journals, and previous legal material collection and analysis research findings. The analysis was conducted using a systematic literature model to understand the relationship between legal concepts, policy changes, and the implementation of land acquisition in Indonesia. This study aims to provide a critical overview of how regulatory changes affect the principles of public interest and agrarian justice. Through this method, the study is expected to contribute academically by providing an in-depth understanding of the transformation of the meaning of public interest and its implications for land acquisition policies in Indonesia.

### 1.1 Philosophical Basis: Public Interest in the Perspective of Legal Objectives

The philosophical basis of land acquisition for public interest can be seen from the three main objectives of the law: justice, legal certainty, and benefit (Sari et al., 2021). According to Gustav Radbruch, the law must function as an instrument to achieve justice, provide legal certainty, and guarantee maximum benefits for the community (Widiyono & Khan, 2023). In this context, land acquisition for public interest aims to accommodate the community's collective needs, such as infrastructure development, social facilities, and tourism areas.

However, expanding the meaning of public interest, as regulated in Article 10 of Law No. 6 of 2023, raises a philosophical dilemma (Astuti & Isnaeni, 2024). The addition of tourist areas and special economic zones as part of the public interest can cause conflict between the principles of justice and benefit. The public interest is a complex and often contested concept, but it is crucial in policymaking and public administration. The public interest principle, especially in land acquisition, refers to the greatest good for the greatest number of people (Short, 2023). It is often framed as the highest standard of governmental action, the measure of government's greatest wisdom or morality. However, defining the public interest is no easy task, as it involves balancing various stakeholder interests and determining what constitutes the "greatest good." According to Maria S.W. Sumardjono's understanding, one of the meanings of the interpretation of "public interest" is: *"The designation of public interest in an activity must explicitly identify its purpose, such as the construction of schools, roads, government buildings, and other projects deemed beneficial to the public under statutory regulations. Any activities not listed in the prescribed categories cannot serve as a justification for land acquisition"* (Sumardjono, 2015).

Some scholars argue that the public interest is a vague and unenforceable criterion, while others contend it provides a meaningful and empirically verifiable framework for evaluating public policies.

Despite these debates, the public interest remains a central concern in political science, law, and public administration. While the principle of benefit supports the acceleration of development, the principle of justice demands that the rights of indigenous peoples and landowners are respected (Suartining & Djaja, 2023). This reflects the challenge in achieving a balance between competing legal objectives.

In the context of distributive justice, Aristotle emphasized that the distribution of resources must be carried out proportionally according to the needs and contributions of each party (Salamone, 2021). When land acquisition for public interest is carried out, it is important to consider how the wider community can feel the benefits of the development without any party being disadvantaged. This principle underscores the need for a fair and balanced approach in land acquisition policies, ensuring that development projects do not disproportionately burden certain groups while benefiting others. In Indonesia, where land is a vital asset for many communities, the government must implement transparent and inclusive decision-making processes (Putri, 2023). Compensation mechanisms should reflect not only the market value of the land but also the social and economic impacts on affected individuals (Syaban & Appiah-Opoku, 2024). Without such considerations, land acquisition risks exacerbating inequality rather than promoting the intended public welfare (Syaban & Appiah-Opoku, 2024).

## 1.2 Utilitarianism and Public Interest Theory

In the legal context, the Utilitarianism theory developed by Jeremy Bentham and John Stuart Mill emphasizes that policies should maximize utility, thereby generating benefits, advantages, happiness, and well-being for the greatest number of people. This principle requires that every regulation or legal policy be assessed based on its impact on collective welfare, balancing individual and public interests to achieve the most beneficial outcome for society (Pratiwi et al., 2022). This theory justifies projects such as tourism areas in land acquisition that can increase state revenue and create jobs, especially in the local community. However, utilitarianism often sacrifices individual rights for collective interests. When landowner rights are ignored, the principle of justice is neglected, creating an imbalance in legal objectives.

