

## Policy of Land Procurement Committee in Determining Validation of Land Fields Between Regulation & Implementation in Toll Road Construction

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**Abstract.** *This study aims to determine and analyze the policy of the land acquisition committee in determining the validation of land parcels in toll road construction. This research method uses a sociological juridical approach with descriptive research specifications. Data sources and data collection methods used primary and secondary data which were analyzed qualitatively. The results of this study indicate that 1) The policy regulation of the land acquisition committee in determining the validation of land parcels in toll road construction already has a strong legal basis and also goes through 8 (eight) activity stages land acquisition for toll road construction. 2) The implementation of the policy of the land acquisition committee in determining the validation of land parcels in toll road construction is good, this can be seen from the number of lands that have been successfully acquired, of the 2,214 plots of land needed there are only 3 plots of land that have a dispute and even then because of a writing error and can be resolved properly through deliberation between the owner of the aggrieved land parcel and the Procurement Committee. Land for road construction. 3) The review of Islamic law regarding the regulation and implementation of the policy of the land acquisition committee in determining the validation of land parcels in the construction of toll roads is already in accordance with the principles of Islamic law, because the land acquisition committee has held deliberations or negotiations with the owner of the land parcel, thereby minimizing the losses faced by the owner. The principle of deliberation is as stated in the Qur'an surah Asy-Shura verse 38, surah Al-Baqarah verse 233 and Surah Ali Imran verse 159.*

**Keywords:** *Committee; Implementation; Land; Policy; Procurement; Regulation.*

## 1. Introduction

A set of regulatory facilities and a set of experts from the government as the executor of land acquisition for toll roads called the Land Procurement Committee for toll roads with a land parcel validation policy in carrying out the duties and functions above by a set of regulations that exist in certain cases and certain situations cannot be carried out properly, meaning that the regulations and implementation in the field are made very different, this fact is a crucial part in the implementation of land acquisition for toll roads, conflicts of interest and social conflicts often occur between the land acquisition committee and the land owner community.

The toll road construction project must continue to run according to the predetermined time regardless of the problems in the land acquisition process. The administration of President Joko Widodo and Vice President Jusuf Kalla has firmly issued a set of regulatory rules through Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest.<sup>1</sup>

President Joko Widodo issued Presidential Regulation of the Republic of Indonesia Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation of National Strategic Projects which regulates everything in fast-paced implementation, as referred to by legal considerations and legal reasons In the issuance of the Presidential Regulation, that in the context of accelerating the implementation of strategic projects to meet the needs of the community, it is necessary to make efforts to accelerate the implementation of national strategic projects. The Trans Java toll road construction project is part of a national strategic project, so that in its implementation it gets priority both for financing and land acquisition, the things that become obstacles and obstacles are strategically packaged.

This research was conducted on the construction of toll roads that stretch from Pemasang Regency, Pekalongan Regency, and Batang Regency. In the section from Cepagan Village, Warungasem District, Batang Regency, at this spot point there are very interesting things that need to be discussed and legal analysis in the land acquisition process, especially in the process of land acquisition belonging to the residents of Cepagan Village, Warungasem District, Regency Trunk.

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<sup>1</sup>Nurjaya, I Nyoman. (2017). "Pengadaan tanah Untuk Kepentingan Umum Atau Kepentingan Pembangunan? Telaah Kritis terhadap UU No. 2 Tahun 2012 Tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum", *Jurnal Hukum Persada*, Volume 1 Nomor 1. p. 1.

The policy of the land acquisition committee in determining the validation of land parcels in toll road construction is to carry out land validation for payment of compensation for land affected by toll roads. However, in the payment of compensation money, there is an error that does not refer to regulations, namely related to land acquisition and compensation payments and determining that land validation is carried out by deliberation, this joint deliberation still leaves problems and problems for land owners affected by toll roads.

The problem that occurs in this study is that the land acquisition committee in determining the validation of land parcels on toll road construction has made mistakes, including:

- a. The absence of accuracy and legal certainty of the measurement results and land area of the toll road object.
- b. The object of land is measured not based on the fact that the area of one plot of land is different from another, with the result that a small plot of land is measured with a large area measurement, this results in a large amount of compensation for each land owner.
- c. The occurrence of an error in the process of measuring and metering the plot of land affected by the toll road due to an error in the amount of area, there is no certainty of the measurement results from the land acquisition committee in carrying out their duties of validating land parcels.

Based on these problems, it creates social conflicts in the land owner community, the land acquisition committee in carrying out its functions and duties does not pay attention to geographical, social and land parcels. The committee for land acquisition and the availability of land for the Toll Road is carried out by a toll road construction project which must be realized as part of a national strategic project. Based on this, it can be seen that in the implementation of the validation of the land parcels carried out by the land acquisition committee, the regulation and implementation did not match.<sup>2</sup>

The polemic of land acquisition for the construction of toll roads is indeed a complicated problem, where the government carries out land acquisition for development which is nothing but to advance the national economy. However, in the process of realizing these good goals, the government does not look at the state of the community and the state of the country's economy, thus causing inequality everywhere, both in terms of development capital, as well as social society. The road construction project is no exception. Therefore, the author is interested in discussing further in the research entitled "Policy of the Land

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<sup>2</sup>Sumaryoto. (2010). "Dampak Keberadaan Jalan Tol Terhadap Kondisi Fisik, Sosial, & Ekonomi Lingkungan", *Journal Of Rural And Development*, Vol. 01, No. 02 August 2010. p. 164- 165.

Procurement Committee in Determining the Validation of Land Fields Between Regulation and Implementation in Toll Road Construction".

## **2. Research Methods**

This research method uses a sociological juridical approach. The sociological juridical approach was used because this research was conducted to obtain empirical legal knowledge by going directly to the object, namely the policy of the land acquisition committee in determining the validation of land parcels between regulations and implementation in toll road construction. Sources of data and data collection methods using primary data obtained by interviewing sources who are considered to understand the research topic and secondary data obtained by reviewing the literature related to the research topic. The data that has been obtained is analyzed qualitatively which is described in quality in the form of coherent, orderly, logical and non-overlapping sentences so as to facilitate understanding of the results of the analysis.

## **3. Results and Discussion**

### **3.1 Policy Regulation of the Land Procurement Committee in Determining the Validation of Land Fields in Toll Road Construction**

Land acquisition is indeed very influential for a development, including the development of facilities and infrastructure for the public interest, one of which is the construction of infrastructure in the form of highways (toll roads). Without land acquisition, it is impossible for the construction of toll roads in Batang Regency to be carried out.

