

Effectiveness of Material Compensation in Guaranteeing the Constitutional Rights of Citizens Affected by National Strategic Projects

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ABSTRACT: National Strategic Projects (NSP) in Indonesia accelerate economic growth but frequently cause displacement, livelihood loss, and cultural disintegration. This study examines the effectiveness of material compensation under Article 36 of Law No. 2/2012 in guaranteeing the constitutional rights of NSP affected citizens. Employing a normative conceptual approach through a systematic review of legal norms, literature, and cases, this study argues that asset replacement compensation is fundamentally insufficient to restore the full scope of community losses. Constitutionally, life extends beyond material ownership to encompass livelihoods, social relations, environments, and cultural identity. Constitutional guarantees under Articles 28A, 28H(1), and 28I(3) of the 1945 Constitution protect citizens' rights to sustain life, access adequate housing, and maintain cultural identity. Therefore, this study proposes a paradigm shift from asset replacement toward life sustainability guarantees (*jaminan keberlanjutan kehidupan*), ensuring affected communities continue living in a dignified, sustainable manner. Alignment with international standards, including the World Bank Environmental and Social Framework and UN Guidelines on Development Based Evictions, supports this reconceptualization.

Keywords: *Material Compensation, Constitutional Rights, National Strategic Projects, Land Acquisition, Life Sustainability Guarantee*

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I. INTRODUCTION

National development constitutes one of the primary instruments through which the Indonesian state seeks to realize social welfare as mandated by the Preamble of the 1945 Constitution. In recent years, the acceleration of development through National Strategic

Projects (NSP) known in Indonesian as *Proyek Strategis Nasional* (PSN) has become a central policy agenda for the government, intended to drive economic growth, enhance territorial connectivity, and strengthen national competitiveness.

Yet behind the ambitions of development lies a set of profound consequences borne by segments of the citizenry, particularly those who lose land, homes, and living spaces as a result of project implementation. The complexity deepens when projects confront communities that have, for generations, built their social, economic, and cultural lives upon particular territories. As of 2024, the Agrarian Reform Consortium (*Konsorsium Pembaruan Agraria*) documented 39 land conflict incidents involving NSPs, affecting 18,130 families across an area of 488,393.91 hectares, encompassing industrial zones, new city development, public facilities, tourism infrastructure, energy projects, and the Nusantara Capital City (IKN) relocation project.

Within Indonesia's positive legal framework, compensation for communities affected by development is regulated under Article 36 of Law Number 2 of 2012 on Land Procurement for Public Interest Development. This provision specifies that compensation may take the form of money, replacement land, resettlement, share ownership, or other mutually agreed forms (Pattrra et al., 2025) [1]. However, despite the apparent breadth of these mechanisms, they remain fundamentally oriented toward the restoration of material losses. The state, in effect, operates under an assumption that the loss of community living spaces can be resolved through the replacement of economically equivalent assets (Rudiana et al., 2023) [2].

This assumption is empirically and normatively contestable. Land, for many communities, is not merely an economic commodity but a living space that harbors history, identity, social relations, and cultural values transmitted across generations. When communities are displaced, what is lost extends far beyond houses or plots of land: social networks, livelihood patterns, local knowledge systems, and inherited ways of life are equally extinguished. Material compensation, therefore, may fail to secure the constitutional rights of citizens to maintain a decent and sustainable life.

Prior scholarship has noted various dimensions of this problem. Studies by Pattrra et al. (2025) [1] and Rudiana et al. (2023) [2] have engaged with compensation issues from a justice theory perspective, while research on indigenous land rights in the context of NSPs has highlighted the inadequacy of current legal frameworks for protecting cultural and territorial rights of customary law communities (Wardana & Darmawardana, 2024) [3]. Rahman et al. (2022) [4] have documented specific failures in protecting customary land rights within public interest land acquisition. Internationally, Hanna and Vanclay (2013) [5] and Esteves (2021) [6] have developed people centered frameworks for assessing livelihood impacts, emphasizing that land acquisition involves not merely physical displacement but systemic disruption of entire ways of life.

Despite this body of work, there remains a gap in scholarship that systematically analyzes the constitutional framework of Indonesia in relation to the concept of life sustainability guarantees, and that reconstructs the paradigm of compensation from the perspective of constitutional protection rather than merely administrative or economic redress. This paper

seeks to fill that gap.