Utilitarianism emphasizes that the ideal policy provides the greatest benefit to the greatest number of people (Priel, 2021). In the context of land acquisition, policies such as Law No. 6 of 2023, through an omnibus law approach, are expected to support accelerated development by providing broad economic and social benefits. However, if examined further, the implementation of this law is not entirely in line with the principle of utilitarianism (Udoudom, 2021), especially when associated with the spirit of agrarian justice carried by Law No. 5 of 1960 concerning Basic Agrarian Principles abbreviated in Indonesian as “UUPA”.

UUPA upholds the principle that land is a strategic resource that must be used as much as possible for the people's prosperity. Its regulations are oriented towards equal ownership distribution and social justice (Wahid et al., 2024). The spirit of agrarian reform contained in UUPA aims to reduce inequality in land ownership and provide greater access to small communities (Hariyanto et al., 2024). However, Law No. 6 of 2023 expands the meaning of public interest to include profit-oriented projects, such as tourism areas, and actually distances itself from the spirit of agrarian reform. In practice, land acquisition for these projects more often benefits large investors than local communities.

The omnibus law policy tends to ignore the needs of small communities highly dependent on land as a source of livelihood. In many cases, indigenous peoples or small farmers whose land is affected by land acquisition lose access to these resources without adequate compensation or alternative livelihoods (Suartining & Djaja, 2023). This is contrary to the principle of benefit in utilitarianism, where policies should provide maximum benefits to all levels of society, not just certain groups. Therefore, the government must ensure that land acquisition policies under the omnibus law align with principles of justice and inclusivity. Development should not come at the expense of vulnerable communities, especially those relying on the land for survival. In other words, agricultural and customary lands are

highly susceptible to forced acquisition and widespread land conversion, often justified under the pretext of development (Hermawan et al., 2024). Instead of prioritizing large-scale investors, policies should incorporate stronger safeguards for affected groups, such as fair compensation, participatory decision-making, and sustainable livelihood programs. Without these measures, the omnibus law risks deepening socio-economic disparities rather than fostering equitable development (Miqat & Susilawati, 2024).

In addition, the spirit of agrarian reform, which emphasizes land redistribution, is becoming increasingly marginalized (Miqat & Susilawati, 2024). Major projects proposed through Law No. 6 of 2023, such as tourism areas and special economic zones, often focus on optimizing economic benefits rather than equalizing benefits for the wider community. For example, according to the Constitutional Court Decision, developing leading tourism destinations in various regions tends to provide greater benefits to investors than to local communities, who lose access to the land and natural resources that have been their mainstay (Mahkamah Konstitusi or Constitutional Court, n.d.).

From a utilitarian perspective, such policies demonstrate a failure to balance economic benefits and social justice (Naeeni, 2023). Although these projects can drive economic growth, the negative impacts on local communities, such as evictions, loss of livelihoods, and economic inequality, cannot be ignored. Therefore, the land acquisition policy within the framework of Law No. 6 of 2023 needs to be reviewed to be more in line with the principle of benefit as aspired to in the UUPA and the spirit of agrarian reform (Hardiyanto, 2021).

### 1.3 Ownership Rights Theory and Challenges in Land Acquisition

Recognition and protection of ownership rights are key to economic development. When the government carries out land acquisition, it is important to ensure that the rights of landowners are respected through fair compensation (Hariyanto et al., 2024). Sri Hajati explained that compensation in land acquisition can take various forms, depending on the assessment results determined through deliberations or court decisions. In principle, compensation is directly provided to the entitled party and may be given as money, replacement land, resettlement, shareholding, or other mutually agreed forms. This flexibility ensures fairness and accommodates different needs, preventing disputes and promoting equitable solutions in land acquisition processes while balancing public interest and individual rights (Hajati, 2019). Law No. 2 of 2012 upholds the principle of mutual agreement in determining the form and amount of compensation. Therefore, land acquisition should be conducted through the release or transfer of land rights based on deliberation to reach a consensus. If no agreement is reached, compensation cannot be consigned or deposited with the court (Hajati, 2019).