Regarding the stages of land acquisition activities for the public interest in the construction of toll roads, they are as follows:

- a. The first stage: Establishment of a Land Acquisition Committee for Development Toll road

The land acquisition committee has a major role in land acquisition and implementation. The Land Procurement Committee (P2T) is an extension of the government as an apparatus that occupies the forefront, in every land acquisition, both land for public interest and other interests. This committee is formed after the letter of determination of location approval by the Governor is issued. With the issuance of the Governor's Decree, the land acquisition process can be carried out. To accelerate the construction of the toll road, every local government whose area is affected by the construction of the Trans Java toll road must form a land acquisition committee (P2T). The duties of the Land Procurement Committee for the Implementation of Development in the Public Interest are:

- 1) Provide explanations or counseling to the public;
  - 2) Conduct research and inventory of plots of land, buildings, plants, and other objects related to land whose rights will be relinquished or handed over;
  - 3) Conduct research on the legal status of the land parcels whose rights will be relinquished or handed over and the supporting documents;
  - 4) Announce the results of research and inventory;
  - 5) Receive the results of the research on the price of land and/or buildings and/or plants and/or other objects related to land from the agency or the Land Price Appraisal Team and the official responsible for appraising buildings and/or plants and/or other objects related to land ;
  - 6) Hold consultations with land rights holders and government agencies requiring land in order to determine the form and/or amount of compensation;
  - 7) Determine the amount of compensation for land whose rights will be released or handed over;
  - 8) Witness the implementation of the delivery of compensation to the owners;
  - 9) Make minutes of release or transfer of rights;
  - 10) Administering and documenting all land acquisition files and submitting them to government agencies that require land and the Land Office;
  - 11) Submitting problems accompanied by consideration of the completion of land acquisition to the Regent if deliberation cannot reach an agreement for decision making.
- b. Second Stage: Submission of Application and Determination of Location
- The submission of the application is stated in the form of a proposal, the submission of a proposal for the construction of toll roads is carried out by the agency, namely the Director General of Highways of the Ministry of Public Works to the Provincial Land Office, after the application is submitted, coordination is held with the Provincial Government in this case the Governor, then the Governor orders the Head of the Land Office Provinces to coordinate with related parties, in this case the Regional Governments of each region affected by toll road construction, both the regent/mayor of each region, the land office of each region affected by toll road construction, and other agencies each area related to the construction of the toll road. The coordination is carried out to conduct research on the suitability of the land requested for development, whether it is in accordance with its designation or not, of course taking into account the Regional Spatial Planning (RTRW) both the National, Provincial, and Regency/City Regional Spatial Plans (RTRW). After the procedure/coordination is carried out and is in accordance with the Regional Spatial Plan for the Regency/City affected by the construction of the Trans Java toll road, the Governor will issue a Decree (SK) for a location determination permit.

c. Third phase: Counseling or Socialization

The Land Procurement Team (TPT) and the Land Procurement Committee (P2T) carry out socialization/counseling to explain the benefits, aims and objectives of development to the community and in order to obtain the availability of the owners. The socialization/counseling is carried out at the place specified in the invitation letter made by the Batang Regency Land Procurement Committee. In Batang Regency itself, socialization is carried out in each village hall for villages whose areas are affected by the toll road construction project itself.

d. Fourth Stage: Measuring and Determining Road Boundaries

After the socialization and counseling regarding the planned toll road construction, the land acquisition committee began land acquisition activities by measuring and installing stakes. The installation of the stakes is carried out by the Land Procurement Team (TPT) on the basis of the installation of the stakes, the Land Office will measure and determine the boundaries of the land parcels affected by the toll road construction plan. Installing the stakes lasted for 7 days.

e. Fifth Stage: data collection

After measuring and determining road boundaries at the locations affected by the toll road construction project, data collection is then carried out. The data collection was carried out to find out clearly and in detail related to the physical and non-physical conditions of the land affected by the toll road construction project.

f. Sixth Stage: Announcement of Data Collection Results

After collecting data on the physical and non-physical conditions of the land, the results of the data collection will be announced. The announcement of the results is posted at the local Village and District Offices as well as at the Land Office for 30 days. The attachment of the data collection results is carried out in order to provide an opportunity for community members to file objections to the data collection results. In addition to posting the announcement of the results of the data collection at the sub-district office and village office, announcements were also made through the website for 7 days and also through the mass media.

g. Seventh Stage: Price deliberation and determination of the form and amount of compensation

In the implementation of land acquisition, the stages of deliberation and determining the form of compensation are very influential in achieving the implementation of land acquisition. However, there is a lot of disagreement about the amount of compensation and the form of compensation given by the parties who need the land with the land owners, so that it can cause big problems in land acquisition. Deliberation is the best way to determine the

amount of compensation and if by means of deliberation an agreement can be reached between the land owner and the agency requiring the land, it can be said to be the highest, best decision and cannot be contested by other parties.

The deliberation is carried out to determine the amount of compensation to be given by the Land Procurement Team to residents affected by land acquisition for the construction of toll roads in accordance with the deliberation principles contained in the Regulation of the Head of the National Land Agency Number 6 of 2015 concerning Amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition where in the implementation of land acquisition for the Trans Java Toll Road project, the process of negotiation/deliberation for compensation did encounter many obstacles, so that the process of deliberation and approaches continued to be carried out by the Land Procurement Committee to residents whose land was affected by the Toll Road construction project. This deliberation process was carried out many times and the matters discussed in the deliberations included: Development plans for the public interest at the location and the form and/or amount of compensation. Deliberations on the form/and or amount of compensation are guided by the NJOP (Tax Object Sales Value), the Agreement of the Parties and the results of the assessment.

h. Eighth Stage: Payment of compensation and waiver

From the results of the deliberation and the determination of the amount of compensation for residents who agree with the price determined by the committee, a savings book will be made by the land acquisition committee. Where with the savings book, the compensation money will be directly transferred by the land acquisition committee to the community whose land is affected by the toll road construction through the account. This is done to reduce the fraudulent activities of irresponsible individuals which will harm the community. Meanwhile, for residents who do not agree with the price set by the land acquisition committee, personal approaches are made to the land owner, so that an agreement is reached between the two parties.

