

LAND PROCUREMENT FOR PUBLIC INTEREST AND SPATIAL PLANNING: LEGAL AND JURIDICAL IMPLICATIONS

Edy Lisdiyono

Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia

Abstract

Population growth, industrial development, and national infrastructure made the government legislate Law No. 2 of 2012 concerning Land Acquisition for Development in the Public Interest. Apart from functioning as a catalyst for national development, this law also functions to manage spatial planning. This law is also related to land conversion and spatial planning, namely Law No. 26 of 2007 concerning Spatial Planning. Transfer of functions and spatial planning activities need to be synchronized in law to balance the need for land and to control the transfer of functions properly and in accordance with the spatial plan. Consequently, if there is a violation of the spatial plan that is not in accordance with its designation, both the permit giver and the user of the space, criminal sanctions must be applied to minimize the occurrence of land conversion. The Spatial Planning Law is ideal for realizing a safe, comfortable, productive, and sustainable national space based on the archipelago concept and national resilience. It is hoped that the dream of spatial planning can be achieved through the realization of harmony between the natural environment and the built environment, integration of the use of natural resources and artificial resources with due regard to human resources, and protection of spatial planning functions and prevention of negative impacts on the environment due to space utilization.

Keywords: *Public Interest, Land Procurement, Spatial Planning, Law No. 26 of 2007*

Abstrak

Pertambahan penduduk, perkembangan industri dan infrastruktur nasional membuat pemerintah mengundangkan Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah Untuk Pembangunan Untuk Kepentingan Umum. Selain berfungsi sebagai katalisator pembangunan nasional, undang-undang ini juga berfungsi untuk mengatur tata ruang. Undang-undang ini juga terkait dengan alih fungsi lahan dan tata ruang, yakni Undang-Undang Nomor 26 Tahun 2007 tentang Penataan Ruang. alih fungsi dan kegiatan penataan ruang perlu disinkronkan dalam undang-undang untuk menyeimbangkan kebutuhan tanah dan mengendalikan alih fungsi secara baik dan sesuai dengan rencana tata ruang. Konsekuensinya, jika terjadi pelanggaran terhadap rencana tata ruang yang tidak sesuai dengan peruntukannya, baik pemberi izin maupun pengguna ruang harus dikenakan sanksi pidana dengan tujuan untuk meminimalisir terjadinya alih fungsi lahan. UU Penataan Ruang sangat ideal untuk mewujudkan ruang nasional yang aman, nyaman, produktif, dan berkelanjutan berlandaskan konsep nusantara dan ketahanan nasional. Harapan penataan ruang yang dicita-citakan dapat tercapai melalui terwujudnya keselarasan antara lingkungan alam dan lingkungan binaan, keterpaduan pemanfaatan sumber daya alam dan sumber daya buatan dengan memperhatikan sumber daya manusia, dan perlindungan fungsi tata ruang dan pencegahan dampak negatif terhadap lingkungan akibat pemanfaatan ruang.

Kata Kunci: *Kepentingan Umum, Pengadaan Tanah, Penataan Ruang, UU No. 26 Tahun 2007*

A. Introduction

The need for land acquisition in the sense of changes or adjustments to land use allocation is basically unavoidable in the implementation of development. The need for land acquisition occurs for two reasons, firstly there is a need to meet the needs of an increasing population, and secondly it is related to demands for development as a change for a better quality of life. An increase in population certainly requires more land, which is not only for the expansion of settlements, but also for the expansion of economic activities in general, while the increasing demand for a better quality of life is basically a positive impact of the successful development that has been held.¹

