



## The urgency of sustainable principle in law no. 2 of 2012 on acquisition of land for development in the public interest “A lesson learnt from billionaires village in Tuban”

A Fauzan, M Ali H M

Magister of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia

### Abstract

The rules of the principle of sustainability in land acquisition for development in the legal system in Indonesia is regulated in Article 2 of the Land Acquisition Law. In addition, the principle of sustainability in the Land Acquisition Law is seen as a program from the idea of sustainable development which has been translated into Indonesian with the term sustainable development. Furthermore, the Land Acquisition Law also mandates that its implementation must be carried out through a more complete and more technical elaboration in a Government Regulation (Peraturan pemerintah/ PP). To fulfill these provisions, thus PP No. 19 of 2021 concerning Land Acquisition had been signed by the President after almost a decade from the time of the Land Acquisition Law enactment. The main discussion of this research is: is the form of compensation based on the Government Regulation (Peraturan Pemerintah/ PP) No. 19 of 2021 concerning the Implementation of Law No. 2 of 2012 (Land Acquisition Law) in-line with the sustainability principle in the Land Acquisition Law?. The research method used by the authors is normative juridical research. This research carried out by studying and reviewing legislation and legal theory in Indonesia in accordance with the problems to be studied. The legal material collection method used in this study is the library research method which means that this research is performed by the author through reading, summarizing, and reviewing library materials related to this study in the form of literature, relevant laws, regulations, and directly related to the object of research that is studied and used as a theoretical basis. Then the materials are processed qualitatively and then presented descriptively through explanation, definition, and description according to the problems that are discussed in this research. The results of this study is the Government Regulation (Peraturan Pemerintah/ PP) No. 19 of 2021 concerning the Implementation of Law No. 2 of 2012 (Land Acquisition Law) is still considered not in line with the sustainability principle in the Land Acquisition Law. Specifically, the norm whose contents have inconsistent characteristics is the norm that regulated in Article 77 of the PP on Land Acquisition. This norm still implicitly stipulates that the main form of compensation is in the form of money. Whereas as is known in this discussion, money is a form of compensation with the lowest value when viewed from the principle of sustainability, whereas in fact there are other forms of compensation that have some sustainability values.

**Keywords:** land acquisition, sustainable development principle, compensation

### Introduction

In the early 2021, the attention of the Indonesian people was drawn on a rare phenomenon that occurred in several villages in Tuban, East Java. The phenomenon is a case where residents in the area flock to buy new cars after they receive compensation payments from the sale of their land which have been bought by the government aimed for the development in the public interest. The development in question is a new oil refinery construction project for PT. Pertamina, a state-owned enterprise (SOE) which is also a holding company in energy sector officially announced by the Indonesian Ministry of SOEs on June 12th, 2020.

But on January 24th, 2022, a number of national media reported the current situation of the residents in the area, not with the good news of the happiness of the residents as depicted in the previous year. The latest news report that the residents have felt regret for having sold their land, because the compensation they have received has now greatly reduced and they are starting to need money to continue living. In addition, they are now unemployed because most of their primary jobs in agriculture have been lost since they sold their land. Not only that, in this latest report, they also held demonstrations at the Pertamina development project site to demand Pertamina's responsibility in providing jobs

for the residents, at least the jobs that are available in the construction project.

Such a phenomenon is certainly seen as very concerning because the implementation of development in the public interest should bring consequences for the benefit and sustainability of public life. This is in line with the mandate of Article 2 of Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest (Land Acquisition Law) which sets that one of the principles in this development is the principle of sustainability. So that money should not be seen as the only form of compensation in land acquisition, but there are other forms besides money which are more directed to the long term and sustainable measure. Therefore, in this Law, the form of compensation is not only cash money, but can also be in the form of replacement land; resettlement; shareholding; and even other forms in the dependence on the agreement between the organizer of the acquisition and the holder of land rights. The latter forms can be seen in Article 36 of the Land Acquisition Law.

This is because money for the people of Indonesia, which is a developing country, is still more often directed to consumptive purposes. It is realized that this is due to the low level of literacy of the majority of people in developing countries in the financial sector. As a result, people will

only experience a stagnation of life or even a decline in their standard of living even though they are supplied with a large amount of money.

On the other hand, this situation is also exacerbated by the existence of legal provisions that regulate the priority of money as a form of compensation for land owners in the implementation of land acquisition projects for development. In Article 77 Paragraph (1) Government Regulation (Peraturan Pemerintah/ PP) No. 19 of 2021 concerning the Implementation of Law No. 2 of 2012 (Land Acquisition Law), the government determines that the form of money is prioritized in the compensation for land owners in the implementation of land acquisition projects for development.

Although there are provisions requiring project organizers, which are usually the government, to consult with the land owners to jointly determine both the form and the amount of the compensation in the implementation of land acquisition projects for development, the situation in the practice area further strengthens the assumption that in the end of the day the form of compensation is still the cash money. This is believed due to the paradigm that apart from the low level of public literacy as described previously, which definitely prefer cash money, as well as the perception that the easiest form for project organizers to provide for the community who owns the land concerned is only the cash money.

