


Reconstructing Justice in Land Acquisition for Public Interest in Indonesia from the Perspectives of Legal Pluralism Werner Menski

Muslimah Hayati^{1*}, Fajrian Noor Anugrah², Dri Setiawan³, Arief Budiono⁴, Turdialiev Mukhammad Ali Polatjon Ogli⁵

^{1,2,3} Sekolah Tinggi Ilmu Hukum Sultan Adam, Banjarmasin, Indonesia.

⁴ Faculty of Law, Universitas Muhammadiyah Surakarta, Sukoharjo, Indonesia.

⁵ Private International Law, Tashkent State University of Law, Uzbekistan.

 : muslimah.h@stihsa-bjm.ac.id
Corresponding Author*



Abstract

Introduction: This article examines the recurring gap between the normative principle of justice in land acquisition regulations for public interest development and the reality of its implementation in Indonesia. This study highlights recurring conflicts, weak community participation, and socio-cultural tensions that arise in state-driven development projects.

Purposes of the Research: This study aims to analyze issues of justice in land acquisition for public purposes and reconstruct a more balanced model of justice using Werner Menski's legal pluralism, which integrates state law, social norms, and moral-ethical values.

Methods of the Research: This study employs normative legal research, adopting a legislative, conceptual, and philosophical approach. Analysis was conducted on the regulatory framework, land acquisition principles, and the application of Menski's triangular legal pluralism model to assess the gap between norms and field practices.

Results of the Research: Findings reveal that the dominance of state-centered legal positivism in land acquisition often neglects socio-cultural values and moral dimensions of justice, resulting in social conflict, marginalization, and inequality. As its principal novelty, this study reconstructs the concept of justice in land acquisition through a pluralistic, participatory, and contextual model. This model integrates state law, living law, and ethical considerations, promotes meaningful community participation in decision-making processes, and adapts legal implementation to local socio-cultural realities. In doing so, it seeks to balance legal certainty, social legitimacy, and substantive justice in the governance of land acquisition.

Keywords: Land Acquisition; Public Interest; Legal Pluralism.

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INTRODUCTION

Land acquisition in Indonesia, particularly for public facility development, is often problematic due to conflicts between the interests of individual landowners and the need for development in the public interest.¹ Imbalances in the land acquisition process often trigger social conflicts, public objections, and delays in public projects, primarily because

¹ Donna Okhtalia Setiabudhi, "The Problematic of Small-Scale Land Acquisition (Less than 5 Hectares) for Public Interest Development," *Hasanuddin Law Review* 1, no. 1 (2016): 61-74.

existing mechanisms do not fully provide equal protection for both parties' interests.² In addition, it is not uncommon to clash with the customary norms and social morals of the communities inhabiting the area.

This tension arises because land acquisition mechanisms tend to be oriented towards accelerating development, thereby neglecting the balance between protecting individual rights, fulfilling state obligations, and upholding the social values that exist within society.³ Practice, the formal laws governing land acquisition have not been fully able to respond to the social complexity and diversity of local contexts in various regions of Indonesia. In many communities, land is not merely an economic asset, but also an integral part of social identity, living space, and a moral symbol.⁴ When the approach used is overly legalistic and fails to consider customary practices or the community's moral values, the practice of land acquisition automatically creates space for conflict, resistance, and injustice.

For example, land acquisition for National Strategic Projects has given rise to massive conflicts. The National Human Rights Commission recorded 41 complaints of rights violations in National Strategic Projects development in 2024 alone. One example is when community representatives in Mangkupadi Village and Tanah Kuning Village, Bulungan Regency, North Kalimantan, who were affected by the Indonesian Green Industrial Estate National Strategic Projects development, reported to The National Human Rights Commission on September 25, 2024, that Indonesian Green Industrial Estate management had closed several plots of land owned by the community without providing compensation or adequate compensation to the landowners. The community feels socially and economically disadvantaged as a result of this unilateral action, because the land they use for their livelihood is threatened with loss without any certainty about how their rights will be replaced. Moreover, there are still many similar cases, such as the Kertajati International Airport National Strategic Projects in West Java and the Rempang Eco-city National Strategic Projects, among others.⁵ Although the mechanism has been regulated in Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest, which was later amended into Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law, in reality, its implementation still presents major and recurring problems. The principles of fairness and transparency mandated in these laws and regulations are often ignored. This highlights the need for a reconstruction of legal instruments to regulate Land Acquisition for development in the public interest, which concretely delivers justice and benefits.

