

# *Transformation of the Meaning of Public Interest in the Indonesian Regulations on Land Acquisition: A Sustainable Development Perspective*

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**Abstract-** The number of land areas controlled by the state is not enough to meet the needs for the lands that must be provided by the government. The basis used by the government to take over individual land is for the public interest. This article seeks to examine whether or not the transformation of the meaning of public interest also occurs in the Indonesian regulations related to the acquisition of private lands by the state. If it does, what kind of transformation in the meaning of public interest in the regulations? What factors might influence the transformation of the meaning? What are the basic arguments underlying the transformation of the meaning? The method used in this research is a normative legal research. The condition of regulations regarding the taking of land rights experienced dynamics and shifts from time to time. The meaning of the public interest in Indonesian regulations regarding the takeover of private land by the government has transformed in accordance with the context of community and legal development. This transformation includes the meaning of public interest not only related to how much the community can use or access the infrastructure, but is also related to the benefits of the infrastructure for the welfare and the advancement of community in the broadest sense

**Keywords-** Transformation, Public Interest, Land Acquisition, Sustainable Development

## I. INTRODUCTION

The issue of taking over private lands by the government in the name of development is a phenomenon that occurs in many countries. The number of land areas controlled by the state is not enough to meet the needs for the lands that must be provided by the government. The basis used by the government to take over individual land is for the public interest. The discourse of public interest always arises in every government policy intended to take over land rights of individuals [1]. Public interest may refer to public services, public utilities, and public welfare. Public service is a service to meet public needs, and, therefore, the public may demand the government to provide the service. The providers of public services can be private individuals or companies that are given authority by the government, which is a concrete manifestation of the government's responsibilities to meet the public interest. Public utility can be commodities and services provided using public-owned facilities, by people or civil legal entities, and carried out without discrimination. It is provided to all members of society, carried out efficiently, with counter-performance for

servants in the form of a price value reasonable and possible only as long as it is reasonable and acceptable to common sense. Public interests are reflected in the forms of infrastructures and public facilities utilized by the community. Public welfare is the welfare of general society, which is actually a community right that is different from the benefits of individuals or groups of people.

This article seeks to examine whether or not the transformation of the meaning of public interest also occurs in the Indonesian regulations related to the acquisition of private lands by the state. If it does, what kind of transformation in the meaning of public interest in the regulations? What are the basic arguments underlying the transformation of the meaning? We employ the perspective of sustainable development in analyzing the data. Sustainable development is often defined as the "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". It is about improving human welfare in ways that don't negatively affect the environment, or "promoting economic development while using natural resources sustainably and minimizing harm to ecological systems" [2]. For this purposes, the discussion of this paper is structured as follows: 1) how public interest is defined in several countries, 2) the Indonesian regulations on private land acquisition by the government, 3) transformation of the meaning of public interest in the Indonesian regulations.

## II. RESEARCH METHOD

The method used in this research is a normative legal research [3]. Sources of data in this study includes primary, secondary, and tertiary legal materials [4]. This can be laws and regulations related to private land taking by the government and decisions of court decisions. A hermeneutics content analysis is carried out to identify the transformation of the meaning of public interests in the regulations concerning land acquisition.

### III. RESULTS AND DISCUSSION

#### 1. *Land Acquisition and Meaning of Public Interest in several Countries*

In Malaysia, land acquisition by the government in the name of public interest was based on the 1960. In Malaysia, the public interest is defined as any purpose which, according to Yang Pertuan Negeri (governor, head of the region), are beneficial for Malaysia's economic development or part of it, or for the general community or part of the general community, or for mining, housing, agriculture, commercial, industrial or tourism activities, or a combination of these activities. It also includes public utilities covering roads, railroads, water and electricity supply, gas pipelines, telecommunications, street lighting, water drainage systems, public works, and other similar public service facilities [5]. Thus, in Singapore, the concept of public interests refers to activities that bring general benefits, or general uses, or public interests, including activities for housing, commercial and industrial. In Thailand, land acquisition may be done only for public purposes through a Royal Decree, as stated in the Article 41 of the 2007 Constitution. Activities that include public interests includes (1) national defense, (2) exploitation of natural resources, (3) urban and rural planning, (4) improvement and preservation of environmental quality, (5) industrial or agricultural development, (6) land reform, (7) preservation of cultural heritage or (8) other activities related to public interest.

In China, the state may take over private lands for the sake of public interests and must provide a compensation in accordance with the provisions of the law. As stated by Zhang Qianfang:

“Based on the amendment in 2004, paragraph 3 of the Article 10 of the Chinese Constitution of 1982 prescribed: ‘For the need of public interest, the state may carry out taking or expropriation of land and shall give corresponding compensation pursuant to the provisions of laws’. [6]

In South Africa, based on Chapter II (Bill of Rights) in the Article 25 of the Act which regulates property, the basic principle of land acquisition by the Government is on the grounds of a public purpose or public interest and that it must be accompanied by compensation based on an agreement with the affected party or on a court decision. In the United States, the government may take over land owned by individuals if it is intended for public interests with compensation for the affected party. [5]. The United States Constitution gives authority to the state, the power to take property from its owner, which is known as a power of eminent domain. Based on this power of eminent domain, private property can be taken for a public use with a fair compensation [7].

