

Reconceptualization of Land Acquisition Regulations for Tourism Village Development Based on the Principle of Public Interest

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Abstract

Villages hold a strategic position in harnessing tourism potential as part of regional autonomy at the regency and city levels. Such development efforts can yield substantial economic gains and enhance the welfare of local communities. Despite this, the existing legal framework confines the authority to carry out land acquisition for tourism area development solely to four entities: the central government, regional administrations, state-owned enterprises (“BUMN”), and regionally owned enterprises (“BUMD”). As a result, village governments and village-owned enterprises face limitations in developing village tourism areas. This study employs a normative juridical approach, integrating conceptual and statutory methods. The findings indicate that strengthening decentralization and focusing on rural development present opportunities to empower village governments and village-owned enterprises with the authority to acquire land. The restriction of land acquisition for tourism areas to the central government, regional governments, SOEs, and ROEs is becoming increasingly irrelevant. Village tourism areas possess more significant economic potential when managed directly by village governments and village-owned enterprises, with active involvement from local communities. Therefore, a legal reconstruction is necessary to expand the entities authorized to acquire land for village tourism development. This can be achieved by harmonizing relevant legislation, particularly Law No. 2 of 2012, in conjunction with Law No. 6 of 2023 and Government Regulation No. 11 of 2021. Such harmonization will support village governments and village-owned enterprises in realizing effective, sustainable, and inclusive village tourism development.

Keywords: *Land Acquisition, Village Tourism, Village Government, Village-Owned Enterprises, Public Interest.*

1. INTRODUCTION

The existence of villages within the governmental structure of the Unitary State of the Republic of Indonesia (NKRI) plays a crucial role in supporting national development.¹ Advancing a region—whether at the regency, city, or provincial level—requires first improving the minor administrative areas, namely villages. Although villages, or other equivalent terms, are not categorized as regional autonomy administrators, they are an essential part of the regional autonomy

¹ Sunarso Siswanto, *Hukum Pemerintahan Daerah di Indonesia* (Jakarta: Sinar Grafika, 2023), 11. Look further into Sri Soemantri, *Pengantar Perbandingan Antar Hukum Tata Negara* (Jakarta: Rajawali Press, 1981), 52.

administered by regency or city governments. Despite this, villages remain highly strategic as they represent the smallest administrative unit of government, enabling communities to participate directly in village development. Development planning typically initiates at the lowest level of government, such as villages, and is subsequently communicated upward to higher tiers of governance, following a bottom-up approach. The effort to achieve successful development encompasses various aspects, including the economy, social welfare, education, public services, religion, and many others.

However, these development efforts must not only be measured through economic outcomes but must also reflect a commitment to social justice as mandated by the values of Pancasila and Article 33 of the 1945 Constitution, particularly in realizing distributive (*or social*) justice and legal equity for village communities.² The principle of social justice must be central to ensuring that every development program—especially those affecting access to land and economic resources—is inclusive, fair, and does not marginalize rural communities.³ Justice in this sense demands not only formal equality before the law but also substantive equality in access, participation, and outcomes. Development should thus be anchored in policies that empower villages as rights-bearing entities—not merely as beneficiaries—so they can negotiate fairly within the legal framework.

Efforts to enhance regional economic growth through the role of villages include managing economic sectors directly administered by the village, one of which is the development of tourism villages. A tourism village involves managing specific areas handled by the village government, cooperatives, village-owned enterprises, or specific community groups. Another concept aspect is that tourism villages are assets based on the village's potential, with unique features and attractions that can be empowered and developed as tourism products to attract visitors.⁴ Tourism villages undoubtedly increase the village's income and the local community.⁵ When appropriately managed, tourism villages can have a significant economic impact on the village while improving the welfare of its residents.⁶ Revenue generated from managing tourism villages can also be used as capital for further village development. The inherent local wisdom of rural communities further enhances the appeal of tourism villages. According to I Nyoman Nurjaya, the development of tourism (including in villages) can serve as an economic instrument in national development, fostering an awareness of national identity within diversity.⁷

The development of tourism villages requires land as a fundamental asset to determine the location and other necessary infrastructure.⁸ Without land, the establishment of a tourism village would be impossible. Therefore, land availability must first be ensured before developing a tourism village. In the context of public agrarian law, one of the legal

2 Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (June 30, 2023): 94 and 97, <https://doi.org/10.24090/volksgeist.v6i1.7867>.

3 Rosmidah Rosmidah and Dony Yusra Pebrianto, "Transparency Principle on Land Acquisition for Agrarian Justice," *Jambe Law Journal* 3, no. 1 (November 29, 2020): 93–97, <https://doi.org/10.22437/jlj.3.1.83-101>.

4 Bagus Sudibya, "Wisata Desa dan Desa Wisata," *Bali Membangun Bali: Jurnal Bappeda Litbang* 1, no. 1 (2018): 22.

5 I Nyoman Nurjaya, "Legal Policy of Sustainable Tourism Development: Toward Community-Based Tourism in Indonesia," *Journal of Tourism Economics and Policy* 2, no. 3 (2023): 127.

6 Nur Sulistyoto Budi Ambarini, Ema Septaria, and M. Yamani, "Tourism Village Management by Village Owned Enterprises in Business Legal Perspective" (International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023), Atlantis Press, 2023), 1269, https://doi.org/10.2991/978-2-38476-180-7_129.

7 Ambarini, Septaria, and Yamani.

8 Fifik Wiryani and Mokhammad Najih, "The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia," *Sriwijaya Law Review* 5, no. 2 (2021): 176.

mechanisms to provide land for developing tourism villages is “*land acquisition based on the principle of public interest*”. Land acquisition for public interest is an effort by the government to provide land for the benefit of the general public.⁹ This process involves providing fair and adequate compensation to affected communities, with the ultimate goal of maximizing public welfare.¹⁰ In this regard, land should be recognized not only as a spatial resource but also as a vital village asset that supports long-term economic and social development. Then, to ensure justice, this process must incorporate principles of social equity, demanding that compensation extends beyond procedural formality to substantive fairness. This entails safeguarding affected citizens from disadvantage and upholding their rights throughout the process. The mechanism for land acquisition is comprehensively regulated under Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. According to Article 1, point 2 of Law No. 2 of 2012, Land Acquisition is defined as: “*An activity to provide land by granting proper and fair compensation to entitled parties.*” The term entitled parties refers to those who possess or own the object of the land acquisition.¹¹ Land acquisition may involve not only the land itself but also its associated components, including the airspace above, the subsoil beneath, buildings, vegetation, objects attached to the land, and other appraisable elements.¹²

Land acquisition differs fundamentally from the concept of buying and selling land rights as understood in civil law. This distinction arises because land acquisition is carried out by public authorities, such as the government, and is grounded in the principle of public interest. Unlike civil law—which operates on private legal relations and does not recognize the public interest principle—land acquisition falls under the domain of public law, where societal interests take precedence. The foundation for the public interest principle, as outlined in Law No. 2 of 2012, can be traced back to Articles 6 and 18 of Law No. 5 of 1960 on the Basic Agrarian Law.¹³ Therefore, a land acquisition mechanism can be implemented to provide land for the development of a tourism village managed publicly by the village government or community groups within the village. The legal basis for land acquisition for the development of tourism villages is stipulated in Article 10 letter v of Law No. 2 of 2012 in conjunction with Law No. 6 of 2023, which regulates that: “*Land for Public Interest as referred to in Article 4 paragraph (1) is used for development purposes, including: ... v. tourism areas initiated and/or controlled by the Central Government, Regional Government, state-owned enterprises, or regionally-owned enterprises.*”