A more comprehensive and pluralistic approach is essential, particularly since land acquisition practices are often intertwined with state law, social norms, and societal moral values. Werner Menski's framework of legal pluralism, with its triangular model (state law – social norms – moral/religious values),⁶ provides an appropriate perspective for analyzing how justice can be reconstructed more contextually and responsively to Indonesia's social diversity. In general, there is already a wealth of literature discussing land

² Wilbard J Kombe, "Land Acquisition for Public Use, Emerging Conflicts and Their Socio-Political Implications," *International Journal of Urban Sustainable Development* 2, no. 1-2 (2010): 45-63.

³ Widaningsih Trenggana and Silvy Vebriha, "Peran Pemerintah Dalam Pengadaan Tanah Untuk Pembangunan Infrastruktur Publik: Studi Mekanisme Dan Kebijakan," *Jurnal Publik* 18, no. 02 (2024): 142-56.

⁴ Aldo Leopold, "The Land Ethic," in *The Ethics of the Environment* (Routledge, 2017), 99-113.

⁵ Mimin Dwi Hartono et al., "Dampak Proyek Strategis Nasional Terhadap Hak Asasi Manusia," 2024.

⁶ Werner Menski, "Remembering and Applying Legal Pluralism: Law as Kite Flying," in *Concepts of Law* (Routledge, 2016), 91-108.

acquisition for public interest development in Indonesia; however, studies that examine the need to combine legal pluralism interactions in order to achieve justice are still limited. Reconstructing justice in land acquisition in Indonesia requires a multidimensional approach that balances the interests of the state with individual rights. However, the direct application of Werner Menski's perspective of legal pluralism is not explicitly discussed in the available sources.

Land acquisition for public purposes in Indonesia reveals a complex legal pluralism, where state law often conflicts with the rights of indigenous peoples and traditional concepts of justice. Evidence points to significant challenges in implementing fair land acquisition policies. Kurniawan et al. show that traditional communities often reject state law, creating legal plurality.⁷ Kukuh Tejomurti et al. highlight the philosophical gap between legal positivism and the historical school of law, suggesting that law is not only created by authorities but also found in community practices.⁸ Noor Rohmat et al. find critical weaknesses in current policies, including unclear compensation standards and a lack of transparency.⁹ Rebecca Meckelburg et al. (2024) further criticize the government's redefinition of "public interest," arguing that development projects often serve the interests of elites rather than local communities. Thus, this study emphasizes the need for a more nuanced and culturally sensitive approach to land acquisition that respects customary rights and ensures true justice. Despite these valuable contributions, previous studies have generally focused on specific aspects of land acquisition, such as compensation mechanisms, legal certainty, human rights protection, or conflicts between state law and customary rights. Limited attention has been devoted to examining how the interaction between state law, social norms, and moral-ethical values can serve as an integrated framework for reconstructing justice in land acquisition. This research gap becomes increasingly significant in light of the growing number of agrarian and land acquisition conflicts, the challenges of achieving sustainable and socially inclusive development, and the urgent need to strengthen the legitimacy of public policies. In this context, Werner Menski's legal pluralism offers a relevant analytical framework for understanding and reconciling competing legal, social, and moral interests in land acquisition governance. This research is increasingly important because the rising number of land acquisition conflicts in various regions indicates systemic failures in existing legal instruments. Cases occurring in various regions within the National Strategic Project (PSN) show that the speed of development often disregards substantive justice and community participation. The current legal framework is inadequate to achieve the common good, as it disregards the principles of justice and transparency and fails to incorporate the customary norms that exist within communities. Reconstructing justice based on legal pluralism is an urgent necessity in situations such as this to prevent recurring social conflicts and strengthen the legitimacy of development.

Drawing on Werner Menski's theory of legal pluralism, this study employs a distinctive analytical framework to examine the interaction among state law, social norms, and moral-ethical values in the context of land acquisition for public purposes in Indonesia. This

⁷ Joeni Arianto Kurniawan, "Contested Land, Contesting Laws. A Context of Legal Pluralism and Industrialization in Indonesia," *Sortuz: Oñati Journal of Emergent Socio-Legal Studies* 6, no. 2 (2014): 93-106.

⁸ Kukuh Tejomurti et al., "Pergulatan Mazhab Hukum Dalam Pengadaan Tanah Milik Masyarakat Adat Untuk Kepentingan Umum," *Warkat* 2 (2022): 1-18, <https://doi.org/10.21776/warkat.v2n1.1>.

⁹ Noor Rohmat, "Reconstruction of Land Procurement Policies and Land Losses Compensation in the Name of Public Interests Based on Justice Value," *Sch Int J Law Crime Justice* 4, no. 2 (2021): 47-53.

framework is used to identify and explain the sources of injustice that emerge when land acquisition policies are predominantly guided by legal positivism and administrative considerations while neglecting local socio-cultural realities and substantive justice concerns. Through this pluralistic lens, the study critically evaluates inconsistencies within the existing regulatory framework, explores the social and moral dimensions that are often marginalized in land acquisition practices, and develops a reconstruction of justice based on a pluralistic, participatory, and contextual model. By integrating legal certainty, social legitimacy, and ethical considerations, this study not only contributes to the development of legal pluralism theory in Indonesia but also offers policymakers practical guidance in designing land acquisition mechanisms that better protect individual rights, accommodate local values, and support sustainable public development.