In the period of more than three decades since the promulgation of the Basic Agrarian Law, population growth has occurred quite rapidly, but the distribution is not evenly distributed. The population of Indonesia in 1960 was recorded at approximately 97 million people, and in 2011 it increased two and a half times compared to 1960, namely 235 million. This number includes approximately 35 percent of the total population living in urban areas. From the description, it can be understood that there is a need for land use, both for development in the agricultural sector. This includes the food crops sub-sector, plantation sub-sector, livestock sub-sector and fisheries sub-sector which require a lot of land, as well as development in the housing sector or housing area. Apart from that, in an effort to accommodate the increase in the workforce, development in the industrial sector was intensified, which resulted in the need for land for industrial development. In terms of land use, development in this industrial sector will be able to accommodate a greater number of workers compared to the use of the same land

area for agricultural businesses. On the other hand, with the allotment of land in the industrial sector which continues to increase, of course it will reduce agricultural land. This will experience a shift in values from Indonesia which is referred to as an agrarian country to a semi-agrarian country due to changes in land use.²

Changes in land use that occur generally result in a reduction in the amount of agricultural land. This is due to the basis of Indonesia's economy starting from the agricultural sector. Therefore, changes in land use for the development of the agricultural sector are generally found in areas with fertile soil. It is in these areas that population centers are then developed, so that it has an impact on the development of public infrastructure and facilities. From changes in land use that are not as they should be, of course, land acquisition problems arise which will have implications for land conversion and inconsistent spatial planning.³ In terms of spatial planning in each region, it has been determined by regulations in each region. Therefore, it is necessary to maintain consistency, whether changes in agricultural land allotment are left for industrial needs or agricultural land must be maintained according to its designation. This is what needs attention and study.

B. Discussion

Land issues are basically cross-sectoral and multi-dimensional because of their interrelationships with various sectors and development interests. Thus, land management requires coordinated handling. The government's efforts to synchronize the implementation of tasks in the agrarian/land sector with various sectors, among others, were carried out by Presidential Instruction No. 1 of 1976 concerning the synchronization of the

¹ Lisdiyono, Edy. "Pengadaan Tanah Untuk Kepentingan Umum Implikasinya dengan Alih Fungsi Lahan dan Penataan Ruang." *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 9, no. 1 (2016).

² Dewi, Nurma Kumala, and Iwan Rudiarto. "Identifikasi alih fungsi lahan pertanian dan kondisi sosial ekonomi masyarakat daerah pinggiran di Kecamatan Gunungpati Kota Semarang." *Jurnal Wilayah dan Lingkungan* 1, no. 2 (2013): 175-188;

Utomo, Selamat Joko. "Transformasi Tenaga Kerjawanita dari Sektor Pertanian ke Sektor Industri Di Kabupaten Mojokerto." *Media trend* 9, no. 2 (2014).

³ Wahid, AM Yunus, and M. Si SH. *Pengantar Hukum Tata Ruang*. Prenada Media, 2016; Setiyanto, Adi, and Bambang Irawan. *Pembangunan berbasis wilayah: Dasar teori, konsep operasional dan implementasinya di sektor pertanian*. Jakarta: Badan Libang Pertanian, 2016.

implementation of tasks in the Agrarian Sector with the sectors of Forestry, Mining, Transmigration and Public Works. The instruction contains instructions to the Minister of Home Affairs, the Minister of Agriculture, the Minister of Mines, the Minister of Manpower, Transmigration and Cooperatives, as well as the Minister of Public Works, to improve the synchronization of the implementation of tasks in the agrarian sector with their respective tasks.⁴

In its development, bearing in mind that tasks in the land sector are cross-sectoral in nature, preventive efforts to control changes in land use allocation are carried out through a licensing mechanism, in the form of location permits and land acquisition permits, which the central government delegates to the Governor. The purpose of this delegation of authority is in the framework of residential and industrial development, in order to control changes in the use of agricultural land for non-agricultural uses, regulated in the Minister of Home Affairs Regulation No. 5 of 1974 concerning Provisions regarding the provision and granting of Land for Company Purposes. The regulation stipulates that in determining the location of non-agricultural activities to be developed, it is necessary to avoid the following matters⁵:

1. As far as possible, the reduction of the area of fertile agricultural land must be avoided.
2. As far as possible, use land that was not previously productive or less productive.
3. Avoid the displacement of residents from their residence.
4. Pay attention to the requirements to prevent contamination/pollution for the environmental area concerned.