### 3.2 Implementation of the Policy of the Land Procurement Committee in Determining the Validation of Land Fields in Toll Road Construction

The performance of the land acquisition committee has been very good, this can be seen from the innovations made regarding the payment of compensation made. The compensation carried out by the land acquisition committee by opening a new savings account for the compensation recipients. This is done so that the community is not harmed by the pieces made by the responsible person/party, which will later harm the community. In addition, regarding the



good performance of the land acquisition committee, this can be seen from the number of lands that have been successfully acquired,

It is undeniable that the process of compensation and transfer of rights carried out by the Land Procurement Committee for Road construction has the potential to cause errors and mistakes which in the end will cause losses to the owner of the land parcel. In every implementation of land acquisition for the development of the public interest, there are always obstacles to be faced. In the construction of this toll road, the obstacles faced are as follows:

a. The occurrence of free sale and purchase of land

There is a sale and purchase of land (land for sale) which is carried out by the land owner freely, without reporting to the authorities regarding land issues, in this case BPN. There is even a process of transferring land rights under the hands, on the other hand, previously owned land has been designated as a location that is crossed/affected by the planned toll road construction. After further exploring this matter, there are reasons why some people do this, namely that the community does not know about it and in the event that the community knows this, the community continues to sell their land because of the economic crush and the growing needs of the community.

b. The Inheritance Process Occurs

In the case of this inheritance process, where the heir in obtaining an inheritance in the form of land, but still not followed up with a name transfer process, so that the legal documents and the reality of ownership of the land are different. This of course requires re-tracing to ascertain who has the right to the land.

c. There is absentee/*guntai* land ownership

The meaning of absentee/*guntai* land ownership here is where the land owner is not located/or domiciled in the area where the land is located, as is the case in the field where a large number of Indonesian Migrant Workers (TKI) invest their money by buying land in their area. . This can affect the market price of land, because the owner does not feel the need to rush to sell his land for any reason, including for toll roads.

d. Do not agree with the price offered

Based on the Regulation of the Head of the National Land Agency Number 6 of 2015 concerning Amendments to the Regulation of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Procurement, it is explained that the



determination of the compensation price is seen from the Sales Value of the Tax Object (NJOP) and the real price or market price taking into account the current Tax Object Selling Value. In the implementation of land acquisition for the construction of the toll road, most of the people still do not agree with the price set by the land acquisition committee. The land acquisition committee has considered the compensation price according to the applicable legal procedures, but according to residents, the compensation price has not been able to make their lives better at the compensation price.

In every land acquisition, there are always obstacles to be faced. So it is necessary for the efforts of the land acquisition committee to overcome these obstacles, including the efforts of the land acquisition committee for road construction including:

- a. There is an active role of the land acquisition committee in conducting deliberation and consensus.

In carrying out land acquisition, the land acquisition committee conducts deliberation and consensus both in determining the amount of compensation and the form of compensation to residents whose land is affected by toll road construction. This consensus deliberation is necessary considering that the most common obstacle encountered when conducting land acquisition is the absence of a price agreement between the land acquisition committee and the residents who own the land. This consensus deliberation aims to reach an agreement from both parties, namely the party who needs the land and the land owner.

- b. Conducted mediation and persuasive approach.  
After holding consensus discussions with residents whose land was affected by toll road construction, then other efforts made by the land acquisition committee were mediation and a persuasive approach. Mediation is carried out for communities who have not agreed on the amount of compensation offered by the land acquisition committee. For people who do not agree to accept the amount of compensation that has been determined by the land acquisition committee, a discussion will be held again to determine the amount of compensation until they agree. After the deliberation has not yet reached a consensus regarding the compensation that has been determined, mediation is carried out to the community whose land is affected by the construction of the toll road. Mediation is the right way to resolve problems without going through court.
- c. An understanding and understanding of the social function of land is carried out.

Apart from deliberation and mediation conducted by the land acquisition committee, another thing to do is to provide an understanding and understanding of the social functions of land. This understanding is carried out by the land acquisition committee to the community by way of socialization to the community whose land is affected by toll road construction. In connection with the toll road construction, the land acquisition committee provides an understanding to land owners that every land has a social function that can be used for the development of public interests. Land owned by residents is not an absolute right that can be owned, but the land can be used for the benefit of the nation. A lot of people don't know about this

Based on the results of the research above, the author can perform an analysis based on 2 (two) theory namely:

a. The rule of law theory according to Friedrich Julius Stahl

Indonesia as a state of law has been clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Friedrich Julius Stahl stated that the protection of human rights is an important element in the concept of a constitutional state of *rechtsstaat* in the continental European tradition. The juridical definition of human rights is a set of rights inherent in the nature of human existence as creatures of God Almighty and is His gift that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and worth dignity.<sup>3</sup> Thus, a feature of a state as a state of law is the recognition, respect, and protection of human rights. One of the basic rights possessed by humans is the right to information. In the development of human rights thinking, the right to information is the first generation of rights related to civil and political rights.<sup>4</sup>

Friedrich Julius Stahl further emphasized that the important elements in the rule of law (*rechstaat*) are the protection of human rights, the separation or division of powers, government based on regulations (*wetmatigheid van bestuur*), and the existence of an administrative court that is free in disputes.<sup>5</sup>

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<sup>3</sup>Taringan, Jefri Porkonanta. (2017). "Akomodasi Politik Hukum di Indonesia Terhadap Hak Asasi Manusia Berdasarkan Generasi Pemikirannya", *Jurnal Konstitusi*, Volume 14, No. 1, March 2017. p. 175.

<sup>4</sup>Sidharta, B. Arief. (2018). "Kajian Kefilsafatan tentang Negara Hukum", *Jurnal Hukum*, Pusat Studi Hukum & Kebijakan (PSHK), Jakarta, edition 3 year II, November 2018. p. 124-125.

<sup>5</sup>Sayuti. (2017). "Konsep Rechstaat dalam Negara Hukum Indonesia", *Jurnal Kajian Ekonomi Islam & Kemasyarakatan*, Volume 4, No. 2, December 2017, p. 24-25.