METHODS OF THE RESEARCH

The research method employed in this study is normative legal research using conceptual and statutory approaches.¹⁰ The conceptual approach is utilised to operationalise Werner Menski's theory of legal pluralism as the primary analytical framework. Through this framework, the study examines the interaction and balance among three dimensions of law: state law, social norms, and moral-ethical values. These dimensions serve as analytical categories for identifying normative gaps, assessing the extent to which existing land acquisition regulations accommodate social realities and substantive justice, and formulating a reconstruction of justice in land acquisition for public purposes. The statutory approach is employed to evaluate the consistency, synchronisation, and effectiveness of the provisions contained in Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest and its related regulations. The research data consist of primary legal materials (statutes, implementing regulations, and court decisions concerning land acquisition disputes), secondary legal materials (books, journal articles, research reports, and institutional studies), and tertiary legal materials (legal dictionaries and encyclopedias). The data were analyzed qualitatively through normative legal reasoning by comparing the provisions of Law Number 2 of 2012 and its amendments with findings derived from court decisions, institutional reports, and relevant scholarly literature. The findings were then examined using Werner Menski's legal pluralism framework, particularly the interaction between state law, social norms, and moral values, to identify normative inconsistencies, gaps between legal norms and social realities, and weaknesses in the existing land acquisition framework. This analytical process served as the basis for formulating a reconstruction model and policy recommendations aimed at creating a more equitable, contextual, and socially responsive land acquisition system in Indonesia.

RESULTS AND DISCUSSION

A. Disparity between the Principle of Normative Justice and the Implementation of Land Acquisition for Public Interest Development in Indonesia

Land acquisition for public interest development in Indonesia is normatively regulated in Law Number 2 of 2012 concerning Land Acquisition for Public Interest Development, which was later amended into Law Number 6 of 2023 concerning the Stipulation of

¹⁰ Andrzej Grabowski, "Juristic Concept of the Validity of Statutory Law," *A Critique of Contemporary Legal Nonpositivism*, Heidelberg–New York–Dordrecht–London, 2013.

Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law Substantively, it regulates the principles of land acquisition to create legal certainty in the process. The term “public interest” for “the people” seems clear; however, when understood more deeply and looking at the situation on the ground, there may be problems. Interpretations tend to deviate. These facts and phenomena require clarification or, at the very least, socialization of the meaning of “the people” in land acquisition for the public interest.¹¹ In reality, these regulations are not in line with what actually happens in the implementation of Land Acquisition for Public Interest Development. Various problems arise and cause prolonged conflicts, so that empirically, justice as a principle has not been fully realized. For example, Land Acquisition for the Development of Rempang Eco City was carried out in a threatening and repressive manner, thereby violating the community's right to freedom. On September 7, 2023, allegations of human rights violations arose due to the deployment of 1,000 joint forces and the use of tear gas to clear land in the indigenous community of Rempang Island. This deployment was considered excessive use of force. As a result, at least ten students and one teacher at Junior High School 22 Galang experienced shortness of breath, dizziness, and headaches. According to Zenzi Suhadi, National Executive Director of Walhi, the planning of the Rempang Eco-City from the outset did not involve the people living in the 16 Kampung Melayu Tua villages on Pulau 15 Rempang, who have lived there since 1834.¹²

From Werner Menski's perspective on legal pluralism, the Rempang Eco-City case clearly demonstrates an imbalance among the three pillars of law: state law, social norms, and moral-ethical values. The pillar of state law was strongly represented through the implementation of national development policies, land acquisition regulations, and the government's reliance on formal legal authority to facilitate strategic investment projects. However, this legal-formal approach was not accompanied by adequate recognition of the social norms embedded within the sixteen Kampung Melayu Tua communities that have inhabited Rempang Island for generations. These communities possess historical ties, communal relationships, and customary understandings of land that extend beyond formal ownership documents. At the same time, moral and ethical values relating to human dignity, justice, participation, cultural identity, and the spiritual attachment of local communities to their ancestral land were insufficiently incorporated into the decision-making process. Consequently, the conflict in Rempang reflects not merely a procedural dispute over land acquisition but a broader failure to integrate state law with social norms and moral-ethical values. In Menski's framework, such an imbalance inevitably weakens the legitimacy of public policy, triggers social resistance, and prevents the realisation of substantive.

