Spatial management in Indonesia : from planning to implementation : cases from West Java and Bandung : a socio-legal study

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CHAPTER IX
LAND ACQUISITION IN THE PUBLIC INTEREST: THE JATIGEDE HYDROELECTRIC POWER PLANT CASE

9.1. Introduction

This chapter explores the processes and mechanisms of land acquisition performed in the public interest in Indonesia during and after the New Order, with special attention for the concept of public interest. My main point of departure is that infrastructure development should be geared to meeting the general populace's basic needs and support sustained local and national economic growth.[676] Accordingly, the rules on land acquisition in the public interest should be perceived as an important legal instrument in spatial management.

In bringing together the critical issues of the public interest and national development, as I have done in previous chapters, I raise two important questions. First, why does the implementation of rules and regulations pertaining to spatial management and land acquisition persistently provoke social and environmental conflict?[677] And second, why has the government been unwilling or unable to reverse its spatial management practice, which clearly threatens developmental sustainability[678]?

These questions are linked to a normative concern: how can a working system of land acquisition for development purposes be made more sensitive to issues of social and environmental justice in Indonesia? How can, for instance, immaterial losses associated with dispossession of land be translated into monetary compensation? Is there any way to truly compensate for environmental degradation brought about by the changing patterns of land use? How can those who lose their land and are forced to relocate in the name of

[676] Heru Dewanto, "Tiba Saat Tiba Akal". (Kompas 10 May 2010). This article asserts that the second approach is more dominant in Indonesia. The National Middle Term Development Plan 2010-2014 states that the government must set aside an investment in infrastructure development amounting to 5% of the GDP or equal to Rp. 2000 trillion within 5 years to support a continued economic growth of 7%.

[677] See Ulrich Löffler, "Land Tenure Development in Indonesia (1996)", in www.mekonginfo.org/mrc. For a different perspective, Owen J. Lynch & Emily Harwell, Whose Natural Resource? Whose Common Good? Towards a New Paradigm of Environmental Justice and the National Interest in Indonesia. (Jakarta: Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002). The point asserted is that disputes over natural resources relate to issues of land proprietorship and management.

[678] Charles Victor Barber, "The Case Study of Indonesia", occasional paper: Project on Environmental Scarcity, State Capacity, and Civil Violence, (Cambridge: American Academy of Arts and Sciences and the University of Toronto, 1997).

development be compensated for the loss of their basic right to enjoy a clean and healthy environment?[679] In such situations, how is justice evaluated? In short, how do we balance the needs of the greater good against the rights of those adversely affected and inadequately compensated by development[680]? In addressing these questions, I present a case study on land acquisition in the public interest – the Jatigede hydroelectric power plant and dam infrastructure development.[681] This case will demonstrate how poorly rules and regulations on land acquisition are followed and how weaknesses in the laws themselves contribute to this. It will also show how and why rules and regulations on land acquisition in relation to existing provincial and district spatial planning tend to disregard social and environmental justice concerns, and how this ultimately jeopardizes the legitimacy of the government[682]. One important element in such an evaluation is the extent to which the law has been clear in its content, accessible and predictable to the people affected by the acquisition process. Also at issue is the law's general applicability, so that it may serve as a tool for controlling government action in the land acquisition process.[683] In this respect, the case is fairly representative of land acquisition practices throughout Indonesia.

One reason for choosing Jatigede in West Java for a case study is that the project is only a small part of a larger project to modernize and industrialize the country from the center. It provides a good example of how a top-down development approach, collides with local people's interests. Previous chapters have already explained how this top-down approach has been embedded in spatial and development planning. As the national capital's hinterland, West Java has to buttress Jakarta's transformation into a megalopolitan city.[684] Thus, the national government has drawn up plans for massive development projects, such as the hydro-electric power plant (Jatigede) in Sumedang, an international airport (Kertajati) and an adjacent urban-industrial area (Majalengka), the upgrading of Cirebon's port so that it can

[679] Art. 5(1) of the Environmental Management Act (23/1997), Art. 28 H of the 1945 Constitution and Art. 9(3) Law 39/1999 on Human Rights.

[680] Maria SW, Kebijakan Pertanahan: Antara Regulasi dan Implementasi (Jakarta: kompas, 2001), pp. 73-75.

[681] As will be discussed below, the land acquisition process started in 1984/1985 and was discontinued. It was restarted under the Soesilo Bambang Yudhoyono administration in 2005 and has continued up until the present (2010).

[682] Philipus Hadjon et. al. Pengantar Hukum Administrasi Indonesia, 4th ed. (GadjahMada University Press, Yogya: 1995), Especially chapter 9, pp. 279-286.

[683] For a discussion on the rule of law and good governance see Chapter 1.

[684] Sri Hartati Samhadi, "Dilema Megapolitan", (Kompas, 17 February 2007): 33.

service international commercial shipping, and a trans-Java toll road from Cikampek to Surabaya.[685]

This chapter is structured as follows. The first section outlines the existing rules on land acquisition in the public interest in light of spatial management. Similarly, as discussed earlier regarding land acquisition in the private interest, the government should ideally represent public interests over private/individual interests. How the public interest is articulated in the existing spatial plan and how it informs the whole process of land acquisition in practice will serve as a litmus test in this respect. Tenure security is greatly influenced by the ways in which spatial and development planning are translated into "infra-structure development projects" which serve to justify the land acquisition process. The next section will discuss the land acquisition process for the Jatigede hydroelectric power plant situated in Sumedang district in West Java. The protracted process of land acquisition for this infrastructure development project has taken years and has yet to be completed at the time of writing of this chapter (2010). The last part of this section will discuss from a rule of law perspective and draw some general conclusions.

9.2. Land Acquisition Procedures and Spatial Planning

Land acquisition in the public interest or specifically performed in the context of infra-structure development projects inevitably results in the dispossession of land owners, albeit not necessarily in revocation of their rights. In this sense, the rules on land acquisition in the public interest have been evaluated in terms of the threat they pose to people's tenurial security. Understandably, they have been mostly perceived negatively as facilitating massive land grabs and /or evictions sponsored by the state in violation of the basic human right to enjoy possession in peace.

However, from a legal viewpoint, this view oversimplifies the issue at hand. While land acquisition may inevitably result in dispossession, it is erroneous to equate it - as many

[685] These infrastructure development projects have been heavily criticized as threatening Indonesian food security. See: "Tol Picu Konversi Lahan Sawah: Kereta Api Bukan Menjadi Pilihan" (Kompas, 17 November 2008). This article suggests that the development of infrastructure (toll roads) will soon be followed by the urbanization (development of residential areas and its amenities) of the surrounding area. See also Bambang PS. Brojonegoro, "Kurangi Beban Ekonomi Pulau Jawa" (Kompas, 17 November 2008).

human rights activist tends to do - with a human rights violation.[686] Governments do need the possibility to be authorized to reserve and allocate land for infrastructure development performed in the public interest. There should be a legal way to acquire land for public use, the legality of which is related to a fixed procedure elucidating the rights and obligations of land owners as well as those looking to acquire land. Therefore, dispossession should not be considered unlawful in and of itself.

9.2.1. A Brief Historical Overview of Land Acquisition Mechanisms

This section will outline the evolution of land acquisition procedures from the Dutch colonial era until now. Its aim is to trace how certain concepts and strategies have been borrowed and adapted with changing contexts and situations and to reveal the extent to which spatial plans play a role in controlling land acquisition in the public interest.

Land Acquisition under the Dutch Colonial Government

Land acquisition "in the public interest" was first introduced in Indonesia by the promulgation of an *onteigeningsordonnantie* (land expropriation ordinance; S.1864-6 as amended by S.1920-574). The 1920 ordinance provided the colonial government with a legal instrument to acquire land through the involuntary release of land rights. A department (e.g. public works) had to submit a proposal explaining the nature of their development project, stressing that it would serve the public interest or common benefit (*algemeen nut*). The Governor-General then issued an *ordonnantie* (government regulation) declaring the project

[686] Such an 'oversimplification' can be found in many articles published in national newspapers discussing the new regulations on land acquisition in the public interest promulgated in 2005. See, for instance, "DPR Dorong Penyempurnaan UU Agraria' (Kompas, 31 May 2005); "DPR Minta Revisi, Komnas HAM Minta Cabut", (Kompas, 14 June 2005); "Liberalisme, Perpres No 36/2005, dan Hak Rakyat" (Kompas, 25 June 2005); "Perpres No 36/2005 Potensial Picu Konflik' (Kompas, 18 May 2005); "Perpres No 36/2005, Dampaknya bagi Kepentingan Umum, (Kompas, 16 June 2005) and "Perpres No 36/2005, Langkah Maju atau Mundur, Kompas, 11 May 2005). See also "Bila Modal Menggusur Rakyat" in Pembaruan Tani: Mimbar Komunikasi Petani, edisi 19, IV, May-June 2005, pp. 6-8. Cf. Adrian Sutedi, Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah untuk Pembangunan, (Jakarta: Sinar Grafika, 2007). He argues that Presidential Regulation No. 36/2005 violates the basic precepts of Art. 17 Universal Declaration of Human Rights (UDHR) and Art. 11 of the International Covenant on Economic-Social and Cultural Rights (ICESCR). Both articles pertain to the basic economic right to possess or own land (pp. 230-1).

to be in the public interest based on this proposal (Art. 6(1)) and established a committee with the task of receiving and processing complaints or objections against the development project (Art. 7-13). Compensation was determined in direct negotiation with land owners (Art. 14). Failing this, a fixed amount of compensation was to be determined by virtue of a court judgment (Art. 15). If an ex-landowner continued to refuse the compensation, the money would be deposited by the court registrar (Art. 61-62), whereupon the person concerned could be removed from the land by force if necessary. This legal path was provided to avoid delays in the completion of development projects in the public interest.

