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Procedural Deviations in Small-Scale Land Acquisition as Unlawful Acts in Corruption Offences

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Abstract. *Small-scale land acquisition constitutes a legal mechanism designed to ensure flexibility and efficiency in the implementation of development projects serving the public interest. The procedural simplification inherent in this regime is intended to respond to urgent development needs that directly affect local communities. In practice, however, such simplification is frequently misconstrued as the elimination of normative legal requirements, thereby creating opportunities for procedural deviations that may result in state financial losses. This condition raises complex legal issues when administrative irregularities shift into the domain of corruption offences. This article examines how procedural deviations in small-scale land acquisition may be legally constructed as unlawful acts within the framework of corruption crimes. The research adopts a normative legal method, employing statutory and case approaches, grounded in findings from the analysis of small-scale land acquisition practices in public-interest development projects. The analysis focuses on the normative limits of procedural simplification, the concept of unlawfulness in both formal and material senses, and the construction of criminal liability based on mens rea and abuse of authority. The findings demonstrate that procedural deviations in small-scale land acquisition cannot automatically be classified as criminal acts. Nevertheless, where such deviations violate fundamental land acquisition norms, are accompanied by an abuse of authority, and result in state financial losses, they may fulfil the elements of unlawfulness in corruption offences, particularly as regulated under Articles 2 and 3 of the Indonesian Anti-Corruption Law. This article underscores the necessity of positioning criminal law as ultimum remedium to prevent the criminalisation of public policy, while simultaneously reinforcing its preventive function in safeguarding the integrity and accountability of the land acquisition system for public development.*

Keywords: *Corruption Offence; Procedural Deviation; Small-Scale Land Acquisition; Unlawful Act; Ultimum Remedium.*

1. Introduction

Land acquisition for development in the public interest constitutes a legal instrument that occupies a strategic position within the national development system. Through this mechanism, the state is granted authority to acquire land rights for public purposes, accompanied by the obligation to provide fair and equitable compensation to entitled parties (Limbong, 2017). From the perspective of a state governed by the rule of law, land acquisition cannot be understood merely as an administrative act, but rather as a manifestation of the balance between public interests and the protection of individual land rights. Accordingly, its regulation and implementation must be grounded in the principles of legality, legal certainty, and substantive justice (Hadjon & Martosoewignjo, 2008).

Normatively, land acquisition for development in the public interest is regulated under Law Number 2 of 2012 on Land Acquisition for Development in the Public Interest, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, along with its implementing regulations. This regulatory framework is intended to ensure procedural certainty while minimizing conflicts between the government and affected communities. It systematically governs each stage of land acquisition, ranging from planning to the handover of acquired land (M. S. W. Sumardjono, 2015). Nevertheless, empirical experience demonstrates that the existence of relatively comprehensive legal norms does not necessarily guarantee orderly and accountable implementation (Dewi, 2017). In practice, land acquisition often emerges as one of the most legally vulnerable stages of development, giving rise to civil disputes, administrative violations, and even allegations of criminal conduct, including disputes over non-material compensation that are improperly handled and potentially infringe constitutional rights (Nadzir et al., 2021).

One form of land acquisition that has recently generated distinct legal challenges is small-scale land acquisition, as regulated under Government Regulation Number 19 of 2021 on the Implementation of Land Acquisition for Development in the Public Interest (Taupiqqurrahman & Dalimunte, 2023). This mechanism is fundamentally designed to provide flexibility for institutions requiring land within a limited area, allowing the acquisition process to be carried out in a simpler and more efficient manner. Procedural simplification is intended to respond to urgent development needs without undermining the core principles of land acquisition that safeguard legal certainty and the protection of the rights of entitled parties (Murwahid, 2020).

In reality, however, the concept of small-scale land acquisition is frequently misunderstood. Procedural simplification is often interpreted as the elimination of normative stages, resulting in land acquisition processes conducted without adequate planning documents, feasibility studies, or careful verification of parties who are legally entitled to receive compensation. This misinterpretation places small-scale land acquisition in a vulnerable position, as it opens space for abuse of authority and practices that contradict the fundamental objectives of land acquisition law itself (Ujung et al., 2025).

Such vulnerability becomes increasingly significant when procedural deviations in small-scale land acquisition lead to state financial losses. Although Law Number 2 of 2012 does not explicitly stipulate criminal provisions, this does not imply that violations of land acquisition norms fall outside the scope of criminal law. Within the Indonesian legal system, any unlawful act committed through an abuse of authority and resulting in state financial losses may be classified as a corruption offence, as regulated under the Anti-Corruption Law (Effendy, 2013).

At this juncture, small-scale land acquisition can no longer be viewed solely as an administrative matter. Procedural deviations that occur may potentially transform into unlawful acts within the criminal law regime, particularly when elements of abuse of authority and state financial losses are fulfilled. In law enforcement practice, this shift from an administrative to a criminal legal regime frequently gives rise to debate, especially in determining the boundary between administrative procedural errors and unlawful acts that warrant criminal liability (Hartanti, 2007).

A number of previous studies have examined land acquisition practices that implicate corruption offences, whether from the perspective of perpetrators' criminal responsibility or the roles of actors involved in the acquisition process (Naibaho et al., 2025; Sangari et al., 2025). Nevertheless, most of these studies continue to treat land acquisition as a general object of analysis, without paying particular attention to the distinctive characteristics of small-scale land acquisition (Hapsari et al., 2025). As a result, conceptual errors in understanding and applying the norms governing small-scale land acquisition are often overlooked, even though this aspect is precisely where the potential for abuse of authority frequently originates.