Category	Number of Complaints
Disputes in the compensation process (socialization, appraisal, to payment)	29

¹¹ Sahnan Sahnan, M Yazid Fathoni, and Musakir Salat, “Penerapan Prinsip Keadilan Dalam Pembebasan Tanah Bagi Pembangunan Untuk Kepentingan Umum,” *Jurnal IUS Kajian Hukum Dan Keadilan* 3, no. 3 (2015).

¹² Hartono et al., “Dampak Proyek Strategis Nasional Terhadap Hak Asasi Manusia.”

Land disputes and implementation of decisions related to land disputes	4
Disturbances to communities and customary lands	3
Dredging of sea sand/coastal areas	2
Disturbances to residences, housing and supporting facilities (water resources, etc.)	3
Total	41

Source: Report of the National Human Rights Commission 2024

Based on data from the National Human Rights Commission, at least when focusing on National Strategic Projects alone, the conflict is already very concerning, not to mention the added conflict of land acquisition outside of the National Strategic Project. The data shows that the category of compensation disputes is the most dominant issue, accounting for 29 of 41 cases. This indicates that the mechanisms for appraisal, socialization, and compensation payments are still far from the principles of “fair and reasonable.” Complaints related to disturbances to indigenous communities, coastal dredging, and disturbances to residences also indicate that land acquisition often causes social-psychological, ecological, and cultural impacts that are not adequately considered within the framework of state law.

If the focus is directed at National Strategic Projects, then the level of conflict becomes even more alarming. The data only illustrates the peak of the phenomenon; outside of National Strategic Project, land acquisition conflicts occur with equally high intensity. This indicates a structural disparity between the principle of normative justice as formulated in regulations and the practice of land acquisition in the field.¹³ Thus, a fundamental gap exists between the principle of justice in legal norms and its implementation, particularly in terms of participation, transparency, compensation mechanisms, and the protection of the rights of indigenous peoples.

In addition, a fundamental problem in land acquisition implementation is the lack of synchronization between formal procedures regulated by law and administrative practices at the local level. Socialization mechanisms that are supposed to guarantee the right to information are often limited, one-sided, or merely a formality to fulfill administrative legal requirements. Many residents report that information regarding the project's form, the required land area, the compensation amount, and the basis for assessing compensation is not communicated transparently.¹⁴ The appraisal process is also often perceived as not being independent because appraisers are considered to be too closely associated with the interests of the project. This puts the community in an unbalanced position in negotiations,

¹³ S M Holtslag-Broekhof et al., “Perceived (in) Justice of Public Land Acquisition,” *Journal of Agricultural and Environmental Ethics* 29, no. 2 (2016): 167–84.

¹⁴ Marcello De Maria, Elizabeth J Z Robinson, and Giacomo Zanello, “Fair Compensation in Large-Scale Land Acquisitions: Fair or Fail?” *World Development* 170 (2023): 106338.

so that the principle of fair compensation promised by Law 2/2012 is not truly realized in practice.

In addition, the vulnerability experienced by indigenous peoples and coastal communities, for example, highlights that the land acquisition process still fails to account for the diverse rights systems and social relationships within these communities. In many cases, including those involving national strategic projects, customary rights are not fully understood, which means that customary land is often considered state land or land without a clear legal status.¹⁵ Land acquisition is carried out in these circumstances without protecting the cultural identity, living space, and spiritual and historical relationship of indigenous peoples with the land. Data from the National Human Rights Commission indicate that land acquisition has not fully incorporated the principles of substantive justice and protection of vulnerable groups, as required by human rights, resulting in disturbances to indigenous peoples and their land, coastal area reclamation, and loss of access to water resources.

This condition further illustrates Menski's argument that legal justice cannot be achieved solely through compliance with statutory regulations. When state law operates without meaningful consideration of customary norms and moral-ethical values, legal certainty may be formally achieved, but social legitimacy and substantive justice remain unattainable. Therefore, the persistence of land acquisition conflicts in indigenous and coastal communities demonstrates the urgent need to rebalance the relationship between state law, social norms, and moral-ethical values within Indonesia's land governance framework.

B. The Dominance of a Legal-Formal Approach in the Land Acquisition Process and the Neglect of Social-Cultural Dimensions

The implementation of land acquisition in Indonesia to date is still heavily dominated by a legal-formal approach that relies on positive regulations, administrative procedures, and the state's authority to determine the "public interest".¹⁶ This approach establishes state law as the sole valid reference for determining land status, compensation mechanisms, and the process of releasing rights. Within the framework of Werner Menski's legal pluralism, this practice reflects the dominance of legal centralism, namely the tendency of the state to overlook the existence of other legal systems within society, such as customary law, social norms, and local cultural values.¹⁷ As a result, the land acquisition process tends to be top-down, less participatory, and far from the principle of substantive justice.