One form of fulfillment of the right to information is through constitutional amendments (1999-2000), this reflects the function of the constitution as a Guardian of Fundamental Rights.<sup>6</sup>The right to information is regulated in Article 28F of the 1945 Constitution of the Republic of Indonesia (UUD 1945), "everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess and store information with using all available channels." A logical consequence of the regulation of human rights by a state is the emergence of the principle of positive obligation.<sup>7</sup> Based on the positive obligation principle, the state as a duty bearer has an obligation to rights holders to provide protection and fulfillment.<sup>8</sup>

The Indonesian government needs to guarantee the fulfillment of the right to information for the public by implementing openness (*openbaarheid*) and open government (*openbaarheid van bestuur*) as one of the features of a democratic state that upholds the sovereignty of the people.<sup>9</sup> Today, openness has become a legal principle in the field of State Administrative Law known as the General Principles of Good Governance (AUPB). There are several general principles (government law), namely the principle of legitimacy (*rechtmatigheid van bestuur*), the principle of efficiency and effectiveness (*doelmatigheid en doeltreffendheid*), the principle of openness (*openbaarheid van bestuur*), and the principle of planning (*planmatigheid*) in running the government.<sup>10</sup>

The application of the principle of openness (*openbaarheid van bestuur*) in a modern legal state (welfare state) is aimed at realizing government accountability to its citizens. Transparency in governance provides an opportunity for the public to know the policies that will be and have been taken by the government. Through the transparency of government administration, the public can provide feedback or outcomes on policies that have been taken by the government. Referring to the explanation of Article

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<sup>6</sup>Manan, Bagir & Susi Dwi Harijanti. (2016). "Konstitusi & Hak Asasi Manusia", *Jurnal Ilmu Hukum*, Volume 3 No. 3, 2016, p. 456.

<sup>7</sup>Sujatmoko, Andrey. (2016). *Hukum HAM & Hukum Humaniter*. Jakarta: PT Rajagrafindo Persada. p. 12

<sup>8</sup>Broberg, Morten & Hans-Otto Sano. (2017). "Strengths and weaknesses in a human rightsbased approach to international development – an analysis of a rights-based approach to development assistance based on practical experiences", *The International Journal of Human Rights*, Volume 22 Number 5, p. 669.

<sup>9</sup>Ridwan. (2017). "Arti Penting Asas Keterbukaan dalam Penyelenggaraan Pemerintahan yang Bebas dari Korupsi, Kolusi, & Nepotism", *Jurnal Hukum*, Volume 27 No. 1, 11 September 2017, p. 52.

<sup>10</sup>Syapriallah, Aditia. (2016). "Penegakan Hukum Administrasi Lingkungan Melalui Instrumen Pengawasan, *Jurnal Bina Hukum Lingkungan*", *Jurnal Hukum*, Volume 1, No. 1, October 2016, p. 103.

10 letter F of Act No. 30 of 2014 concerning Government Administration (Law on Government Administration), it is explained that "the principle of Openness in the AUPB is referred to as a principle that serves the community to gain access and obtain correct, honest, and truthful information and non-discriminatory in the administration of government while still paying attention to the protection of personal rights, groups, and state secrets." Transparency according to Mardiasmo means openness of the government in providing information related to public resource management activities to parties who need information.<sup>11</sup>

Openness is built on the basis of free information. All government processes, institutions, and information need to be accessible to interested parties, and the information available must be sufficient to be understood and monitored. However, it does not mean that all information can be opened and accessed by the public. So, the openness to obtain access to information is not as free as it is without limits but with its limits in the law.<sup>12</sup>

The right to information and the application of the principle of transparency in land acquisition activities for the public interest have been regulated in the Land Procurement Law. It can be concluded that the fulfillment of the right to information in a normative context has been carried out by the government, in which the community holding land rights has the right to know the plan for implementing land acquisition and to obtain information regarding land acquisition.

Fulfillment of the right to information in the realm of state administrative law is an obligation for the government. The government in this case is the agency that needs land. The government's action has been given signs in the Land Procurement Law in the form of the principle of openness. The principle of openness is one of the important principles regulated in Article 2 letter e of the Land Procurement Law and its explanation, that "Land Procurement for Public Interest is carried out based on the principle of openness." "The principle of openness means that land acquisition for development is carried out by providing access to the public to obtain information related to Land Procurement."<sup>13</sup>

The implementation of the principle of transparency in land acquisition to fulfill the right to information for land rights holders can be carried out

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<sup>11</sup>Mardiasmo. (2014). *Otonomi & Manajemen Keuangan Daerah*. Yogyakarta: Penerbit ANDI, p. 30.

<sup>12</sup>Efendi, A'an & Freddy Purnomo. (2017). *Hukum Administrasi*. Jakarta: Sinar Grafika, p. 173.

<sup>13</sup>Gozali, Djoni Sumardi. (2018). *Hukum Pengadaan Tanah (Asas Kesepakatan dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum)*. Yogyakarta: UII Press, p. 22.

through several activities as regulated in Presidential Regulation no. 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest as last modified by Presidential Regulation no. 30 of 2015 (Perpres on Land Acquisition) as a technical regulation of the Land Procurement Law. Information disclosure is carried out by the government through:

- 1) Notification of development plans that can be done directly with outreach activities, face-to-face and notification letters.
- 2) Public consultation on development plans, which is a dialogue activity between the government and land rights holders, aimed at obtaining location agreements.
- 3) Deliberation on the form of compensation. This deliberation is carried out directly between the government and the holder of land rights to determine the form and amount of compensation based on the results of the compensation assessment.<sup>14</sup>

Based on theory rule of law according to Friedrich Julius Stahl above, then land acquisition process by the Land Procurement Committee on toll road construction carried out by deliberation of the parties without any element of coercion to obtain a mutual agreement. The basis of the agreement of the parties is both in the preparation stage and in the implementation stage to obtain a mutual agreement, so that the principle of openness and the principle of agreement become the two basic principles for implementing land acquisition for the public interest which cannot be separated.

b. The theory of legal certainty according to Gustav Radbruch

Legal certainty will guarantee a person conducts behavior in accordance with applicable legal provisions, on the contrary without legal certainty, a person does not have standard provisions in carrying out behavior. Thus, it is not wrong if Gustav Radbruch put forward certainty as one of the objectives of the law. In the order of community life, it is closely related to legal certainty. Legal certainty is in accordance with the normative nature of both the provisions and the judge's decision. Legal certainty refers to the implementation of the order of life which in its implementation is clear, regular, consistent, and consequent and cannot be influenced by subjective conditions in people's lives.

Certainty is an inseparable feature of law, especially for written legal norms. Law without the value of certainty will lose its meaning because it can no longer be used as a behavioral guide for everyone. Certainty itself is referred to as one of the goals of law. When viewed historically, the discussion of legal certainty is a discussion that has emerged since the idea of the separation of powers from Montesquieu.

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<sup>14</sup>Mertokusumo, Sudikno. (2017). *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Liberty, p. 403.