In fact, if the government and project organizers carry out some informative and educative socialization for public in the implementation of their practice to inform that there are other forms of compensation that are more beneficial to the rights holder in addition to money, of course these residents will open their paradigms and prefer these other forms to fulfill their goals, which has a value of sustainability. However, it turns out that socialization and education are not widely carried out in the implementation of land acquisition projects for development so far. And there is an assumption that this is suspected by the application or implementation of this PP norm.

Departing from concerns over the issue above, this study is presented to try as much as possible to examine and analyze the conceptual framework to the conformity of the provisions of this PP on Land Acquisition with the legal system that has been forced in Indonesia. Although some of these studies should limit the discussion in the context of the legal system that has been forced in Indonesia, it is hoped that this study will not eliminate its comprehensive nature.

To answer those issues above, the main problem discussed in this paper is: is the form of compensation based on the PP on Land Acquisition in-line with the sustainability principle in the Land Acquisition Law?.

### Research Methods

Normative juridical research is the research method used in this study. This research carried out by studying and reviewing legislation and legal theory in Indonesia in accordance with the problems to be studied. The legal material collection method used in this study is the library research method which means that this research is performed by the author through reading, summarizing, and reviewing library materials related to this study in the form of literature, relevant laws, regulations, and directly related to the object of research that is studied and used as a theoretical basis. Then the materials are processed qualitatively and then presented descriptively through

explanation, definition, and description according to the problems that are discussed in this research.

## Results and Discussion

### A. Sustainable Development

Sustainable development has become the main focus of the majority of modern countries when carrying out national development in various aspects ranging from economic, social, cultural, political, and others. But to understand the content of the rules and the impact of their application is not easy. However, there is an understanding among world experts that sustainable development is an idea that integrates environmental protection and economic development.

The idea of sustainable development is not actually an idea that was put forward at a certain time, but is something that is formed from a long discourse on the interests of development on the one hand and the interests of the environment on the other. The United Nations (UN) in 1983 established a body called the World Commission On Environment And Development (WCED), which is also commonly referred to as the Brundtland Commission.

For WCED, sustainable development is conceptualized as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. From this, it can be understood that there are two important elements in the analysis of sustainable development, they are limitations and needs. According to WCED, needs are somethings that are needed principally on the part of the weak, while the limitations mentioned here are referred to limited availability in meeting current and future needs.

Furthermore, UNCED (United Nations Conference on Environment and Development), commonly called the Rio Conference which was held in 1992, finally formulated five charters and one important body related to sustainable development, namely: the Rio Declaration; Agenda 21; Principles in Forestry; Convention on Biological Diversity; Convention on Climate Change; and the Commission for Sustainable Development. The Rio Declaration itself dictates that the development must be maximized to balance the needs of the present and the future. The Rio Declaration in the legal context is actually still categorized as soft law because it is only a form of agreement that does not have binding legal force for the parties. But it is the three conventions mentioned above that become hard laws which are legally binding. And the three conventions also certainly contain matters related to the declarations that preceded them.

In Indonesia itself, there are also hard laws that contain the principles of sustainable development, such as the 1945 Constitution; Law No. 32 of 2009 concerning Environmental Protection and Management; and including Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. In Article 33 Paragraph (4) of the 1945 Constitution it is stated as follows:

“(4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity.”

Furthermore, Article 2 and Article 3 of Law No. 32 of 2009 concerning Environmental Protection and Management contains the following norms:

“Environmental protection and management is carried out based on the following principles:

- a. state responsibility;
- b. preservation and sustainability;
- c. conformity and balance;
- d. cohesiveness;
- e. utility;
- f. cautiousness;
- g. justice;
- h. ecoregion;
- i. biodiversity;
- j. polluter pays;
- k. participatory;
- l. local wisdom;
- m. good governance; and
- n. regional autonomy.”

“Environmental protection and management aim to:

- a. protect the territory of the Republic of Indonesia from pollution and/or environmental damage;
- b. ensure safety, health and human life;
- c. ensure the survival of living things and the preservation of ecosystems;
- d. preserve the function of the environment;
- e. achieve conformity, harmony, and environmental balance;
- f. ensure the fulfillment of justice for the present and future generations;
- g. guarantee the fulfillment and protection of the right to the healthy environment as part of human rights;
- h. control the wise use of natural resources;
- i. realizing sustainable development; and
- j. anticipate global environmental issues.”

Based on the descriptions of the two articles mentioned, it can be understood that the concept of sustainable development has received guaranteed recognition in the legal system in Indonesia, both as the principle and purpose of the regulation.

The principle of sustainability in the Land Acquisition Law can be seen as a legal norm, precisely in Article 2 which determines as follows:

“Land Acquisition for Public Interest is carried out based on the following principles:

- a. humanity;
- b. justice;
- c. utility;
- d. certainty;
- e. openness;
- f. consensus;
- g. participation;
- h. welfare;
- i. sustainability; and
- j. conformity.”