In many cases, affected communities feel that the land acquisition process only emphasizes the fulfillment of formal procedures without considering the socio-cultural aspects inherent in land as a living space.¹⁸ Land is not only understood as an economic asset, but also a symbol of identity, history, and kinship relations. However, this perspective is often not accommodated in the process of identifying rights holders, social mapping, or

¹⁵ Mustafa Bola, "Legal Standing of Customary Land in Indonesia: A Comparative Study of Land Administration Systems," *Hasanuddin Law Review* 3, no. 2 (2017): 175-90.

¹⁶ Putri Raihan Wirda, Rahmad Efendy Al Amin Siregar, and Azka Amalia Jihad, "Criminal Evidence Auction System At The Aceh Besar District Prosecutor's Office Based On Islamic Law's Perspective," *JURISTA: Jurnal Hukum Dan Keadilan* 9, no. 2 (2025): 404-25.

¹⁷ Hanisah Binte Abdullah Sani, "State Law and Legal Pluralism: Towards an Appraisal," *The Journal of Legal Pluralism and Unofficial Law* 52, no. 1 (2020): 82-109.

¹⁸ Tsegaye Moreda, "Large-Scale Land Acquisitions, State Authority and Indigenous Local Communities: Insights from Ethiopia," *Third World Quarterly* 38, no. 3 (2017): 698-716.

determining the form of compensation.¹⁹ When customary land or communal land does not have formal certificates, the state tends to classify it as state land, ignoring historical evidence and practices of hereditary ownership.²⁰ This discrepancy creates a sense of injustice and encourages communities to resist, as seen in the Rempang dispute, dam construction conflicts, and highway infrastructure projects in various regions. This neglect of socio-cultural dimensions also weakens the legitimacy of the government and erodes public trust in land acquisition.²¹ When communities do not feel that their dignity is respected and are not meaningfully involved, the land acquisition process becomes prone to prolonged conflict, even if it is formally considered to have followed procedure. Data from the National Human Rights Commission in 2024 shows that most complaints relate to compensation disputes and disturbances to indigenous communities, demonstrating that social and cultural issues cannot be simplified into mere administrative matters. The state's tendency to prioritize the acceleration of projects, especially National Strategic Projects, without considering sociological aspects, actually reinforces the inequality in the relationship between the state and its citizens, and widens the gap between normative justice and the justice perceived by the community.

In addition, intense pressure from the government to pursue development targets, particularly within the framework of National Strategic Projects, has led to unequal power relations between state officials and affected citizens. In many cases, officials in the field feel they have complete legitimacy to use coercive approaches to ensure the smooth running of projects, ranging from subtle intimidation and forcing people to sign agreements to deploying security forces.²² This pattern reveals that the legal-formal approach not only overlooks socio-cultural norms but also has the potential to give rise to repressive practices that contradict the principles of procedural justice. In the logic of legal pluralism, such actions reflect the dominance of state law, which is unable to interact harmoniously with social norms and community values that should be integral to the decision-making process.

The dominance of the legal-formal approach also reveals its limitations when dealing with Indonesia's social reality, which is multicultural and characterized by diverse land rights. Land acquisition procedures are often implemented based on the assumption that all communities have the same understanding of land administration, when in fact many indigenous and rural communities have land tenure systems rooted in oral traditions, deliberation, and communal ownership structures.²³ When the state fails to accommodate these differences, the land acquisition process becomes an instrument of homogenization, imposing a single legal logic on various local legal systems. As a consequence, the space for dialogue and negotiation, which should be a fundamental mechanism in a pluralistic context, is lost, and communities become increasingly alienated from processes that directly affect their living spaces. The originality of this study lies not only in identifying the limitations of the legal-formal approach in land acquisition but also in applying Werner

¹⁹ Erik Swyngedouw and Callum Ward, "Land as an Asset," in *The Political Economy of Land* (Routledge, 2022), 40–55.

²⁰ Rikardo Simarmata, "The States Position Regarding Registration of Customary Land (Orientasi Negara Dalam Pendaftaran Tanah Adat Di Indonesia)," *The Indonesian Journal of Socio-Legal Studies* 1, no. 1 (2021): 3.

²¹ yakub Yulizar, "Perlindungan Hukum Terhadap Korban Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Di Sumatera Barat" (Universitas Andalas, 2017).

²² Laurens Bakker, "Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences & Humanities Open* 8, no. 1 (2023): 100624.

²³ Ahmad Dhiaulhaq and John F McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54.

Menski's theory of legal pluralism as a comprehensive analytical framework for understanding the interaction between state law, social norms, and moral-ethical values in the Indonesian context. While previous studies have generally focused on legal certainty, compensation disputes, or procedural aspects of land acquisition, this research demonstrates that injustice emerges from the imbalance among these three dimensions of law. Based on this finding, the study develops a pluralistic, participatory, and contextual reconstruction model of justice, aiming to harmonise legal certainty with social legitimacy and substantive justice. This reconstruction constitutes the principal contribution of the study to both the development of legal pluralism theory and the reform of land acquisition policies in Indonesia.