Land acquisition is fundamentally carried out through deliberation to reach an agreement between land rights holders and the parties or institutions requiring the land. The concept of deliberation contains several key elements, namely: (1) the principle of equality between parties; (2) voluntary participation; (3) a mutual exchange of views, including listening, giving, and receiving opinions; and (4) a shared intention to reach an agreement on the form and amount of compensation (Gozali, 2017).

Expanding the meaning of public interest in Law No. 6 of 2023 must be accompanied by an adequate compensation mechanism to avoid causing conflict and loss for landowners. In this case, the urgency to reconstruct the meaning of public interest in the Basic Agrarian Law (UUPA) lies in aligning it with social and agrarian justice principles, ensuring that land acquisition truly serves the collective welfare rather than merely facilitating large-scale investments (Amal et al., 2024). Without clear limitations, the broad interpretation of public interest risks legitimizing land dispossession that disproportionately affects local communities and threatens environmental sustainability.

If compensation is not properly regulated, there is a risk that landowners, especially small-scale farmers and indigenous communities, will be forced to give up their land without sufficient economic security (Hardiyanto, 2021). This could lead to social unrest and further marginalization of vulnerable

groups. Therefore, the government must establish clear and transparent guidelines for compensation that reflect not only the market value of the land but also its long-term economic and cultural significance (Hardiyanto, 2021). Without such safeguards, land acquisition policies may fail to achieve their intended development goals while exacerbating inequality and social conflict. This issue is further compounded by the dominance of a legal-positivist perspective in policy execution, prioritizing formal legality over substantive justice (Sufriadi, 2011). As a result, land acquisition often becomes a rigid bureaucratic process that overlooks social realities, marginalizing customary landowners and vulnerable communities in favor of state or investor interests (Listyawati & Sulastriyono, 2014).

In this context, the revision of Article 10 of Law No. 6 of 2023 must include special recognition of the rights of indigenous peoples and local communities. For example, indigenous peoples have spiritual and cultural ties to the land they own. Land acquisition without considering this dimension can result in violations of their human rights (Wico et al., 2021). As emphasized in Constitutional Court Decision No. 35/PUU-X/2012, which recognizes the rights of Indigenous peoples to their customary land, the Basic Agrarian Law (UUPA) actually does recognize Indigenous land ownership, but in a limited manner, as it is still subject to state control and national development interests (Yonatan & Nugraha, 2021). In this case, legal reforms must provide stronger protection to prevent the displacement of indigenous peoples from their ancestral lands. Recognizing customary land should not be merely symbolic but must be accompanied by clear legal mechanisms that ensure fair compensation, community participation, and respect for traditional land management practices. Without these protections, land acquisition policies risk undermining indigenous sovereignty and perpetuating historical injustices (Bedner & Arizona, 2019).

Respect for the rights of indigenous peoples can be realized through meaningful consultation mechanisms and free, prior, and informed consent. This is important to prevent negative impacts such as land grabbing in the name of public interest (Kennedy et al., 2023). Besides that, the United Nations Declaration on the Rights of Indigenous Peoples (2007) also states that indigenous peoples have inherent rights over their lands, territories, and resources (Henderson, 2023), which states must recognize and protect. Therefore, it can be concluded that protecting indigenous land ownership is a part of human rights (or constitutional rights). If land grabbing occurs, the impacts may include the loss of community access to sources of livelihood, social disintegration, and increasing economic inequality. Land-grabbing constitutes a violation of human rights.

The revision of Article 10 of Land Acquisition Law must also include compensation provisions that cover the economic value of the land and the social and cultural aspects lost due to the land acquisition. For example, customary land used for tourism areas cannot be assessed only from an economic perspective because the land has invaluable historical and cultural value. In addition, an independent monitoring institution must be established to ensure the land acquisition process is transparent and fair. This institution must have the authority to stop projects that are proven to violate the rights of local or customary communities. This monitoring function will provide stronger protection for communities often in a weak position in negotiations with large investors.