The current legal framework under Law No. 2 of 2012 fails to empower village governments to independently carry out land acquisition for tourism village development. Specifically, Article 10 letter v of Law No. 2 of 2012, as amended by Law No. 6 of 2023, exclusively grants land procurement authority to the Central Government, Regional Governments, state-owned enterprises (SOEs), and regionally-owned enterprises (ROEs). This limitation on the village government’s authority carries both normative and practical consequences. In practice, land acquisition initiatives for tourism village development require coordination with district or municipal governments as

9 Mukmin Zakie, “Konflik Agraria Yang Tak Pernah Reda,” *Legality: Jurnal Ilmiah Hukum* 24, no. 1 (2017): 40.

10 Zakie.

11 Article 1, point 3 of Law No. 2 of 2012.

12 Article 1, point 4 of Law No. 2 of 2012.

13 Suhadi, “Harmonization of Regulation on Land Acquisition For Infrastructure Development with Public-Private Partnership Scheme In Indonesia” (1st International Conference on Indonesian Legal Studies (ICILS 2018), Atlantis Press, 2018), 212, <https://doi.org/10.2991/icils-18.2018.40>.

implementing authorities. In fact, local community involvement is closely related to strengthening decentralization and regional income. The significant potential for the development and growth of tourism villages constitutes a crucial asset, warranting focused policy attention to maximize their positive impacts on the welfare of village communities.¹⁴

Without the meaningful inclusion of village actors in the legal framework of land acquisition renders the principle of social justice—especially equitable right access for marginalized rural populations—risks becoming rhetorical. Legal exclusion reinforces structural disadvantages and deepens inequality. Therefore, legislative reform must expressly acknowledge villages as legitimate stakeholders in land governance. This transformation transcends procedural adjustments; it constitutes a substantive justice, affirming the dignity and agency of rural communities. It ensures that development is not imposed from above but shaped by the voices and needs of those most directly affected at the grassroots level.

The central government's focus on initiating national development from the village level presents a significant opportunity to promote the development of tourism villages as part of the national strategic agenda. In light of this, affirmative measures are needed to provide greater scope for village governments to play a more active role in the land acquisition process for tourism village development. Furthermore, there is a pressing need for more straightforward regulations regarding village governments' participation in the planning and implementation of land acquisition. Such regulations would enhance local community involvement and ensure that tourism village development adheres to public interest principles and legal certainty. These two principles are closely interconnected with efforts to create land acquisition for tourism village development that align with the elements of public interest and strengthen decentralization in local government. Similarly, the principle of legal certainty serves as a legal guarantee for realizing land acquisition for tourism village development.¹⁵

Dwi Edi Wibowo and colleagues' study, "*Ecological Justice-Based Village Tourism Management Strategies: What and How?*" examines the concept and implementation of ecological justice-based strategies for managing tourism villages. The study adopts a Community-Based Tourism (CBT) approach to achieve ecologically just management of tourism villages in Indonesia.¹⁶ The weakness of that research is not explain in depth the norm development model in Land Acquisition Law for village tourism management, so that the process is fair.

Another study conducted by Nadyah Maylika Rahmawati, titled "*Legal Politics of Utilizing Village Fund Allocation in Traditional Tourist Village Ngadas, Poncokusumo Sub-District, Malang Regency,*" explores the legal politics behind the use of village fund allocations in the development of the traditional tourism village of Ngadas in Poncokusumo Sub-District, Malang Regency.¹⁷ Nadyah Maylika Rahmawati's study examines the importance of utilizing village fund allocations to ensure that the

14 Anak Agung Gede Ngurah Jaya Agung, "Management Model of Traditional Village-Based Tourism Objects in the Perspective of Tourism Law" (2nd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2021), Atlantis Press, 2021), 22-23, <https://doi.org/10.2991/assehr.k.211203.005>.

15 M. Yazid Fathoni, Adi Sulistiyono, and Lego Karjoko, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 26, 2024): 64, <https://doi.org/10.29303/ius.v12i1.1351>.

16 Dwi Edi Wibowo et al., "Ecological Justice-Based Village Tourism Management Strategies: What and How?," *Syiah Kuala Law Journal* 8, no. 2 (2024): 329-45, <https://doi.org/10.24815/sklj.v8i1.39510>.

17 Nadyah Maylika Rahmawati, "Legal Politics of Utilizing Village Fund Allocation in Ngadas Traditional Tourist Village, Poncokusumo Sub-District, Malang Regency," *Iblam Law Review* 3, no. 3 (2023): 62-72.

conventional tourism village in Ngadas contributes optimally to economic development and embodies a tourism village characterized by local wisdom. However, a limitation of Rahmawati's research lies in its failure to address the reconstruction of norms in Land Acquisition Law. These two studies differ from the present research, which specifically examines the land acquisition mechanism to promote tourism village development within the framework of public interest principles enshrined in the Land Acquisition Law. This research holds particular relevance as it aims to develop a model of tourism village governance that is expected to enhance the village communities' welfare. This study's findings are expected to provide substantive contributions to the progressive development of land acquisition regulations in the future.

This research employs a normative juridical method, also known as doctrinal research,¹⁸ which is particularly suited to examining the legal vacuum and normative gaps regarding village participation in the land acquisition process. The Normative approach proves most appropriate as the research fundamentally concerns normative evaluation of laws and legal doctrines rather than empirical observation. Two principal analytical approaches include the statutory approach and the conceptual approach.¹⁹ The legal materials used in this research consist of primary legal sources derived from laws and regulations and secondary legal materials, including books, journals, and legal articles relevant to this study. The analysis techniques employed are grammatical and systematic interpretation. Grammatical interpretation is used to analyze the wording of legal provisions concerning land acquisition and tourism village development, while systematic interpretation helps situate those provisions within the broader legal framework governing decentralization and village authority. Crucially, those principles must be embedded within a broader commitment to social justice—ensuring that no group is unfairly displaced, neglected, or excluded in the name of development.

2. ANALYSIS AND DISCUSSION

2.1. The Concept of Land Acquisition for Public Interest Development

Physical infrastructure development, whether at the regional or national level, is a fundamental necessity to promote equitable development, drive economic growth, and ensure the creation of a just and prosperous society. The availability of land is an essential component of infrastructure development. Without land, it would be nearly impossible to realize successful infrastructure projects. Moreover, the increasing complexity of human needs has resulted in an increased demand for land availability. Similarly, from the development perspective, the growing demand for infrastructure inevitably underscores the critical need for land availability.²⁰ From a historical perspective, land regulation in Indonesia reflects a long and intricate history of policy development.²¹ Regardless of the specific mechanisms governing land utilization, its existence remains intrinsically linked to the broader public interest. Consequently, the state (particularly the government) holds the authority to regulate land allocation, use, provision, and

18 Bambang Sunggono, *Metode Penelitian Hukum*, 1st ed. (Jakarta: Raja Grafindo Persada, 2003), 42.

19 Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017), 133.

20 Darwin Ginting, *Kapita Selekta Hukum Agraria* (Jakarta: Fokusindo Mandiri, 2013), 122.

21 Suhadi and Aprila Niravita, "Urban Agrarian Reform: Opportunities and Challenges for Land Rights Among Low-Income Communities," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 353-354.

maintenance, as well as to establish the legal relationship between legal subjects and land.²²

Land acquisition is one method used to obtain land for development purposes within public agrarian law.²³ Land acquisition was first used in Presidential Decree Number 55 of 1993 concerning Land Acquisition for Implementing Development for Public Interest.²⁴ In this Presidential Decree, “*Land acquisition is any activity aimed at obtaining land by compensating those entitled to the land.*” Subsequently, Presidential Decree No. 55 of 1993 was replaced by Presidential Regulation No. 36 of 2005 on Land Acquisition for the Implementation of Development for Public Interest. Following the enactment of Law No. 2 of 2012, Presidential Regulation No. 36 of 2005 was also revoked and replaced by Presidential Regulation No. 71 of 2012. The frequent changes in these regulatory regimes indicate that the land acquisition issue is quite dynamic.²⁵ The current applicable provisions are Law No. 2 of 2012, as amended by Law No. 6 of 2023, along with its implementing regulations, namely Government Regulation No. 19 of 2021, in conjunction with Government Regulation No. 39 of 2023.