C. Inequality in Bargaining Power and Unequal Access to Justice for Affected Communities

One of the most fundamental problems in land acquisition for public purposes in Indonesia is the imbalance in bargaining power between the state, through its bureaucracy and security apparatus, and the community whose land is to be taken.²⁴ The state has full access to regulatory instruments, budgeting, licensing authority, and even the legitimacy to use force. In contrast, affected communities are often in a weak position, as they have limited information, no expert advisors, and lack an understanding of complex legal procedures. In such situations, negotiations regarding the form and value of compensation are unequal, as the community is in a position where it must accept the government's offer or face the threat of consignment proceedings. This imbalance makes the principle of justice in Law 2/2012 and its derivative regulations more declarative than operational.

Inequality in access to justice becomes even more apparent when communities try to voice their objections through formal legal channels. Administrative objection mechanisms, lawsuits filed with the State Administrative Court, and legal actions against location decisions require technical legal expertise, costly legal assistance, and a significant amount of time. Rural communities, indigenous communities, and economically disadvantaged groups are clearly not on an equal footing with project developers or the government. Even when communities do file objections, the results are often ineffective because court decisions frequently side with the state based on "public interest" and the urgency of development. From the perspective of Werner Menski's legal pluralism, this situation illustrates the dominance of state law, which fails to provide a proportional space for people's law values, traditions, and community interests in the pursuit of justice.

Additionally, access to public information related to the land acquisition process remains inadequate. The socialization carried out by project implementers is often merely a formality, lacking transparency. It sometimes does not provide sufficient opportunity for the community to understand the long-term consequences of development.²⁵ The lack of clarity regarding compensation values, appraisal criteria, and relocation mechanisms leaves the community in a state of uncertainty that weakens their bargaining position. The principles of transparency, participation, and accountability, which should be the

²⁴ Rofi Wahanisa et al., "Problems of Disputes/Conflicts over Land Acquisition towards Development for Public Interest in Indonesia," *International Journal* 10 (2021): 321.

²⁵ Trenggana and Vebritha, "Peran Pemerintah Dalam Pengadaan Tanah Untuk Pembangunan Infrastruktur Publik: Studi Mekanisme Dan Kebijakan."

foundation of procedural justice, are violated in practice, thereby increasing the potential for discrimination and marginalization of those affected.

This imbalance in bargaining power becomes even more complex when it comes to indigenous peoples and communities that depend on land as the basis of their identity and collective living space. Compensation mechanisms based on economic value cannot replace the cultural significance of land that has been passed down through generations. In many cases, indigenous communities do not even have access to prove their rights administratively because the national land system does not recognize evidence of ownership based on history, customary testimony, or communal control structures.²⁶ As a result, they are trapped in a situation of legal vulnerability, as their land is considered illegal under state law, putting them in the weakest possible bargaining position.

D. Reconstruction of Land Acquisition Justice Based on Legal Pluralism Werner Menski

Term "legal pluralism" gained popularity among academics and English-speaking scientific communities following the publication of Barry Hooker's book on the subject in 1975. There has been much important research and debate on the subject. In 1576, French thinker Jean Bodin promoted the cultural elements of law. To understand legal pluralism, it is essential to grasp its philosophical underpinnings and historical context.²⁷ Legal centralism, the idea that the law is the law of the state that applies uniformly to all people and is enforced by state institutions, often gives rise to thoughts about legal pluralism.²⁸

Critical thinking about the dominant currents of legal centralism and positivism in the study of the relationship between law and society forms the basis for research on legal pluralism.²⁹ According to Griffiths, centralism is the idea that the concept of law solely encompasses an understanding of state-produced law and that this law applies universally to all citizens. The concept of legal pluralism aims to illustrate how the various legal systems that operate within society interact with one another.³⁰ People who live ecologically in a chthonic way, meaning they live in or almost in harmony with the earth, often discuss legal pluralism as a theme.

The development of the discussion of legal pluralism converged on Werner Menski's triangular theory of legal plurality, which supports Lawrence M. Friedman's idea of a third component of the legal system, legal culture.³¹ Due to the diversity that exists in legal culture, a legal theory is needed that can explain legal pluralism. The three approaches of normative, empirical, and philosophical law are used proportionally in Menski's method. This study is highly relevant to Asian and African law.³²

Furthermore, in 2006, Werner Menski refined his Triangular Theory of Pluralism Law. This theory supports the idea that legal pluralism is not only related to differences in

²⁶ Ayu Chairun Nisa and Arini Asriyani, "Dinamika Agraria Nasional Dan Sengketa Tanah Adat Dalam Perspektif Hukum Kontemporer," *Jurnal Ilmiah Multidisiplin Amsir* 3, no. 2 (2025): 173–80.