Based on the above description, we can see that the terms of public interest is expressed in several ways,

including for any general purpose (Malaysia), public purpose (Singapore), public purpose and public interest (Thailand), public interest (China), public purpose and public interest (Africa South), as well as public use, public interest, public purpose (United States). Public interest may be reflected in any forms of public services, public utilities, and public welfare. Public service is a service for public needs that is general in nature, and therefore can be demanded to be carried out. Service providers can be individuals or companies that are given authority by the Government which is a concrete manifestation of their rights and responsibilities to the public interest.

Public utility is a service for commodities and services using public-owned facilities and facilities that can be carried out by people or civil legal entities and carried out without discrimination, applies to all levels of society, carried out efficiently, with counter-performance for servants in the form of a price value reasonable and possible only as long as it is reasonable and acceptable to common sense. Public interests can be seen from public facilities and facilities needed and utilized by the community. Public welfare is the welfare of society in general, which is a community right that is distinguished from the benefits of individuals or groups of people [8]. The above description indicates that public interest is a very general concept. However, it is important to note that the end of public interest are the welfare, prosperity, and happiness of the people.

#### 2. *Regulation on Land Acquisition and Meaning of Public Interest in Indonesia*

In Indonesia, the underlying provisions regarding expropriation of land for public purposes can be found in the 1945 Constitution of the Republic of Indonesia, The Law Number 5 of 1960 on Basic Regulations on Agrarian Law (UUPA), The Law Number 20 of 1961 on Revocation of Land Rights and/or Items above it, and the Land Acquisition Law. The Article 33 paragraph (3) of the 1945 Constitution before the amendment states that “The earth and water and natural resources contained therein are controlled by the state and are used for as large as the prosperity of the people”. In the Explanatory section of the constitution, it is stated that “Earth and water and the natural wealth contained in the earth are the main points of people's prosperity. Therefore it must be controlled by the state and used for the greatest prosperity of the people.” After the amendment, the formulation of the Article 33 paragraph (3) has not changed. The Article 33 of the 1945 Constitution is the basis of economic democracy and the national economic system which has a very broad impact and concerns the livelihoods of all levels of society [9]. The Article 33 Paragraph (3) of the 1945 Constitution, according to Koeswahnyaono, implies that it provides power (authority) to the state (the government) to regulate natural resources existing in the territory of the Unitary State of the Republic of Indonesia for the welfare of all Indonesian people [10]

The Article 18 of Law Number 5 Year 1960 concerning Basic Principles of Agrarian Law, known as UUPA, states that for the public interest (including the interests of the nation and the common interests of the people), land rights can be revoked by providing appropriate compensation and according to the method regulated by the Act. To strengthen the provisions of Article 18 of the UUPA, the Law Number 20 of 1961 on the Revocation of Right to Land and Objects Above It was issued. Article 1 of the Law Number 20 of 1961 states that for the sake of public interests, including the interests of the nation, the state and the common interests of the people, the President may revoke the rights to land and objects above it in a compelling condition after listening to the consideration of the Minister of Agrarian Affairs and Minister of Justice. In the Explanation Section of the Law Number 20 of 1961.

In connection with the revocation of land rights by the President, the government then issued the Presidential Instruction Number 9 of 1973 concerning the Implementation of the Revocation of Rights on the Land and Objects Above It, which among others states that the right to land and all objects on it is an important legal relationship for the Indonesian people. Therefore, it is necessary that the revocation of such rights for the public interest (including the interests of the nation and the state, the collective interests of the people and the purposes of development) shall be done with caution and in a fair and wise manner. Furthermore, the Article 1 paragraph (1) of the Appendix of Presidential Instruction 9 of 1973 states that an activity of development has a general interest if such an activity has to do with: (a) the interests of the Nations and/or (b) public interest, and/or (c) the interests of many/common people, and/or (d) development purposes..

The Presidential Decree Number 55 of 1993 defines the meaning of public interest as the interests of all members of society. Furthermore, the criteria of public interest include the development activities undertaken and subsequently owned by the government and not used for profit. This may refer to public roads, public hospitals, public markets, government offices and so forth. This Presidential Decree Number 55 of 1993 emphasizes the meaning and criteria of public interest.

The Presidential Regulation Number 36 of 2005 only mentions public interest as the interest of most people. The Presidential Regulation No. 65/2006 does not mention the definition of public interest, but there is an affirmation on the procurement of land for the public interest undertaken by the government or local government which is subsequently owned or will be owned by the Government or the Regional Government. It also mentions details about seven fields of activities. The Law No. 2 of 2012 states that public interest is the interests of the nation, state, and society that must be realized by the government and for the purposes of the

people's prosperity. The Law mentions eighteen types of development in which public interest might exist.