With the promulgation of the SVO the use of land acquired by the public works service was controlled through a construction permit (*aanlegvergunning*) to be regulated further in a building ordinance (*bouwverordening*). Art. 18 of the SVO stipulated that on the basis of the building ordinance all public works activities would be prohibited unless a prior construction permit had been granted by the mayor (*burgemeester)* and aldermen (*wethouders)* on the basis of an approved construction design plan. Likewise, the public must be notified ahead of time. Par. (3) stipulated that a permit application could be refused if the construction design plan was not in conformity with any *stadsvormingsvoorschrift* (conditions for the establishment of cities). The SVO further authorized the mayor and aldermen to attach conditions to the construction permit in so far as they related to the public interest (Art. 18 par. (4) and (5)). In short, the SVO established a framework for preventing misuse of land acquired by the government in the public interest.

The Indonesian expropriation law

The colonial land expropriation ordinance was simply taken over by the Indonesian government with minor changes (S-1947: 96). It was later replaced by Law 20/1961 on the revocation of property rights on land and other objects on land (expropriation law). This law was an elaboration of Art. 16 of the BAL which stipulates that:

> "In the public interest as well as in the interest of the nation and the state and the common interest of the people, land may be expropriated, (on the condition that) adequate compensation shall be granted according to the law."

Law 20/1961 defines the "public interest" widely, comprising of:

(1) The Nation's or State's interest
(2) The common interests of the people
(3) The interest of development (*kepentingan pembangunan*).

The procedure established by Law 20/1961 was limited to land acquisition and more relevant to infrastructure development projects than to natural resource management. This was made explicit in the law's implementing regulations issued in 1973 (GR 39/1973 and Presidential Instruction 9/1973). Here, it is helpful to consider that the promulgation of Law No. 20/1961 followed the first Broad Guidelines of State Policies (PCA' Decree II/1960). As discussed earlier, later on the term "development" became interchangeable with the interests of the state, nation and people.[687] "Development" programs were considered to be in the public interest automatically, and this was sufficient justification in itself for expropriating land for infra-structure development – uncontrolled by any effort at spatial planning.

GR 39/1973[688] provided land owners with a legal avenue to contest the amount of compensation offered in the event that land was needed for government sponsored construction development projects. However, it was only applicable to expropriation based on a Presidential Decree, not to other expropriation procedures such as land clearance (*pembebasan tanah*). In the same year, President Soeharto issued an instruction to ministers and governors with general directions on the procedure to revoke property rights on land[689]. Art. 1 of this Instruction elaborated on the notion of public interest. It is stipulated that:

> "A development project (*suatu kegiatan dalam rangka pelaksanaan pembangunan*) shall be of a public interest nature, if the project relates to (*menyangkut*):
>
> a. the state and nation's interest; and/or
> b. the interest of society (*masyarakat luas*); and/or
> c. the interest of the people (*rakyat banyak*); and/or

[687] Cf. Chapter 1 (sub-section 1.2.2.) which discusses the notion of *rechtsstaat* and development and Chapter 3 (sub-section 3.4.). At issue here is how law (spatial and development planning) has been perceived as a tool for bringing about the modernization and industrialization of society (development).In short, spatial and development planning are mutually constitutive and both reassert the state's right to control *(hak menguasai Negara*).

[688] GR 39/1973 on the procedure for the determination of compensation by the High Court in the case of revocation of property rights on land and objects on land (*acara penetapan ganti-kerugian oleh pengadilan tinggi sehubungan dengan pencabutan hak-hak atas tanah dan benda-benda yang ada di atasnya*) is a further elaboration of Art. 8 of Law 20/1961.

[689] Presidential Instruction 9/1973 on the implementation for the revocation of property rights on land and objects on land (*pelaksanaan pencabutan hak-hak atas tanah dan benda-benda yang ada di atasnya*).

d. the interest of development"

The second paragraph continued with an extremely broad list of what development activities should be considered as in the nature of the public interest. [690]

That this list was not even exhaustive can be seen in the next paragraph which granted the president authority to decide what other activities fell under the public interest. The instruction did add the important condition that a development project could only be declared in the public interest by means of the development plan (*rencana pembangunan*) or the regional development master plan (*rencana induk pembangunan daerah*) (Art. 2). This suggests that such expropriation only applied to infrastructure development, as natural resource exploitation or management was regulated in special plans falling under the monopolistic jurisdiction of the Minister of Forestry and the Minister of Minerals and Energy.[691]

However, expropriation by Presidential Decree was considered impractical and placing too much of a burden on the President. Moreover, only a small fraction of land was titled at the time and only land with formal titling could be expropriated this way.[692] Considering that until the present informal titles in land tenure are the norm rather than the exception, the government issued three ministerial regulations on the basis of Art. 10 of Law. 20/1961, which allowed government agencies and private sector to acquire land on the basis of an agreement. It concerns:

1. Ministry of Home Affair's Regulation (MHAR) 15/1975 on the procedure of land acquisition (*tata cara pembebasan tanah*),
2. MHAR 2/1976 on the utilization of the land acquisition procedure for the government by private companies; and
3. MHAR 2/1985 on land acquisition for development projects performed in sub-districts (*pengadaan tanah untuk keperluan pembangunan di wilayah kecamatan*).

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[690] Defense, public works, general equipment provision service (*perlengkapan umum*), public service; religious affairs; science, arts and culture; health, sports; public safety in regard to natural disaster; social welfare; cemeteries; tourism and recreation; and other economic activities beneficial to the general welfare.

[691] About the fragmented approach to land use and natural resource management, see Chapter 3 (sub section 3.4.2).

[692] Low level of land titling, and informality of land transactions which result in low accuracy of ownership data certainly made the effort to revoke land certificates difficult. Additionally, land owners (those whose name are mentioned in the land certificate as owner) may not physically possess land. Empty land (private or state owned) may well be occupied by squatters or other occupants claiming possession under adat law or peaceful possession for a number of years. See also Chapter 7.

Art. 1 of the 1975 Ministerial Regulation stipulated that land acquisition or release (*pembebasan tanah*)[693] is the act of giving compensation to land owners for releasing all property claims, whether formal or informal. Consequently, land came under the direct control of the state and the NLA could then award a title to the applicant. While the official basis of this procedure was consensus (*musyawarah mufakat*), in practice the option to negotiate existed only in regard to the form and amount of compensation – not in a refusal of land release.

The most important part of MHAR 15/1975 concerned the procedure to release land of property claims. The governor was to establish a (permanent) land acquisition or "release" team (*panitia pembebasan tanah*) in each district under his jurisdiction (Art. 1). It consisted of:

1. The head of the NLA's district branch office (as team leader);
2. One official from the district government;
3. The head of the land tax office;
4. A representative of the government agency needing the land (if an applicant is a private enterprise, an official representing the company);
5. The head of the public works service or the agricultural service;
6. The head of the sub-district;
7. The village head;
8. A secretary appointed from the land office (as non-member of the team).

Government agencies needing land had to submit an application to the governor, who would forward it to the land aquisition team. The team was then to represent the applicant's interest (Art. 4) and should:

(1) conduct a survey on the land's condition;
(2) conduct direct negotiation (*musyawarah*) with land owners/occupants;
(3) estimate the amount of compensation;
(4) prepare the report on land acquisition operations;
(5) act as witness to the payment of compensation.

MHAR 2/1976 declared this procedure applicable to private investors as well.

[693] To denote "*pembebasan*" I use the term release (see note 55 chapter III) which is used interchangeably with the term acquisition (*pengadaan*). Both purport to release land from all existing or competing property claims. Whereas the term land clearance is used to denote the physical act of removing all objects from land in preparation of the proposed land use (see chapter VII on the land use permits).

This procedure did not apply for land acquisition of less than 5 hectares within a single sub-district. According to MHAR 2/1985 (Art. 4 and 5 par(2)), in this case the amount of compensation should be determined in favour of the government (*paling menguntungkan Negara*) or based on a fixed rate (*harga dasar)* as determined by the head of district in accordance with MHAR 15/1975. The project leader himself was to conduct direct negotiations with the land owners (Art. 5 par (1)) and report the results to the sub-district head. However, obviously in such a situation there was no room for negotiation: the project leader could only convey the government's formal offer, which the land owners were expected to accept "in the public interest". Still, legally land owners could refuse the offer and thus force the development project's relocation.

Negotiations were usually initiated by publicly announcing the development plan to the land owners at the sub-district office. This is better known as "*sosialisasi*" in Indonesia. If land owners had any objections regarding the amount of compensation offered, the governor held the authority to decide on the matter (Art. 8), except in small projects, where the project leader had to find a different location (MHAR 2/1985).The governor's central role in determining the allocation of land was also emphasized by Presidential Instruction 1/ 1976,[694] which charged him with coordinating the management of land for development projects where exploitation rights had already been granted by central government ministers.