Legally, land acquisition is defined as any activity undertaken to obtain land by providing compensation to those who release or transfer the land, buildings, plants, and objects related to the land.²⁶ The normative definition is regulated in Article 1, paragraph 2 of Law No. 2 of 2012, which defines land acquisition as “*the activity of providing land by offering fair and equitable compensation to the entitled party.*” Based on these definitions, land acquisition consists of three elements, which include: (1) the activity of obtaining land to fulfill land needs for public development; (2) the provision of compensation to the party whose land becomes the object of land acquisition; and (3) the release of the legal relationship from the landowner to another party.²⁷

The fundamental principle in land acquisition is the existence of public interest. To clarify the meaning of land acquisition, the title of Law No. 2 of 2012 includes the principle of public interest, which is fully stated as “*Land Acquisition for Development for Public Interest.*” The concept of regulating public interest is also outlined in Article 18 of Law No. 5 of 1960, which states that “*for public interest, including the interests of the nation and state as well as the collective interests of the people, land rights may be revoked, with fair compensation and in the manner prescribed by law.*” According to Maria S.W. Sumardjono, the concept of public interest must not only meet its intended purpose but also generate tangible benefit for the community, and it should not be designed for profit (socially profitable, for public use, or used by the public).²⁸ Sitorus and Limbong define public interest as encompassing the needs, requirements, interests, and objective of the general public or a broader purpose.²⁹ In this context, land acquisition is not intended for

22 Martin Roestamy et al., “A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest,” *Land Use Policy* 120 (2022): 2, <https://doi.org/10.1016/j.landusepol.2022.106275>.

23 Wiryani and Najih, “The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia,” 178.

24 Edi Rohaedi, Isep H. Insan, and Nadia Zumaro, “Mekanisme Pengadaan Tanah Untuk Kepentingan Umum,” *PALAR (Pakuan Law Review)* 5, no. 2 (2019): 3, <https://doi.org/10.33751/palar.v5i2.1192>.

25 Muhammad Yusrizal, “Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum,” *De Lega Lata: Jurnal Ilmu Hukum* 2, no. 1 (2017): 125-126.

26 Silvia Salsabella and Tiyas Vika Widyastuti, “Pembaharuan Regulasi Pengadaan Tanah Untuk Kepentingan Umum Dalam Konsepsi Ganti Untung,” *Pancasakti Law Journal (PLJ)* 2, no. 1 (2024): 48.

27 Mudakir Iskandar Syah, *Dasar-Dasar Pembebasan Tanah Untuk Kepentingan Umum* (Jakarta: Jala Permata Aksara, 2007), 2.

28 Oloan Sitorus and Dayat Limbong, *Pengadaan Tanah Untuk Kepentingan Umum* (Yogyakarta: Mitra Kebijakan Tanah Indonesia, 2004), 7.

29 Adrian Sutedi, *Implementasi Prinsip Kepentingan Umum di Dalam Pengadaan Tanah Untuk Pembangunan* (Jakarta: Sinar Grafika, 2020), 82.

private or civil interests but rather for the general public interest, as manifested through the development of infrastructure, public facilities, and social amenities. According to Adrian Sutedi, the principle of public interest can be further elaborated into three aspects: (1) the nature of public interest, (2) the form of public interest, and (3) the characteristics of public interest.³⁰

In agrarian law studies, the concept of land acquisition is closely linked to public law studies as it pertains to the interests of the general public. The form of land release by the community also involves providing compensation sourced from the state budget (APBN) or regional budget (APBD).³¹ This is also reflected in Articles 6 and 18 of Law No. 5 of 1960, which state that land has a social function and serves the public interest.³² This social function forms the basis for land allocation, giving it a dimension of public interest; thus, it cannot be managed privately.³³ Therefore, the principle of public interest in land acquisition must fulfill the intended purpose and provide genuinely felt benefits to the community.³⁴ Other legal principles that must be fulfilled in land acquisition for public development include ensuring the welfare and prosperity of the nation, state, and society based on humanity, democracy, and justice.³⁵ These principles are extensively regulated in Article 33 of the 1945 Constitution of the Republic of Indonesia.³⁶

Law No. 2 of 2012 does not provide a clear interpretation or standard for the policy on land acquisition for public interest. It merely states, “*Public Interest is the interest of the nation, state, and society that must be realized by the government and used to the greatest extent for the prosperity of the people.*”³⁷ The lack of clarity in the interpretation and the absence of standardized guidelines undoubtedly create a legal issue in the practical implementation of development policies, as such ambiguities allow policymakers to interpret the provisions with considerable flexibility. Moreover, the approval or participation of the people directly impacted by the development projects also lacks a clear legal justification in Law No. 2 of 2012. Article 56 of Law No. 2 of 2012 merely states, “*In the implementation of Land Acquisition for Public Interest, every person is required to comply with the provisions of Land Acquisition for Development for Public Interest.*” Such a regulatory characteristic has the potential to be used as a legal basis by the government to seize the land of the people under the guise of development for public interest, as outlined in the framework of Law No. 2 of 2012 and its implementing regulations.

Government-implemented land acquisition policies, often carried out through compensation mechanisms, frequently disadvantage the public, particularly those in the lower to middle economic strata, due to their limited access to information, resources, and bargaining power. As a result, land acquisition processes frequently face significant obstacles and, in many cases, culminate in conflicts. This situation is supported by a report from the Agrarian Reform Consortium (Konsorsium Pembaruan Agraria, “KPA”), which recorded 115 agrarian conflicts caused by the development of National

30 Sutedi, 84.

31 Article 52, paragraph (1) of Law No. 2 of 2012.

32 Rahayu Subekti, “Kebijakan Pemberian Ganti Kerugian Dalam Pengadaan Tanah Bagi Pembangunan Umum,” *Yustisia* 5, no. 2 (2016): 377.

33 Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Djambatan, 1997), 229.

34 Supriyadi, “Rekonstruksi Kebijakan Pengadaan Tanah dan Kompensasinya Guna Kepentingan Proyek Strategis Nasional” (Disertasi, Semarang, Fakultas Hukum Universitas Islam Sultan Agung, 2021), 95.

35 Wiryani and Najih, “The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia.”

36 Rahayu Subekti, Tsabbita Ahmilul Husna, and Putri Balqis Salsabila, “Questioning Food Security in Green Constitution Conception: Realizing Sustainable Development Goals (SDGs) in Indonesia,” *Padjadjaran Jurnal Ilmu Hukum* 11, no. 2 (2024): 265; Jimly Asshiddiqie, *Konstitusi Ekonomi* (Jakarta: Kompas Media Nusantara, 2016), 68.