### *3. The Transformation of the Meaning of Public Interest*

The definition of public interest in the context of procurement of land, as is mentioned in Law Number 2 of 2012 on Procurement of Land for the Implementation of Development for the Public Interest, refers to the interests of the nation, the state and society. The definition of public interest is mentioned in Article 1 point 6, that public interest is the interests of the nation, the state, and the society that must be realized by the government and used as much for the people's prosperity.

Criteria on the nature of public interest, can be found in Article 1 of Presidential Decree Number 9 Year 1973, states that an activity of development has a common interest if such an activity has something to do with:

- a. national and state interests, and/or
- b. public interest, and/or
- c. the interests of many/common people, and/or
- d. the importance of development.

Criteria regarding the form of public interest, can be found in Article 2 of the 1973 Presidential Instruction and Article 5 of the Presidential Decree, includes land, public works, general equipment, public services, religion, science and arts, culture, health, sports, public safety including natural disasters, and social welfare. Criteria regarding the characteristics of public interest can be found in Article 5 paragraph (1) of Presidential Decree Number 55 of 1993, namely (1) development activities carried out by the government, (2) government-owned development activities, and (3) unused development activities for profit.

The UUPA, as a national regulation on the basis of national land law, does not clearly regulate what is meant by public interest in relation to land acquisition. Article relating to public interest in the context of land acquisition is Article 18 of the UUPA, which states that for public interests including the interests of the nation and state and the common interests of the people, the right to land can be revoked by providing appropriate compensation and according to the method which is regulated by law. The most important provision in Article 18 is that land rights can be revoked for the public interest, by providing adequate compensation. The land rights referred to include property rights, business use rights, building rights. Article 27 states that Property Rights abolish if the land falls to the state, among others because of the revocation of rights under Article 18 (for the public interest). Article 34 states that the Right to Cultivate removes, among other things, being revoked in the public interest. Article 40 states that the Building Use Right is deleted partly because it is revoked in the public interest.

In the initial period of enactment of Law Number 5 of 1960, public interest is defined as the interests of the nation, the state, society, and development. In this era, the

land taken over by the government is only used for government development projects. The meaning of public interest began to change by the introduction of the Minister of Home Affairs Regulation Number 15 of 1975, the land taken over by the government other than for the government's development project was also reserved for private projects. The meaning of public interest changed again after the issuance of Presidential Decree No. 55 of 1993, in which public interest is defined as the interests of all members of society, development activities carried out by the government, owned by the government and not used to profit. In this regulation, land taken over by the government cannot be used by the private sector. The meaning of public interest has changed in the era of Presidential Regulation Number 65 of 2006, as amended by Presidential Regulation Number 35 of 2006. Here, the public interest is defined as the interests of most of the society, the land taken over by the government although it is not regulated strictly but can be used by the private sector. Land for public benefit is owned or will be owned by the Government or Local Government. Currently, the public interest in the Law Number 2 of 2012 is defined as the interests of the state, nation, and society that is oriented towards the realization of society's prosperity. In this era, the acquisition of land for public interest, besides being done by the government, can also be done by private entities that have a contract agreement with the government.

The transformation of the meaning of public interest can be seen from the construction of the Central Java Power Plant 2 X 1.000 MW in Batang Regency (PLTU Batang). The land acquisition for the construction of the PLTU Batang in Central Java is obtained in two ways, namely (1) a direct sale and purchase of land by PT. Bhimasena Power Indonesia from landowners, according to location permits, and (2) a release of rights or land acquisition through land acquisition activities. In addition, the transformation of the meaning of public interest can also be seen from the use of forest areas for infrastructure development and toll road. Infrastructure development that uses forest areas aims to promote economic development in the framework of improving human welfare. Toll road construction is an infrastructure for the public interest which has a role in improving the welfare of the community. [11]

The decision of the Constitutional Court in adjudicating the case of Law No. 2 Year 2012 concerning Land Procurement, among others, states that "... the construction of toll roads is carried out for the smooth transportation of people, goods and services which are the necessities of life for many people. Even though it cannot be accessed freely by the poor, but with the existence of the toll road, both directly and indirectly the benefits will be felt to the entire community [12]. In addition, with the existence of toll roads, heavy equipment of land transportation is largely diverted to toll roads so that the burden of public roads will be reduced, and thus will increase the security of public road users".

#### IV. CONCLUSION

The transformation of the meaning of public interest in the land acquisition legislation in Indonesia is based on the principles of land ownership by the state for the welfare of the people, the principle of state responsibility to realize the prosperity and prosperity of the people, and the development of community needs. On the other hand, it is also influenced by developments and practices of land acquisition laws in the other countries, particularly the practices of government and private partnership in the development of infrastructures for the public interest.

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