MHAR 1/1975 became notorious when it was used to dispossess rural villagers objecting to the World Bank sponsored Kedungombo dam building project in Central Java. Apparently, villagers were 'tricked' into accepting the government compensation in the form of resettlement and many in fact refused it". In the words of Rumansara:[695]

> "The process of reaching consensus had been based on an environmental impact assessment conducted in 1984 by a State University in Bandung which concludes that 75% of the people in the proposed reservoir area were willing to transmigrate. The accuracy of the figure was clearly dubious because of the misleading nature of the survey questions".

[694] Presidential Instruction No. 1/1976 on the synchronization of the implementation of governmental task in land issues with forestry, mining, transmigration and public works (*sinkronisasi pelaksanaan tugas bidang keagrariaan dengan bidang kehutanan, pertambangan, transmigrasi dan pekerjaan umum*)

[695] Augustinus Rumansara, "Indonesia: the struggle of the people of Kedung Ombo", in Jonathan A Fox & L. David Brown (eds.), The Struggle for Accountability: the World Bank, NGO's and Grassroots Movements, (Massachussetts Institute of Technology, 1998), pp. 123-150.

The Regulation fell into further disrepute when the government decided to adopt a settlement procedure, allegedly reserved to settle private debts but actually with the intention to speed up the process of land appropriation. This mechanism, called "*konsinyasi*", allows the debtor to deposit the money due at the court if a creditor refuses to accept payment. In the Kedungombo case it was used to deposit the compensation at the Boyolali district court, and in this way the government was supposed to have fulfilled its obligations towards the villagers who refused to accept the compensation. This system was not new; it was a part of the *Onteigeningsordonnantie* and later adopted by Presidential Regulation 36/2005.[696]

In the face of the controversies surrounding the use of MHAR 1/1975, the government in the end decided to replace it by Presidential Decree 55/1993, which refined the scheme of land release and removed some of its harshest features.[697]

Presidential Decree 55/1993

PD 55/1993 provided a separate procedure for land acquisition by private enterprises (foreign and domestic), which was already discussed in earlier chapters (the permit-in-principle and location permit scheme).[698] It emphasised the principle that land should be acquired on the basis of consensus.[699] An important difference with MHAR 15/1975 was that it specifically mentioned that requests for land acquisition (*pengadaan tanah*)[700] should be evaluated against existing district spatial plans (Art. 4). Only if application to acquire land was found to be in conformity with the district spatial plan, the district head (if the land requested lay within the borders of one district) or the governor (if the land requested was located in two or more districts) could issue an 'agreement to determine the location for development in the public interest' (*persetujuan penetapan lokasi pembangunan untuk kepentingan umum*). This

[696] See further: Yusi A.P. et al, "Dua Wajah dari Kedungombo" (Tempo, 38/XXX 19 November 2001)

[697] Presidential Decree 55/1993 concerning the procedure to aquire land for development projects in the public interest (*pengadaan tanah bagi pelaksanaan pembangunan untuk kepentingan umum*). The Ministry of Agraria/Head of the National Land Agency issued an implementing regulation: MAR 1/1994.

[698] See Chapter VII and VIII on the permit and recommendation system regulating land acquisition by private enterprises.

[699] Circular Letter of NLA 508.2-5568-D.III dated 6 December 1990 on the establishment of a committee to supervise and monitor land release performed by private entities (*tim pengawasan dan pengendalian pembebasan tanah untuk keperluan swasta*) and Letter of Ministry Agraria/Head of NLA no. 22/1993 dated 4 December 1993. These letters stipulated that private entities wishing to clear land must do so in consensus with the land owners, on a voluntary basis, under the supervision of the NLA.

[700] It should be noted that since then the term "pembebasan" was never used anymore.

agreement was prepared by the provincial or district land office (Ministry of Agraria/Head of NLA Regulation 1/1994) and comparable to the permit-in-principle and the site permit scheme. The NLA had to co-ordinate the procedure with the head of the district service concerned. In practice, this meant the Head of the District or Provincial Development Planning Board had to issue a recommendation on the appropriateness of the project plan with relevant spatial or development plans.

The rest of the process followed the original procedure: a team established by the governor representing the government agency (the public interest) would conduct a preliminary survey, invite land owners to a meeting, directly negotiate with them and witness the payment of compensation (Art. 8). Here, the terms *pengadaan* (literary 'making available') and *pembebasan (*release the land of all property claims) actually refered to the same thing, i.e. the acquisition of land by offering compensation to land owners. If land owners were to object to the compensation offered, the governor would arbitrate and decide on their final compensation (Art. 20). It was also the governor who could initiate the process of expropriation of Law 20/1961 as a last resort if land owners continued to refuse the compensation offered (art. 21).

Another similarity was the use of the expression "public interest" (*kepentingan umum*). PD 55/1993 defined it as the interest of all levels of society (*kepentingan seluruh lapisan masyarakat*; Art. 1 (5)) and, as further explained in Art. 5, that it only applied to development projects and activities performed and owned by the government. It could not be used to seek profit. Art. 5 (1) listed the government projects covered by the term public interest,[701] which included all government projects decreed to be in the public interest by the President. The latter thus held wide discretionary power in this matter, not unlike the governor-general under the colonial expropriation law.

As already mentioned, Indonesia underwent massive urbanization during the 1980s and 1990s, resulting in unstoppable land conversion and a sharp rise in land disputes. As a result society at large became more aware of land's economic value and more reluctant to accept the interpretation of the social function of land as meaning that individual or communal land owners must consent to dispossession at all times.

[701] (1) public roads, sewers and drainage; (2) dams and other water-works constructions, including irrigation; (3) public hospitals and health centers/clinics; (4) sea and airports; (5) buildings of worships; (6) public schools; (7) public markets; (8) public cemeteries; (9) public safety facilities; (10) post and telecommunication; (11) sports facilities; (12) broadcasting stations (radio and television); (13) government offices; (14) facilities for the armed forces.

Refinement of the Land Acquisition Procedure

After the start of *Reformasi*, the central government decided to replace PD 55/1993 with Presidential Regulation (PR) 36/2005, which only put into place minor changes. The basic principles remained the same:

1. Land acquisition (in the form of voluntary release and transfer of property rights or expropriation) would only be allowed if based on existing spatial plans. Conformity with these plans must be evidenced by a decree on the allocation of land for the development project (*surat keputusan penetapan lokasi*) to be issued either by the governor or district head.
2. A land committee comprising of government officials was to be established, either at the district/provincial level or by the Ministry of Home Affairs, if the land to be acquired would be located in more than one district viz. province.
3. This committee should conduct negotiations (*musyawarah*) on the form and amount of compensation.

However, a number of other things did change. In addition, to the above tasks, the committee was entrusted with the supervision of the realization of the development project on site. Furthermore, Art. 5 provided a longer, but exhaustive, list of what comprises development in the public interest.[702] Development projects not included in the list were therefore not legally considered to be in the public interest, meaning that land acquisition by government agencies in those cases could only be effected through direct negotiation with land owners. This limited government discretion in deciding what constitutes public interest and was quite an improvement over the 1993 ruling. On the other hand, the general provisions defined the public interest quite broadly, as the interest of a large part of society (*sebagian besar lapisan masyarakat)*.

[702] Comprising of: (a) public roads, toll roads, railways; clean water distribution installation, sewers and drainage; (b) dams, irrigation works and other waterworks constructions; (c) public hospitals and health centers; (d) air and sea-ports, bus and railway terminals'; (e) houses of worship; (f) schools; (g) public markets; (h) public cemeteries; (i) public safety facilities; (j) post and telecommunication; (k) sport facilities; (l) radio and televisions broadcast stations; (m) government offices, embassies/consulates, the UN and other international organizations under the UN; (n) facilities for the armed forces and police force; (o) prisons; (p) apartments for the low income; (q) garbage dump sites; (r) nature and culture conservation sites; (s) public parks; (t) orphanages; and (u) electrical generating, transmission and distribution installations.

PR 36/2005 provoked a lot of critique. One legal aid institution in Palembang even threatened to apply for a judicial review.[703] The main fear was that private investors would manage to again start utilizing the land acquisition process intended for government projects, because the list contained some projects typically suitable for private investment or public-private partnership.

In response to such critique from scholars, parliament and NGOs, the President decided to amend PR 36/2005 by PR 65/2006.[704] The list now only contains seven development projects: (a) public road, toll ways, railways; clean water installation and sewerage; (b) dams, irrigation works and other waterworks constructions; (c) public hospitals and health centers; (d) air and sea-ports, bus and railway terminals'; (e) public safety facilities; (f) garbage dump sites; (g) nature and culture conservation sites and (h) electrical generating, transmission and distribution installations. Topics such as sports facilities and houses of worship have been removed. The list is still exhaustive (Art. 2 par.(2)), but it also suggests that there is little or no room to negotiate the amount of compensation if the development project fits the above list of government projects in the public interest. However, releasing land rights has remained a voluntary act.

Consistent with its goal of providing a speedy land acquisition process, PR 65/2006 has established a statutory time limit for negotiation. If the development project cannot be moved to another location, and the 120 negotiation days have expired, the land acquisition committee can decide the amount of compensation to be paid. This sum can be deposited with the Court's registrar (the so-called *konsinyasi*; Art. 10). Land owners may still contest the amount of compensation by submitting an appeal to the High Court in accordance with Law 20/1961 and GR 39/1973 (Art. 18a). The cross reference to Law 20/1961 also suggests that in the end land owners can be disposed against their will, i.e. by using the title revocation procedure as a last resort measure.