37 See Article 1, point 6 of Law No. 2 of 2012.

Strategic Projects through land acquisition mechanisms between 2020 and 2023.³⁸ This data reflects a structural problem in how land acquisition is planned and executed, where strategic development agendas tend to override the rights of vulnerable groups. Instead of ensuring inclusive development, the top-down implementation of PSN often neglects meaningful community participation and reinforces patterns of dispossession. So far, the National Strategic Project program has relied on land availability as the site for development.³⁹ The KPA's data, therefore, underscores the urgency of reformulating land acquisition policies to recognize community rights, minimize conflict, and promote justice-oriented development. Law No. 2 of 2012, in conjunction with Law No. 6 of 2023, serves as the government's legal basis for appropriating privately owned land (including certificate of ownership or SHM status) through compensation or consignment, despite whether such compensation is rejected by the landowners on the grounds of its inherently unjust nature. Beyond triggering the agrarian conflicts, these practices have also given rise to social conflicts, which often emerged as derivative consequences of unresolved land-related tensions.⁴⁰

Following the enactment of Law No. 11 of 2020 on Job Creation—which has been replaced by Law No. 6 of 2023—there is a derivative regulation, Government Regulation No. 42 of 2021 on the Facilitation of National Strategic Projects, which serves as a technical guideline to streamline land acquisition for National Strategic Projects (PSN).⁴¹ According to M. Nurul Fajri, Law No. 2 of 2012 indeed needs to be reviewed, particularly in two aspects: (1) the limitation of the principle of eminent domain to appropriate private property, such as land, on the grounds of public interest; and (2) the need for clarity in defining land acquisition for public interest, along with addressing the social impacts resulting from land acquisition.⁴² The regulation of public interest, which tends to be determined subjectively in each National Strategic Project (PSN), has the potential to justify arbitrary policies and the seizure of citizens' land. Therefore, there is a need for clear limitations on the principle of public interest itself.⁴³ In the absence of a clear interpretation of the principle of public interest, the claim of public interest may, in fact, not exist at all in the policy for the development of National Strategic Projects (PSN).⁴⁴ Adrian Sutedi also pointed out that the ongoing issue lies in determining the extent to which such a characteristic must be inherent in a particular activity for the public interest. In practice, a development program that barely reflects the principle of public interest may still be presented as if it serves the public interest.⁴⁵

Another critical shortcoming of Law No. 2 of 2012 is the absence of provisions ensuring the availability of information on the assessment of land acquisition objects

38 M. Nurul Fajri, "12 Tahun Undang-Undang Pengadaan Tanah," accessed October 9, 2024, <https://www.kompas.id/baca/opini/2024/06/07/12-tahun-undang-undang-pengadaan-tanah>.

39 Nandang Iskandar and Hadi Arnowo, *Prinsip Dan Pelaksanaan Pengadaan Tanah Untuk Kepentingan Umum Di Indonesia* (Banyumas: SIP Publishing, 2021), 47-48.

40 Rebecca Meckelburg and Agung Wardana, "The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia," *Land Use Policy* 137 (February 1, 2024): 2-3, <https://doi.org/10.1016/j.landusepol.2023.107017>.

41 Refer to Articles 4, 9, 19, 27, 45, and 46 of Government Regulation No. 42 of 2021 on the Facilitation of National Strategic Projects.

42 Fajri, "12 Tahun Undang-Undang Pengadaan Tanah."

43 Rias Frihandini, "Limitations of Public Interest Clause in Land Acquisition So That Land Rights Holders Can Retain Their Rights," *NORMA* 18, no. 1 (March 5, 2021): 64, <https://doi.org/10.30742/nlj.v18i1.1291>. whether for the benefit of the state or the private sector. Based on the 1945 Constitution, it can be seen that the use of the earth (land

44 Abdurrahman, *Pengadaan Tanah Bagi Pelaksanaan Pembangunan Kepentingan Umum* (Bandung: PT Citra Aditya Bakti, 1994), 45.

45 Sutedi, *Implementasi Prinsip Kepentingan Umum di Dalam Pengadaan Tanah Untuk Pembangunan*. See also on page 88.

and the timeframe for submitting the assessment results, as per the principle of transparency.⁴⁶ This omission also indicates the failure to uphold the principle of legal certainty. Moreover, the law falls short in meeting the principle of fairness, particularly in providing adequate compensation to those affected by land acquisition. As a result, the objectives outlined in Article 3 of Law No. 2 of 2012 risk remaining unfulfilled.⁴⁷ In line with this concern, Adrian Sutedi suggests that any development program should genuinely embody the principle of public interest. He emphasizes the need for a detailed explanation of indicators for the public interest principle, which should at least include three key aspects, such as:⁴⁸

1. The government must truly own a development program; individuals or private entities cannot own it.
2. Every activity conducted must be a government activity aimed at serving the public interest; and
3. It must not be profit-oriented, ensuring its intended use aligns with the principle of public interest.

The application of public interest principle indicators serves to establish qualifying criteria for activities that must satisfy the public interest requirements. These three points must be interpreted cumulatively rather than selectively. The concept of “public interest” in land acquisition, generally must refer to the broad benefit of the community, including infrastructure, health, education, and local economics. In the context of BUMDes, this concept assumes a localized interpretation referring to the collective villagers’ welfare. Although BUMDes operations are geographically confined to village boundaries, their fundamental orientation serves the communal good rather than private interests. This distinction maintains the essential public character of such initiatives while adapting the scale of “public” to village-level parameters.

2.2. The Conceptual Regulation of Village Government in Indonesia

Villages as part of the governance system predate Indonesia’s independence. This is explained in the Elucidation of Article 18 of the 1945 Constitution before the amendments, which states: “*In the territory of the Indonesian State, there are approximately 250 ‘Zelfbesturende landschappen’ and ‘Volksgemeenschappen’ such as villages in Java and Bali, Nagari in Minangkabau, Sub-village and clan in Palembang, and so on. Therefore, these regions have their original structures and can be considered regions with special characteristics.*”

Villages generally have a governance system managed autonomously, without hierarchical-structural ties to higher-level structures.⁴⁹ A village is a community unit that manages its affairs (self-governing community).⁵⁰ The term village varies across regions. For example, “*desa*” in Java and Bali island, “*nagari*” in Minangkabau, “*gampong*” or “*meunasah*” in Aceh, and “*dusun*” and “*marga*” in South Sumatra. Despite the different terms, structurally, they remain the same as part of the governance hierarchy. However, legal transitions over time have revealed contradictions between the formal structure of village governance and the practical limitations faced by villages—particularly regarding

46 Wiryani and Najih, “The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia,” 182.

47 Sutedi, *Implementasi Prinsip Kepentingan Umum di Dalam Pengadaan Tanah Untuk Pembangunan*.

48 Sutedi.

49 Adharinalti, “Eksistensi Hukum Adat Dalam Penyelenggaraan Pemerintahan Desa Di Bali,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 3 (2012): 410.

50 Kiki Endah, “Penyelenggaraan Pemerintahan Desa Menurut Undang-Undang Nomor 6 Tahun 2014 Tentang Desa,” *Dinamika: Jurnal Ilmiah Ilmu Administrasi Negara* 5, no. 1 (2018): 78.

land-related authority. In the post-independence era on 17th August 1945, the legal concept regarding village governance was diverse. During the New Order era, when Law No. 5 of 1979 was enacted, there was an attempt to standardize village institutions. At that time, villages were not autonomous or administrative regions.⁵¹

Following the collapse of the New Order regime and the revision of the 1945 Constitution, authority began to be transferred from the central government to regional administrations, to enhance community empowerment across multiple sectors.⁵² Through this amendment, regional autonomy was constitutionally recognized and applied broadly. Post-reform era regulations made it clear that village administration falls within the scope of regional governance, as outlined in Law Number 22 of 1999 concerning Regional Government.⁵³ The legislative transition from Law No. 22 of 1999 to Law No. 32 of 2004 has resolved substantial weaknesses while strengthening fiscal provisions for villages. However, this regulatory evolution maintained a crucial limitation: while recognizing villages as administrative entities, Law No. 32 of 2004 fails to explicitly incorporate village-level autonomy within its decentralization framework.⁵⁴ That law confines the implementation of decentralization and regional autonomy to the district (kabupaten)/city (kota) level, thereby systematically excluding villages from meaningful autonomous governance structures. This omission creates a fundamental disconnect between the formal recognition of villages and their actual authority in local governance.