Community order is closely related to certainty in law, because order is the essence of certainty itself. Regularity causes people to live with certainty so that they can carry out the activities needed in social life. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a norm system with other norms so that it does not clash or cause norm conflicts. Norm conflicts arising from uncertainty of rules can take the form of norm contestation, norm reduction or norm distortion.

Gustav Radbruch suggests 4 (four) basic things related to the meaning of legal certainty, namely:

- 1) First, that the law is positive, meaning that positive law is legislation.
- 2) Second, that the law is based on facts, meaning that it is based on reality.
- 3) Third, that the facts must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement.
- 4) Fourth, positive law should not be easily changed.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically from legislation. Based on this opinion, according to Gustav Radbruch, positive law that regulates human interests in society must always be obeyed even though positive law is unfair.

Gustav Radbruch further explained that legal certainty requires efforts to regulate law in legislation made by competent and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

Based on theory legal certainty according to Gustav Radbruch above, then land acquisition process by the Land Procurement Committee on the construction of toll roads already has good legal certainty. All legal basis used is a form of legal certainty provided by the land acquisition committee for land parcel owners so that land parcel owners no longer hesitate in handing over land or receiving land compensation for the construction of toll roads. With this legal certainty, landowners are calmer and less worried about dealing with the law. The law must apply firmly in society, contain openness so that anyone can understand the meaning of a legal provision. One law with another must not be contradictory so that it does not become a source of doubt. Legal certainty is a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented, which is able to guarantee the

rights and obligations of every citizen in accordance with the existing culture of the community.

### 3.3. Islamic Law Review on Regulation and Policy Implementation of the Land Procurement Committee in Determining the Validation of Land Fields in Toll Road Construction

The normative stipulation of compensation that applies only provides compensation to land, buildings, plants, and other related objects used by the government, in other words, the provision of compensation is only material for objects used by the government, while those in the form of losses due to activities Land acquisition, such as remaining land that cannot be used economically or socially, is not included in the calculation of compensation.

Regarding the procedure for implementing land acquisition and providing compensation in the construction of toll roads, it should be based on democratic principles and uphold human rights, it is necessary to pay attention to the following matters:

- a. First, the expropriation of land is a legal act that results in the loss of a person's physical or non-physical rights, and the temporary or permanent loss of property, regardless of whether those evicted remain in their original place or move to another location. .
- b. Second, compensation must take into account:
  - 1) Loss of rights to land, buildings, plants, and other objects related to land;
  - 2) Loss of income and other sources of livelihood;
  - 3) Assistance to move to another location, by providing an alternative to a new location equipped with appropriate facilities and services;
  - 4) Income recovery assistance in order to achieve an equivalent condition to the situation before the expropriation took place. The amount of compensation for land and buildings should be based on actual replacement costs. If necessary, the services of an independent appraiser can be requested to estimate the compensation.
- c. Third, those who are evicted due to land acquisition and must be taken into account in the provision of compensation must be expanded to include:
  - 1) Holders of land rights with certificates;
  - 2) Those who control land without certificates and other proof of ownership;
  - 3) building tenants;
  - 4) Tenants/cultivators who will lose their rental rights or crops produced on the land in question;
  - 5) Farm laborers or homeless people about to lose their jobs;
  - 6) Land users without rights who will lose their jobs or income;



- 7) Indigenous peoples/traditional communities who will lose their land and sources of livelihood.
- d. Fourth, to obtain accurate data on those affected by eviction and the amount of compensation, it is imperative to carry out basic surveys and socio-economic surveys.
- e. Fifth, it is necessary to establish an agency responsible for the implementation of land acquisition and resettlement, provided that community participation in planning, implementation and evaluation of activities is truly guaranteed.
- f. Sixth, the method of deliberation to reach an agreement must be developed in the event of resettlement, integration with the local community needs to be prepared from the start to avoid things that are not expected by both parties.
- g. Seventh, it is necessary to have a means to accommodate complaints and resolve disputes that arise in the process of land acquisition and resettlement, as well as how to submit them.

The procedure for implementing land acquisition for road construction is not in accordance with Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest, Presidential Regulation Number 19 of 2021 concerning Implementation of Land Procurement for Development in the Public Interest, and Regulation of the Head of the National Land Agency Number 6 of 2015 concerning Amendments to Regulations of the Head of the National Land Agency Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition. This can be seen in the provision of compensation to citizens who hold rights, the compensation provided is only guided by the NJOP.

The provision of compensation does not pay attention to the market price of land around the area and does not pay attention to the variables that affect the price of land, such as which includes: location and location of land, land status, land designation, suitability of land use with regional spatial plans or regional spatial planning or cities that already exist, the available facilities and infrastructure, and other factors that affect the price of land, so that when compensation is determined, many residents do not agree with the price set.

Related to the regulation of the implementation of land acquisition for development in the public interest, namely the activity of providing land for development by providing appropriate and fair compensation. Regulations related to land acquisition in Indonesia are Act No. 2 of 2012 concerning Land Procurement for Development in the Public Interest, Act No. 11 of 2020 concerning Job Creation, and Government Regulation Number 19 of 2021 concerning Implementation of Land Procurement in the Public Interest. The

nature of "Religious Communalism" is contained in HTN, so that in its arrangement it is also guided by customary law,

Islamic law is a law that is not written in the statute book. However, it becomes a living law, develops, applies, and is obeyed by the Islamic community which stands alone in addition to written laws. This is a historical necessity to meet the needs of the people's lives, especially since most of the Indonesian people are Muslim. One of the actions to realize the public interest, as a guarantee for the fulfillment of the needs of people who are in need, the Prophet Muhammad established the Naqi area in Medina as Hima which was provided for grazing for the horses of the Muhajirin and Ansar. Abu Bakr gave camels in the area of Rabza while Umar in Saref.<sup>15</sup>

The public interest must take precedence over personal interests, in accordance with the legal principles that apply to the implementation of life together in society. But even so, individual interests cannot be ignored because they are respected and protected by law, therefore if the public interest urges personal interests, appropriate and fair compensation must be given. Both Islamic Law and National Land Law prioritize public interest over private interests. Land procurement for public interest is carried out based on Act No. 2 of 2012 which contains 10 (ten) principles. Legal principles are not concrete legal rules, but are the background of concrete and general or abstract regulations. Legal principles are applied indirectly.<sup>16</sup>

One of the principles or principles adopted in the national land law as regulated in Act No. 2 of 2012 is the principle of justice which is defined as providing a guarantee of proper compensation to parties who are entitled to land acquisition so that they have the opportunity to live a better life.