1. Land Acquisition Arrangements

In Presidential Decree No. 53 of 1989 concerning Industrial Areas, it is stipulated that the development of industrial estates does not reduce agricultural land and is not carried out on land which has the main function of protecting natural resources and cultural

heritage. The implementation instructions for the Presidential Decree are spelled out in Regulation of the Head of the National Land Agency No. 18 of 1989 concerning Provision and granting of Land Rights for the Needs of Industrial Estate Companies. Furthermore, Presidential Decree No. 33 of 1990 concerning the Use of Land for the Development of Industrial Estates and Decree of the Head of the National Land Agency No. 6 of 1990 concerning Presentation of Environmental Information (PIL) for Industrial Estates. Both regulate matters intended to control changes in allotment of use of agricultural land for other uses, especially for the development of industrial zones.

The above regulations still regulate partial and incidental changes in land use allotment. In a broader scope of the problem of land acquisition for the implementation of development in the public interest, the government has issued "Perpres (Presidential Regulation) No. 36 of 2005. Land acquisition in the framework of development for the public interest must be transparent and still pay attention to the principle of respecting the rights of legal rights to land. Therefore, the principle of respect for landowners, now there is a tendency to change the concept of land that has a social function (as in Article 6 of Law No.5/1960). That there is a tendency among community members around industrial areas "concept the social function of land as something that is normative has shifted to become a function of land value". In relation to the relinquishment or revocation of land rights in the framework of land acquisition for the public interest, it is not necessarily carried out without regard to land rights, but the procurement is carried out by way of buying and selling, bartering, or in other ways agreed upon voluntarily. by interested parties (Article 2 paragraph (2) Perpres 36/2005).

In addition to the regulations mentioned above, it is a fact that here and there there is illegal occupation of land, namely land tenure, without permission from the authorities. Against illegal occupation of land, the

⁴ Safitri, Myrna A. "Meninjau Kembali Hak Pengelolaan dalam Rancangan Undang-Undang Pertanahan." *Jurnal Hukum dan Bisnis (Selisik)* 1, no. 2 (2015): 103-122.

⁵ Nurlinda, Ida. "Telaah atas materi muatan rancangan undang-undang pertanahan." *Jurnal Bina Mulia Hukum* 1, no. 1 (2016): 1-13.

procedures for controlling it have been regulated in law No/ 51 Prp. In 1960, the authority to control was vested in the Regent/Mayor of the Head of Level II Region, which for DKI Jakarta was vested in the Governor of the Head of the Special Capital Region. In general, this kind of land occupation takes place both on government agency land, known as state land, and forest land. In Law No. 51 Prp. In 1960 it was determined that basically the evacuation of the land occupation without rights was carried out without compensation. However, in its humane implementation, compensation or severance pay is still provided.

Regarding the occupation of land without rights there are several problems faced, including:

1. Unlawful occupation is generally carried out by economically weak groups.
2. Due to a lack of legal awareness, after a long period of time it is difficult to give an understanding of the good and obligations as a land owner and as a cultivator of the land, so that if there is a law enforcement, an opinion arises regarding the compensation demanded, and not just severance pay or compensation.
3. If there is enforcement in the form of emptying buildings or plants, it is considered an eviction.