Moreover, the tendency of prior research to focus predominantly on the subject of offenders and forms of criminal liability risks obscuring a more fundamental normative issue, namely how procedural simplification in small-scale land acquisition should be properly interpreted and delimited (Rahmat et al., 2025). Without a precise normative understanding of these limits, small-scale land acquisition risks being practiced as an uncontrolled space of administrative discretion, making it difficult to distinguish between legitimate administrative policy and deviations that constitute unlawful conduct.

Against this background, this article places small-scale land acquisition as the primary focus of normative analysis. Rather than merely examining the legal consequences of specific acts, this study seeks to analyse the misapplication of norms governing small-scale land acquisition as a conceptual problem that creates opportunities for abuse of authority and state financial losses. Based on normative legal research employing a case approach to small-scale land acquisition practices in public-interest development projects, this article aims to elucidate how procedural deviations in small-scale land acquisition can be constructed as unlawful acts within the framework of corruption offences, while also providing an argumentative foundation for strengthening legal certainty in land acquisition practices for development in the public interest.

2. Research Methods

This study adopts a normative legal research method focusing on the analysis of legal norms governing land acquisition for development in the public interest, particularly small-scale land acquisition, and its implications for the construction of unlawfulness in corruption offences. Normative legal research is employed because the object of analysis is directed toward the interpretation and systematisation of positive law rather than the measurement of empirical facts, while remaining closely connected to the context of legal implementation through findings derived from problematic small-scale land acquisition practices (Wiraguna, 2025). The research applies a statutory approach to examine the regulatory framework under Law Number 2 of 2012 on Land Acquisition for Development in the Public Interest and Government Regulation Number 19 of 2021 on the Implementation of Land Acquisition for Development in the Public Interest, along with their implementing regulations, as well as a case approach to normatively analyse a selected small-scale land acquisition practice in a public-interest development project (Negara, 2023). The case analysis particularly addresses planning aspects, the determination of entitled parties, compensation payment mechanisms, and their juridical implications for potential state financial losses (Naryana et al., 2020). Primary and secondary legal materials, consisting of statutory regulations, legal textbooks, and scholarly journal articles, were collected through library research and analysed qualitatively using normative legal reasoning to assess the boundary between administrative errors and unlawful acts within the framework of corruption offences (Amiruddin & Asikin, 2020; Marzuki, 2017).

3. Results and Discussion

3.1. Small-Scale Land Acquisition within the Legal Framework of Land Acquisition for the Public Interest

3.1.1. The Rationale for Regulating Small-Scale Land Acquisition

Based on the research findings, the land acquisition practice examined in this study is factually classified as small-scale land acquisition because the acquired land area falls below the maximum threshold stipulated under the relevant Government Regulation. The regulation of small-scale land acquisition within the legal system governing land acquisition for development in the public interest represents the state's effort to balance legal certainty, the protection of land rights, and the effectiveness of development implementation (S. W. M. Sumardjono, 2008). Normatively, this rationale is reflected in Articles 126 and 127 of Government Regulation Number 19 of 2021 on the Implementation of Land Acquisition for Development in the Public Interest, as amended by Government Regulation Number 39 of 2023, which introduce a land acquisition mechanism with simplified procedures for development activities involving land of a limited size. This regulatory approach cannot be separated from the long-standing problems of land acquisition in Indonesia, which are frequently characterised by lengthy processes, high costs, and protracted disputes, particularly when large-scale land acquisition mechanisms are applied uniformly without regard to the character and urgency of specific development activities (Yasim et al., 2025).

From the perspective of administrative efficiency theory, the simplification of procedures in small-scale land acquisition constitutes a response to the demand that governmental actions be carried out in a timely, precise, and proportional manner (Aronson et al., 2016). The principle of efficiency requires that the administrative burdens imposed on both the government and affected communities do not exceed the benefits to be achieved. The application of complex and multi-layered procedures to land acquisition involving relatively small land requirements is likely to generate inefficiencies in terms of time and cost, thereby contradicting the principle of effective governance (HR., 2018). Accordingly, the regulation of small-scale land acquisition is positioned as a legal instrument to prevent over-regulation and excessive administrative burdens that are disproportionate to the scale of the public interest pursued. Nevertheless, the research findings indicate that this normative rationale is not always fully understood in practice, leading procedural simplification to be misinterpreted as a justification for disregarding certain legal obligations in small-scale land acquisition.

In addition to efficiency considerations, the rationale for regulating small-scale land acquisition is closely linked to the concept of administrative discretion in public law. The state, through its governmental organs, is afforded a degree of discretion to determine the most appropriate course of action in particular circumstances, provided that such discretion remains within the bounds of law and the principles of good governance (Putri et al., 2025). Small-scale land acquisition provides normative legitimacy for administrative officials not to be rigidly bound by large-scale land acquisition procedures, but instead to employ simpler mechanisms while still safeguarding the principles of deliberation, fairness, and respect for landowners' rights. In this regard, administrative discretion functions as an instrument that bridges general legal norms with the concrete needs of development in practice (Putri et al., 2025).

The research findings further demonstrate that the discretionary space afforded in small-scale land acquisition may become a critical point of vulnerability if it is not strictly constrained by the principles of prudence and due care in the exercise of official authority (Rahmat et al., 2025). At the same time, the regulation of small-scale land acquisition is directly connected to the agenda of accelerating development. Many local public-interest projects—such as the construction of primary healthcare facilities, educational infrastructure, neighbourhood roads, and other basic public services—typically require land in limited areas but are urgent in nature and have an immediate impact on communities. If such projects were required to follow large-scale land acquisition procedures, delays in development would be difficult to avoid (Trenggana & Vebritha, 2024). Accordingly, small-scale land acquisition is designed as a normative solution to ensure that urgent public interests with direct societal impacts can be realised promptly, without undermining the principles of legality and the protection of land rights.

