

Legal Clarification On The Use Of Basements In The Context Of Public Land Acquisition In Indonesia

Diyan Isnaeni
University of Malang

*Corresponding Author
Email: dianisnaeni@unisma.ac.id

Abstract

Rapid urban growth and increasing infrastructure needs in Indonesia are driving an increasing need for basement use. Even so, significant legal challenges arise, especially with regard to rights to the crypt and conflict resolution mechanisms. The lack of clarity in the basic agrarian law and the law on Land Acquisition for the public interest creates the potential for conflict and social injustice in the procurement and use of basements. This study conducted a normative legal analysis of the agrarian Basic Law and the land acquisition law for the public interest, and evaluated how these laws operate in practice. Through a philosophical and analytical approach, the study considers the underlying legal principles and evaluates the effectiveness of existing regulation and enforcement. In seeking a solution to this challenge, the study considers a range of measures, including legal reform to provide further clarification on the right to a basement; development of effective and fair conflict resolution mechanisms; and increased protection of the rights and interests of landowners in the process of land acquisition. These solutions will be tailored to the local context and needs and involve the participation of all interested parties. This research seeks a deeper understanding of how laws operate in this context and evaluates whether existing laws are sufficient and effective in regulating these issues. The results of this study are expected to make an important contribution in formulating and updating legal regulations on the use of basements in the context of land acquisition for public use in Indonesia.

Keywords: *Basement Use, Land Acquisition, Indonesian Agrarian Law Introduction*

INTRODUCTION

In an increasingly complex and interconnected world, a deep understanding of the common law and the Constitution is essential and cannot be ignored (Harahap dkk., 2023). The common law and the Constitution are the foundation for the rule of law, guarantee the protection of human rights, and guide the interaction between the government and its people (Abqa dkk., 2023). Particularly in Indonesia, the Constitution and common law have undergone various changes and adjustments throughout its history, to reflect the social, political, and economic development of the society (Indra dkk., 2023). The 1945 Constitution, as the Constitution of Indonesia, has been amended several times, reflecting the response to new challenges and issues that have arisen over time (Gobel dkk., 2023).

One of them is the use and arrangement of basements, which is a complex and multifaceted issue, especially in the context of land acquisition for public use (Putri dkk., 2023) In many countries, including Indonesia, conceptions of land and property rights have historically focused on surface land, without explicitly recognizing the right to subsoil.

In recent decades, increasing urban growth and increasing infrastructure needs (Bates, 2006), such as underground transportation and storage facilities, have encouraged countries and individuals to utilize the basement. It has also prompted questions about who has the right to control and access the space. In the context of Indonesia, National Land Law is regulated by law No. 5 of 1960 on the basic regulation of Agrarian principles (agrarian Basic Law). However, this law does not provide a clear explanation of the status of the basement and the rights to it. This raises the question of who has the right to the basement when the land is

acquired for public use.

This creates ambiguity and possibly also potential legal conflicts over who has rights to the basement when the land is acquired for public use. The lack of legal guidance in this regard not only poses challenges in the implementation of infrastructure projects, but could also lead to social injustice if not managed carefully. This situation underlines the importance of a more detailed and critical analysis of existing laws and how they interact with modern needs and demands of land use in the context of rapid urbanization.

In addition, rapid urban growth and improved infrastructure in major cities in Indonesia, such as Jakarta and Bandung, have encouraged the construction of more underground structures, such as the rapid mass transportation (MRT) (Robbina dkk., 2023) This further reinforces the need for legal clarification on the use of basements. This issue is becoming increasingly important due to the potential conflict between the development of public infrastructure and individual rights to property. For example, does the government have the right to build underground infrastructure under private property without compensation or permission of the landowner? Or vice versa, does the owner of the land have the right to refuse such construction?

In line with increasing urban growth and increasing infrastructure needs (Apripari dkk., 2023), the use of basements is becoming increasingly relevant and important. However, in the context of land law in Indonesia, there are ambiguities and potential legal conflicts that create obstacles and challenges in the implementation of infrastructure projects, and can trigger social injustice. In particular, the basic agrarian law, which is the foundation of land law in Indonesia, has not provided sufficient clarification on the right to a basement, especially when the land is acquired for public use.

In addition, rapid urban growth in major cities such as Jakarta and Bandung has resulted in the need for underground infrastructure such as the MRT, further reinforcing the need for clarification of this law. The emergence of this potential issue between public infrastructure development and individual rights to property highlights the importance of the role of law in facilitating development while safeguarding individual rights and interests.