2. Land Procurement in Relation to Spatial Planning

With Presidential Decree No. 36 Years 2005 concerning land acquisition for the implementation of development for the public interest can only be carried out if it is based on the Spatial Plan that has been determined beforehand (as stipulated in Article 4 of Presidential Decree No. 36 of 2005), so that changes in the use of agricultural lands, plantations, for the purpose of - non-agricultural purposes are expected to be under control. Recognizing the development and growth of the business world, as well as development and population growth on the other hand, the problem of spatial planning becomes very important to optimize the use of available space in a good, efficient and effective manner for the community and the

business world. Besides that, spatial planning is also intended to provide users with an overview of the specifications for spatial use, and in the end, it will become a guide in planning relevant and efficient activities. In such a context, spatial planning is basically intended to allocate the location, area, and other attributes (such as the type and intensity of activity) of the space so that it can be utilized as much as possible without having to disrupt sustainability and damage the environment. Schematically, it can be abstracted that the need for a city spatial plan is made as shown in Figure 1.

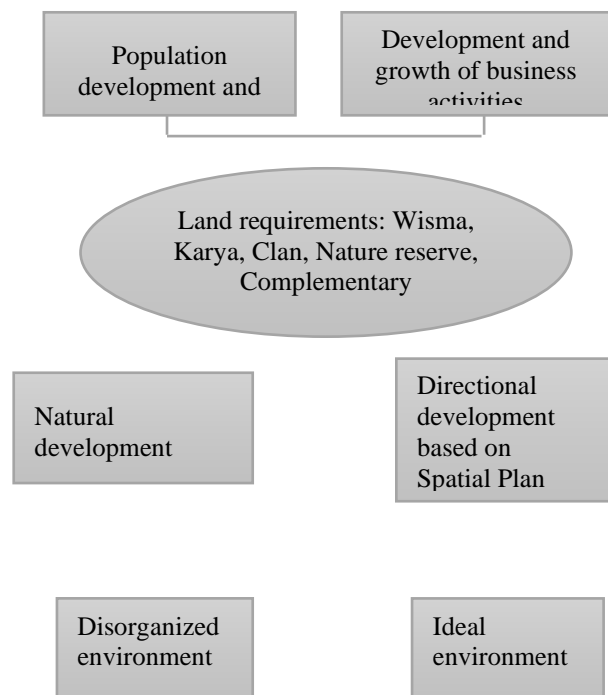


Figure 1. Schematic of the Need for Urban Spatial Planning

The chart shows that both the development and growth of the population as well as the development and growth of the business world are closely related to the availability of land or space. The development and growth of both really require the availability of adequate land, and therefore the land allocation for both must be arranged so that they do not overlap and interfere with each other. If both are allowed to develop and grow naturally without any intervention from spatial planners, then apart from creating an irregular environment, it will also open up opportunities

for conflicts of interest to the population on the one hand and the interests of the business world on the other.

On the other hand, ideally in modern life, the existence of the two components with different interests needs to be regulated through a directed spatial planning policy so that the development and growth of both can run well in an ideal and orderly environment. However, in reality, land acquisition for the implementation of development for the public interest is not in accordance with the spatial plan that has been determined by the government, whether the Provincial, Regency/City Governments. Thus, there has actually been a contradiction between land acquisition for the benefit of settlements, development and the spatial plan that has been determined.⁶

According to Manuwoto as quoted by Emerson, that in general various land problems that arise are caused by conflicts of interest related to the use of space, among the various problems the most prominent are:⁷

1. The overlapping of the allocation of space, between sectoral development activities (eg agriculture and industry), between sectoral development activities and the community (evictions) and between the community and the community;
2. Uncontrolled changes in the use of space;
3. Use of space that is not in accordance with the potential or capacity of the space;
4. Inefficient use of space or not in accordance with its function, causing various negative impacts such as soil damage, productivity decline, landslides and floods.

Spatial planning actually has an important and decisive function at the spatial utilization stage as an effort to control regional spatial planning, and is an instrument for anticipating efforts to reduce the quality of

space. However, it cannot be denied that the spatial policy sometimes creates a clash between technocratic and commercial approaches on the one hand and humanist approaches on the other.⁸ In the Spatial Planning Law No. 26 of 2007 contains the principles of spatial planning, including: (1) integration, (2) harmony, and balance, (3) sustainability, (4) usability and sustainability, (5) openness, (6) togetherness and partnership, (7) protection of the public interest, and (8) legal certainty and justice, (9) accountability.