As an additional solution, the redistribution of economic benefits from profit-oriented projects must be a priority. For example, part of the profits from tourism areas must be allocated for developing public facilities, skills training for local communities, or establishing cooperatives that involve affected communities. Thus, negative social impacts can be minimized, and development benefits can be felt more evenly. If these steps are not taken, land acquisition for public interest managed by large investors can increase social and economic inequality. Land grabbing without a clear protection mechanism will create structural injustice that is difficult to fix. Therefore, a revision to Article 10 of Law No. 6 of 2023 is urgently needed to create a more just, inclusive legal arrangement that respects the rights of indigenous peoples and local communities.

## 1.4 Critical Legal Studies (CLS) Approach and Public Interest

This perspective is relevant in land acquisition for tourism development in Indonesia, especially when large investors manage profit-oriented tourism projects while local communities do not receive equal benefits. Empowering local communities to actively participate in the planning, developing, and managing of tourism initiatives can be a key strategy to promote a more equitable distribution of the economic, social, and environmental outcomes generated by the tourism industry, ensuring that the benefits are shared among all stakeholders involved (Kodir, 2018).

Data shows that investment in the Indonesian tourism sector in 2023 reached USD 3.604 billion or around IDR 58.64 trillion. However, 80 percent of this investment is concentrated in starred hotels, restaurants, cafes, and fitness centers. This indicates that most capital flows to sectors controlled by large investors with a high profit orientation. On the other hand, the development of tourist villages, which are often managed by local communities, does not receive a significant portion of investment. Limited access to capital, infrastructure, and promotion causes tourist villages to develop more slowly than destinations managed by private or large investors. This gap reflects how land acquisition laws and policies can benefit large investors while local communities do not receive proportional benefits.

In addition, the land acquisition process for tourism projects often causes conflicts with local communities. For example, the land acquisition process resulted in land conflicts with local communities in the Mandalika and Tanjung Kelayang Tourism Special Economic Zones (KEK) development. This shows that although the project is claimed to be in the public interest, its implementation can be detrimental to local communities. From a CLS perspective, this situation shows that land acquisition laws and tourism policies in Indonesia tend to favor the interests of large investors with a profit orientation, while the interests and rights of local communities are less considered. Therefore, a fairer and more inclusive legal reform is needed, one that ensures that tourism development not only benefits large investors but also provides real benefits to local communities.

The interpretation of Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia concerning land acquisition shows that the public interest must include elements that support collective prosperity (Harisman, 2021), not just the interests of a handful of parties. That is why Imam Koeswahyono emphasized that justice is a fundamental aspect of the state constitution, embodying Indonesia's commitment to a social constitution that not only defines state elements and subjects but also recognizes natural resources as vital assets for public welfare (Koeswahyono, 2024). This principle underscores the need for policies that ensure equitable access and benefit-sharing for all communities in Indonesia's land acquisition context.

Land acquisition for tourism areas regulated in the latest regulations, such as Law No. 6 of 2023, can be seen as one way to maximize national economic potential while ensuring equitable distribution of development benefits. However, applying this principle must balance national interests and the protection of community rights. Land acquisition for tourism areas regulated in the latest regulations, such as Law No. 6 of 2023, can be seen as one way to maximize national economic potential while ensuring equitable distribution of development benefits. However, applying this principle must balance national interests and the protection of community rights. Clear legal safeguards are necessary to prevent land dispossession that harms local communities. Additionally, inclusive decision-making processes should be implemented to ensure that affected communities have a voice in development projects.

The main legal basis governing this land acquisition is Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Law No. 2 of 2012). This law thoroughly regulates the land acquisition process, from planning, preparation, implementation, and handover of results. One of the key articles in the law is Article 10, which stipulates the types of development that are considered to be in the public interest.



However, the mandate of the Land Acquisition Law does not fully reflect the spirit of agrarian reform. Instead of prioritizing equitable land distribution, it has become the legal basis for the state's takeover of land, often at the expense of local communities (Atmaja & Erliyana, 2024). This legal framework creates barriers to agrarian reform as it facilitates large-scale development projects while limiting opportunities for land redistribution to marginalized groups. Additionally, it hampers rural economic development, as villages have minimal authority to manage and optimize local economic resources. Ideally, land acquisition should empower villages by allowing them to utilize land for productive activities that support community welfare, rather than merely serving as passive subjects in state-driven projects.