²⁷ Ian C Pilarczyk, Angela Fernandez, and Brian Young, *Law, Life, and the Teaching of Legal History: Essays in Honour of G. Blaine Baker* (McGill-Queen's Press-MQUP, 2022).

²⁸ Geoffrey Swenson, "Legal Pluralism in Theory and Practice," *International Studies Review* 20, no. 3 (2018): 438–62.

²⁹ Achmad Hariri, Satria Unggul Wicaksana, and Samsul Arifin, "A Critical Study of Legal Positivism As a Legal System in a Pluralist Country," *KnE Social Sciences*, 2022, 563–72.

³⁰ B Wolski, "Mediators and Substantive Justice: A Sociocultural Perspective," in *Law and Society Association of Australia and New Zealand Conference 2017: A Meeting Place for Interdisciplinary Explorations of Justice*, 2017.

³¹ Afieq Mufty Djunaidy, Sri Damayanti, and Ricky Ridwan Firmansyah, "Perspective of Legal Culture and Legal Pluralism in the Ahmadiyah Group in Indonesia," *Social Impact Journal* 3, no. 2 (2024): 70–77.

³² Werner Menski, *Perbandingan Hukum Dalam Konteks Global: Sistem Eropa, Asia Dan Afrika* (Nusamedia, 2019).

positive law between countries and nations, but also to the legal behavior of individuals or groups in each country and Indonesian society. It is unreasonable to study legal systems, including judicial systems and positive law, using only one type of methodology. According to Menski, three main pillars form the foundation of law as a whole: natural law (encompassing religious, ethical, and moral principles), state positivism, and societal norms.³³

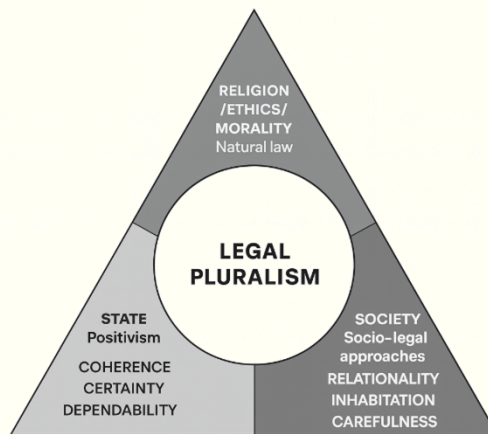
Reconstructing justice in land acquisition through Menski's approach to legal pluralism entails correcting the state's tendency to view land acquisition solely as a formal legal process. For reconstruction, this process must open up more space for the voices of the community and the moral and cultural values attached to the land. In the context of indigenous communities, for example, land is not merely an economic commodity but a symbol of identity, spirituality, and generational continuity. Ignoring this dimension is tantamount to denying aspects of natural law and societal law that should be an important part of considerations of justice.

The legal pluralism approach also requires legal interlegality, namely the meeting and dialogue between different legal systems. The state is no longer positioned as the sole source of legal truth, but as a mediator that must balance development needs with the protection of citizens' rights and the interests of indigenous peoples. In the reconstruction of land acquisition, this means that the process of identifying rights must involve socio-cultural mapping, meaningful participation, and recognition of non-certificated evidence of ownership that is valid according to customary law. Thus, the state does not merely carry out procedures, but delivers justice that is acceptable to the public.

In addition, this approach requires a transformation in the compensation mechanism so that it is not solely based on economic value. The principle of just compensation must be expanded to fair compensation, which takes into account factors such as loss of livelihood, social cohesion, spiritual aspects, and community sustainability. In many cases, economic value cannot replace the meaning of land in the socio-cultural system of indigenous peoples. Therefore, the Menski approach encourages the use of a hybrid mechanism: material compensation, guarantees of social sustainability, and guarantees of cultural identity recognition, so that the land acquisition process is truly in line with the principle of intergenerational justice.

Pluralistic legal reconstruction also requires reform in decision-making governance. Public participation must be designed from the planning stage, not merely socialized after decisions have been made. The state needs to shift from a top-down approach to a dialogical one, making the community a subject rather than an object in the development process. Legal assistance, transparent access to information, and the strengthening of independent mediation institutions are important instruments for reducing the imbalance in bargaining power between the community and the state. By strengthening the three pillars outlined by Menski, land acquisition is no longer seen as a conflict between development and citizens' rights, but as a joint process to achieve a balance between the public interest, justice, and the rights of citizens.

³³ Menski, "Remembering and Applying Legal Pluralism: Law as Kite Flying."