Around ten years later, Law No. 32 of 2004 was replaced by Law No. 6 of 2014, which brought many changes regarding village governance. Law No. 6 of 2014 is the third law specifically regulating village matters, following Law No. 19 of 1965 on Desa Praja and Law No. 5 of 1979 on Village Governance.⁵⁵ Law No. 6 of 2014 also acknowledges the diversity of villages that uphold traditional values under the Unitary State of the Republic of Indonesia (NKRI) principles. Moreover, Law No. 6 of 2014 marks a turning point in recognizing villages as governmental entities with special autonomy.⁵⁶ However, it is important to clarify that the autonomy granted by this law can be interpreted across three dimensions: formal (legal recognition), functional (authority to implement duties), and fiscal (budgetary capacity). While villages now have stronger formal and fiscal roles, their functional autonomy—especially in land governance—remains constrained by overlapping sectoral regulations and the absence of clear implementation mechanisms. Given the significant affirmative policy, Law No. 6 of 2014 has the potential to bring about substantial changes for village governments and communities across Indonesia.⁵⁷ Therefore, Law No. 6 of 2014 demonstrates a serious effort to reaffirm the diversity of villages.⁵⁸

51 M. Yasin Al-Arif, "Mengkaji Konstruksi Politik Hukum Pengaturan Otonomi Desa Dalam Penyelenggaraan Pemerintahan Desa," *Arena Hukum* 11, no. 1 (2018): 120.

52 M. Ryass Rasyid, "Otonomi Daerah: Latar Belakang Dan Masa depannya," in *Desentralisasi Dan Otonomi Daerah, Desentralisasi, Demokratisasi, Dan Akuntabilitas Pemerintah Daerah* (Jakarta: Lipi Press, 2005), 8. See also Al-Arif, 121.

53 These provisions are reflected in the regulations of Articles 93 through 111 of Law No. 22 of 1999 concerning Regional Government.

54 Al-Arif, "Mengkaji Konstruksi Politik Hukum Pengaturan Otonomi Desa Dalam Penyelenggaraan Pemerintahan Desa," 131.

55 Rahyunir Rauf and Sri Maulidiah, *Pemerintahan Desa* (Pekanbaru: Zanafa Publishing, 2015), 2.

56 Sutrisno Purwohadi Mulyono, "Sinergitas Penyelenggaraan Pemerintahan Desa Pasca Pemberlakuan UU No. 6 Tahun 2014 Tentang Desa," *Masalah-Masalah Hukum* 43, no. 3 (2014): 439.

57 Nata Irawan, *Tata Kelola Pemerintahan Desa Era UU Desa* (Jakarta: Yayasan Pustaka Obor Indonesia, 2017), 9-10.

58 Mulyono, "Sinergitas Penyelenggaraan Pemerintahan Desa Pasca Pemberlakuan UU No. 6 Tahun 2014 Tentang Desa."

A fundamental aspect regulated in Law No. 6 of 2014 is village finance. Since 2015, there has been a serious policy in which each village receives financial support from the State Budget (APBN) to assist in the administration of village governance and the optimization of village development. In addition to receiving financial aid from the APBN and Regional Budget (APBD), villages are granted the authority to seek other sources of income, such as from managing village-owned enterprises, revenue from self-help and participation, a share of local taxes and levies from the district/city, as well as grants.⁵⁹ The sources of village funding are used to finance all the village's responsibilities, such as the administration of governance, development, community empowerment, and social activities.⁶⁰

Law No. 6 of 2014 represents a significant advancement in villages' governance by granting villages expanded authority to manage and regulate their affairs based on state-recognized customary rights and customs. This legal recognition is also reinforced by Law No. 5 of 1960, which offers a strong legal foundation for protecting indigenous peoples' rights, particularly in the context of land acquisition.⁶¹ These legal frameworks position villages as strategic actors in regional development, as they are empowered to issue village regulations, manage local budgets, and utilize village resources independently. Furthermore, Law No. 6 of 2014 acknowledges the diversity among villages by allowing customary villages to practice governance based on local customary law, provided it does not contradict higher legal norms. This arrangement is essential for affirming village identity and preserving traditional values, especially in regions where customary practices remain deeply rooted. Nevertheless, criticisms remain regarding the gap between the legal recognition of village authority and its practical implementation. Several scholars have noted inconsistencies between national legislation—such as agrarian or spatial planning laws—and village autonomy provisions, which can effectively neutralize the decision-making power of villages in key sectors like land use. As such, villages become not only administrative units but also cultural and legal entities within the national legal system.

2.3. Issues in Land Acquisition for the Development of Tourist Villages for Public Interest

The development of tourist villages requires land acquisition, which may be undertaken by various stakeholders, including individuals, private entities, or local government authorities, or government authorities at multiple levels, including village governments. This process aligns with the current government's village-based development paradigm, representing a strategic approach to rural development. This policy orientation is certainly supports tourism village initiatives, serving as both an economic catalyst for rural communities and mechanism for enhancing the community's welfare. Land acquisition for developing tourism areas through the land acquisition mechanism is now regulated in Law No. 6 of 2023, which amended Law No. 2 of 2012. Before the revision in Law No. 6 of 2023, the provisions of Article 10 of Law No. 2 of 2012 did not include land acquisition for tourism areas. However, following the revision in Law No. 6 of 2023, the scope of land acquisition has expanded for public interest. Article 10 letter v states that one of the objects of land acquisition for the public interest is "*tourism areas*

59 See Articles 72 and 87 through 90 of Law No. 6 of 2014 on Villages.

60 Muhamad Mu'iz Raharjo, *Pengelolaan Dana Desa* (Jakarta: Bumi Aksara, 2020), 10-11.

61 Iwan Permadi, Weny Almoravid Dunga, and Azhani Arshad, "Ensuring Indigenous People's Rights Protection Through Normative Law in Land Acquisition for Indonesia's New National Capital City, Nusantara," *Jambura Law Review* 7, no. 1 (2025): 36 and 38, <https://doi.org/10.33756/jlr.v7i1.24930>. Ibu Kota Nusantara (IKN

initiated and/or controlled by the Central Government, Regional Governments, state-owned enterprises, or regional-owned enterprises.” Similar provisions are also outlined in Article 17 letter w of Government Regulation No. 64 of 2021 on the Land Bank Agency, which specifies that land availability for public interest includes developing tourism areas.

Article 10 letter v merely refers to tourism areas initiated or managed by the central or regional governments, as well as by state-owned or region-owned enterprises. However, it does not explicitly recognize the role of village governments or local communities in managing tourist villages. However, these legal instruments do not explicitly recognize the role of village governments or local communities as initiators or managers of tourism village development.

Within Indonesia’s governmental administration, villages constitute an administrative component of the regional governance system rather than autonomous entities. This subordinate position is explicitly established in Article 5 of Law No. 6 of 2014 on Villages, which states, “*The village is located in the district/city area.*” This means the village is a part of the district/city government system, not fully autonomous. Therefore, based on current positive law, the village is not an organizer of regional autonomy like the provincial, district, and city governments but rather part of the district/city government. The juridical implication is the limitation of the village’s authority in optimizing strategic development programs, including tourist village development. This results in legal and practical limitations on the village’s ability to independently engage in strategic development programs, including land acquisition for tourism development.

Tourist villages are not necessarily administered directly by the village government; instead, their management can be carried out by community-based groups or organizations, or through the establishment of village-owned enterprises (BUMDes). Top of FormBottom of Form⁶² This governance model encourages active community engagement while strengthening the village’s sustainable economic independence, which is deeply rooted in local wisdom.⁶³ However, irrespective of the managing entity, land acquisition remains the primary developmental constraint due to regulatory ambiguity, fiscal capacity limitations, and potential conflicts of interest. This is critical, as land is a prerequisite for initiating any physical development.