Land acquisition for the public interest is the government's effort to improve the welfare of its people through the provision of development infrastructure that can increase community productivity. In the context of infrastructure development, of course, land is needed as a basic element where the

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<sup>15</sup>Ramulyo, Moh. Idris. (2014). *Asas-asas Hukum Islam: Sejarah Timbul & Berkembangnya Kedudukan Hukum Islam dalam Sistem Hukum di Indonesia*. Jakarta: Sinar Grafika, p. 38.

<sup>16</sup>Rahman, Afzalur. (2015). *Doktrin Ekonomi Islam*. Yogyakarta: PT. Dana Bhakti Wakaf, p. 253., see to Ong Argo Victoria, (2018) *Waqf Al-Nuqūd In Indonesia (In Law Perspective)*, Jurnal Pembaharuan Hukum Vol 5, No 1 Universitas Sultan Agung, <http://jurnal.unissula.ac.id/index.php/PH/article/view/2999> and Sukarmi, S., & Victoria, Argo. (2018). Cash Waqf in Sustaining of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, IRKHS-IIUM, Malaysia, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>

infrastructure is built, considering this, it is necessary to acquire land obtained from land previously owned by the community<sup>17</sup>.

The relinquishment of land rights owned by the community should be carried out by providing protection to the community whose land is the object of land acquisition so that the relinquishment of these rights does not result in the community affected by the land acquisition not being miserable and can still be productive in order to meet the needs of their family life. . This principle of justice has actually been seen from the notion of land acquisition itself, namely the activity of providing land by giving proper and fair compensation to the entitled party<sup>18</sup>.

The implementation of Land Procurement in the Public Interest pays attention to the balance between the interests of development and the interests of the community, this balance can occur with the provision of appropriate and fair compensation, so that the implementation of the purpose of land acquisition does not injure the rights of the community whose land becomes the object of land acquisition for development for the benefit of the community generally, because of the provision of compensation that can be used as compensation to continue his welfare. The importance of implementing justice in land acquisition for development in the public interest is to ensure the sustainability of the productivity of the people affected by land acquisition so that they can continue to work in the context of fulfilling their lives and their families to achieve welfare.

Provisions related to the principle of justice in the payment of compensation are the payment of the remaining land affected by the object of land acquisition, this is as regulated in Article 35 of Act No. 2 of 2012 which reads: can be functioned in accordance with its designation and use, the Entitled Party may request a complete replacement of its parcel of land". The provisions of the procedural law mechanism related to compensation objections as are the same as objections to location determination are carried out in a fast period and only an appeal is made in order to determine legal certainty over land that is the object of land acquisition so that it does not drag on and the status becomes clear.

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<sup>17</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>, see to Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>18</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, *Jurnal Daulat Hukum*, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218> , see to Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. *Sultan Agung Notary Law Review*, 1 (1), 46-56, <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435>

The existence of legal institutions related to land acquisition for development in the public interest is a form of legal protection for all parties by basing it on the principle of justice so as to create balance, on the one hand the state can carry out development in order to improve the welfare of its people on the other hand the protection of the rights of the parties affected by the object of land acquisition with the provision of appropriate and fair compensation so that they can still get a decent life in order to meet the needs of their lives and their families.

In principle, Islam guarantees the protection of rights for everyone. Every right owner may claim the fulfillment of his rights. In the event of a violation or destruction of rights, the owner of the right can claim compensation or compensation commensurate with his rights. With the ownership of an object including land, if the land is to be transferred ownership must go through various procedures. The public interest in Islam is called *al-Maslahah al-ammah*, namely the public benefit that concerns the interests of many people. The public benefit does not mean for the benefit of everyone, but can take the form of the interests of the majority of the people.<sup>19</sup>

General benefits or common property are benefits that do not belong to a particular individual but the benefits become the common property of everyone. In terms of development for Muslims, this development is like roads, mosques and cemeteries. Similar needs are also directly related to the welfare of the community, both external in nature, and also related to matters relating to the problems of order and security in religious life.

In the science of *ushul fiqh*, the notion of public interest is called *Maslahah*, which means public interest that can benefit and reject harm. *Maslahah* according to ash-Syatibi is a delicacy and enjoyment. However, *Maslahah* does not mean merely enjoyment as the fulfillment of lust desires and bodily instincts. The true *Maslahah* is the *Maslahah* that leads to the establishment of life, not destroying it, but brings profit and safety in the afterlife. The meaning of public interest broadly is the interest of the state, including personal and group interests. In other words, the public interest is an interest that concerns the majority of society.<sup>20</sup>

The postulates of public interest in Islam are listed in the Qur'an, namely:

a. *Surah Al-Anbiya* verse 107 which reads:

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<sup>19</sup>Djuwaini, Dimyauddin. (2016). *Pengantar Fiqih Muamalah*. Yogyakarta: Pustaka Pelajar, p. 12

<sup>20</sup>Yafie, Ali. (2014). *Menggagas Fiqih Sosial*. Bandung: Mizan, p. 148

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ﴿١٠٧﴾

Meaning: "And We have not sent you, except to (be) a mercy for the worlds". (Surah al-Anbiya: 107).

b. Surah Al-Nahl verse 64 which reads:

وَمَا أَنْزَلْنَا عَلَيْكَ الْكِتَابَ إِلَّا لِتُبَيِّنَ لَهُمُ الَّذِي اخْتَلَفُوا فِيهِ وَهُدًى وَرَحْمَةً  
لِّقَوْمٍ يُؤْمِنُونَ ﴿٦٤﴾

Meaning: "And We have not sent down to you this Book (Al Quran), but so that you can explain to them what they dispute and be a guide and a mercy for those who believe." (Surah al-Nahl: 64).

With this argument, seeking goodness is the main thing. In *fiqh*, the term public interest is called *al-Maslahah al-ammah*. There are at least five criteria that serve as the basis and benchmark for the scholars, including:

- Al-Maslahah al-ammah* that is, something whose benefits are suggested by the majority of society, not a particular group.
- In harmony with the objectives of sharia which are summarized in *al-khulliyat al-khams*.
- The benefits in question must be real (*haqiqi*) not limited to thoughts (*wahmi*).
- Must not conflict with the Qur'an, *al-Hadith*, *Ijma'* and *Qiyas*.
- It should not be done at the expense of other equal or even greater public interests.<sup>21</sup>

*Al-Maslahah al-ammah* must not sacrifice other equal or greater public interests. *Al-Maslahah al-ammah* must be *haqiqiyah* (real) and not *wahmiyah* (hypothetical). Therefore, to determine the *Maslahah ammah* must be done through careful study or research, deliberation and determined jointly. *Al-Maslahah al-ammah* must not contradict the Qur'an, hadith, *ijma'* and *qiyas*. Therefore, any policy taken under the pretext of being in the public interest but contrary to the above-mentioned grounds must be rejected. Limitations of land acquisition for public interest have categories in their use, namely as follows:

- Maslahah* should be included in the objectives of *syara'*.