Analyzing and understanding applicable laws and interacting with modern needs and demands of land use is essential. It is necessary to ensure that development can proceed effectively and efficiently, while the rights and interests of individuals remain protected. Legal clarifications and reforms that may be necessary should be carefully considered, considering all parties involved and the potential impact of such changes. This analysis will be an important foundation in formulating problems and finding adequate and fair solutions.

RESEARCH METHODS

This research is categorized into the type of normative legal research, it is based on the issues and / or themes raised as research topics. The research approach used is philosophical and analytical, which is research that focuses on rational views, critical and philosophical analysis, and ends with conclusions that aim to produce new findings as an answer to the main problem that has been set (Ishaq, 2017) And will be analyzed with descriptive analytical methods, namely by describing the applicable legislation related to the theory of law and positive law enforcement practices related to the problem (Mahmud, 2017) In achieving these objectives, this study will use a normative legal approach. This means that the research will focus on the analysis of legal texts and related legal documents, such as the agrarian Basic Law, other laws and regulations, as well as court decisions and other relevant legal documents.

Furthermore, the approach of the study used is philosophical and analytical, which will allow this study to evaluate and understand the concepts and legal principles underlying the use of basements in the context of land acquisition for public use. Through this approach, the research will seek to seek a deeper understanding of how the law operates in this context, as well as evaluate whether existing laws are sufficient and effective in regulating these issues.

Finally, analytical descriptive methods will be used to analyze the data and information found. Through this method, the study will try to describe and explain the existing legislation, as well as law enforcement practices related to the use of basements in the procurement of land for public use. This method will enable research to understand and evaluate the workings of law in practice and how they affect individuals and society.

Based on the approaches and methods described above, this study will provide an in-depth and critical look at the legal regulation of the use of basements in the context of land procurement for the public interest in Indonesia. The study will also offer possible solutions to the legal challenges identified.

RESULT AND DISCUSSION

Legal Arrangements In Indonesia Regarding The Use Of Basements In The Context Of Public Land Acquisition United States of America

Legal arrangements in Indonesia regarding the use of basements in the context of public land acquisition are rooted in a concept known as land rights. In Indonesian land law, this concept is applied through law No. 5 of 1960 on the basic regulation of Agrarian principles (agrarian Basic Law) (Hermawan & Hananto, 2021). However, although this law provides a framework for land rights, there is no clear or detailed explanation of how this applies to the basement.

The basic agrarian law, as the fundamental law governing land rights in Indonesia, has a strong emphasis on the concept of "management rights," which entitles the state to control and utilize natural resources (Sibuea, 2016). As far as the use of basements is concerned, however, this law does not provide clear guidelines. Article 20 paragraph 1 of this law, for example, states that land, water and space, including the natural wealth contained in them, are controlled by the state. However, the arrangements related to how the state can control or allow the use of underground space, particularly in the context of land acquisition for public use, are less clear.

The law further does not distinguish between ground level and basement in the context of land rights. While some legal interpretations may argue that a right to land implicitly includes a right to a basement, this is not explicitly stated in the law. This vagueness creates room for interpretation and potential conflict, especially in situations where the use of basements could potentially damage or interfere with surface land rights. This irregularity becomes all the more striking when viewed at in the context of growing infrastructure needs and increased use of general-purpose basements.

With regard to the use of basements for public use, such as for infrastructure or storage facilities, the legislation offers some guidelines (Afifah dkk., 2018). However, these guidelines are still general and often ambiguous, making their interpretation and implementation complex. For example, Article 6 states that land, water and natural resources are regulated and used by the state for the greatest possible prosperity of the people. However, in practice, how the state can regulate and control the use of basements, especially in the context of land acquisition for public use, is still a big question.

Furthermore, in the case of land acquisition for public use, law No. 2 of 2012 on the acquisition of land for development in the public interest applies. This law describes the processes and procedures that must be followed by the government when acquiring land for

public use, including compensation requirements and consultation with landowners (Surono dkk., 2017). However, this law does not make it clear about how the use of the basement in the context.

The lack of a clear legal explanation of the right to a basement, in particular in the context of the acquisition of land for public use, can provoke legal and social conflicts. This conflict can be between the government and the landowner, or between the landowner and a third party, such as a company commissioned by the government to build infrastructure. In addition, there is no specific provision that applies to situations in which land is acquired through the process of procuring land for public use, leaving an unclear legal space and possibly generating conflicts.