Village-owned enterprises act as the backbone of the village economy, playing a dual role as both social and commercial entities. In their social role, these enterprises prioritize community welfare by supporting the delivery of public services. On the other hand, as commercial entities, they seek to generate income by leveraging local resources or offering goods and services to meet market demand.⁶⁴ The significant profit potential from the tourist village program makes it urgent to consolidate policies that strengthen the village economy through tourist village development. This approach will serve as an entry point to developing a grassroots economy at the village level while also increasing community participation in every development agenda aligned with each village’s local wisdom. Moreover, the substantial decentralization of governance at the regional level will further empower bottom-up development from the town rather than a top-down approach.

62 According to Article 1 point 1 of Government Regulation No. 11 of 2021, a Village-Owned Enterprise (Badan Usaha Milik Desa or BUMDes) is defined as a legal entity established by a village and/or jointly by multiple villages to manage businesses, utilize assets, develop investments and productivity, provide services, and/or offer other types of enterprises for the maximum welfare of the village community.

63 Nurjaya, “Legal Policy of Sustainable Tourism Development.”

64 Jusman Khairul Hadi, “Kedudukan Badan Usaha Milik Desa (Bumdes) Berdasarkan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja,” *JURIDICA : Jurnal Fakultas Hukum Universitas Gunung Rinjani* 3, no. 1 (November 25, 2021): 30, <https://doi.org/10.46601/juridica.v3i1.192>.

Although villages and BUMDes hold strategic potential in tourism development, many still face institutional challenges, including limited administrative capacity, weak legal understanding, and a lack of skilled personnel. BUMDes often struggle with financing and limited experience in administering large-scale projects. These limitations raise significant doubts about their operational capacity to effectively execute land acquisition processes and manage tourism governance. To address this, central and regional governments must strengthen village institutions through comprehensive training programs in land law and property rights, public procurement procedures, and sustainable tourism planning and management. Clear regulations and technical guidelines should support land acquisition processes, potentially requiring certified staff in relevant fields. Facilitating access to funding, expert support, and cross-sector coordination is also crucial. These interventions would ensure that devolved authority to the village level is accompanied by the professional capacity and accountability mechanism, thereby enabling effective local governance of tourism development projects. The current regulatory framework lacks specific provisions governing land acquisition by village governments or development projects managed by BUMDes. While the Government Regulation No. 11 of 2021 on Village-Owned Enterprises establishes basic operational parameters, it fails to provide a clear mechanism for land procurement to support village tourism development initiatives.. Article 41 of PP No. 11 of 2021 only regulates land acquisition for BUMDes sourced from “*community investment capital*.” This leaves a gap in the legal framework for village governments and village-owned enterprises to procure land directly for such strategic development projects. The regulated entity is defined as the “village community,” not the village government. This distinction between the two entities has significant implications, namely that land acquisition for village tourism development through BUMDes cannot entirely rely on the authority of the village government. The village government lacks a clear legal basis to procure land directly, as Article 41 of Government Regulation No. 11 of 2021 only recognizes capital contributions from the village community. Although the provision of land by the village government to BUMDes is not a legal obligation, in practice, many village tourism initiatives rely on village government support to secure land access. Therefore, it is important to clarify the legal role of the village government in facilitating or supporting land provision for BUMDes to avoid uncertainty in future development efforts. This regulatory void creates a legal gap that could hinder efforts to develop village tourism initiatives driven by the village government. Without specific regulations governing the model of land acquisition involving the village government as one of the key actors, the realization of village tourism development may face obstacles, both in terms of legal processes and technical implementation on the ground.

This issue highlights that land acquisition for village tourism development managed by village governments or local communities lacks explicit legal foundations in existing regulations. Provisions in Law No. 2 of 2012, Law No. 6 of 2023, and Government Regulation No. 11 of 2021 fail to provide adequate legal solutions to address this challenge. Despite villages’ strategic position as part of district/city governments, which allows for synergy among village, district/city, and provincial governments, there remains a need for more inclusive and integrated policy frameworks. One potential solution is the enactment of additional regional or local government regulations that specifically accommodate the role of village governments in land acquisition for tourism development. Strong policy support is crucial given the village’s structural position within district/city governance frameworks. Regional governments play a pivotal role in providing legitimacy for

village-level initiatives and facilitating the delegation of authority to village governments through regulatory and institutional channels. In parallel, this article acknowledges that land for BUMDes can originate from village treasury land, market-based purchases, or a grants mechanism as regulated in the Ministerial Regulation. When such sources are unavailable or insufficient, land acquisition under the public interest regime may serve as a supplementary mechanism, aligns with legal requirements, and demonstrably serves collective village welfare.

However, under the principle of legality in administrative law, the authority of village governments to acquire land must be explicitly defined in the legal framework. Any action without a clear legal foundation risks violating administrative law principles and creating legal uncertainty. Therefore, it is essential to revise or adjust regulations to clarify the authority of village governments in land procurement to support the legal and practical development of village tourism. Given that land acquisition serves the public interest, village tourism facilities may be classified as public infrastructure, designed to generate benefits within a tourism-based economic area. Accordingly, the management and development of such facilities are most appropriately undertaken by village-owned enterprises (BUMDes). In this context, initial capital and capital contributions, including land, may be provided by village governments and subsequently allocated to the entities responsible for managing the village's tourism areas. This approach not only ensures compliance with the prevailing legal frameworks but also promotes sustainable economic growth within local communities.

The incomplete provisions in Law No. 2 of 2012, Law No. 6 of 2023, and Government Regulation (PP) No. 11 of 2021 create legal gaps that hinder the optimal management of tourism areas in rural regions. Specifically, they fail to ensure legal certainty regarding the procedures for land acquisition for the development of village tourism areas, whether managed by village-owned enterprises or directly by community groups. These legal gaps can lead to social issues, such as unclear procedures and potential land disputes—particularly in customary areas—and may also cause delays in implementing village tourism development programs initiated by village governments or local communities.⁶⁵ This uncertainty also affects investors' confidence and other stakeholders seeking to contribute to village tourism development. Without a robust and comprehensive legal foundation, land acquisition for village tourism risks becoming lengthy, costly, and conflict-prone. Therefore, legal harmonization and the establishment of clear regulations are necessary. These regulations must provide legal safeguards, reduce conflict potential, and accelerate sustainable village tourism development. Comparative perspectives—such as best practices from countries with community-based tourism models—could also be used to inform and refine the regulatory framework.

2.4. Reconceptualization of Land Acquisition for Village Tourism Development for Public Interest

Village governments, as administrative units within the broader governmental structure, face various constraints in advancing development initiatives—particularly concerning land acquisition. Based on Article 10 letter v of Law No. 2 of 2012, as amended by Law No. 6 of 2023, land procurement mechanisms are provided for the establishment of tourism areas. However, these provisions apply exclusively to projects initiated or overseen by the central government, local governments, state-owned

⁶⁵ Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (October 20, 2019): 417-418, <https://doi.org/10.1080/14442213.2019.1670246>.

enterprises (BUMN), or regionally owned enterprises (BUMD). Consequently, village authorities and village-owned enterprises (BUMDes) are not explicitly recognized as legal entities authorized to conduct land acquisition to develop tourism areas within village jurisdictions.

Due to their proximity to the local community, village governments play a pivotal role as policymakers in facilitating authority for land acquisition for developing tourism areas. This proximity not only enables more effective community involvement but also helps ensure that land acquisition priorities are aligned with the community's social and cultural context.⁶⁶ In essence, a constructive dialogic interaction between landowners and the business entities requiring land assets is necessary in providing compensation for land acquisition. The goal is to reach a comprehensive consensus among all stakeholders through an inclusive deliberation mechanism within the village.⁶⁷ This is where the proper form of public interest lies, based on the deliberation between the parties involved.