<sup>21</sup>Qutub, Sayyid. (2014). *Keadlian Sosial Dalam Islam*. Bandung: Pustaka Pelajar, p. 148

- b. *Maslahah* does not conflict with the Qur'an.
- c. *Maslahah* does not conflict with the Sunnah.
- d. *Maslahah* does not conflict with *Qiyas*.
- e. *Maslahah* is a greater or equal benefit.
- f. *Maslahah* should be accepted by reason or rational.
- g. The use of *Maslahah* to avoid the difficulties that exist.
- h. *Maslahah* is included in *Maslahah al-ammah* (public interest) and not special interests.<sup>22</sup>

In relation to land acquisition, the essence that must be considered is the principle of justice and in the Qur'an the views on justice are explained in order to maintain the body of society. Islam establishes the principle of justice for all mankind, the Qur'an, both in the Makkiyah and Madaniyah letters, prioritizes and recommends that justice be the concern of the people. The expropriation of land for the public interest is permitted because the public interest takes precedence over personal interests. The expropriation of property rights to land for *Maslahah al-ammah* is carried out by paying compensation. Especially at the time of the Prophet Muhammad. Khulafa 'ar-Rashidin, and the later Islamic caliphs.

Flashback to when the Prophet built the Quba mosque, he had revoked the rights to the land of the surrounding community as a mosque construction site, by paying compensation in the form of standard land assets at that time, even though the land owner was willing to give it free. This practice is an example of the revocation of private rights to land for the public interest. Meanwhile, during the time of Umar bin Khattab, Umar took a new policy in managing the spoils of war. During the time of the Prophet and Abu Bakr, the spoils of war were distributed among the troops who participated in the war. The goal is to prevent the domination of land ownership among the Islamic soldiers. On the other hand, it continues to provide welfare guarantees for the people of the conquered areas. Umar then placed the war booty lands as state assets, whose utilization is handed over to the previous owner. They are still given the right to cultivate their lands, but there is an obligation to pay taxes (*kharaj*) to the state. This is what shows justice related to land from an Islamic perspective.<sup>23</sup>

Several provisions in the regulation of land acquisition for the public interest in Indonesia when viewed from the principle of justice in Islamic law include:

- a. Implementation of public deliberation/consultation at the planning stage

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<sup>22</sup>Awang, Ridzuan. (2014). *Kedudukan Hukum Islam dalam Sistem Hukum di Indonesia*. Jakarta: Sinar Grafika, p. 32.

<sup>23</sup>Zuhdi, Masjfuk. (2013). *Studi Islam: Muamalah*. Jakarta: Rajawali, p. 75.

Deliberation comes from the word *syā'ur* which means something that is obvious. Theologically, deliberation is a logical consequence of the attitude of monotheism in Islamic teachings which places Allah SWT. As the all-knowing, all-perfect, all-absolute and all-true. The word deliberation is basically only used for good things, in line with its basic meaning. Meanwhile, according to the term *fiqh*, it is asking the opinion of others or the people regarding a matter. The word deliberation is also commonly interpreted as negotiation or an exchange of ideas.

Deliberations or public consultations on the implementation of land acquisition can be carried out in various ways and forms. However, the purpose of deliberation remains the same, namely to resolve a problem and obtain better and fair results or decisions in its settlement because it is carried out and agreed upon by many parties. Settlement by way of deliberation can only be done for good purposes. So that if there is an element of unfaithfulness in resolving the case, even though it is carried out by many parties, it cannot be included in the category of deliberation.

- b. Assessment of the economic value of land as the basis for payment of compensation

In Islam individual rights should not be taken arbitrarily. The taking of property in Islam may be carried out in a way that is justified by Islamic law.

In determining compensation, it must be fair. Justice in determining the value of compensation. For example in the time of the companions of the Prophet, justice in determining the value of compensation for Bakar Abdullah Abu Yazid used two ways, namely bargaining with the land owner to determine the price and with a fair assessment if the land owner was not willing to set the price. In the implementation of compensation is done by way of buying and selling. The buying and selling process is done by bargaining. Compensation payments are made as soon as possible unless the beneficiary suspends receipt of the indemnity. Given that the law of origin of land ownership is a mandate, the government in terms of determining compensation by force is allowed. According to the term *fuqaha'* this is included in *uqud*. The *uqud* is the engagement of consent and *qabul* according to which religion is prescribed, the traces of which appear in the contract. *Uqud* which is the cause of this ownership there are two, namely:

- 1) *Uqud Jabariyah* namely contracts that must be carried out based on the judge's decision, such as selling the property of a debtor forcibly.
- 2) *Uqud Istimlak* for the public good. For example, land next to the mosque, if needed by the mosque, it must be owned by the mosque and the



owner must sell it. This is called *tamalluk bil jabari* (possession by force).<sup>24</sup>

The purpose of the general benefit of the process of relinquishing rights, the government has great power and by using its power with the objectives that have been prescribed so that if buying and selling cannot be done, it can be done by force. This is included in the realm of the leader's power or what is called the caliphate according to the term *fuqaha' khalafiyah* is the place of someone or something new in an old place that has been lost, in various kinds of rights. If the ruler takes the people's land and destroys their building on it with the intention of not being in the public interest, then in this situation it is obligatory for him to compensate the people's losses at an appropriate price and compensate for the losses of the owner of the property as *iwadh or tadlmin*.

If in the determination of compensation there is a sense of lack of justice, the party entitled to submit a case to the Supreme Court to assess the importance of *Maslahah al-ammah* for the general public or the extent to which it is obligatory to take back for the purpose of *Maslahah al-ammah*, or the extent to which the value of compensation is fair. .

The concept of ownership in national land law and Islamic law is not much different. Contracts carried out in the acquisition of ownership in Islam are also contained in national land law. What makes the difference is the classification. Not all contracts are done the same, a very significant difference is that the concept of ownership in Islam is actually not entirely, because the right to property is Allah SWT so that in human ownership only carry out the mandate entrusted by God to his creatures. Meanwhile, ownership in national land law is absolute.