From a critical point of view, it seems clear that there is a need for clarification and possibly legal reform in this context. Rapid urban growth and the increasing need for infrastructure, such as rapid mass transport (MRT), indicate that the question of the right to underground space will become increasingly relevant and urgent. However, current law is not fully equipped to deal with these challenges, both from a conceptual and practical perspective. Therefore, it is important to conduct an in-depth and critical legal analysis of this issue, with the aim of identifying weaknesses and shortcomings in existing laws, as well as to find fair and effective solutions that can meet the modern needs and challenges of the use of basements in the context of land acquisition for public use. This brings to the fore shortcomings in the current legal framework, which is not fully equipped to deal with these challenges, both from a conceptual and practical perspective.

Currently, the agrarian Basic Law and the law on Land Acquisition for the public interest serve as the two main legal instruments governing the use and acquisition of land (Haryati, 2016). However, the vagueness and ambiguity in this law, particularly with regard to basements, creates challenges in the implementation and enforcement of the law. This can generate conflicts between various interested parties, including governments, landowners, and infrastructure companies.

To address these challenges, in-depth and critical legal analysis is required. This not only involves an in-depth assessment of existing laws, but also involves a clear understanding of the social, economic, and technical contexts in which these laws are applied. The study should explore issues such as how land rights are understood and enforced in the context of underground space, how underground infrastructure is managed and regulated, and how the rights and interests of landowners can be protected in this process. Through this understanding, we can seek fair and effective solutions that can meet the modern challenges of basement use in the context of public land acquisition. This could involve a clearer and more specific reform of the law on the right to dungeons, the development of more effective conflict resolution mechanisms, and the establishment of new institutions or regulations designed to regulate the efficient and fair use of Dungeons.

Legal Challenges And Solutions Related To The Use Of Basements In The Procurement Of Land For Public Use

Challenges and solutions in the context of the use of basements in the procurement of land for public use in Indonesia is a complex issue involving legal, technical, and social considerations. The following are some of the major legal challenges and potential solutions related to this issue.

Challenges:

1. Ambiguity in existing law

Ambiguity in existing laws refers to the lack of clear explanations or provisions in the applicable Indonesian legislation regarding the use and control of basements. For example, in the basic agrarian Law (Law No. 5 of 1960), does not explicitly regulate the rights and limitations of basement ownership. Traditionally, the concept of land title refers to the Latin principle "*Cujus est solum, ejus est usque ad coelum et ad inferos*", which means "to whom the land belongs, to him also the air and the underground (Bradbrook, 1987). However, in practice, this principle is becoming increasingly complicated to apply, especially in the context of modern technological and infrastructure developments that often require the use of basements. The situation becomes even more complicated when it comes to the context of land acquisition in the public interest. Law on Land Acquisition for Public Interest (Law No. 2 of 2012) regulates the process and compensation for landowners when their land is taken for public use, such as the construction of public infrastructure. However, this law also does not provide a clear explanation of how this applies to the basement. This legal vagueness creates a lot of uncertainty and can trigger conflicts between various interested parties, including governments, landowners, and developers. For example, landowners may feel that their rights are being violated if the government or developer wants to use their basement for public use without permission or adequate compensation. Meanwhile, the government or developer may feel that they have the right to use the basement in the public interest, based on their interpretation of existing legislation. This kind of conflict can delay or hinder important projects, and can also lead to lengthy and costly legal conflicts. Therefore, it is important to provide legal explanation and clarity on this issue.

2. Lack Of Conflict Resolution Mechanisms

The vagueness of the law regarding the right to the crypt and the resolution of conflicts related to it also reflects the lack of an effective conflict resolution mechanism. Today, in the event of a dispute regarding the use or rights to the basement, the options for its resolution tend to be limited to formal litigation through the courts or the negotiation process between the parties to the dispute, each of which has its own challenges and limitations. Litigation through the courts can be a lengthy, expensive, and burdensome process, and the results are often unsatisfactory to all parties involved. In addition, Court decisions may not always provide a practical or sustainable solution, especially in the context of public land acquisition involving various interests and parties (Said & Irwansyah, 2019). On the other hand, negotiations between the disputing parties may seem like a more flexible and informal solution, but can be limited by the dynamics of forces and resources between the disputing parties. For example, landowners may feel disadvantaged or forced to accept less favorable conditions, especially if they face pressure from a more powerful or powerful party, such as the government or a large developer. As a result, the absence of an effective conflict resolution mechanism can exacerbate legal uncertainties and conflicts regarding the use and rights to the basement. This indicates the need for the development and implementation of more equitable, transparent and effective conflict resolution mechanisms in this context.