This study is therefore guided by the following research question: To what extent does material compensation, as currently regulated under Law Number 2 of 2012, effectively guarantee the constitutional rights of citizens affected by National Strategic Projects, and what paradigm shift is needed to ensure their life sustainability?

The significance of this study lies in its normative reconstruction of compensation from a constitutional rights perspective, arguing that the right to sustain life as guaranteed by Articles 28A, 28H(1), and 28I(3) of the 1945 Constitution cannot be fulfilled through material replacement alone. It calls for a life based compensation paradigm that integrates economic, social, cultural, and environmental dimensions of well being.

II. METHOD

This study employs a normative legal research method (*penelitian hukum normatif*), which is appropriate for examining legal norms, constitutional provisions, and their interpretive implications without requiring empirical fieldwork. Normative legal research seeks to understand the law as it is written and how it ought to be applied, interpreted, and reformed (Marzuki, 2005) [7].

The research approach is conceptual analytical, drawing on primary legal sources including the 1945 Constitution of the Republic of Indonesia (particularly Articles 28A, 28H(1), and 28I(3)), Law Number 2 of 2012 on Land Procurement for Public Interest Development (especially Article 36), and relevant Presidential Regulations governing NSPs. Secondary sources include peer-reviewed journal articles indexed in Sinta and Scopus databases, institutional reports from the National Human Rights Commission (*Komnas HAM*) and the Alliance of Indigenous Peoples of the Archipelago (AMAN), as well as international normative frameworks including the World Bank Environmental and Social Framework (ESF) and the United Nations Basic Principles and Guidelines on Development Based Evictions and Displacement.

Data collection was conducted through systematic literature review, encompassing literature published between 2012 and 2025 with particular focus on works from 2020 onwards to ensure currency. The search strategy employed keywords including "compensation," "constitutional rights," "land acquisition," "National Strategic Projects," "indigenous peoples," "livelihood restoration," and "resettlement," applied in both Indonesian and English across databases including Google Scholar, Garuda (Portal Garuda), and Scopus.

Analysis was carried out through doctrinal legal analysis, whereby constitutional provisions and statutory norms were interpreted through systematic, historical, and teleological methods. Systematic interpretation aligns norms within their broader legal structure, historical interpretation reconstructs the intent of constitutional drafters, and teleological interpretation evaluates norms in light of their stated purposes and social goals. Findings

were triangulated against comparative international standards to assess the adequacy of Indonesian legal frameworks.

The normative conceptual approach was further strengthened through argumentative legal reasoning, which reconstructs existing legal concepts particularly the concept of "compensation" and proposes a normatively grounded alternative paradigm. This method is consistent with established legal research traditions in Indonesia as described by Marzuki (2005) [7] and has been applied in comparable studies by Sari et al. (2020) [8] and Ginting et al. (2024) [9].

III. RESULT AND DISCUSSION

National Strategic Projects and Constitutional Rights of Citizens

Development through NSP constitutes a manifestation of the state's constitutional obligation to realize general welfare as mandated by the 1945 Constitution's Preamble. Through infrastructure development, industrial zones, dams, toll roads, and other strategic projects, the state seeks to increase economic growth and equitable development. Nevertheless, development carried out in the name of the public interest cannot be separated from the state's obligation to respect, protect, and fulfill the constitutional rights of citizens (Komnas HAM, 2016) [10]. The ultimate purpose of development is not merely to produce physical infrastructure, but to create better lives for human beings as the primary subjects of development.

In this context, Article 28A of the 1945 Constitution affirms that "every person shall have the right to live and to maintain their life." Constitutional scholars have interpreted this provision as extending beyond biological survival to encompass the continuity of all conditions that sustain human existence in a dignified manner (Asshiddiqie, 2010) [11]. The constitutional text deliberately employs not only the phrase "right to live" but also "right to maintain their life" a formulation indicating that the state must not merely guarantee a person's physical continuation but must actively ensure the sustainability of everything that supports a complete and dignified human life.

Life, in its constitutional dimension, encompasses employment as a source of sustenance, social environments within which people develop, cultural traditions that form individual identity, and living spaces that allow communities to sustain their existence across generations (Rahardjo, 2014) [12]. When a person loses their living space, their source of livelihood, or is severed from the social and cultural environment that has shaped their life, what is endangered is not merely ownership of an asset but the constitutional right to maintain life itself.