On this basis, the rationale for regulating small-scale land acquisition is not driven solely by technical administrative considerations, but rather is rooted in a systemic need to develop a land acquisition legal framework that is adaptive, proportional, and responsive to the dynamics of development. Articles 126–127 of Government Regulation Number 19 of 2021 may therefore be understood as an effort by the lawmaker to introduce a differentiated land acquisition regime based on the scale and urgency of the public interest, ensuring that the land acquisition legal system does not operate through rigid uniformity but is capable of responding more effectively to real development needs. As demonstrated by the research findings, however, the success of this differentiated regime is highly dependent on the accuracy with which land acquisition authorities understand and apply the governing norms.

3.1.2. Normative Limits of Procedural Simplification in Small-Scale Land Acquisition

Procedural simplification in small-scale land acquisition cannot be understood as the elimination of legal norms, but rather as an adjustment of administrative mechanisms that remains subject to the principles of legality and the protection of rights. Accordingly, the concept of “simplification” under Articles 126–127 of Government Regulation Number 19 of 2021 must be interpreted in a restrictive and functional manner, not as a procedurally unregulated space. Clarifying these normative limits is crucial to prevent small-scale land acquisition from evolving into practices that disregard minimum legal standards, particularly in relation to the protection of land rights and the prevention of abuse of authority. Based on the research findings, a failure to properly understand these normative boundaries constitutes one of the primary factors underlying procedural deviations in the practice of small-scale land acquisition.

First, although small-scale land acquisition is designed with simplified procedures, it normatively continues to require the existence of minimum planning documents as the legal basis for governmental action. This planning obligation is consistent with the principle of due process of administrative decision-making, which requires that every governmental action be grounded in rational and documented considerations (Aronson et al., 2016). However, the research findings indicate that in the examined practice, this minimum planning requirement was not adequately fulfilled, as land acquisition was conducted without proper land acquisition planning documents and feasibility studies as required. Even though small-scale land acquisition does not demand documentation as comprehensive as that required for large-scale land acquisition, the presence of planning documents specifying development objectives, location, and land area requirements constitutes a normative prerequisite that cannot be disregarded. Such minimum planning documents function as instruments of accountability, enabling the assessment of policy rationality and serving as a reference point for testing legality in the event of future disputes (Suyanto, 2023). Consequently, minimum planning cannot be regarded merely as an administrative formality, but rather as an essential element that maintains the linkage between development policy and the implementation of land acquisition.

Second, verification of entitled parties constitutes a legal obligation that cannot be substantively simplified. Normatively, procedural simplification in small-scale land acquisition does not eliminate the requirement to ascertain the legal status of the land and its rights holders (U. Santoso, 2017). Nevertheless, the research findings reveal that in the case under examination, verification of parties entitled to receive compensation was not conducted with due care, resulting in compensation being paid to parties lacking legal standing over the land object. Proper verification should encompass the identification of land ownership or control, the validity of title documents, and the existence of other parties who may possess legal interests in the land concerned (Yasim et al., 2025). The absence of adequate verification not only undermines the legitimacy of land acquisition actions but also creates space for civil disputes and social conflict. Ultimately, such conditions contradict the primary objectives of small-scale land acquisition, namely procedural efficiency and accelerated development grounded in legal certainty and the protection of rights (Suyanto, 2023).

Third, conformity with spatial planning constitutes an imperative normative boundary that is non-negotiable in small-scale land acquisition. Procedural simplification cannot be used to justify disregard for established spatial planning regulations (Imamulhadi, 2021). However, the research findings demonstrate that in the examined practice, compliance with spatial utilisation plans was frequently neglected, thereby creating the risk that small-scale land acquisition would conflict with applicable spatial plans. Within the legal system of land and spatial planning, spatial plans function as binding instruments for controlling land use for both government and society. Consequently, every land acquisition action, including small-scale acquisition, must be carried out within the legally designated spatial framework (Puspadewi et al., 2024). Disregard for spatial planning considerations not only results in administrative legal defects, but also has the potential to trigger development disorder and violations of the principles of sustainable development.

Fourth, all stages of procedural simplification in small-scale land acquisition must continue to be implemented in accordance with the principle of prudence (prudence principle). This principle requires authorised officials to carefully consider the legal, social, and economic implications of each land acquisition decision, even where the required land area is relatively small (Putri et al., 2025). The research findings indicate that neglect of the prudence principle in small-scale land acquisition practices often becomes the point at which administrative errors intersect with the potential for abuse of authority. Within the framework of administrative discretion, the prudence principle operates as a normative restraint that limits officials' freedom of action, ensuring that procedural simplification does not shift into arbitrary conduct (Naibaho et al., 2025). Accordingly, the prudence principle serves as a key instrument for maintaining alignment between procedural efficiency, legal certainty, rights protection, and governmental accountability.