The above Presidential Regulation should be read in conjunction with its implementing regulation, MAR (Ministry of Agraria/Head of NLA Regulation) 3/2007.[705] Soemardjono has criticized this implementing regulation as going against the consensual principle underlying

[703] Taufik Wijaya, "Langgar HAM, Perpres Pengadaan Tanah akan dijudicial review" (detikNews, 21/05/2005). The Palembang Legal Aid argued that the possibility of depositing compensation money to the court's registrar would result in human rights violations as happened during the New Order era.

[704] "DPR: Revisi Perpres Pengadaan Tanah"(www.suarapembaruan.com, 09/06/2005) ; Perpres Pengadaan Tanah Lebih Kejam Dari Aturan Sebelumnya : Perpres no. 36/2005 dinilai bisa menjadi alat efektif untuk penggusuran, (http://hukumonline.com, 9/05/2005)

[705] MAR 3/2007 on the implementation of PR 36/2005 as amended by PR 65/2006.

the land acquisition process.[706] Physical development may only be initiated after consent has been obtained and compensation has been received by the dispossessed land owners. MAR 3/2007 instead provides that physical development may be initiated without the land acquisition process being completed. This seems to support the allegation that the decision to promulgate PR 36/2005 was a response to the demand by potential investors at the infrastructure summit hosted by the Indonesian government in January 2005[707] that the government provides a system where land can be acquired in a speedy manner, both for infrastructure development and commercial purposes.

MAR 3/2007 explicitly refers to the possibility of relocating the site project. It provides that the land acquisition committee[708] (Arts. 14-18) shall inform land owners of the planned project site and its goals. If 75 percent of the land owners object to the location of the site, the team must go through the socialization process a second time. If this fails to be successful, the government shall look for alternative options – that is, if it is feasible to relocate the site. If not, the land acquisition committee may request the district head or mayor to initiate the expropriation procedure of Law 20/1961 (Art. 19). Thus, it is ultimately left to the discretion of the government whether to relocate the site project or dispossess land owners using the procedure available in Law 20/1961. This is consistent with the NLA's approach to the socialization process (*penyuluhan*). The elucidation of Article 19 suggests that socialization involves a one way communication process. It consists of the land acquisition committee informing the land owners of the goals and usefulness of the development project to society in general rather than a genuine *"musyawarah*" involving public participation.

[706] For a more elaborate comment on MAR 3/2007, see Maria S.W. Soemardjono, Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya" (Jakarta: Kompas, 2008), particularly Chapter 7 "Pengadaan Tanah untuk Kepentingan Umum".

[707] Periksa www.iisummit2005.com, last accessed 13/01/2005. For comments and critisicm regarding this huge infrastructure development plan, see Sunarsip, "Reorientasi infrastruktur pasca Tsunami" (http://groups.msn.com, last accessed 13/01/2005).

[708] This is the same land acquisition committee (better known as the *Panitia Sembilan*) as referred to by Presidential Decree 36/2005 (amended by PD 65/2006) which at the least should comprise of: regional secretary (*sekretaris daerah*) as head of the committee, a government official 2nd echelon, Head of the NLA at the district/municipal level and Head of the (district or provincial) service for which the land acquisition project will be performed (Art. 14).

9.3. Land Acquisition for Development in the Public Interest

This section looks at a case study of land acquisition, with particular attention for the role of spatial-development plans and changing circumstances caused by district and provincial legislation. It concerns the Jatigede case, a hydro-electrical power plant project situated in Sumedang, West Java. The land acquisition process for this case began in 1983/84 and at the time of my last fieldwork (2007/2008) was still ongoing.

9.3.1. The Jatigede Dam

The case concerns the building of a multi-purpose dam in Sumedang district, north of Bandung. It was a pet project of the Ministry of Public Works, which fizzled out in the late 1970s and was resumed by the central government after 1999. The project was to produce a water reservoir for irrigation purposes and hydroelectric power for neighboring regions and as such key to other development projects in the adjacent regions. China agreed to finance the project in 2007. Construction work may commence soon, even though the land acquisition process has not been fully completed yet.

9.3.2 Justifying the Construction of the Dam

Already in the 1960s, the central government sought to build a multi-purpose dam in Jatigede, an area spread out across the districts of Sumedang and Bandung, adjacent to the Majalengka and Indramayu districts in the west and north respectively.[709] The site map (see below) shows how the dam will enable the irrigation of 90,000 hectares of land down river and will cover an area of 4,891.13 hectare with a water catchment area of 1,460 km². The total land area to be acquired for this development project amounts to 1,768.69 hectares: several villages had to be relocated, and 1,200 hectares of state forest land managed by PT. Perhutani were to be included.[710] The Jatigede area forms part of the Cimanuk-Cisanggarang watershed, which covers an area of 7,711 km² and runs through two adjacent provinces

[709] The exact site for the future dam was determined by a survey conducted by a foreign geologist in 1963, and later corroborated by recommendations made by the Netherlands Engineering Consultants-Snowy Mountains Engineering Corporation (SMEC) in 1973 and again in 1978-1980.

[710] Data provided by Bappeda Sumedang as quoted by Litbang Kompas, (Kompas 20 May 2010). The Sumedang district website provides the same numbers. See: "Pembangunan Bendungan Jatigede" (www.sumedangkab.go.id, last accessed 20 May 2010).

(West and Central Java) and several districts within both provinces. Hence, the central government has the authority over the spatial management of the Cimanuk watershed.[711]

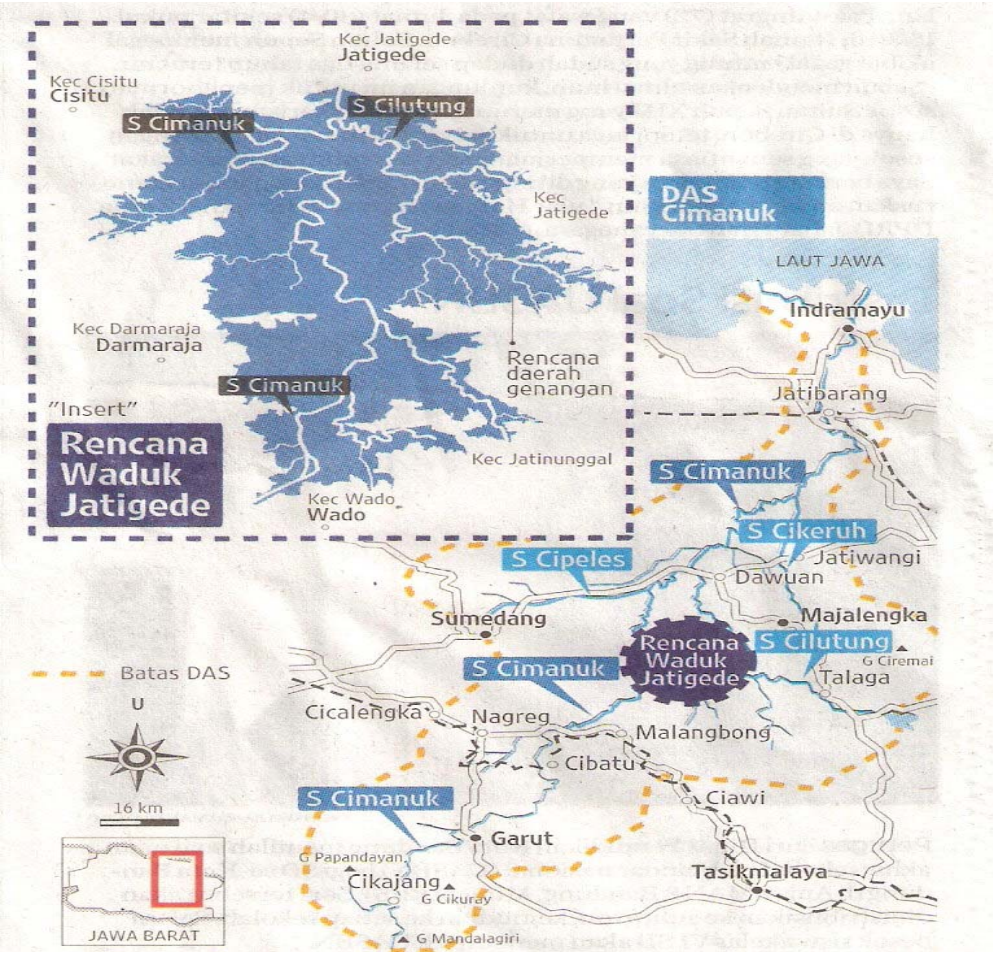

Figure 9-6: Site map of Jatigede: adapted by Kompas (April 20, 2010) from Balai Besar Wilayah Sungai Cimanuk-Cisanggarung)

The proposal was initiated in the context of developing the larger Cimanuk river basin and its adjacent regions. Driving the plan was the need to provide water to sustain the productive rice fields and other agricultural activities. In 1967 another multi-purpose dam (the Jatiluhur

[711] Pursuant to Ministry of Public Works Regulation (MPWR) 11A/2006. However, authority concerning irrigation is equally shared between the central, province and district governments (MPW Decree 390/Kpts/M/2007) on the status of irrigated areas whose management falls under the authority of the central, provincial and district governments (*penetapan status daerah irigasi yang pengelolaannya menjadi wewenang dan tanggungjawab pemerintah, pemerintah provinsi dan pemerintah kabupaten/kota*).