This interpretation is reinforced by Article 28H(1) of the 1945 Constitution, which states that "every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment." This provision makes clear that housing cannot be understood merely as a physical structure replaceable by another structure at a different location. Housing, from a human rights perspective, is a living space that allows a

person to build social relations, engage in economic activity, form community identity, and sustain life quality. Displacement therefore cannot be regarded as fulfilling the right to housing simply because the state has provided a replacement dwelling elsewhere (Sari et al., 2020) [8].

The case of fishermen relocated away from coastal areas illustrates this problem starkly. Such communities lose access not merely to housing but to the ecosystem upon which their livelihoods depend. Farmers who lose agricultural land similarly lose the economic foundation that has sustained their families. Indigenous peoples displaced from traditional territories lose access to food sources, medicinal plants, and cultural spaces integral to their daily life (Hanna & Vanclay, 2013) [5]. In each instance, the state may have replaced the house but has not replaced the life.

Article 28I(3) of the 1945 Constitution further establishes that "cultural identity and the rights of traditional communities shall be respected in accordance with the progress of civilization." This provision offers constitutional recognition that cultural identity cannot be separated from the lives of communities, particularly indigenous and traditional peoples (Barora, 2020) [13]. Cultural identity forms through the long standing relationship between people and their living spaces forests, rivers, seas, ancestral territories, sacred sites, and the social practices that have developed within them. For indigenous communities, forests are not merely collections of economically valuable trees but living spaces, spiritual realms, educational arenas, and cultural repositories (Rubiati, 2024) [14].

When ancestral territories are converted for development purposes and communities receive only monetary compensation or relocation to new settlements, what is lost is not merely material assets but collective memory, cultural identity, and the continuity of a local civilization (AMAN, 2023) [15]. The state has frequently calculated losses based on the market value of land, buildings, crops, or economically quantifiable objects, while losses in the form of severed social relations, lost cultural identity, damaged spiritual connections with living spaces, and the extinction of local knowledge systems have been excluded from compensation calculations (Wardana & Darmawardana, 2024) [3].

These are precisely the dimensions of life that the Constitution protects. Life cannot be valued exclusively through market approaches because not all aspects of life carry economic exchange values. When NSP cause the loss of living spaces, disrupt sources of livelihood, and erode community cultural identity, what is taken is not merely the property of citizens but life itself as guaranteed and protected by the Constitution.

Why Material Compensation is Insufficient: Doctrinal and Empirical Analysis

In various land acquisition policies for development purposes, the state has generally placed material compensation as the primary instrument for resolving displacement related conflicts. Losses are calculated based on the value of land, buildings, crops, and other objects affected by projects, then replaced through money, substitute land, relocation, or other forms of material compensation as stipulated in Article 36 of Law Number 2 of 2012 (Pattra et al., 2025) [1]. This approach proceeds from the assumption that loss can be restored

through the replacement of missing assets with equivalent economic value. Administratively and legally, this mechanism appears to provide certainty, but problems arise when what is lost is not merely material assets but the life itself built within that space.

In practice, human life cannot be measured solely through economic approaches. When a house is demolished, what is lost is not only the physical structure but family history, social relations, and the environment in which people have grown (Rahardjo, 2014) [12]. Similarly, when agricultural land is taken for development, the farmer's loss is not merely the land as an economic asset but the livelihood source that has sustained the family. Measuring losses only against the market price of land and buildings constitutes a fundamental reductionism regarding the complexity of human life (Sen Sharma & Jothiprakash, 2024) [16].

The same problem manifests for indigenous and traditional communities whose lives are deeply tied to particular living spaces. The state has often treated forests, rivers, or ancestral territories as areas that can be converted provided compensation mechanisms exist. Yet for indigenous communities, forests are not collections of economically valuable trees but living spaces providing food, traditional medicines, spiritual nourishment, education, and cultural practices transmitted across generations (Hanna & Vanclay, 2013) [5]. When forests are taken and communities relocated, what is lost is not only access to natural resources but the entire life system that has shaped their identity as a community.

The effectiveness of material compensation therefore warrants serious questioning when the state focuses exclusively on replacing physically visible objects. Money may replace the economic value of buildings or land through numerical calculation, but money cannot replace severed social relations, local knowledge systems that have lost their practical context, or cultural identities that gradually fade through relocation. In many cases, communities receive compensation of certain amounts, but once this money is exhausted meeting daily needs, they continue to face the same problem: loss of livelihood and loss of the living space that had sustained their lives (Esteves, 2021) [6].