3. Rights and interests of landowners

Another problem that arises in the context of the use of basements in the public interest is that the rights and interests of landowners are often not sufficiently well protected. In many cases,

the acquisition of land in the public interest can involve great sacrifices for landowners, both in terms of their own use of the land and the compensation they receive (UISSO dkk., t.t.). For example, in the context of building underground infrastructure such as mass transportation systems, landowners may lose access to basements on their property, which may affect the value and function of their land. Meanwhile, the compensation they receive may not always reflect these losses, especially if existing law does not provide clear guidance on how such compensation should be calculated or awarded. This raises serious questions about the fairness and appropriateness of land acquisition in the public interest, and indicates the need for stronger protection of the rights and interests of landowners. One way to achieve this may be through changes to existing laws and policies, for example by introducing clearer and fairer guidelines on compensation and conflict resolution mechanisms, or by recognising and protecting landowners' rights to basements in the context of land acquisition in the public interest.

The challenges that arise in the context of the use of basements in the procurement of land for public use require a diverse and integrated set of solutions. First, there is a need to carry out legal reform. Legal clarification through changes or amendments to the agrarian Basic Law and the law on Land Acquisition for public use can provide clearer and more detailed guidance on the right to a basement, including in the context of land acquisition for public use. This can help prevent conflicts and facilitate the resolution of conflicts if they arise.

Secondly, the development and implementation of an effective and fair conflict resolution mechanism is also important. With a mechanism like this, disputes about the use or rights to the basement can be resolved more efficiently and fairly. This requires a better understanding of the nature and roots of these conflicts, as well as an approach that encourages dialogue, participation and negotiation between all interested parties.

Thirdly, it is important to ensure that the rights and interests of landowners are protected in the process of acquiring land for public use. This means that there is a need for fair and adequate compensation for landowners, as well as better consultation mechanisms and community participation in the decision-making process. Recognizing and protecting landowners' rights to their basements can encourage trust and cooperation between landowners and procurators, as well as prevent injustice and conflict. By addressing these challenges through a series of solutions such as these, Indonesia can lead to a more equitable, sustainable and efficient use of basements in the context of public land acquisition. However, it is important to remember that these solutions must be adapted to the local context and needs, and require active participation and support from all interested parties.

This strategy serves as a guiding framework for the long-term defense of the country, outlining the necessary policies and resources to ensure national security. However, the defense policy of the United States extends beyond its borders and encompasses foreign and security policy, which involves close collaboration with allies and partners to achieve global security goals (Feaver & Kohn, 2019). In 2018, the DoD released the "Summary of the 2018 National Defense Strategy of the United States of America," which underscored the significance of military competition in an era characterized by globalization and rapid technological advancements. This document established strategic objectives that revolved around enhancing U.S. defense capabilities, forging stronger partnerships with allies and partners, and addressing global threats posed by nations such as China and Russia (US DoD, 2018).

The evolving nature of defense policy in the United States has been particularly evident in the wake of significant events, most notably the tragic events of September 11, 2001. These events prompted substantial changes in U.S. defense policy, aimed at safeguarding national security and protecting the interests of the nation both domestically and abroad. To accomplish these objectives, the United States allocates a substantial budget to defense. In fact, the U.S. defense budget is one of the largest in the world. In 2020, total military spending reached \$778 billion, representing a 4.4% increase compared to the previous year (SIPRI, 2021). Moreover, the United States' defense budget accounted for approximately 3.7% of its gross domestic product (GDP) in 2020 (SIPRI, 2021). This robust financial investment reflects the nation's commitment to maintaining a well-equipped and formidable military force.

CONCLUSION

Rapid urban growth and increasing infrastructure needs in Indonesia are driving an increasing need for basement use. Nevertheless, there are significant challenges in the context of land law and land acquisition, particularly with regard to rights to basements and conflict resolution mechanisms. Ambiguity and vagueness in the basic agrarian law and the law on Land Acquisition for the public interest creates the potential for conflict and social injustice in the procurement and use of basements for the public interest. To address this challenge, the following measures need to be considered: reform of the law to provide further clarification of the right to the basement; development of an effective and fair conflict resolution mechanism; and increased protection of the rights and interests of landowners in the process of land acquisition.