The prudence principle, as outlined above, must not remain at an abstract normative level, but must be concretely operationalised at every stage of small-scale land acquisition implementation. Such operationalisation requires the identification of practical indicators to assess the extent to which the prudence principle is genuinely internalised in practice. At a minimum, this principle is reflected in the following elements:

a. the conduct of meaningful deliberation, characterised by substantive, participatory, and pressure-free dialogue that provides landowners with adequate space to express their views, interests, and objections (P. B. Santoso et al., 2025);

b. the assurance of comprehensive information transparency, including clarity regarding development objectives, the legal basis for land acquisition, implementation mechanisms, and compensation valuation methods, thereby preventing information asymmetry between authorities and landowners (A. R. Hidayat et al., 2022);

c. the realisation of consent based on full understanding (informed consent), rather than mere formal approval, as a logical consequence of meaningful deliberation and transparent information (Margaretha & Putra, 2022); and

d. the provision of fair and reasonable compensation that assesses land not only from a narrow economic perspective, but also takes into account non-material losses and tangible social impacts arising from the land acquisition process (P. B. Santoso et al., 2025).

In the practice examined in this study, these elements were not cumulatively fulfilled, resulting in procedural simplification that instead weakened legal protection for entitled parties.

Accordingly, the normative limits of procedural simplification in small-scale land acquisition affirm that simplification of mechanisms is not synonymous with substantive deregulation. On the contrary, simplification must be understood as a reinforcement of the function of administrative law in ensuring that governmental actions are both expeditious and legally valid. As demonstrated by the research findings, failure to maintain these normative limits creates opportunities for abuses of authority that may evolve into unlawful acts within the framework of corruption offences.

3.2. Procedural Deviations in Small-Scale Land Acquisition: From Maladministration to Unlawful Acts

3.2.1. Typology of Procedural Deviations in Small-Scale Land Acquisition

Procedural deviations in small-scale land acquisition do not always manifest as overt violations of law; rather, they often originate from administrative practices that depart from established minimum normative standards. Based on the research findings concerning the Land Compensation Acquisition for the Construction of the Regional Office (UPTD) of Education and Culture of North Maluku Province in West Halmahera Regency for the 2021 Fiscal Year (Afrianti, 2023), such deviations can be identified as structural, repetitive, and occurring across multiple stages of the land acquisition process. This occurs despite the formal classification of the activity as small-scale land acquisition, given that the acquired land area was only approximately 3,760 m², far below the maximum threshold of five hectares as stipulated under Article 126 of Government Regulation Number 19 of 2021 on the Implementation of Land Acquisition for Development in the Public Interest.

Accordingly, these deviations require typological classification to enable a systematic mapping of procedural deviation patterns in small-scale land acquisition based on each stage of the acquisition process. A typological approach allows the analysis to move beyond mere descriptive case narratives and to reveal recurring and structured normative tendencies, which, in certain contexts, may lead to abuses of authority and state financial losses.

a. First, deviations at the planning stage.

The first typology concerns deviations at the planning stage, characterised by the absence of land acquisition planning documents as required under the land acquisition legal framework. The research findings indicate that the land acquisition activity examined was based solely on a Land Grant Application Letter issued by the Branch Office of Education and Culture of West Halmahera Regency, without being supported by a Land Acquisition Planning Document (Dokumen Perencanaan Pengadaan Tanah/DPPT) or the minimum feasibility study as required under Articles 6 and 7 of Government Regulation Number 19 of 2021.

This practice reflects a mistaken reduction of the meaning of procedural simplification, as if small-scale land acquisition could be detached from substantive planning obligations. In fact, Articles 126(4) and 126(5) of Government Regulation Number 19 of 2021 expressly require that small-scale land acquisition be accompanied by planning documents and minimum feasibility studies, notwithstanding the simplified administrative mechanisms. Normatively, such deviations cannot be justified, as planning documents function as the legal, rational, and accountable foundation of every land acquisition action (Yasim et al., 2025). In the absence of valid planning, land acquisition actions lose their administrative legitimacy and create space for arbitrary decision-making, even where the acquired land area is relatively limited.

b. Second, deviations in the determination of entitled parties.

The second typology involves deviations in determining the parties entitled to receive compensation. Based on the research findings, compensation payments were made to parties who were neither registered land rights holders nor legitimate heirs, and were not supported by a Power of Attorney to Sell as a basis for legal standing (Dewi, 2017). A review of land administration documents revealed that Freehold Title Certificate (Sertifikat Hak Milik/SHM) Number 257 of Hatebicara Village, covering an area of 3,760 m², remained registered under the name of the original owner, and no lawful transfer of rights had occurred prior to the compensation payment. Juridically, this condition contravenes Article 18 of Government Regulation Number 19 of 2021, which limits entitled parties in land acquisition to land rights holders or other parties possessing a valid legal basis. Consequently, the payment of compensation to parties lacking legal standing constitutes a serious deviation from the principle of land rights protection.

This deviation highlights the weakness of legal subject verification in small-scale land acquisition. Rather than being administratively simplified, verification of entitled parties represents a non-negotiable element, as it is directly linked to legal certainty, land rights protection, and the prevention of future legal conflicts (Notess et al., 2021).

3. Third, deviations in compensation payment mechanisms and rights relinquishment.

The third typology relates to deviations in compensation payment mechanisms and the relinquishment of land rights. The research found that the relinquishment of land rights was not conducted before the Head of the local Land Office, nor was it accompanied by the submission of copies of data and documents resulting from land acquisition to the Land Office, as mandated under Article 100(1) and Article 140(2) of Ministerial Regulation of ATR/BPN Number 19 of 2021 on the Implementation Provisions of Government Regulation Number 19 of 2021 on Land Acquisition for Development in the Public Interest. This condition reflects a disregard for the principle of legal formality in the transfer of land rights, which should function as a legal safeguard mechanism for acquired land. Rights relinquishment carried out outside the prescribed procedure not only results in administrative defects, but also has the potential to create legal uncertainty regarding the status of the acquired land (Rahmat et al., 2025).