From the description of this norm, it can be said that the land acquisition for development for the public interest also should adhere to the principle of sustainability.

Although some argue that the idea of sustainable development has many elements of environmental discussion in it, it will not change what is the stance of the formulators of this concept both internationally and domestically in Indonesia, that this concept also still has an

important portion for the matters related to social, political, economic, cultural, even legal matter.

Likewise, in the law on land acquisition for development, all aspects of the implementation of land acquisition should be carried out based on the principles of sustainable development. This includes the form of compensation, as was the issue previously raised in this paper. Even though Article 36 of this Law has several choices of forms of compensation that can be taken in appreciating residents whose land was taken for development in the public interest, the form of compensation that is chosen should appropriately guarantee the principle of sustainability for all parties, including the residents whose lands were taken.

## **B. Sustainable Development Analysis on Government Regulation (Peraturan Pemerintah /PP) on Land Acquisition**

As described earlier, the rules of the principle of sustainability in land acquisition for development in the legal system in Indonesia is regulated in Article 2 of the Land Acquisition Law. In addition, the principle of sustainability in the Land Acquisition Law is seen as a program from the idea of sustainable development which has been translated into Indonesian with the term sustainable development.

Furthermore, the Land Acquisition Law also mandates that its implementation must be carried out through a more complete and more technical elaboration in a Government Regulation (Peraturan pemerintah/ PP). To fulfill these provisions, thus PP No. 19 of 2021 concerning Land Acquisition had been signed by the President after almost a decade from the time of the Land Acquisition Law enactment. Meanwhile, in the context of norms, this PP no longer explicitly includes regulations regarding principles or some form of higher norm such as the principle of sustainability. This is because the PP is the implementing rule of a law (in this case the Land Acquisition Law) which of course had included the basic content or basic rules. So in principle, this PP is also required to be build on the basis of the principles as stipulated in the Land Acquisition Law.

Furthermore, the regulation regarding the form of compensation as regulated in Article 36 of the Land Acquisition Law as previously described, is also regulated in this PP with the same editorial, apparently in Article 76 of this PP. However, in the next article, namely in Article 77 Paragraph (1), the provisions of Article 76 and Article 77 of this PP are considered contradictory to each other. Article 77 Paragraph (1) is intended to stipulate that in consultation with the land owners regarding the determination of the form of compensation, the Land Acquisition organizer will be able to prioritize the provision of compensation in the form of money.

So it can be judged that the formation of this PP actually created a new norm that came out of the limits of a higher norm that was implemented (in this case is Land Acquisition Law). In fact, this PP is supposed to function as the implementer of the higher norm or rule.

In addition, Article 77 Paragraph (1) substantially will serve as a benchmark for implementers in practice in implementing this provision. The organizers will tend to prioritize money as a form of compensation offered to residents whose land will be taken in the project. Meanwhile, the background of citizens whose majority has a low level of financial literacy such as Indonesian citizens

will be more likely to follow the choices based on the norms of Article 77 Paragraph (1).

This norm should, in fact, determine money as the last option and prioritize other options already mentioned in Article 36 of the Land Acquisition Law and Article 76 of the PP on Land Acquisition. Because when compared in simple terms, each of these other options is seen as more sustainable than the cash money option for the land owners. For instance the provision of replacement land. The comparison between any amount of money with even a small plot of land, will still position the land as a more sustainable economic resource than cash money. Because actually land in its position in the social realm has a different value than its function in the economic and market realms.

In developed and rich countries, land acquisition laws may (by a few developed countries) have been based on the assumption that the value of a plot of land can be determined as easily as it is easy to calculate the amount of money. However, this assumption is not always seen as true by most of the developed countries. Even such a concept gets rejection from the majority of developing countries, especially countries that have large rural areas. Of course, the loss of land in this area because it is requested by the state through the hands of the government has the potential to cause a big loss for the owner, and this loss should only be overcome by the government by preparing other similar land replacements.

Then the provision of resettlement which of course has a higher economic value as well and is more useful in a time period that is not as short as money. This land and buildings can be used by residents as homes for a very long time, for example.

Therefore, besides this PP is deviating from the regulation regarding the forms of compensation regulated in the Law as equal options and none is prioritized, this PP also deviates from the principle of sustainability as stipulated in Article 2 of the Land Acquisition Law.

### Conclusion

Based on the discussion as described above, this study concludes that the PP on Land Acquisition is still considered not in line with the sustainability principle in the Land Acquisition Law. Specifically, the norm whose contents have inconsistent characteristics is the norm that regulated in Article 77 of the PP on Land Acquisition. This norm still implicitly stipulates that the main form of compensation is in the form of money. Whereas as is known in this discussion, money is a form of compensation with the lowest value when viewed from the principle of sustainability, whereas in fact there are other forms of compensation that have some sustainability values.

From this conclusion, it can be recommended that there is a need to renew the PP on Land Acquisition, especially related to the norm of Article 77, so that it contains more substances that further strengthen the implementation of the principle of sustainability. So that the implementation of land acquisition for development in the public interest in the future does not cause new, greater losses for the community.

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