The vast potential for developing tourist areas in villages represents a strategic asset for establishing and developing tourist destinations initiated and managed by village governments through village-owned enterprises (BUMDes) or village community-based groups. Strengthening the role of these village-owned enterprises as key actors in initiating development programs is essential, particularly when land acquisition is undertaken through a mechanism for procuring land in the public interest. However, the current legal framework still fails to optimally support the policy of developing village tourism, especially regarding legal certainty regarding land acquisition. The lack of a specific and adequate legal framework for village governments or BUMDes to procure land has hindered the full realization of village tourism potential development. Properly developed, village tourism can become a driving force for the local economy while also supporting sustainable development programs focused on community empowerment.⁶⁸

To address the aforementioned challenges, it is necessary to reconceptualize land procurement policies in a manner that grants greater authority for village governments and village-owned enterprises (BUMDes) as legal entities empowered to develop village tourist areas. This approach must be backed by a legal framework that ensures legal certainty and promotes cooperation among the central government, local governments, and village communities to sustain local potential. Therefore, re-conceptualizing legal policies thus serves as a critical step toward reorganizing the legal norms in regulations, ensuring that the management and development of village tourism are implemented in a directed, fair, and public-interest-oriented manner. This reconceptualization should adopt a more inclusive approach that accommodates the roles of both the central and local governments while creating space for active participation by village governments and local communities. A concrete measure in this regard would be the formulation of derivative regulations, such as government or regional laws that explicitly govern the land acquisition procedures for village tourism development by village-owned enterprises (BUMDes) or community groups.

Developing policies encouraging collaboration between the public sector and village communities is crucial. This can be achieved through partnership schemes or by facilitating village capital participation, supported by incentives from local governments.

66 Amelia Marchela Putri Riduan and Atik Winanti, "The Land Acquisition Compensation Process for Public Interest Based on Law No. 2 of 2012," *Jurnal Daulat Hukum* 7, no. 4 (December 24, 2024): 398, <https://doi.org/10.30659/jdh.v7i4.41595>.

67 Riduan and Winanti.

68 Nurjaya, "Legal Policy of Sustainable Tourism Development."

Additionally, a revised legal framework should incorporate mechanisms to protect the rights of village communities over customary land or *ulayat* land.⁶⁹ Such provisions would ensure that land acquisition not only facilitates physical development but also upholds social, cultural, and environmental sustainability aspects.⁷⁰ Implemented effectively, these measures would enable village tourism to serve as a vital component in strengthening the local economy growth while contributing to the achievement of sustainable development goals (SDGs). It is essential to highlight that this approach will align with the principle of public interest, a fundamental aspect of land acquisition policy.

The legal policy reconceptualization needed to address land acquisition issues for the development of village tourism in line with the principle of public interest is derived from the following analysis:

2.4.1. Revise Law No. 2 of 2012 in conjunction with Law No. 6 of 2023

Policy-makers, including the President and the Parliament, are encouraged to evaluate the need for revising Law No. 2 of 2012 as amended by Law No. 6 of 2023, particularly to recognize village governments and village-owned enterprises as legal entities authorized to carry out land acquisition for public purposes. Such a revision should specifically target Article 10 letter v, ensuring that the amended article explicitly includes these village institutions as legitimate actors in land procurement processes. The reformed provision of Article 10 should be as follows:

Before the Revision	After the Revision
<p>“Land for Public Interest, as referred to in Article 4, paragraph (1), is used for the development of:”</p> <p>“v. Tourist areas initiated and/or controlled by the Central Government, Regional Governments, state-owned enterprises (BUMN), or regional-owned enterprises (BUMD)”</p>	<p>“Land for Public Interest, as referred to in Article 4, paragraph (1), is used for the development of:”</p> <p>“v. Tourist areas initiated and/or controlled by the Central Government, Regional Governments, village governments, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), or village-owned enterprises (BUMDes)”</p>

The amendment of Law No. 2 of 2012 through Law No. 6 of 2023 should carry the legal consequence of recognizing additional entities—namely, village governments and village-owned enterprises (BUMDes)—as authorized parties in land acquisition for the development of tourism areas, particularly those located in villages. These institutions are inherently linked to the implementation of village tourism, given that such developments are consistent with the principle of serving the public interest. To ensure proper execution and prevent misuse of authority, the amendment must also be supported by detailed technical guidelines and specific limitations, which should be outlined in implementing regulations.

69 Sahlan, Nurul Miqat, and Susi Susilawati, “Realizing ‘Deconstructional’ Justice Through Agrarian Civil Law Reform: A Review Of Jacques Derrida’s Theory,” *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 3 (December 27, 2024): 588, <https://doi.org/10.29303/ius.v12i3.1559>.

70 Laura Notess et al., “Community Land Formalization and Company Land Acquisition Procedures: A Review of 33 Procedures in 15 Countries,” *Land Use Policy*, Land governance and tenure security at scale, 110 (November 1, 2021): 10, <https://doi.org/10.1016/j.landusepol.2020.104461>.

The expansion of legal subjects authorized to acquire land for public interest, as introduced through the revision of Law No. 2 of 2012 in conjunction with Law No. 6 of 2023, carries significant juridical, administrative, and social implications. From a juridical perspective, authorizing village governments and BUMDes to acquire land expands the legal scope beyond just central, regional, and state-owned actors. This requires clear implementing regulations to ensure the process remains accountable, transparent, and community-friendly.⁷¹ These derivative regulations must also prevent the potential abuse of power, such as land price manipulation or disregarding community rights during the acquisition process. Therefore, land acquisition becomes an instrument that directly affects people's rights, especially when it overrides participatory principles.

From an administrative perspective, this policy change will impose additional responsibilities on village governments in performing land acquisition functions, necessitating an increase in institutional capacity at the village level. To manage land acquisition effectively, village governments must be equipped with targeted training and technical guidance covering professional document administration, accurate determination of compensation values, and effective mechanisms for conflict resolution. On the other hand, coordination between village governments, regional governments, and village communities must be strengthened to avoid overlapping authorities or misunderstandings in implementing this policy.

From a social perspective, this expansion can positively impact village communities, particularly in improving economic welfare through developing village tourism areas. However, potential social conflicts must also be anticipated, especially if communities feel excluded or disadvantaged in the land acquisition process. Therefore, community participation must be a central element in every policy stage, from planning to implementation. With an inclusive approach based on deliberation, negative social implications can be minimized, while more significant economic and social benefits can be experienced by the village community as a whole.

2.4.2. Revised Government Regulation No. 11 of 2021 on Village-Owned Enterprises

The implications of revising Law No. 2 of 2012 in conjunction with Law No. 6 of 2023 must also be harmonized with its derivative regulations, specifically Government Regulation No. 11 of 2021. Notably, the provisions in PP No. 11 of 2021 do not regulate policies for managing village tourism areas using land acquired through the land procurement mechanism. Article 41 of PP No. 11 of 2021 limits the source of land for village-owned enterprises to "village community capital participation." However, capital participation differs fundamentally from land procurement. Land procurement is a planned, structured, and systematic process involving landowners' compensation. In contrast, capital participation refers to voluntary contributions or investments made by the village community to support the business activities of the village-owned enterprise.