Deviations at this stage carry not only administrative implications, but also the potential to cause state financial losses, particularly where compensation payments are made without a lawful basis and without certainty that land rights have been validly transferred to the state.

4. Fourth, abuse of discretion in small-scale land acquisition.

The fourth typology concerns the abuse of administrative discretion under the guise of small-scale land acquisition. The research findings indicate a tendency to apply the small-scale land acquisition regime inconsistently, whereby certain stages—such as the engagement of independent appraisers (Kantor Jasa Penilai Publik/KJPP)—are retained, while fundamental normative obligations, including timely location determination and conformity with spatial utilisation, are disregarded.

Empirical findings further reveal that the determination of the land acquisition location was issued only after the acquisition process and compensation payments had been completed, thereby contradicting Articles 19 and 20 of Government Regulation Number 19 of 2021, which position location determination as an initial stage of land acquisition. From the perspective of administrative law, discretion must not be used to negate legal obligations, but rather to fill regulatory gaps or simplify procedures without sacrificing the principles of legality and prudence. When discretion is exercised selectively and opportunistically, such practices no longer fall solely within the realm of maladministration, but may evolve into unlawful acts that are relevant for assessment within the framework of corruption offences (Rahmawati et al., 2025).

Overall, the typology of procedural deviations in small-scale land acquisition identified through the research findings demonstrates that the core problem does not lie in the absence of legal norms, but rather in the abuse of authority and misinterpretation of the concept of procedural simplification. This condition constitutes the starting point for the transition from administrative errors to unlawful acts that entail state financial losses.

3.2.2. Unlawful Acts: Formele versus Materiële Wederrechtelijkheid

The concept of unlawfulness (wederrechtelijkheid) constitutes a key element in determining whether a procedural deviation may transform from mere maladministration into conduct with criminal implications (Hamzah, 2019). In criminal law doctrine, unlawfulness is not understood as a singular concept, but rather has developed through two principal approaches, namely formele wederrechtelijkheid and materiële wederrechtelijkheid (Hiariej, 2017). This distinction is particularly important for assessing procedural deviations in small-scale land acquisition, which are often justified under the pretext of procedural simplification.

In classical doctrinal terms, formele wederrechtelijkheid is understood as unlawfulness measured solely by reference to violations of written legal norms (Moeljatno, 2008). An act is considered unlawful when it directly contravenes applicable statutory provisions. This approach situates law within a strict positivist framework, whereby the primary focus of assessment lies in whether explicitly formulated procedures and authorities have been violated (Moeljatno, 2008). In the context of land acquisition, a formal approach evaluates whether the stages, documents, and mechanisms prescribed by land acquisition regulations have been normatively fulfilled.

Based on the case examined in this research, formal violations are evident, inter alia, in the absence of Land Acquisition Planning Documents and minimum feasibility studies as required under Articles 6 and 7 of Government Regulation Number 19 of 2021, as well as the failure to conduct the relinquishment of land rights before authorised land officials as stipulated under Ministerial Regulation of ATR/BPN Number 19 of 2021.

Nevertheless, the formele wederrechtelijkheid approach has limitations when confronted with administrative practices that appear formally compliant, yet substantively deviate from the objectives and legal values intended to be protected. These limitations have given rise to the development of the doctrine of materiële wederrechtelijkheid, which assesses unlawfulness not only in terms of normative compliance, but also in relation to the substance, purpose, and impact of the conduct in question (Remmelink, 2014). Under this approach, an act may still be deemed unlawful even if it does not formally violate written provisions, where it conflicts with principles of justice, propriety, and the objectives of the law (Remmelink, 2014). The relevance of this approach is clearly reflected in the research findings, where compensation payment mechanisms were administratively documented as complete, yet substantively directed to parties lacking legal standing as land rights holders, thereby contravening principles of rights protection and substantive justice.

Within the framework of modern administrative law, the relevance of materiële wederrechtelijkheid is further reinforced through the principles of Good Governance (Asas-Asas Umum Pemerintahan yang Baik/AUPB) (Hadjon & Lotulung, 2010). AUPB function as ethical–juridical standards for evaluating the quality of governmental actions beyond mere procedural compliance. Principles such as prudence, due care, transparency, proportionality, and the prohibition of abuse of authority serve as key parameters for assessing whether a policy or administrative action—including those in small-scale land acquisition—remains within the bounds of lawful governance (HR., 2018). Violations of AUPB in this context may be regarded as strong indicators of materiële wederrechtelijkheid, even where explicit formal violations are not always present. The research findings demonstrate that neglect of the principles of prudence and due care, particularly in the verification of entitled parties and the timing of location determination, constitutes a serious breach of AUPB in the implementation of small-scale land acquisition.

The significance of distinguishing between formele and materiële wederrechtelijkheid in small-scale land acquisition becomes increasingly apparent when linked to the inherent character of procedural simplification under this regime. Simplification expands the scope of administrative discretion, while simultaneously heightening the risk of abuse of authority. In such circumstances, a purely formal approach is often insufficient to capture the complexity of the deviations that occur. For example, land acquisition conducted without careful verification of entitled parties, or compensation payments that appear administratively valid but are substantively misdirected, may pass formal scrutiny while materially conflicting with principles of justice and rights protection. This condition is clearly confirmed by the research findings, which reveal that procedural simplification in small-scale land acquisition has been used as an administrative justification to obscure substantive deviations.