The case of the Orang Rimba (Suku Anak Dalam) community in Jambi province provides a concrete illustration. For generations, this community has relied on forest areas as their primary living space sources of food, traditional medicine, social interaction, and cultural identity. Various government programs have provided permanent houses and residential areas as part of welfare improvement efforts. However, not a few community members have chosen to return to the forest because the life provided in residential settlements could not replace the life system they had long practiced (ANTARA, 2021) [17]. A new house may serve as shelter but does not necessarily function as a living space that allows them to maintain identity and the continuity of life (ANTARA, 2024) [18].

This phenomenon reveals that new housing does not automatically mean a better new life. For communities that have long lived alongside forests, relocation to different environments often severs their connection with livelihoods that had sustained daily existence. When forest access disappears, the ability to hunt, gather, and practice inherited ways of life is lost. In such situations, the house provided by the state may offer physical shelter but does not

constitute a living space enabling them to maintain their identity and life continuity.

The problem extends beyond physical relocation to the minimal provision of post-relocation life guarantees. Many development affected communities receive material compensation without adequate social and economic assistance. After land is taken and projects proceed, communities must often struggle alone to adapt to new environments that may not accord with their life backgrounds (Sari et al., 2020) [8]. As a consequence, many communities experience declining quality of life, loss of employment, and economic dependence, as their previous livelihood sources have disappeared.

From a constitutional rights perspective, losses resulting from development projects cannot be understood merely as the loss of economically calculable assets. What is genuinely affected is the entire life of the citizen. When communities lose the living environment sustaining their lives, lose the cultural space shaping their identity, and lose livelihood sources transmitted across generations, what is taken is not merely land, houses, or crops what is taken is their capacity to maintain life as guaranteed by Articles 28A, 28H(1), and 28I(3) of the 1945 Constitution (Asshiddiqie, 2010) [11]. Material compensation, therefore, becomes insufficient because human life cannot be restored through monetary approaches alone but requires guarantees of life sustainability that respect identity, culture, and the living spaces of communities affected by development (Rahman et al., 2022) [4].

Paradigm Shift in Compensation: From Material Indemnification to Life Sustainability Guarantee

The dominant paradigm of compensation in land acquisition for development purposes has been characterized by an economic approach. Losses are calculated based on the market value of land, buildings, crops, and other objects affected by projects, then compensated through money, substitute land, relocation, or other forms of material compensation as regulated in Article 36 of Law Number 2 of 2012 (Pattra et al., 2025) [1]. As argued above, this approach fails to address the full scope of losses experienced by affected communities.

If the right protected by the Constitution is the right to maintain life as guaranteed under Article 28A, then compensation provided by the state must also be directed toward ensuring the continuity of community life after development projects proceed. The orientation of compensation therefore needs to shift from mere asset replacement toward life sustainability guarantee. The central question must move from "What is the value of the land that was lost?" to "How can communities continue their lives after losing their living spaces?" (Asshiddiqie, 2010) [11].

This paradigm shift is essential because in many development cases, communities lose not only homes or land but also the capacity to maintain life patterns that had served as sources of welfare. Traditional fishermen affected by coastal reclamation cannot be adequately compensated merely through money representing lost access to fishing grounds. The problem they face is not solely the loss of an economic asset but the transformation of an entire life ecosystem that had sustained their livelihoods. When coastal areas develop into industrial centers, ports, or economic zones, the state cannot stop at providing

compensation. The state must also engage through accompaniment programs, capacity building, skills training, access to new employment opportunities, and protection of the family economy (Ginting et al., 2024) [9].

In this context, the state must be understood not merely as compensation provider but as a facilitator of life transformation for development affected communities. Transformation of living spaces always generates social and economic transformation. Communities must not be left to face these changes alone. When territories become industrial zones or new economic centers, the state bears responsibility for ensuring that local communities are not marginalized from developments occurring in their own territories.

The same applies to indigenous communities losing forests or ancestral territories to development. Current compensation approaches often terminate with monetary payments or relocation to new settlements. Yet the primary problem facing indigenous communities is not merely the loss of housing but the loss of an entire life system sustaining their existence. When forests serving as sources of food, medicine, income, and cultural space are lost, what is required is not merely material compensation but a life sustainability guarantee. The state must ensure accompaniment programs enabling communities to build new livelihood sources without losing their cultural identities (Rubiati, 2024) [14].