This capital participation does not encompass the aspects of land procurement that involve transferring land rights through specific legal mechanisms, such as land release or purchase with appropriate compensation. This fundamental difference highlights that the provisions in Government Regulation No. 11 of 2021 do not yet provide a concrete solution for acquiring land necessary for developing village tourism areas, primarily

71 Hamdi Hamdi, "Penyelesaian Sengketa Penetapan Ganti Rugi Dalam Pengadaan Tanah Untuk Pembangunan Kepentingan Umum (Kajian Terhadap Undang-Undang Nomor 2 Tahun 2012)," *Jurnal IUS Kajian Hukum Dan Keadilan* 2, no. 1 (April 19, 2014): 90, <https://doi.org/10.12345/ius.v2i4.159>.

when the land must be procured for public purposes. The absence of clear provisions in this regard risks creating legal barriers, as village-owned enterprises or governments currently lack a strong legal foundation to engage in land procurement. Therefore, it is essential to revise or supplement the provisions of Government Regulation No. 11 of 2021 by including specific regulations regarding land procurement for village-owned enterprises. Enhancing these provisions with more comprehensive regulations is necessary to ensure that the additions cover the procedures for land procurement involving village governments or village-owned enterprises as legal entities. These regulations must also uphold the principles of fairness, transparency, and respect for community land rights.

In this context, the role of village governments in land acquisition must be clearly defined, including whether they may serve as the authorized entity to initiate land procurement processes under existing land laws. If the village government acts as the procuring entity, then the acquired land would first become a village asset under the village treasury. Subsequently, legal mechanisms such as asset transfer or capital participation could be used to grant the land for use by the BUMDes. This two-step approach ensures legal certainty over asset status and delineates the responsibility between village governments and BUMDes in managing tourism development. Clear rules on this transition—from public village asset to productive BUMDes asset—are crucial to prevent legal uncertainty and overlapping claims.

Regarding legislative norms, harmonization between Law No. 2 of 2012 jo. Law No. 6 of 2023, Law No. 6 of 2014, and Government Regulation No. 11 of 2021 are necessary to establish an integrated legal framework. This approach should also be accompanied by clear technical guidelines for village governments in implementing land procurement, including mechanisms for fair compensation and steps to mitigate social and environmental impacts. By doing so, village tourism areas can be optimally managed to support local community empowerment and sustainable development.

1.4.3. Drafting Regional Regulations

Normatively, regional governments possess the right and authority to manage and regulate their governmental affairs per the principles of regional autonomy, particularly in land acquisition for development projects aimed at serving the public interest.⁷² The authority to establish regional regulations is, in fact, a logical consequence of implementing regional autonomy in Indonesia as a means of empowering local governance. Therefore, regional regulations cannot be separated from their strategic role in elaborating the norms established in higher-level legislation while simultaneously adapting them to local needs. This underscores the intention to involve regional entities, including villages, in land-related matters, as they are considered capable of effectively organizing and implementing such responsibilities.⁷³

In the context of land acquisition for developing tourism villages, regional governments can utilize their authority to formulate more specific and operational regional regulations. These regulations can serve as legal guidelines for village governments and village-owned enterprises in carrying out land acquisition in a planned and procedurally compliant manner. For instance, regional regulations could outline the procedures for land acquisition involving village-owned enterprises, including planning processes, public consultations, compensation mechanisms, and social and

⁷² Hardianto Djanggih and Salle, "Aspek Hukum Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum," *Pandecta Research Law Journal* 12, no. 2 (2017): 171.

⁷³ H.M. Arba, *Hukum Pengadaan Tanah Untuk Kepentingan Umum* (Jakarta: Sinar Grafika, 2019), 51.

environmental impact management. Moreover, regional regulations could establish frameworks for partnerships between village governments, local communities, and investors, fostering more potent synergy in developing tourism villages. Thus, regional regulations would provide legal certainty and serve as tools to maximize local potential sustainably.⁷⁴

Practical issues at the regional level reveal the diverse approaches implemented across various provinces, depending on local needs and conditions. For example, several regional regulations in East Java, Central Java, and West Java designate village-owned enterprises as one of the primary managers of tourism villages. East Java Regional Regulation No. 4 of 2022 on the Empowerment of Tourism Villages stipulates that the management bodies of tourism villages include village-owned enterprises, tourism awareness groups (Pokdarwis), and/or other community groups.⁷⁵ Subsequently, West Java Regional Regulation No. 2 of 2022 on Tourism Villages stipulates that tourism villages are managed by village-owned enterprises, community groups, Indigenous community groups,⁷⁶ or other business entities.⁷⁷ In Central Java, Regional Regulation No. 2 of 2019 on the Empowerment of Tourism Villages stipulates that the management of tourism villages includes community groups, village-owned enterprises (BUMDes), or other business entities, by applicable laws and regulations.⁷⁸

The needs of rural communities in developing the tourism sector are becoming more evident, as tourism villages have now become one of the main pillars of the rural economy, alongside traditional sectors such as agriculture, plantations, and livestock. According to data from the Tourism Village Networking page of the Ministry of Tourism and Creative Economy (Kemenparekraf), as of September 10, 2023, there were 4,730 tourism villages, up from 4,674 at the beginning of 2023. This trend indicates significant growth in the number of tourism villages, which also reflects the great potential for improving the welfare of rural communities through the tourism sector. In light of these trends and needs, local regulations are crucial to drive the optimal management of tourism villages, including land acquisition for tourism areas.

Legal products in the form of regional rules, for example, can serve as legal instruments that provide a more specific legal foundation while bridging the needs of rural communities with regional development policies. However, this decentralized approach also poses the risk of regulatory fragmentation, potentially leading to inconsistencies in legal protection and inequality in implementation across regions. Therefore, to ensure coherence, legal certainty, and fairness in land acquisition practices, it is necessary to develop mechanisms such as model regional regulations, intergovernmental coordination frameworks, or the establishment of minimum national standards that guide local rule-making while respecting regional autonomy.

3. CONCLUSION

The government's focus on advancing rural development represents a strategic initiative to accelerate village progress and enhance community well-being. One tangible

74 Fathoni, Sulistiyono, and Karjoko, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia," 64.

75 Article 5 of the East Java Regional Regulation No. 4 of 2022 on Tourism Village Empowerment.

76 Yance Arizona and Miriam Cohen, "The Recognition of Customary Land Rights at the Constitutional Court of Indonesia: A Critical Assessment of the Jurisprudence," in *Courts and Diversity Twenty Years of the Constitutional Court of Indonesia* (Leiden: Brill, 2024), 182–84.

77 Article 10 of West Java Regional Regulation No. 2 of 2022 on Tourism Village.

78 Article 14 of Central Java Regulation No. 2 of 2019 on Tourism Village Empowerment.

measure is facilitating land acquisition for tourism village development. Nevertheless, existing laws still lack specific regulatory provisions addressing this issue. This gap is evident in Law No. 2 of 2012 jo. Law No. 6 of 2023 and Government Regulation No. 11 of 2021, where Article 10 letter v only authorizes land acquisition for public interest tourism areas by the central government, regional authorities, state-owned enterprises (BUMN), and regionally owned enterprises (BUMD), without including village governments or their institutions.

The exclusion of village governments and village-owned enterprises (BUMDes) has significant implications, as these actors often lead the management of tourism areas in rural regions. In practice, many tourism initiatives are driven by village communities and local institutions, not by central or regional authorities. This regulatory limitation inhibits the ability of village institutions to pursue land acquisition, ultimately slowing the realization of inclusive tourism development.

To support legal certainty and decentralization, legislative harmonization is urgently needed. This includes revising Law No. 2 of 2012 jo. Law No. 6 of 2023 and Government Regulation No. 11 of 2021, so that village governments and BUMDes can be explicitly authorized as legal subjects of land acquisition for tourism villages. Then, it is crucial to harmonize all derivative technical regulations to prevent conflicts and maladaptation triggered by changes in regulation. The amendment should be followed by the drafting of local regulations or village bylaws that accommodate land acquisition mechanisms in line with the village's authority. These steps would reinforce institutional roles, reduce legal ambiguity, and ensure that tourism village development can proceed inclusively and sustainably.

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