Accordingly, the application of a materiële wederrechtelijkheid framework enables a more responsive and substantive legal analysis of small-scale land acquisition practices. This approach affirms that law does not function merely as a set of procedural rules, but as a value-based system that must ensure a balanced realisation of justice, legal certainty, and utility (Hiariej, 2017).

3.2.3. The Transition of Legal Qualification: From Maladministration to Corruption Offences

The shift from maladministration to conduct with criminal implications does not occur automatically merely because a procedural violation exists. Within the framework of modern criminal law, particularly in relation to corruption offences, the qualification of an unlawful act requires the cumulative presence of material unlawfulness, abuse of authority, and the occurrence of state financial losses. These three elements form an inseparable causal relationship in assessing the gravity of administrative deviations, such that not every procedural violation is automatically eligible to be classified as a corruption offence (Atmoko & Syauket, 2022). The research findings demonstrate that the procedural deviations identified in the examined small-scale land acquisition case do not occur in isolation, but are interrelated and cumulatively fulfil the prerequisites for such a transition in legal qualification (T. Santoso & Zulfa, 2013).

From the perspective of materiële wederrechtelijkheid, a governmental act may be deemed unlawful not solely because it contravenes written rules, but because it deviates from the purpose of the authority conferred by law (Muammar, 2025). It is at this point that the concept of abuse of authority becomes significant. Administrative authority is inherently granted to achieve specific objectives (doelbinding); therefore, when such authority is exercised in a manner that exceeds its limits, conflates different powers, or is directed toward improper purposes, the action loses its legal legitimacy, even if it appears formally valid (Widyastuti et al., 2022).

Small-scale land acquisition, with its characteristic procedural simplification, further intensifies the need for substantive legal scrutiny. Administrative discretion, which is initially intended to expedite public service delivery, may transform into a vehicle for deviation when exercised without prudence, due care, and accountability (S. W. M. Sumardjono, 2009). In such circumstances, violations of the principles of Good Governance (Asas-Asas Umum Pemerintahan yang Baik/AUPB) no longer merely indicate administrative defects, but may be regarded as early indicators of materiële wederrechtelijkheid with criminal relevance. The research findings reveal that the principles of prudence and due care were not adequately implemented, particularly in determining the recipients of compensation and in establishing the timing and legal basis for land acquisition procedures, resulting in administrative discretion being exercised selectively and opportunistically.

The criminal dimension becomes increasingly apparent when such abuse of authority results in state financial losses. State losses function as an objective element linking deviations in authority to concrete harm to public interests. Within this framework, compensation payments made to non-entitled parties, compensation valuations conducted without proper verification of lawful subjects, or the use of public funds without adequate land acquisition planning can no longer be regarded merely as governance failures, but rather as actions that potentially cause state financial losses (Sekarwangi & Sihombing, 2025).

Accordingly, the concept of materiële wederrechtelijkheid serves as a conceptual bridge that enables legal analysis to transcend administrative formalities and to assess the substantive use of state authority. This approach allows for a proportional distinction between deviations that are sufficiently addressed within the realm of administrative law and unlawful acts that fulfil the elements of corruption offences (Hiariej, 2017). Based on the research findings, the accumulation of procedural deviations, abuse of authority, and potential state financial losses in the examined small-scale land acquisition demonstrates that the conduct in question extends beyond maladministration and satisfies the normative prerequisites for analysis within the framework of corruption crimes.

3.3. The Construction of Criminal Liability in Small-Scale Land Acquisition

3.3.1. Mens Rea in Procedural Deviations in Small-Scale Land Acquisition

Criminal liability in small-scale land acquisition cannot be attributed solely to the existence of procedural deviations or the emergence of state financial losses. Criminal punishment requires the presence of fault (mens rea) as a subjective element that connects the act to the perpetrator. The fundamental principle of geen straf zonder schuld affirms that not every administrative violation resulting in financial impact can automatically be qualified as a criminal offence; rather, it must be proven that the perpetrator possessed a culpable mental attitude toward both the act and its consequences (Hamzah, 22010). Accordingly, the analysis of mens rea serves as the primary instrument for distinguishing administrative errors from criminal wrongdoing in the implementation of small-scale land acquisition.

Within the structure of fault theory, mens rea encompasses two principal forms, namely intent (dolus) and negligence (culpa). Negligence itself is not a unitary concept, but is differentiated into culpa levis (ordinary negligence) and culpa lata (gross negligence) (Balya et al., 2025). This distinction holds strategic significance in the context of small-scale land acquisition, as the character of procedural simplification creates space for technically administrative errors that do not necessarily reflect malicious intent or a conscious desire to abuse authority.

Ordinary negligence (culpa levis) typically manifests in the form of administrative inattention, such as misinterpretation of technical norms or delays in fulfilling certain procedural requirements, without any motive to unlawfully enrich oneself or others (Zikun, 2023). In the practice of small-scale land acquisition, such negligence is often influenced by limited institutional capacity, weak inter-agency coordination, or the absence of clear technical implementation guidelines. From a doctrinal perspective, errors of this nature are more appropriately addressed within the realm of administrative or disciplinary liability, rather than serving as grounds for criminal punishment, as they do not meet the threshold of criminal fault that requires blameworthiness (blameworthiness) (Husak, 2016). This approach is essential to prevent excessive criminalisation of administrative policies that are fundamentally carried out in good faith.