Werner Menski's model of legal pluralism is beneficial in explaining why various principles in Law No. 2 of 2012 on Land Acquisition, which were reaffirmed in Law 6/2023 as part of the enactment of the Job Creation Perppu, are not fully realized in practice. Normatively, the law contains important principles such as humanity, justice, benefit, certainty, openness, agreement, participation, welfare, sustainability, and harmony, which ideally reflect a combination of the pillars of natural law (moral and ethical values), state positivism (legal certainty), and society (recognition of the social and cultural interests of the community). However, in its implementation, land acquisition is more often oriented towards formal procedural certainty, so that these principles do not work in a balanced manner as intended in the regulation.

When viewed from Menski's triangle theory, state dominance in land acquisition shows an excessive strengthening of the pillar of state positivism and a weakening of the other two pillars. Although the law mandates adherence to the principles of openness, agreement, sustainability, and respect for community rights, the reality on the ground often reveals a lack of meaningful participation and inadequate protection of the socio-cultural interests of local and indigenous communities. Thus, the normative principles in Law 2/2012, such as humanity, justice, participation, and welfare, are actually firmly rooted in the pillars of natural law and society; however, their implementation has deviated from these two pillars due to the dominant legal-formal approach.

Within the framework of reconstructing justice in land acquisition, Menski's theory provides a basis that the successful realization of the principles of Law 2/2012 and Law 6/2023 is highly dependent on the state's ability to balance the three pillars of law proportionally. Reconstruction of justice means shifting the orientation of policy from merely fulfilling legal procedures to integrating moral values (substantive justice), the socio-cultural needs of society, and legal certainty that is not repressive. With a legal pluralism approach, the principles in the Land Acquisition Law are not only norms at the textual level, but are truly realized in a participatory, transparent, and socially sensitive process, thereby reducing conflict and increasing the legitimacy of land acquisition policies for the public interest.

The theoretical contribution of this study lies in refining the application of Werner Menski's legal pluralism theory within the context of land acquisition law in Indonesia. While Menski's framework has been widely employed to explain the coexistence of multiple legal orders, this study demonstrates its analytical value in identifying the structural imbalance between state positivism, social norms, and moral-ethical values that underlie persistent land acquisition conflicts. By positioning these three dimensions as

interconnected analytical categories, the study extends the relevance of legal pluralism theory beyond a descriptive framework to a normative basis for reconstructing justice in land governance. In addition, the originality of this research lies in the formulation of a reconstruction model of land acquisition justice based on a pluralistic, participatory, and contextual approach. Unlike conventional approaches that primarily emphasise procedural legality and legal certainty, the proposed model seeks to integrate substantive justice, socio-cultural legitimacy, and meaningful public participation into every stage of land acquisition. This model offers a conceptual framework that balances development objectives with the protection of community rights, particularly those of indigenous peoples and vulnerable groups. In practice, this study provides policy recommendations for strengthening socio-cultural mapping, institutionalising meaningful participation, recognising customary and non-certificated land rights, reforming compensation mechanisms beyond purely economic valuation, and enhancing access to legal assistance and independent mediation. These recommendations are expected to support the development of a more legitimate, equitable, and socially responsive land acquisition system in Indonesia.

CONCLUSION

The positive legal framework that has dominated land acquisition has not been able to guarantee substantive justice for the affected communities fully. The dominance of state law makes land acquisition mechanisms more oriented towards development efficiency than towards protecting community rights. Second, Werner Menski's perspective of legal pluralism helps identify that justice in land acquisition can only be achieved when the state accommodates local community norms and moral-religious values regarding justice, deliberation, and partiality towards vulnerable groups. Third, reconstructing justice in land acquisition requires a paradigm shift: from a legalistic approach to a pluralistic, participatory, and contextual approach. Thus, equitable land acquisition necessitates a balanced integration of legal certainty, social legitimacy, and ethical justice to achieve inclusive and sustainable development. This study contributes theoretically by refining the application of Werner Menski's legal pluralism theory within the context of land acquisition law in Indonesia and practically by offering a pluralistic, participatory, and contextual reconstruction model as a policy framework for more equitable land governance. The practical implication of this model is that policymakers should strengthen socio-cultural mapping prior to land acquisition, ensure meaningful community participation throughout decision-making processes, recognize customary and communal land rights, develop compensation mechanisms that consider social and cultural losses in addition to economic value, and enhance independent mediation mechanisms to prevent and resolve conflicts more effectively. Future research is recommended to examine the implementation of this reconstruction model through empirical socio-legal studies, particularly in indigenous territories, National Strategic Projects, and other regions characterised by strong legal pluralism. Further studies may also examine the interactions among state law, customary law, and moral-religious values in specific land acquisition cases to assess the effectiveness of legal pluralism in achieving substantive justice.

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