Hydro electrical power plant) was already built closer to Jakarta to comply with the rising demand for electricity.

Responding to a letter from the Ministry of Public Work, the Governor of West Java issued a decree in September 1975[712], placing the future site of the dam under status quo. People within the area lost their right to conduct land transactions or any other new activities related to land, as the the Jatigede area had been reserved for the project. Consecutive West Java spatial plans also allocated the area as the future site for the dam.

In 1979 the Jatigede project was halted temporarily. Soeharto's development policy at the time concentrated on natural resource exploitation (forestry, oil and gas and mining). However, these views changed quickly, even if formal explanations were not offered, and in 1982 the government revived the project and started preparing for acquiring the land. During the same period, the government initiated the Cirata and Saguling hydroelectric power plants in the Citarum river basin with financial support of the IBRD/World Bank. These were taken into use in the late 1980s.

9.3.3. Formal Announcement of the Plan and/or Socialization

In 1983, the district government, on the basis of an instruction from the Governor, began the socialization process. In 1984, awaiting the availability of state budget, the Governor appointed the land acquisition committee (*panitia sembilan*).[713] At a number of village meetings in 1984 the locals present were told to accept the compensation as it would be decided by the land acquision committee on the basis of three decrees from the Sumedang District Head. These were issued in 1984-1985 and contained a value assessment of land,

[712] No: 293/AI/2/T.Pra/75 dated 26 September 1975 renewed in 1981 and 2000 by Governor of West Java Decree 181.1/SK1267-Pem.Um/1981 dated 16 September 1981 and No. 36/2000 dated 23 November 2000. After the promulgation of the RGL 1999, the head of the now autonomous regions held the power to place land under status quo, by a *surat persetujuan Penetapan Lahan untuk Pembangunan or surat persetujuan penetapan lokasi* (approval that a certain piece of land shall be used for development purposes), except for development projects straddling two or more districts, in which case the Governor still held the autority.

[713] On the basis of MHAR 3/1973 and 15/1975. This ad hoc committee (established by virtue of a decree issued by the governor) consisted of regional government officials: the regent or mayor (heading the committee) and the deputy for government affairs, head of the regional land agency (*kantor wilayah badan pertanahan*) and one section head of the same office, the head of the Land Tax and Building Office, the head of the building service (*dinas bangunan)*", the head of the agriculture service (*dinas pertania)*, and the head of the sub-district (*camat*) and lurah/village head within the land area targeted for acquisition..

buildings and agricultural products.[714] At the same occasion, the people were warned that objection to the project, including rejection of the predetermined level of compensation, would be interpreted as efforts to obstruct national development. Under the New Order, such "subversive" behavior was equated with having sympathy for leftist/communist ideas. Given the dire consequences such associations had under Soeharto's regime, this strategy – which was used extensively during the New Order – instilled a sufficient amount of fear in the local populace not to raise any objections.[715]

The district government also sought the assistance of the local military unit. As reported by the Bandung Legal Aid Foundation (*Lembaga Bantuan Hukum Bandung*)[716], people at Jatigede who refused the compensation offered in the 1980s were summoned to the Sumedang district military court. They were accused of stirring up political unrest, interrogated, and two of them were severely beaten. Publicly, the military declared that it was their legal duty to control and monitor land acquisition in the interest of national development.[717]

LBH Bandung also reported that local people were never given the choice as to whether or not to move, and were not consulted about the value of their land and property. Instead, they were tricked into accepting the payments by officials. For instance, the committee led locals to believe that rejection of the offer would result in forfeiture of any right to compensation, since the recalcitrant would be seen to be obstructing gain for the greater good, or in the New Order parlance, "development". In this way, the government created the impression that compensation – whatever the amount or form – is not a right,[718] but a benevolent gift from the government.

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[714] District Head of Sumedang Decree 590/SK.7-Ag/1984 and 590/SK.45/Ag/1985 on the value estimation of land held in possession by land owners and Decree 604/SK.186-PUK/1984 on the value estimation of buildings.

[715] As reported by ELSAM, the same strategy was used in the Kedung Ombo and the Cirata dam cases.

[716] See Yayasan Lembaga Bantuan Hukum, Bandung, "Mengungkap Pelanggaran Hak Asasi Manusia, Hukum dan Korupsi di Bendungan Jatigede, Sumedang-Jawa Barat (sebuah laporan alternatif), (LBH-Bandung, Law Firm Adnan Buyung & Partners, West-Java Corruption Watch: Agustus 2003).

[717] "Jatigede dam campaign gain momentum" (Down to Earth no.61, May 2004); West Java mega-dam looms (Down to Earth no. 59, November 2003). Both articles refer to a September 2003 report compiled by LBH Bandung which documented the human rights violations associated with the project's land acquisition.

[718] As determined in Art. 17 Universal Declarations of Human Rights. Cf. on the national plane: Art. 28H of the Indonesian Constitution of 1945 (second amendment of 2000); Art. 23/32 of PCA Decree 17/1998 on Human Right as further elaborated in Law 39/1999 (on human rights (Art. 29 and 36(2)).

9.3.4. Bureaucratic Hurdles and Corrupt Practices

Considering the government's power one would expect that the land for the project would be easily acquired. However, this was not the case. From 1984 up to the 1990s, the committee only acquired 2,159 hectares of land.[719] Neither did the subsequent years bring much result. Several reasons account for this. First, members of the land acquisition committee did not work full-time on the process as they all had other government duties to attend too. Second, red tape hampered efficient and reliable data collection on the details of the land to be acquired. For instance, the NLA's data on formal land ownership were incomplete and in part conflicted with those of the tax office on land and building tax payers. As a result the committee first had to collect and verify data from different sources. Third, this uncertainty created room for corruption, which in its turn led to mismanagement of the budget and further delays. The Director of LBH Bandung revealed that about 6 billon rupiah (± 600,000 US$) had been lost as a result:[720]

> "Only an estimated 12-33% of the compensation fund allocated in the government budget has reached individual land owners. (…) Compensation had been granted in violation of the District head decrees on the value estimation of land and buildings."

Apparently during the New Order government such transgression of the law did not result in any legal response at all. This changed after *Reformasi* when some locals decided to take matters into their own hand. In 2006, a few inhabitants from two villages at Jatigede brought a class-action civil lawsuit against the government of Indonesia before the Bandung district court with the support of several legal aid institutions.[721] They demanded a re-evaluation of the land acquisition process, a fairer treatment with regard to the valuation of land and relocation to an area close by.[722] They explicitly mentioned the intimidation and fear instilled by government officials which marred the *musyawarah* principle that was supposed to be upheld by both parties. Unfortunately, they lost the case at this stage because the government's lawyer could prove to the court that the land owners who had shown up during the socialization process had signed a document that expressed their consent with the development project, while quite a number of other land owners had agreed to be

[719] "Proyek Bendungan Jatigede Sumedang: Catatan Kelabu dalam Lembar Pembangunan" (Republika online, 4 February 2003).
[720] "Gubernur Jabar Kaget: LBH Temukan Dugaan Korupsi Waduk Jatigede" (Sinar Harapan, 5 March 2004).
[721] LBH-Bandung and the legal aid bureau of the Parahyangan University Law Faculty.
[722] "Warga Jatigede Gugat Presiden" (Sinar Harapan, 12 September 2006).

compensated and accepted the money offered. The court concluded that it was proven beyond reasonable doubt that *musyawarah* had been reached and that the full amount of compensation had been paid in accordance with the law.[723]

In regard to the corruption charges (committed in the 1980s and 1990s), as revealed by the police which began investigating in 2009, individual landowners and outsiders also participated in the misappropriation of compensation funds. Various criminal schemes were developed by and in co-operation with local government officials, such as 'marking up' the amount of land to be compensated, demanding compensation for the same land more than once and misrepresenting people as landowners and collecting compensation on their behalf.[724] As mentioned earlier, a lack of reliable land and population records in combination with the widespread informality of land tenure facilitated such practices.

Government responses to the corruption problems have been largely ineffective. In 2009 the National Planing Agence (*Bappenas*) established a team headed by Ms. Rinella Tambunan to inquire into the compensation process of the Jatigede project before and after 2007. The result of this inquiry has not come forth at the time of writing, but will be in the form of a policy recommendation on the compensation process, addressed to the central government and the government of Sumedang.[725] No corruption charges were filed against members of the land acquisition committee suspected of embezzling funds to be used for the land acquisition process in 1984-1985. Only the secretary of the Sumedang district land acquisition committee was found guilty of misappropriating funds allocated for land acquisition during the 2004-2005 budget year. For this, the District Court of Sumedang sentenced him with a mere one year of imprisonment in 2009.[726]

9.3.5. Availability of Funding

Problems with funding also caused delay. Similar to Kedung Ombo, the Jatigede dam would be funded by foreign loans. However, the World Bank decided to stop funding the project and cancelled its plan to allocate US$ 37 million after a negative feasibility study in 1988.[727] A

[723] "Gugatan Warga Jatigede Ditolak" (Sinar Harapan, 26 July 2007); Pengadilan Negeri Bandung Tolak Gugatan Warga Jatigede (Gatra online, 25 July 2007). An appeal is still pending.
[724] "Ganti Rugi Jatigede Diselewengkan" (Tribun Jabar online, March 1, 2009).
[725] Bappenas Evaluasi Ganti-Rugi Proyek Waduk Jatigede (Sindo online, 24 August 2007).
[726] "Terpidana Kasus Jatigede Dieksekusi" (Pikiran Rakyat, 21 Oktober 2009).
[727] "Jatigede dam project attractive, but at what cost to environment?" (The Jakarta Post, 06-11-2007). In 1985, in cooperation with the Dept of Planology of the ITB, the government made a relocation plan for around the

second blow to the project came with the economic crisis of 1997, which caused the government to officially stop the ongoing land acquisition process by PD 39/1997, a decision reinforced by the political turmoil following the crisis. Priority was given to fundamentally reconstruct the legal, political and economic foundations of the state and government rather than conduct huge infrastructure projects.