### 1.5 Economic Analysis of Law in Land Acquisition

The Economic Analysis of Law approach is rooted in Jeremy Bentham's utilitarianism, which prioritizes maximizing benefits. According to Bentham, a legal provision qualifies as law if it provides the greatest benefit to the most people, aligning with the principle of "*the greatest happiness of the greatest number*" (Mochtar & Hiariej, 2023). The economic analysis of law approach assesses legal policies based on their economic efficiency. In the context of land acquisition for tourism areas, this approach supports projects that maximize the economic value of land assets. However, economic benefits should not be the sole consideration. The process must also protect social and cultural values, particularly for local communities that have long depended on the land. If economic efficiency is prioritized without considering distributive justice, land acquisition risks marginalizing vulnerable groups and exacerbating social inequalities.

This theory is relevant for economic actors like traders and is utilized by legal institutions to optimize their role in development through their responsibilities (Khafidzoh, 2023). For instance, there has been ongoing debate regarding implementing the Land Bank following the enactment of the Job Creation Law in Indonesia. This institution plays several roles, particularly in the economic aspect of land management. The Land Bank is regulated under Government Regulation No. 64 of 2021, which outlines its functions, including land acquisition, management, utilization, and distribution to support national development (Lahilote et al., 2021). Its establishment aims to ensure the availability of land for public-interest projects while maintaining economic balance and preventing speculative land control. However, concerns remain regarding its implementation, particularly about transparency, land rights protection, and its impact on local communities.

In the context of this research, land acquisition has long been a contentious issue involving competing interests between private property rights, public welfare, and economic development (Qurbani & Rafiqi, 2022). While law and economics literature provides valuable insights into land governance, much of the discussion is rooted in theoretical frameworks that do not always align with the realities of land tenure systems in developing countries. For instance, the privatization of land markets has often led to the concentration of property rights in the hands of a few, sidelining customary landowners and indigenous communities.

A key challenge in applying an economic analysis of land acquisition is the potential neglect of externalities—such as livelihood disruptions and environmental degradation—that are not immediately reflected in market transactions. While land reform initiatives often emphasize efficiency (Khafidzoh, 2023), they may overlook broader socioeconomic structures that sustain rural economies. The expansion of formal land markets, particularly in tourism-driven development, must be carefully managed to prevent the displacement of local populations and the erosion of customary land rights. Without adequate safeguards, economic-driven policies risk undermining long-term sustainability and social stability.

The United States' experience with property rights as policy tools for balancing resource use and conservation offers a useful comparative perspective. Land policies can be structured to align economic goals with social equity by implementing regulatory mechanisms that accommodate multiple

stakeholders. However, the effectiveness of such tools depends on strong legal institutions capable of enforcing property arrangements while minimizing transaction costs. In Indonesia, where land governance is often fragmented, the challenge lies in integrating economic efficiency with legal certainty and social justice (Widiyono & Khan, 2023). For instance, expanding land acquisition under the omnibus law framework raises concerns about whether economic growth is being pursued at the expense of community welfare (Taduri, 2021).

Ultimately, an economic land acquisition analysis must go beyond mere cost-benefit calculations. A truly effective policy should consider long-term development goals, environmental sustainability, and the socio-economic resilience of affected communities. Lawmakers must recognize that land is not merely an economic commodity but also a critical social and cultural asset. If land acquisition is to serve the public interest, it must be designed to balance efficiency with fairness, ensuring that development does not come at the cost of social displacement and economic disparity.

### 1.6 Practical Implications and Criticism of Regulatory Changes

In practical terms, expanding the meaning of public interest aims to support the acceleration of national development. However, this policy also presents challenges and potential conflicts between the government and the community (Meckelburg & Wardana, 2024). In many cases, the land acquisition process is marked by rejection from local communities, especially if the project benefits certain parties more than the wider community. Community participation is involved in all stages, namely, the planning, implementation, and evaluation of activities, which can be enhanced by an empowerment approach aimed at rural communities.