The deliberation process carried out is to discuss the compensation that will be given by the government to the owners of the required land rights. In other words, the government will involve the owner of the right after the spatial planning is planned, not before there is planning, in this case it means that the local community is not involved in the spatial planning concept that the government will implement in the land acquisition process for the public interest. Deliberation in Islam has the same goal, namely to obtain an agreement on the release of land rights used for public purposes, the difference in this deliberation is that the parties holding the deliberation are not only humans but Islam believes that Allah is in everything that is done by His creatures so that in the goal of getting an agreement there is also another goal, namely to get *ridho* from Allah SWT. In addition, there is no time limit for deliberation in Islamic law.

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<sup>24</sup>Syah, Mukadir Iskandar. (2015). *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum*. Jakarta: Jala Permata, p. 62.

Deliberation is carried out by placing Allah SWT as the party who knows everything and deliberation is carried out for good things. So that in Islamic law, besides the parties involved, there is also Allah SWT who is the supervisor of everything. Deliberation is carried out by placing Allah SWT as the party who knows everything and deliberation is carried out for good things. So that in Islamic law, besides the parties involved, there is also Allah SWT who is the supervisor of everything. Deliberation is carried out by placing Allah SWT as the party who knows everything and deliberation is carried out for good things. So that in Islamic law, besides the parties involved, there is also Allah SWT who is the supervisor of everything.

There is a difference in the concept of deliberation in Islamic law with Act No. 2 of 2012. The difference is if this law discusses deliberation only in the material realm and does not discuss matters of worship or spiritual satisfaction, whereas in Islamic law deliberation is not only to discuss material matters only, but also want the pleasure of Allah SWT. Fairness in Act No. 2 of 2012 is to provide appropriate compensation after deliberation by the parties regarding land acquisition. Whereas in the Islamic concept what is called justice is equality, putting things in their place, paying attention to individual rights and giving those rights to each owner and the one who can actually give justice is God but humans are obliged to try. For this matter, in the process of relinquishing rights, it is carried out through buying and selling. With buying and selling, there is nothing that makes the intention of the existence of land acquisition for the public interest to be able to buy people's land at a low price.

Deliberations in the process of land acquisition for the public interest are carried out to achieve the common good. The benefit of everyone with an interest in this land acquisition issue. If discussing the common good, then there is a consensus agreement in accordance with the principle of *Maslahah mursalah*. The difference is if the deliberation process is carried out by means of guided deliberation. Guided deliberation provides its own taboo. The involvement of certain parties outside the government may take advantage of circumstances that can lead to injustice, so that in the guided deliberation it has its own vulnerability conditions which result in the principle of *Maslahah* not being fulfilled. For example, if there are certain parties with their efforts to take advantage of the existing legal conditions for their personal interests. The requirement for *Maslahah mursalah* is that it is in the public interest, not for personal or group interests. So the implementation of the mechanism for the land acquisition process in this law is not the same as the concept of *Maslahah mursalah* in Islamic law. *Maslahah* criteria is the establishment of worldly life in order to achieve the hereafter.

With the benefit criteria as mentioned above, when land acquisition for the public interest does not have two functions, namely the world and the hereafter, it cannot be carried out because it is contrary to the Shari'a, so that in realizing land acquisition for the public interest, all parties involved in land acquisition for the public interest are in accordance with The real purpose of *Maslahah* is to be free from worldly desires because this benefit is not measured according to lustful desires.<sup>25</sup>

When the land acquisition process is not based on minority interests, the concept of *Maslahah* can actually be applied. So that the deliberations carried out for the realization of land acquisition for the public interest are carried out carefully and mutually understand each other. By understanding the theme of the deliberation, a balanced result will be obtained. Parties who need land, the government and rights owners can accept the goals and positive impacts that will arise in the future.

The implementation of land acquisition for development in the public interest needs to be strengthened in the planning and implementation stages, especially by conducting deliberation in determining the location and determining compensation so that justice can be achieved for all parties, both for the state to carry out development in the public interest in order to improve the welfare of the community while at the same time maintaining protect the interests of those whose land is the object of land acquisition so that they can continue their lives for the welfare of their lives and their families. The application of the principle of justice needs to be prioritized for the common good, both the public interest and the personal interest of the land owner affected by the land acquisition.

The review of Islamic law regarding the regulation and implementation of the policy of the land acquisition committee in determining the validation of land parcels in the construction of toll roads is already in accordance with the principles of Islamic law, because the land acquisition committee has held deliberations or negotiations with the owner of the land parcel, thereby minimizing the losses faced by the owner. The principle of deliberation is as stated in the Qur'an *surah Asy-Shura* verse 38, *surah Al-Baqarah* verse 233 and *Surah Ali Imran* verse 159. The role of the land acquisition committee is very necessary, especially to overcome the obstacles that occur in land acquisition. The land acquisition committee, which is an arm of the local government, has a vital role not only in carrying out land acquisition but also in resolving problems that arise between those who need the land and those who own the land.

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<sup>25</sup>Haq, Hamka. (2012). *Aspek Teologis Konsep Maslahah Dalam Kitab Al-Muwafaqat*. Yogyakarta; Erlangga, p. 81

#### 4. Conclusion

Based on the results of the research and discussion above, the conclusions of this researcher are as follows: a. The policy regulation of the land acquisition committee in determining the validation of land parcels in toll road construction already has a strong legal basis and also goes through 8 (eight) activity stages Land acquisition for toll road construction includes: establishment of land acquisition committee, submission of application and determination of location, counseling or socialization, measurement and determination of road boundaries, data collection, announcement of data collection results, price deliberation and determination of the form and amount of compensation and payment of compensation and relinquishment of rights. b. The implementation of the policy of the land acquisition committee in determining the validation of land parcels in the construction of toll roads is good, the dispute that occurs can be resolved properly by way of deliberation between the owner of the aggrieved land parcel and the Land Procurement Committee for road construction. c. The review of Islamic law regarding the regulation and implementation of the policy of the land acquisition committee in determining the validation of land parcels in the construction of toll roads is already in accordance with the principles of Islamic law, because the land acquisition committee has held deliberations or negotiations with the owner of the land parcel, thereby minimizing the losses faced by the owner. The principle of deliberation is as stated in the Qur'an *surah Asy-Shura* verse 38, *surah Al-Baqarah* verse 233 and *Surah Ali Imran* verse 159.

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