Three years later, in 2000, President Wahid at least officially restarted the project, by rescinding PD 39/1997.[728] According to the government projects such as Jatigede were needed to jumpstart the national economy. However, nothing happened as the President got embroiled in a long political fight eventually leading to his impeachment in 2001. Neither were efforts by his successor Megawati to rekindle the project successful.

This changed under the Presidency of Soesilo Bambang Yudhono. In January 2005, the President held an infrastructure summit in Jakarta to convince international investors that his new government was serious about attracting foreign investment. A few months later, the West Java provincial government followed suit and offered 57 infrastructure projects worth US$3.5 billion to the 174 foreign and domestic investors attending that summit.[729] Projects included the construction of toll roads connecting West Java's economic centres and a new international airport in Majalengka. Many believed these projects were indispensable for increasing the region's comparative competitiveness in attracting investment.[730]

As discussed earlier the President also decided to amend PD 55/1993 and replaced it with PR 36/2005, and subsequently PR 65/2006. The Minister of Public Works, Joko Kirmanto, explicitly stated that the aim of the Decrees was to provide the government and investors alike with a way to acquire land as quickly as possible. He added that once an area is allocated for a certain public purpose, the people living within said area lose their right to

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lake. The feasibility study was conducted in 1989-1990 by the Lembaga Ekologi (ecology institute) of the Padjadjaran State University at Bandung. It was the same institution which conducted the environmental impact study in 1992. See also Amaliya et all, "Mengejar Mimpi Setengah Abad" (Pikiran Rakyat, June 7, 2010).

[728] By virtue of Presidential Decree No. 64 of 2000.

[729] For a critical comment on both summits which reflect a policy of prioritizing direct investment and infrastructure development see "A recipe for injustice" (Down to Earth no. 69, May 2006).

[730] Asep Mh. Mulyana, "Jabar genjot proyek infrastruktur" (www.bisnis.com, 08/07/2005). The West Java Chamber of Industry and Commerce (Kadin Jabar) were behind the provincial government's initiative for such infrastructure development projects, as, if realized, the province's comparative competitiveness should increase and, in addition, reduce the unemployment rate up to 30-40%".

sell their land to third parties.[731] The new regulation further enabled continuation of the project even if the land acquisition process had not been completed.

These efforts paid off when the Chinese government agreed to offer a loan, subject to the condition that a Chinese contractor firm be appointed to do the construction work. The contract between the government of Indonesia and Chinese contractor SinoHydro Coop Ltd was signed on April 30, 2007.[732] On a state visit to China Vice-President Jusuf Kalla officially met with representatives from SinoHydro coop Ltd.[733] At the end of 2007, Djoko Kirmanto confidently stated that:

> "The government had signed a loan agreement amounting to US$ 239.57 million with the government of China as represented by the Chinese Exim Bank. Hence the money is available, the contract had been signed and now we must proceed to start the work." [734]

In this manner the Minister of Public Works brought pressure to bear on the provincial and district governments to finally complete the land acquisition project. As the government perceived it, protests concerned not the project itself but rather local people's dissatisfaction with the amount of compensation received and uncertainty about relocation.[735]

9.3.6. People's objections against the project

The tendency of government officials to perceive the issue at hand only as land occupants' dissastisfaction with the compensation amount offered, unfortunately, had been further strengthened by the fact that in 2007 people from nine villages in Jatigede (representing 1,054 families) who formed a *Gabungan Rakyat Daerah Rencana Genangan Jatigede* (Jatigede people's association) and *Pokja Gugatan Proyek Jatigede* (compensation claim task force) contested the amount of compensation granted to them in 1983-1984. The main ground was allegation of the use of threat to manufacture consent on the compensation amount

[731] See: "Kepentingan Umum, Globalisasi, dan Percaloan", (Kompas on line, 25 June 2005); "Pembebasan Tanah Akan Dipermudah", (Tempointeraktif.com, 17 January 2005).
[732] "Kontrak Pembangunan Jatigede Ditandatangani" (Kapanlagi.com. 30 April 2007)
[733] "Kalla Bertemu Pimpinan BUMN Cina" (Kapanlagi.com, 7 Juni 2007).
[734] "Proyek Jatigede Dimulai" (Tempointeraktif, 25 November 2007); Soedrajat Tisnasasmita and Irwan Natsir, "Implikasi Waduk Jatigede Bagi Jawa Barat"(Pikiran Rakyat, 15 February 2008)
[735] "Penolakan Warga Meluas"(Koran Sindo, 23 October 2007).

offered.[736] As mentioned earlier above, these people with the help of the Bandung Legal Aid earlier brought this matter before the Bandung court which dismissed the case. No other legal avenue is open to them anymore.

However, in response the government, in the same year, conducted a tripartite meeting of central, provincial and district government officials (from Sumedang, Majalengka, Indramayu and Cirebon). In that meeting was decided that the provincial government would do the "social engineering" (*rekayasa social*) required to move the project forward. This meant that they would try to convince locals who still retained claims on land, to voluntary release their claims and accept indemnity in the form of relocation. The districts were charged with allocating and reserving land for this purpose.[737] This task was quite a challenge, because many of those who had earlier been forced to release their land and been relocated to the outer islands under a transmigration program had by now returned because of the hardships they had experienced.[738] These people had since reoccupied the land they had released and that had not been used since.

Nonetheless, the government wished to sustain its commitment made in 2003, i.e. to relocate all of the locals.[739] Earlier in 2006, the central government officially requested provincial governments from outer regions to accept the relocation of people from Jatigede to their areas. Representatives of Riau province and the districts of Bengkalis and Indragiri Hilir were invited to Jakarta and notified of the central government's decision to reserve land for this purpose.[740] However, the central government could not force transmigration upon these governments, and its requests met with a sceptical reaction. Such difficulty in dealing with regions in determining sites to relocate people from Java was certainly absent during the Soeharto administration.

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[736] See: Waduk Resahkan Warga (Kompas 1 July 2008); Warga Jatigede Tuntut Gantirugi Tanah (Tempo interaktif, 5 May 2008). A similar negotiation (*musyawarah*) process was used in the land acquisition for the construction of the Kedung Ombo Dam in Central Java. See: In the Name of Development: Human Rights and the World Bank in Indonesia, a joint report of the Lawyers Committee for Human Rights and the Institute for Policy Research and Advocay (ELSAM), July 1995.

[737] "Bantu Relokasi Warga Jatigede" (Pikiran Rakyat, 27 august 2007).

[738] See: "Pemerintah keluarkan 4 opsi soal proyek jatigede"(Kemitraan Air Indonesia, 10-9-2003, www.inawater.com/news); "Bendungan Dibangun, Rakyat Malah Merana", suara public-edisi May 2004; Dilema Pembangunan Proyek Tokek Waduk Jatigede", (Kompas online, 1 November 2004).

[739] West Java mega-dam looms (Down to Earth no. 59, November 2003).

[740] "Riau Bakal Terima Warga Transmigrasi dari Jawa Barat" (Riau online, 19 January 2006).

The most important district government concerned, Sumedang took no concrete steps towards relocation until 2008,[741] when the district head issued a decree pertaining to the relocation of 5,891 families to a nearby location. Still, this left a large number of other families in doubt about their future.[742] Dedi Kusmayadi, head of a local NGO*, Komunike Bersama*, moreover criticized the above decree for not taking into consideration land owners' wishes. He argued that:

> "(…) the government should priorly consult with us (the people) in determining the relocation site. The government decision to relocate, without prior consultation and consensus building (musyawarah), will only cause unnecessary suffering of people in their new location." [743]

National environmental NGO WALHI argued that the dam would devastate the local community, forever uprooting the local people from their ancestral land and destroying their traditional culture.[744] The dam would submerge nearly 5,000 hectares, comprising of 35 villages (or 70,000 villagers).[745]

NGOs also objected to restarting the project for environmental reasons. In a 2004 discussion with the Deputy of Environmental Impact Assessment of the Ministry of Environment, the head of the FKRJ, Kusnadi Chandrawiguna pointed out that the environmental impact assessment made for the project in 1992 was no longer valid.[746] According to WALHI, the continuation of the project would mean a considerable reduction of already scarce forested

[741] Notwithstanding the fact that already back in 2005, in support of that effort the regency of Garut agreed to reserve an area for relocation. See: "Sang Tauladan dari Arinem", Info Ketransmigrasian Volume I no. 2 th. 2005. The article advertises transmigration by an alleged success story of individuals who are better off as transmigrants. "Rencana Relokasi Warga Belum Serius" (Pikiran Rakyat, 22 Februari 2006); "Belum Pasti Pemindahan Warga Jatigede", (Pikiran Rakyat, 23 September 2007).