The main criticism of this regulation is the lack of monitoring and accountability mechanisms in implementing land acquisition. Without strict supervision, projects labeled as being in the "public interest" may instead benefit private entities while harming local communities. This could lead to land dispossession without adequate compensation, violating justice and legal benefit principles. Therefore, concrete steps, such as independent oversight, transparent evaluation criteria, and legal remedies for affected parties, are needed to ensure that public interest remains the true priority in every land acquisition process.

Article 10 of Law No. 2 of 2012 provides limitations on public interests that include activities such as national defense and security; public roads, toll roads, tunnels, railways, railway stations, and railway operating facilities; reservoirs, dams, weirs, irrigation, drinking water channels, water drainage and sanitation, and other irrigation structures; ports, airports, and terminals; oil, gas, and geothermal infrastructure; power generation, transmission, substations, networks, and distribution; government telecommunications and informatics networks; waste disposal and processing sites; government/regional government hospitals; public safety facilities; government/regional government public cemeteries; social facilities, public facilities, and public green open spaces; nature reserves and cultural reserves; government/regional government/village offices; urban slum settlement arrangement and/or land consolidation, and low-income housing with rental status; government/regional government education or school infrastructure; government/regional government sports infrastructure; and public markets and public parking lots.

However, with the implementation of the omnibus law system through Law Number 11 of 2020 concerning Job Creation (Law No. 11 of 2020) (Rafiqi, 2021), there has been a significant change in land acquisition policy. The government has expanded the meaning of "public interest" to provide more flexibility in the development process, especially in supporting investment and accelerating national strategic projects (Septian, 2023). This expansion of meaning includes additions to Article 10 of Law No. 6 of 2023, namely covering upstream and downstream oil and gas industrial areas; special economic zones; industrial areas; tourism areas; food security areas; and technological water development areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or

regional-owned enterprises. This change in regulation has significant legal implications, especially in the context of the principle of *lex posteriori derogat legi priori*, which means that newer regulations will override older regulations if there is a conflict between the two.

In this case, the provisions of Article 10 of Law No. 6 of 2023 legally replace Article 10 of Law No. 2 of 2012. Therefore, an in-depth normative legal study is needed to understand how this transformation affects the implementation of land acquisition for tourism area development (Meckelburg & Wardana, 2024), including its impact on development implementation, protection of community rights (Qurbani & Rafiqi, 2022) and legal certainty. Theoretically, the concept of "public interest" has various definitions from experts. According to Maria S.W. Sumardjono, public interest is a legal concept that includes society's basic needs that urgently need to be realized through government or other authority actions (Sumardjono, 2015). This concept contains essential elements such as fulfilling basic rights, increasing public welfare, and maintaining common interests above individual interests (Hariyanto et al., 2024). This land acquisition policy has undergone significant changes, particularly after Law No. 2 of 2012 was enacted. Before this law, land acquisition was solely carried out by the government based on presidential decrees and regulations, which were considered applicable at the time. However, with the introduction of Law No. 2 of 2012, land acquisition now allows the government to collaborate with private entities. This poses a significant issue, as it opens the possibility of interest abuse that could disproportionately benefit private entities.

In the context of land acquisition, the meaning of public interest must consider the principles of justice, sustainability, and harmony with national development. Two crucial aspects are ensuring access to land for public infrastructure and achieving social justice and societal prosperity (Roestamy et al., 2022). Public interest is a fundamental aspect of modern society because it includes the welfare and interests of the general public (Koeswahyono, 2024). This concept has been widely debated in political science and public administration, with academics discussing its definition, application, and role in policymaking.