By contrast, gross negligence (culpa lata) is characterised by a manifest disregard for legal obligations that should reasonably be known and complied with by the relevant official (Turnip & Budiman, 2025). Based on the research findings, patterns such as the failure to verify entitled parties, the payment of compensation to subjects lacking legal standing, and the omission of minimum land acquisition planning documents reflect forms of negligence that can no longer be considered minor. At this stage, negligence intersects with violations of the principles of prudence and due care in office, thereby opening the possibility of criminal liability where such conduct is proven to have caused state financial losses and to have occurred in circumstances involving abuse of authority.

Intent (dolus), meanwhile, represents the highest degree of fault, characterised by awareness and willingness to commit acts that are known, or ought reasonably to be known, to produce legally prohibited consequences (Ashton, 2023). In small-scale land acquisition, dolus may be indicated where officials consciously direct compensation payments to non-entitled parties, manipulate acquisition processes for specific purposes, or deliberately exploit procedural simplification mechanisms as a façade for personal or third-party interests. In this study, indications of intent are not assessed a priori, but must be established rigorously through a constellation of facts, patterns of conduct, and accompanying authority relations (Sulantoro, 2025). At this point, procedural deviations can no longer be tolerated as administrative errors, but instead fulfil the subjective requirements necessary to be classified as criminal offences.

The analysis of mens rea simultaneously responds to critiques of over-criminalisation in the enforcement of land acquisition law. Not all errors in land acquisition warrant criminal prosecution, as punishment imposed without differentiation of fault severity risks paralysing officials' willingness to make administrative decisions. Through a clear distinction between culpa levis, culpa lata, and dolus, criminal law functions as a selective instrument that targets only conduct exhibiting a degree of fault deserving of criminal accountability (Rofiq & Pujiyono, 2022).

Based on this analysis, mens rea operates as a normative filtering mechanism in the construction of criminal liability for procedural deviations in small-scale land acquisition. This approach enables a more just and proportional assessment, while maintaining a balance between the protection of state finances and legal certainty for public officials exercising their administrative authority.

3.3.2. The Relevance of Articles 2 and 3 of Law Number 31 of 1999 as Amended by Law Number 20 of 2001 on the Eradication of Corruption

Articles 2 and 3 of the Anti-Corruption Law constitute two central provisions most frequently invoked in qualifying corruption offences in the field of land acquisition. Although these articles are often applied in close proximity, they are doctrinally distinct in terms of their orientation, constituent elements, and implications for criminal liability (Rinaldi & Rosmely, 2020). Accordingly, a precise understanding of the differing characteristics of Articles 2 and 3 is essential, particularly in the context of small-scale land acquisition, which carries a heightened risk of excessive criminalisation if these provisions are not carefully distinguished.

The first element common to both Article 2 and Article 3 is the act of enriching oneself or another person. In cases of small-scale land acquisition, this element does not always manifest in the form of direct personal gain by the authorised official. As revealed by the research findings, the prevailing pattern instead involves the diversion of economic benefits to parties who are not legally entitled to receive compensation, either through misdirected payments or through administrative constructions that are allowed to persist without adequate legal verification. Consequently, the element of enriching oneself or another must not be interpreted narrowly as personal gain, but rather as encompassing any act that results in the unlawful flow of economic benefits arising from the abuse of land acquisition mechanisms (Miru et al., 2023).

The fundamental distinction between Articles 2 and 3 lies in the orientation of the criminalised conduct. Article 2 emphasises unlawful acts in a broad sense, encompassing both formal and material unlawfulness, without requiring a specific official position or office. The primary focus of Article 2 is on the nature and consequences of the act itself, namely whether the conduct is unlawful and causes state financial losses (D et al., 2024). With this character, Article 2 is more appropriately applied to situations in which corrupt conduct is carried out actively and consciously (dolus), and is not wholly dependent on the abuse of official authority.

By contrast, Article 3 is oriented more specifically toward the abuse of authority, opportunity, or means by virtue of office or position. This provision places official position at the centre of analysis, such that criminal fault is assessed not only by reference to the consequences of the act, but also by the manner in which the perpetrator exercises the authority vested in them (Endang, 2018). In the context of small-scale land acquisition, Article 3 becomes particularly relevant where deviations occur through the misuse of administrative discretion that departs from the purpose for which authority was granted, for example by disregarding verification of entitled parties, omitting minimum planning documents, or exploiting the simplified procedural regime to facilitate practices that result in state financial losses. Based on the characteristics of the conduct identified in the research object, such deviations more closely align with patterns of abuse of official authority, thereby rendering Article 3 more salient than Article 2.

These differing orientations also have direct implications for the assessment of mens rea, as discussed in the preceding subsection. Article 2 generally requires stronger proof of intent (dolus), as the unlawful act is carried out actively and with awareness. Article 3, on the other hand, allows for criminal liability based on fault in office, whereby gross negligence (culpa lata), when accompanied by abuse of authority and resulting in state financial losses, may satisfy the elements of the offence (Bowta & Hufron, 2022). On this basis, not every instance of negligence by officials in small-scale land acquisition can automatically be subsumed under Article 3; rather, only gross negligence reflecting a serious disregard of official duties and the principle of prudence may justify criminal liability.

From a systematic perspective, the relevance of Articles 2 and 3 of the Anti-Corruption Law in small-scale land acquisition must be applied selectively and proportionally. Article 2 is more appropriately utilised to assess conduct that is active, manipulative, and oriented toward the direct acquisition of economic benefits, whereas Article 3 is better suited to evaluating abuses of authority in the execution of official duties that culminate in state financial losses. This distinction serves to maintain consistency between the objectives of corruption eradication and the principle of prudence in the criminalisation of public policy.