Such a pattern of spatial planning allows the realization of several things: (1) the implementation of environmentally sound spatial use; (2) implementation of spatial utilization arrangements for protected areas and cultivation areas; (3) achieving the utilization of quality spatial planning to realize the protection of spatial functions; (4) preventing and mitigating impacts on the environment, and realizing a balance between welfare and security interests. The Spatial Planning Law idealizes creating a safe, comfortable, productive and sustainable national territorial space based on the concept of the archipelago and national resilience. The ideals of spatial planning are expected to be achieved through the realization of: (a) harmony between the natural environment and the artificial environment, (b) integration in the use of natural resources and artificial resources with due regard to human resources, and (c) protection of spatial functions and prevention of impacts. negative impact on the environment due to the use of space.

In order to maintain the contents of these principles, it is necessary to take control measures in the form of security measures so that the planned use of space can be realized. Controlling the use of space that is not in accordance with the spatial plan is carried out in the form of imposition of sanctions in accordance with the applicable laws and

⁶ Triyanto, Bayu Arief, and Jawoto Sih Setyono. "Faktor yang Mempengaruhi Ketidakefektifan Implementasi Rencana Tata Ruang Kota di Kelurahan Gedawang Kota Semarang." *Teknik PWK (Perencanaan Wilayah Kota)* 4, no. 1 (2015): 29-40; Kartika, I. MADE. "Pengendalian pemanfaatan ruang." *GaneC* 5, no. 2 (2011): 123-130.

⁷ Manuwoto in Joni Emirzon. *Kawasan Industri dalam Rangka Pelaksanaan Penataan Ruang di Kotamadya Daerah Tingkat II Palembang*. Medan: Program Pascasarjana Universitas Sumatera Utara (Doctoral Thesis), (1995).

⁸ Budihardjo, Eko and Djoko Sujarto. *Kota Berkelanjutan*. Bandung: Alumni, 2005.

regulations. The sanctions referred to here are administrative, civil, and criminal sanctions. Thus, the use of space not in accordance with the spatial plan can still be subject to sanctions based on the applicable laws and regulations provisions. As the criminal provisions from article 69 to article 75 of Law no. 26 years in 2007.

In Article 69 paragraph (1) it is stated that any person who does not comply with the spatial layout plan that has been determined as referred to in Article 61 letter a, which results in a change in the function of the space, shall be punished with imprisonment for a maximum of 3 (three) years and a fine of up to 500,000,000.- IDR (five hundred million rupiahs) both for the permit giver (authorized agency) and also for space users in the event of irregularities in the use of space. This article requires and regulates the giver and user of the permit in using the spatial layout to be consistent as required in the general spatial layout plan.

C. Conclusion

Land acquisition for public purposes is basically unavoidable in implementing development and transferring land use due to population growth and industrial development.

The conversion of land from agricultural land to non-agricultural purposes, such as industrial areas or residential/housing, increases yearly. The reduction of agricultural land, on the one hand, brings benefits, but on the other hand, it can cause disaster if the change in land use is not properly controlled and in accordance with Spatial Planning. Such a pattern of spatial planning allows for the realization of several things, such as implementing environmentally sound spatial use and regulating the spatial use of protected areas and cultivation areas. It is also expected to achieve the utilization of quality spatial planning to realize the protection of spatial functions as well as preventing and mitigating impacts on the environment and realizing a balance of welfare and security interests. The Spatial Planning Law idealizes creating a safe, comfortable, productive, and sustainable national territorial space based on the concept of the archipelago and national resilience. The ideality of spatial planning is expected to be achieved through the realization of harmony between the natural environment and the built environment, integration in the use of natural resources and artificial resources with due regard to human resources, and protection of spatial functions and prevention of negative impacts on the environment due to space utilization.

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