Other experts, such as Erman Rajagukguk, emphasize that the concept of public interest must be dynamic, following the needs of society and the development of the times. Public interest covers the physical aspects of development and touches on broader social and economic dimensions. In land acquisition, public interest must be able to bridge individual interests with the collective needs of society. Erman Rajagukguk's view highlights the necessity of adapting the concept of public interest to societal changes and evolving economic conditions. This perspective is highly relevant in land acquisition, where the definition of public interest should not be rigidly limited to physical infrastructure projects but must also consider long-term social and economic impacts. If the public interest is understood too narrowly, it risks marginalizing local communities whose livelihoods depend on the land. Therefore, a more inclusive approach is needed—one that ensures land acquisition policies genuinely balance individual rights with broader societal benefits. This policy transformation is important, especially considering that tourism areas have strategic value in national economic development. Thus, expanding the meaning of public interest needs to be analyzed to ensure legal harmonization and sustainable, equitable development.

However, the principle that land acquisition for public interest must be non-profit, as conveyed by Maria S.W. Sumardjono, raises the potential for anomalies. In Law No. 6 of 2023, the expansion of the meaning of public interest includes projects such as tourism areas, industrial areas, and special economic zones that can have profit-oriented characteristics. This is contrary to the principle of public interest as an action that is only for the collective benefit of society without prioritizing the benefits of certain parties. This anomaly poses a challenge in maintaining a balance between national strategic development goals and the principle of agrarian justice. Therefore, strict supervision is needed to ensure that these projects remain by constitutional principles and do not sacrifice the interests of the wider community.

In China, research shows that local governments in rural areas have gained increased autonomy to manage tourism projects for their own interest. This trend departs from the traditional top-down approach,

where central authorities held more control over such projects. With greater local autonomy, rural governments now have the power to make decisions that directly impact the direction of tourism development in their regions, potentially enabling them to prioritize local economic growth and development objectives. This autonomy allows for more tailored approaches to tourism planning, with local authorities leveraging tourism to boost regional economies, improve infrastructure, and enhance public services.

A similar approach can be applied in Indonesia by strengthening the role of village-owned business entities (Badan Usaha Milik Desa/BUMDes) in land acquisition for tourism development. Government policies, such as those outlined in Minister of Villages, Development of Disadvantaged Regions, and Transmigration Regulation No. 4 of 2015, emphasize the empowerment of BUMDes as a driver of local economic growth. By involving BUMDes in managing tourism land, villages can maintain greater control over their resources, ensuring economic benefits remain within the community. This model allows for participatory decision-making, revenue-sharing mechanisms, and sustainable development aligned with local interests.

Reinterpreting the principle of public interest in land acquisition is necessary to align it with social justice and agrarian justice values. The broad interpretation currently used often marginalizes local communities and indigenous peoples, undermining their rights and livelihoods. Future policies must ensure that public interest is not merely defined by large-scale infrastructure or investment projects but also by community well-being and sustainable land use. Furthermore, benefit-sharing mechanisms should be embedded in land acquisition regulations. This can be done through profit redistribution from large projects, investment in local infrastructure, and capacity-building programs for affected communities. By doing so, land acquisition will contribute to economic growth, social equity, and long-term rural empowerment.

## ***Conclusion***

The land acquisition process must adhere to justice, legal certainty, and community empowerment principles. Expanding the meaning of "public interest" under Law No. 6 of 2023 raises concerns about the potential marginalization of local communities, particularly in tourism development projects. Strengthening regulatory frameworks and supervisory mechanisms is essential to ensure land acquisition truly serves the broader public rather than benefiting only investors or large corporations. A participatory approach, where local communities, indigenous groups, and vulnerable populations are actively involved in decision-making, is crucial to preventing land dispossession and social conflict.

Additionally, an independent oversight mechanism is necessary to prevent unfair practices such as forced land acquisition, inadequate compensation, and ecological degradation. Transparent supervision can help ensure that economic gains from large-scale tourism projects are fairly distributed rather than concentrated among private investors. Future legal reforms should refine the definition of public interest and introduce benefit-sharing mechanisms that allow local communities to partake in economic gains through revenue allocation, community-based tourism initiatives, or social development programs. By incorporating these principles, land acquisition policies can align with agrarian justice and sustainable development, ensuring that economic growth does not come at the expense of social equity and environmental protection.

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