[742] Decree of the Head of the Sumedang District 503.PL/SK.015-PTPSP/2008 on the determination of location for resettlement. See further Yosa, "Peristiwa di Balik Pembebasan Lahan Bendungan Jatigede" (progresif jaya online, 14 December 2009).

[743] Ibidem.

[744] "Bendungan Dibangun, Rakyat Malah Merana" (Suara Publik Online, edisi mei 2004)

[745] "LSM Minta Proyek Pembangunan Waduk Jatigede Dihentikan", (Media Indonesia, 14 mei 2004). Dihentikan)

[746] "Warga Tolak Waduk Jatigede"(Kompas, 13 Mei 2004).

area in West Java[747] and would furthermore violate the general rule prohibiting productive rice field conversion.[748]

In an effort to find an ally within the central government against the Public Works Ministry and the provincial government, the FKRJ lobbied the Ministry of Environment to stop the project.[749] To such attempts the Public Works Minister responded by arguing that the Minister of Environment held no authority to decide on the future of the project, except in case a new environmental impact assessment study would determine that the project was not feasible.[750] But even then, it was improbable that a new environmental impact assessment would be able to put a halt to a project in which the central, provincial and district governments had already invested so much money – indicating the weakness of the Minister of Environment in controlling development projects and the failure of the environmental impact assessment to function properly.[751]

It should also be noted that the two impact assessments made in justification of the Jatigede dam skirt the question as to whether continuous habitat fragmentation through other dam related activities, such as the construction of new cities and roads, is a reasonable price to be paid. The feasibility study only addresses what actions should be undertaken in order to minimize or control the environmental impact of the project itself, not of its longer term consequences.[752] As a result, issues of social and environmental justice tend to be

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[747] See West Java PR 3/1994 and commentary by Yaman Mulyana, "Memantapkan Kawasan Lindung Jawa Barat", (Pikiran Rakyat, 19 July 2002).

[748] Adig Suwandi, "Penggusuran Lahan Pertanian Produktif", (Republika online, 09.09.02); "perjuangan merebut tanah" (down to earth no. 40, February 1999 in http://dte.gn.apc.org; cf. "Mengerem Konversi Lahan dengan Pendekatan Pasar", (www.kompas.com, 16 oktober 2002); Bambang Irawan et al, "Perumusan Model Kelembagaan Riset Lahan Pertanian", in Bulletin AgroEkonomi, volume 1, no. 2, February 2001, "Lahan Pertanian di Jawa tidak boleh Dikonversi", (Kompas online, 24 September 2002)., "Konversi Sawah Beririgasi Akan Dilarang", (Tempo Interaktif, 20 June 2006), "Revitalisasi Pertanian Baru Daftar Keinginan", (Kompas online, 2 February 2005). Cf. Law 25/2004 (national development planning system) and Presidential Regulation 7/2005 on middle term development plan 2004-2009, especially chapters 19 and 25.

[749] "LSM Minta Proyek Pembangunan Waduk Jatigede Dihentikan", (Media Indonesia, 14 May 2004).

[750] "Amdal Kadaluarsa: Menteri LH Larang Lanjutkan Proyek Waduk Jatigede'(Kompas, 29 March 2004).

[751] According to Wisandana, a former government official working at the BPLHD West Java province, in legal practice the environmental impact study lost its preventive function and degenerated into an administrative requirement without any consequence. Wisandana, "Pokok-pokok Amdal (pengertian, lingkup, prosedur, kegunaan, kedudukan dan fungsi)" paper without date (Bandung: BPLHD, 2007).

[752] An interesting comparison here is the Three Gorges dam project in China. Were Chinese environmentalists did look into this critical issue Jianguo Wu, Jian Hui Hiang, Xinggou Han, Zongqian Xie and Xianming Gao, "Three Gorges Dam-Experiment in Habitat Fragmentation? (Science 23 May 2003, Vol. 300 no. 5623):pp. 1239-1240. Dai Qing, Philip B. Williams, John Thibodeau (eds.), The River Dragon Has Come!: The Three Gorges Dam and the Fate of China' Yangtze river and Its People, (Probe International, International Rivers Network),

marginalised and criticism against the ideological underpinning of the Jatigede project did not get the government's official attention. [753]

In 2008 WALHI announced that it was seeking support from other NGOs to boycott the project. Spokesman Dadang Sudardja repeated some of the earlier complaints, but added arguments related to climate change:[754]

> "The dam would displace more than 70,000 people, submerge five districts and villages. It would damage the ecosystem because it would inundate some 1,200 hectares of Perhutani state forest (…) the dam would also create massive amounts of methane and carbon dioxide gas which would contribute significantly to the greenhouse effect".

To such criticism, the governor of West Java only responded that: "In every development project, it's normal to have pros and cons".[755] Such a remark is representative of the dismissive attitude of government officials of sustainable development principles when it comes to genuine choices to be made, as also indicated by the weakness of environmental impact assessments. This attitude has underlied Indonesian government (unofficial) policy for decades.[756]

The disregard for the position of those afflicted by such projects and their consequences is also visible in the absence of taking public participation seriously.[757] Instead, the official policy seems to be geared only towards boosting economic growth by enabling the completion of infrastructure development projects. This leitmotif runs along the government response to protest voiced against the project, as will now be further elaborated.

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see also Jun Jing, "Rural Resettlement: Past Lessons For the Three Gorges Project", (the China Journal no. 38, July 1976): 65-92, who mentions the enormous difficulties of economic recovery of those resettled in other locations.

[753] As written by Stanley, Seputar Kedung Ombo, (Elsam: Jakarta, 1994) and other NGOs.

[754] "Jatigede project meets opposition, (the Jakarta Post, March 17, 2008); "Villagers and NGOs: Jatigede dam bad plan (the Jakarta Post, June 18, 2008).

[755] Ibidem.

[756] See also J. Arnscheidt, 'Debating' Nature Conservation: Policy, Law and Practice in Indonesia; a discourse analysis of history and present, dissertation Leiden University (Leiden: Leiden University Press, 2009). She stresses the influence of the *pembangunan* discourse on nature conservation policy. However, the same discourse also influences the position of the Ministry of Environment and determines the role and function granted to environmental impact assessment studies to influence development (land use) policies.

[757] Dadang Purnama, "Reform of the EIA process in Indonesia: improving the role of public involvement" (Environmental Impact Assessment Review 23 (2003)): 415-439.

9.3.7. Government response

The status of environmental impact assessments became a bone of contention in the Jatigede case. In 2008, a spokesman of the Ministry of Public Works - referring to the principle of sustainable development as adopted at the World Summit of 2002 in Johannesburg- asserted that an environmental impact assessment could influence the decision but not cancel it. Other criteria would have to be taken into consideration, such as technical and economical feasibility and the social and political acceptability of the project.[758] Implicitly, he also referred to the Jatigede project being crucial for the completion and operation of other huge infrastructure development plans in the region, notably the earlier mentioned construction of an international airport in Majalengka[759] and the expansion of the Cirebon seaport.[760]

Another issue was the meaning of public interest, which government officials interpreted as the interest of the majority of the people. Don Murdono, the Sumedang District Head, put it like this:

> "Despite being controversial, the government will go ahead with plans to build the Jatigede dam. There has been debate among the public. The government believes that the construction of the dam will benefit the majority so we will move on with it." [761]

Danny Setiawan, the then governor of West Java, refused to talk with the farmers from Jatigede who came to Bandung to protest against the dam in 2005. He claimed that the issue had been settled in 2004.[762] His successor, Achmad Heryawan, reiterated that his administration would go ahead with the project, which would benefit the majority of the people in the province:

> "Why would we stop projects which have been running well? We will go ahead and complete them for the community's sake."[763]

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[758] "Pemda dan Masyarakat Minta Waduk Jatigede Dilanjutkan", (September 2008) www.pu.go.id/index.asp. last accessed 15 January 2009.
[759] "*Jabar akan Miliki Bandara Internasional*" (Suara Karya, 29 Oktober 2007).
[760] "Jabar genjot proyek infrastructure" (Pikiran Rakyat online, 8 July 2005).
[761] Yuli Tri Suwarni and Nana Rukmana, "Government will go ahead with Jatigede dam project" (Jakarta Post, August 9, 2004).
[762] "Protest color summit" (Jakarta Post, August 20, 2005).
[763] "Villagers and NGOs: Jatigede dam bad plan (Jakarta Post, June 18, 2008).

The Sumedang district government even petitioned the Ministry of Public Works to continue the project despite that it meant the loss of 1,510 hectares of irrigated rice fields. To compensate for this, they also asked the central government to finance the construction of three small dams in Rengrang, Cikandung Girang, Cikandung Hilir and Leuwishaeng.[764]

The district government of Sumedang also pointed out that locals from neighboring regencies would benefit from the Jatigede dam. Farmers in the lowlands of Cirebon, Indramayu and Majalengka, represented by the Association for Harmony among Farmers (*Himpunan Kerukunan Tani* or HKTI), who have suffered alternatively from annual floods and water shortages,[765] saw the dam as a solution to their problems.[766] The project therefore would not only serve national, but also provincial and district interests. Public interest was understood as the interest of the majority of the people. Local people, considered a minority, must make way for development performed in the interest of the majority. It comes as no surprise then that social and environmental interests were dismissed.