Articles 2 and 3 of the Anti-Corruption Law should not be treated as interchangeable norms, but rather as legal instruments with distinct functions and targets (G. Hidayat, 2024). Proper positioning of these provisions is a decisive factor in determining whether criminal liability in small-scale land acquisition reflects substantive justice or instead risks generating over-criminalisation of administrative errors that ought to be resolved through alternative legal mechanisms. Through this selective approach, the analysis of Articles 2 and 3 becomes not only doctrinally sound, but also contextually aligned with the research findings and the specific characteristics of small-scale land acquisition.

3.4. Limits of Criminalisation and the Function of Ultimum Remedium

The application of criminal law in small-scale land acquisition must be exercised with caution in order to avoid the criminalisation of policy (criminalization of policy). Policy criminalisation occurs when administrative decisions taken in the exercise of governmental functions—despite containing errors or imperfections—are immediately drawn into the criminal domain without due consideration of the scope of authority, policy objectives, and the degree of fault attributable to the decision-maker. In modern criminal law scholarship, such an approach has been criticised for blurring the boundary between policy error and criminal wrongdoing, and for shifting the function of criminal law from a means of protecting legal interests into an instrument of administrative correction (Situmeang et al., 2025).

The principal danger of policy criminalisation lies in the erosion of public officials' willingness to make decisions. Fear of criminal liability may induce defensive, hesitant, and risk-averse behaviour among officials, ultimately obstructing public service delivery and the acceleration of development (Sianturi, 2025). In the context of small-scale land acquisition, such conditions risk paralysing the normative objectives of procedural simplification, which were originally designed to promote efficiency, flexibility, and responsiveness to community needs. The disproportionate use of criminal law may thus produce counterproductive effects that negate the very aims of public policy.

Accordingly, it is necessary to establish a clear and measurable criminal threshold. Not every procedural deviation or administrative error warrants criminal prosecution. The criminal threshold in small-scale land acquisition should, at a minimum, be based on the cumulative fulfilment of three core elements: the existence of material unlawfulness, abuse of authority that deviates from the purpose for which authority was conferred, and significant subjective fault in the form of mens rea, whether gross negligence (culpa lata) or intent (dolus) (Darmawan & Pattiasina, 2023). In the absence of these elements, deviations should be resolved through administrative or civil law mechanisms rather than criminal law.

The determination of such a criminal threshold also functions as a controlling instrument to prevent the excessive use of criminal law in addressing governance-related issues. For example, administrative errors arising from limited legal understanding, weak coordination, or procedural imperfections—without malicious intent or serious disregard of official duties—are more appropriately classified as maladministration. This approach is not only fairer to public officials, but also more consistent with the principles of the rule of law, which uphold legal certainty, proportionality, and the protection of governmental actions carried out in good faith.

Within this framework, criminal law must be positioned as an instrument of ultimum remedium. This means that criminal punishment should be employed only when other legal mechanisms have proven inadequate to protect the violated legal interests (Ginting, 2024), particularly state finances and the public's right to clean and accountable governance. The function of ultimum remedium underscores that criminal law is not the primary tool for managing state administration, but rather a last resort to address deviations that are serious, systemic, and harmful to public interests (Sianturi, 2025). This approach simultaneously prevents criminal law from being reduced to a mere instrument of administrative correction.

Moreover, the function of criminal law in small-scale land acquisition should be oriented toward prevention rather than solely repression. Criminal sanctions should ideally operate as a deterrent mechanism, encouraging public officials to exercise their authority with prudence, transparency, and accountability. With a preventive orientation, criminal law contributes to safeguarding the integrity of the land acquisition system without producing excessive deterrent effects or creating structural fear within the bureaucracy that would otherwise be counterproductive to effective public service delivery.

Ultimately, limiting criminalisation and positioning criminal law as ultimum remedium constitute essential conceptual conclusions in the analysis of small-scale land acquisition cases. This approach affirms that efforts to eradicate corruption must proceed in tandem with the protection of legitimate and rational governmental functions. Only through such balance can criminal law operate effectively as the final guardian of public interests, without undermining the courage of state administration in fulfilling its mandate of public service and development.

4. Conclusion

Small-scale land acquisition constitutes an integral component of the legal system governing land acquisition for development in the public interest, designed to ensure efficiency and the acceleration of development without undermining the principles of legality, land rights protection, and good governance. Procedural simplification within this regime cannot be interpreted as the elimination of legal norms, but rather as an adjustment of administrative mechanisms that remains constrained by minimum planning obligations, verification of entitled parties, conformity with spatial planning, and the principle of prudence. This study demonstrates that procedural deviations in small-scale land acquisition are fundamentally forms of maladministration, yet may transform into materially unlawful acts where such deviations are carried out systematically, exceed the permissible limits of administrative discretion, and result in state financial losses. Through the lens of materiële wederrechtelijkheid, the assessment of unlawfulness cannot rely solely on violations of written norms, but must examine the substantive use of authority and the legal objectives sought to be protected. Consequently, the construction of criminal liability must be tested proportionally through the element of mens rea by distinguishing between ordinary negligence, gross negligence, and intent, in order to avoid excessive criminalisation of administrative errors. The application of Articles 2 and 3 of the Anti-Corruption Law must therefore be conducted selectively in accordance with the character of the conduct involved, positioning criminal law as ultimum remedium that serves not only a repressive function, but also a preventive role in safeguarding the integrity and accountability of the land acquisition system for development in the public interest.

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