These solutions need to be adapted to local contexts and needs and involve the participation of all interested parties. In the face of these challenges, it is important to appreciate and understand the dynamics between infrastructure development and the protection of individual rights. It requires in-depth legal analysis and an understanding of the social, economic, and technical context. With this approach, fair and effective solutions can be found to meet the modern challenges of the use of basements in the context of land acquisition for public use.

REFERENCES

- Abqa, M. A. R., Junaidi, Hutabarat, S. A., Suhariyanto, D., Fauziah, N. M., Khilmi, E. F., Meliana, Y., & Muhtar, M. H. (2023). *HUKUM TATA NEGARA: Sebuah Konsep Dasar dalam Menata Bangsa*. PT. Sonpedia Publishing Indonesia.
- Afifah, S. S., Kurniati, N., & Zamil, Y. S. (2018). Penggunaan Ruang Bawah Tanah untuk Bangunan Gedung ditinjau dari Peraturan Perundang-Undangan terkait yang berlaku. *Jurnal Bina Hukum Lingkungan*, 3(1).
- Apripari, A., Swarianata, V., Puluhalawa, J., Puluhalawa, I., & Matte, D. N. (2023). Investigating the Existence of Gorontalo Customary Law in the National Criminal Code. *Dialogia Iuridica*, 14(2), Article 2. <https://doi.org/10.28932/di.v14i2.6250>
- Bates, D. (2006). Political theology and the nazi state: Carl schmitt's concept of the institution. *Modern Intellectual History*, 3(3), 415–442. <https://doi.org/10.1017/S1479244306000862>
- Bradbrook, A. J. (1987). Relevance of the *cujus est solum* doctrine to the surface landowner's claims to natural resources located above and beneath the land. *Adel. L. Rev.*, 11, 462.
- Gobel, R. T. S., Muhtar, M. H., & Putri, V. S. (2023). Regulation And Institutional Arrangement Of Village-Owned Enterprises After The Work Creation Era Applied. *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo*, 16(1), 15–33.

- Harahap, T. K., Prayuti, Y., Latianingsih, N., Damanik, A., Maheni, T., Farida, I., Muhtar, M. H., & Mustaqim. (2023). PENGANTAR ILMU HUKUM. *Penerbit Tahta Media*. <https://tahtamedia.co.id/index.php/issj/article/view/255>
- Haryati, S. H. (2016). Demokrasi, Negara Indonesia. *JURNAL ILMIAH HUKUM DAN DINAMIKA MASYARAKAT*, 5(1).
- Hermawan, S., & Hananto, S. A. (2021). Pengaturan Ruang Bawah Tanah berdasarkan Prinsip Agraria Nasional. *Pandecta Research Law Journal*, 16(1), 27–44.
- Indra, M., Saragih, G. M., & Muhtar, M. H. (2023). Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar 1945 di Indonesia. *Jurnal Konstitusi*, 20(2), 279–299.
- Ishaq, I. (2017). *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*. Alfabeta.
- Mahmud, M. P. (2017). *Penelitian Hukum edisi revisi*. Jakarta: Kencana Prenada Media Group.
- Putri, V. S., Muhtar, M. H., Winarsasi, P. A., & Manullang, S. O. (2023). *Kewenangan Izin Pemanfaatan Ruang Pasca Undang-undang Cipta Kerja*. Eureka Media Aksara. <https://repository.penerbiteurka.com/publications/563020/>
- Robbina, A., Sari, A. F., Zahra, A. A., Aji, D., & Fitria Nur Lita, L. (2023). *ANALISIS PERENCANAAN PEMBANGUNAN INFRASTRUKTUR NASIONAL (KERETA CEPAT JAKARTA-BANDUNG)*.
- Said, S. N. F., & Irwansyah, I. (2019). Land Acquisition by the Government and the Impact for the Community. *Papua Law Journal*, 3(2), 117–133.
- Sibuea, H. Y. (2016). Tinjauan Yuridis Atas Pemanfaatan Ruang Di Bawah Tanah. *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 4(1), 17–34.
- Surono, A., Sisingamangaraja, J., & Baru, K. (2017). Perlindungan hak korban pengadaan tanah untuk pembangunan jalan tol di Kabupaten Kendal. *Jurnal Penelitian Hukum P-Issn, 1410*, 5632.
- UISSO, A., Sevgen, S. C., & TANRIVERMİŞ, H. (t.t.). The plight of urban settlements based on the proliferation of dichotomy in Tanzania. *International Journal of Engineering and Geosciences*, 8(3), 262–276.