In contemporary development practice, this approach has been developed through the World Bank's Environmental and Social Framework (ESF). Under this framework, the success of a project is measured not only by the completion of physical construction but by the project's ability to manage the social and environmental impacts generated upon affected communities (World Bank, 2017) [19]. One of the key principles in ESF is that affected communities must receive livelihood restoration and should be supported to achieve conditions at least equivalent to or better than their pre-project situation (Vanclay & Hanna, 2019) [20]. This principle demonstrates that compensation cannot terminate at loss payment but must ensure the continuity of community life after development is implemented.

Similar approaches appear in various international standards on land acquisition and forced displacement. Under international human rights instruments, relocation cannot be considered successful merely because communities have received new housing or compensation money. Relocation can be considered just only when communities retain access to employment, education, health services, supportive social environments, and opportunities to maintain their cultural identities and ways of life (OHCHR, 2007) [21]. What must be restored is not merely the lost asset but the entire life system affected by development.

The legal protection dimension of this question extends beyond Indonesia's borders. Comparative analysis demonstrates that legal systems in various jurisdictions have moved toward recognizing the inadequacy of purely monetary compensation. International standards emphasize that the real costs of eviction and displacement go far beyond the market price of physical structures, and that compensation must account for social, cultural, and livelihood dimensions of loss (OHCHR, 2005) [22]. The inadequacy of market value based

compensation has been similarly noted in comparative land acquisition studies (Nasution & Aini, 2020) [23].

Based on these considerations, the paradigm of compensation must be reconstructed toward the concept of life based compensation. In this paradigm, compensation is no longer understood as an economic transaction between the state and citizens but as an instrument of constitutional rights protection. The state is obligated not merely to replace material losses but to guarantee life sustainability through economic accompaniment, community capacity strengthening, cultural identity protection, access to new livelihood sources, and long-term monitoring of community conditions following development implementation.

This paradigm is aligned with the mandate of Article 28A of the 1945 Constitution, which guarantees the right to maintain life, Article 28H(1), which guarantees the right to adequate housing and living environment; and Article 28I(3), which guarantees respect for cultural identity and the rights of traditional communities (Suharyono et al., 2022) [24]. The measure of justice in development thus lies not in the size of the compensation nominal provided but in the extent to which the state ensures that affected communities can continue to live in a dignified, worthy, and sustainable manner after project implementation.

This reconceptualization has practical implications for policy design. The Indonesian government must develop supplementary regulations that expand the definition of compensable losses beyond market value of physical assets to include livelihood disruption, social and cultural damages, and long-term monitoring obligations. The current legislative framework under Law Number 2 of 2012, while providing a basis for various compensation forms, lacks explicit provisions for life sustainability guarantees and post relocation accompaniment as constitutional obligations rather than discretionary welfare measures (Wahyuningsih, 2022) [25].

IV. CONCLUSION

National Strategic Projects constitute important instruments in realizing development and community welfare in Indonesia. However, development cannot be viewed solely as a matter of economic growth and infrastructure provision, it must also be assessed through its impacts upon the lives of affected citizens. The current compensation mechanism provided by the state remains predominantly oriented toward material loss replacement in the form of money, substitute land, relocation, or other economic compensation as regulated under Article 36 of Law Number 2 of 2012.

Yet as guaranteed under Articles 28A, 28H(1), and 28I(3) of the 1945 Constitution, the life that the state must protect encompasses not only physical survival but also livelihoods, living environments, cultural identities, and the social spaces that enable communities to maintain their lives in a dignified and sustainable manner. When development causes the loss of community living spaces, what is affected is not merely economically calculable assets but life it self.

The effectiveness of material compensation in guaranteeing constitutional rights therefore

has fundamental limitations. Economic indemnification can restore some losses but does not always guarantee the continuity of community life following development. The state must view compensation not merely as an administrative obligation to replace missing assets but as an instrument of constitutional rights protection that must ensure the life sustainability of affected communities.

This study proposes a paradigm shift from asset replacement to life based compensation, characterized by: (1) the expansion of compensable losses to include livelihood disruption, social and cultural impacts, and environmental harms; (2) mandatory post relocation accompaniment and capacity building programs; (3) long term monitoring obligations; and (4) full respect for cultural identity and traditional community rights. This reconstruction is normatively grounded in the constitutional framework and consistent with international best practice standards as embodied in the World Bank ESF and UN Guidelines on Development Based Evictions.

The measure of justice in development does not lie in the nominal size of compensation provided but in the capacity of the state to ensure that every citizen can continue to maintain their life, identity, and future amid the transformations generated by national development.

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