Such a policy is both against the law and against common sense. Not only did this approach blatantly ignore the sustainable development principle embodied in the SPL 1992 and 2007 and EMA 1997, but also the World Commission on Dams' demand that all dam projects must result in sustainable improvement of human welfare, i.e. a significant advance in human development on a basis that is economically viable, socially equitable, and environmentally sustainable.[767] Simply stated, it is against the law to grant a permit and continue with a project which has a negative Environmental Impact Assessment.

9.3.8. The final stage: construction of the dam

Financing and completing the project as quickly as possible were the two things that seemed to matter most to the government.[768] Following a "socialization" seminar conducted in 2003

[764] "Kompensasi Hilangnya 1.510 ha Areal Sawah: Sumedang Ajukan 3 Bendungan Baru" (Galamedia 11 March 2010).

[765] "Pembangunan Waduk Jatigede Dimulai Tahun 2007" (Kompas online, 27 juni 2005).

[766] "Percepat Pembangunan Jatigede: Petani Korban Banjir Kesulitan Tanam Ulang", (Pikiran Rakyat, 06 februari 2006). This statement is voiced in response to Bappenas's intention to shelve the Jatigede project. See also "Jatigede Dam Campaign Gains Momentum" (Down to Earth no. 61, May 2004).

[767] World Commission on Dams, Dams and Development: A New Framework for Decision Making, the Report of the World Commission on Dams, London: Earthscan Publications Ltd, November 2000).

[768] "Nasib Waduk Jatigede Masih Teka-Teki", (Pikiran Rakyat, 04 februari 2004).

under the auspieces of the West Java provincial governor[769] in 2006 the Governor of West Java established a special task force (*Satgas Jatigede*) to accelerate the project's completion.[770] Soon thereafter the Director General of Water Resources of the Public Works Department, Siswoko, announced that 60% of the land needed (4,000 hectares) had been acquired.[771] In 2007-2008, only a small number of farmers living in remote and inaccessible areas had not yet been approached. The Task Force also started negotiations with Perum Perhutani in order to get them to release their claim on state forest land needed for the completion of the project.[772] After the construction contract with SinoHydro Coop Ltd was signed in 2007, Siswoko confidently announced that even though not all of the land had been acquired yet, the construction work could begin in 2007, could be completed in 2012 and the dam could be operational in 2013.[773]

In 2008, the Ministry of Public Work, rather boastfully, announced that 90% of the land had been acquired. The figure mentioned, however, might not represent what actually happened on the ground. During the same period, as mentioned earlier above, quite a number of land occupants reclaimed their land or contested the legality of the land acquisition process conducted earlier.[774] Quite a number of land owners (villages) had not even heard of the project and did not yet (in 2008-9) know that they would be removed from their land. In any case, the Ministry further argued that the final 10% would pose no problem as MS. Kaban,

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[769] In the above "socialization seminar" (30 December 2003) two key speakers, Ir. Maksoem from the Dinas PSDA Jabar and Ir. H. Mardjono Notodihardjo from Tarumanagara University-Jakarta argued that the Jatigede project must be completed and if necessary financed by off-shore loans. See: walhinews@yahoogroups.com, 31 December 2003.

[770] Governor of West Java Decree 611.1/kep.124-sarek/2006. This Task Force also maintains a website: http://satgas-jatigede.com providing visitors with information on actions performed. Articles published on the site reflected the government's views on such matters as socialization and the social-environmental impact of the Jatigede project. However, information available may not be up to date as daily maintenance is lacking.

[771] "Rp.2.1 Triliun untuk Waduk Jatigede", (Tempointeraktif, 2 April 2004); Andri setyawan/harun mahbub, "Proyek Waduk Jatigede Dilengkapi Pembangkit Listrik", (Tempo interaktif, 10 July 2006). Fortunately, from the government's viewpoint, China pledged its support in the form of a loan amounting to USD 190 million to partially finance the project. The remaining money needed (some Rp. 103 billion) to complete the land appropriation phase would be allocated from the 2006 state budget.

[772] Tita Pati working for the Provincial Directorate General of Public Works asserted that she even met villagers upstream who had not even heard about the Jatigede plan when she conducted a field visit in 2007 (interview, 5 August 2007).

[773] "Kontrak Pembangunan Bendungan Jatigede Ditandatangani", (www.kapanlagi.com, 30 Aprl 2007, last accessed 25/06/2010).

[774] "Korban Waduk Dibantu" (www.suarakarya-online.com, 18 November 2008). It was reported that Eldhie Suwandie, a Member of Parliament (Comission V) visited protesting villagers which demanded repayment of compensation. He was there to inform society on the result of a hearing with the Ministry of Public Works conducted in Jakarta earlier (17 September 2008).

the Forestry Minister, had already agreed in principle to relinquish his claim on the state forest land needed for the completion of the project. He promised to provide a substitute forest (*lahan hutan pengganti*) to compensate Perhutani, as required by law.[775] However, at this moment no fixed plan has been adopted as to where this substitute forest will be acquired, within or outside Sumedang.[776] In fact, no one seems in a hurry to settle this matter, since together the Minister of Forestry and Perum Perhutani issued a land use dispensation allowing for the construction work to commence[777] pending the settlement of substitute land.[778] This means that the Forestry Minister has effectively relinquished his claim on state forest land.

Two years later, Moch. Amron, from the Directorate General of Water of the Ministry of Public Works, mentioning a different percentage of total land acquired, announced that the total amount of land acquired in the 2009 budget year reached 75% of the land needed for the project, comprising of land owned by locals (3,455.37 hectares) and state forest land (185 hectares). Only 1,305 hectares remained to be acquired and in the end the government will certainly obtain all the land it needs.[779] Besides simply continuing with the construction project and, as was done in the Kedung Ombo case, flood the land, still occupied by recalcitrant villagers, the government also has several legal options. They may choose to use the expropriation procedure under Law 20/1961 or the available mechanisms provided by PR 65/2006. Under PR 65/2006, the land acquisition committee can simply decide the amount of compensation to be paid and deposit this sum with the Court's registrar (the so-called *konsinyasi*; Art. 10). While land owners may contest the amount of compensation by submitting an appeal to the High Court in accordance with Law 20/1961 and GR 39/1973 (Art. 18a), their claim on land is already effectively revoked.

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[775] Mahfud, "Pembangunan Waduk Jatigede Cirebon Terhambat Pembebasan Lahan Perhutani" (www.perumperhutani.com, 14 April 2008, last accessed 25/06/2010.)

[776] Endy Rossady, "1.300 Ha Hutan Sumedang Bakal Ditenggelamkan Proyek Jatigede" (www.perumperhutani.com, 25 June 2008, last accessed 25/06/2010).

[777] Letter nos. S.314/Menhut-VII/2008 and 182/044.2/Kum/Din (perhutani) concerning the dispensation granted to use forest land to start construction work of the Jatigede dam (*dispensasi pemanfaatan kawasan hutan untuk dimulainya pelaksanaan pembangunan waduk jatigede*).

[778] "Ditolak, Penggusuran 50.000 ha Lahan HGU untuk Waduk Jatigede dan Proyek Pembangunan", (Pikiran Rakyat, 29 August 2008). See also: "Lahan Hutan Jatigede Sudah Ada Gantinya", (Kapanlagi.com, 09 February 2009, last accessed 25/06/2010). As reported, the district of Sumedang was able to acquire only 400 hectares to compensate Perhutani's loss amounting to 1,200 hectares in 2010. See "Jatigede Tenggelamkan 1.200 hektar Hutan (www.tribunjabar.co.id., 31 January 2010, last accessed 25/06/2010). Cf. Lahan Hutan Jatigede Sudah Ada Gantinya, (www.kapanlagi.com, 09 February 2009, last accessed 25/06/2010)

[779] As reported by the Directorate General of Water (ditjen sumberdaya air), Moch Amron: "Perampungan Waduk Jatigede Molor ke 2014 (Detikcom, 25/4/2010).

While the correct figures on land acquisition are conflicting – denoting that the process itself has not been successfully completed - it is certain that the construction project has already been initiated. If everything runs according to plans, West Java will possess a multi-functional dam in the near future, making the construction of other huge infrastructure projects in adjacent districts, such as the Majalengka international airport and Kertajati aero city, possible. In turn, these will cause similar social and environmental problems as those engendered by the Jatigede project.[780]

9.4. Conclusion

What can we learn from the evolution of laws and rules on land acquisition as well as those pertaining to expropriation and its implementation? In retrospect, it seems as though the overriding concern of how to establish a speedy process to appropriate land and utilize it for "development" lies at the core of the issue of land acquisition in the public interest. Less attention is given by law makers and government agencies (the users of the process) to the question of how to protect citizens against abusive land acquisition practices. Even if it has been brought up, it has been trivialized in light of the overriding interest to bring development to the majority.

The long record of mass evictions performed in the name of development resulting in land disputes and conflicts is likely to have played an important role in creating negative perceptions regarding land acquisition projects. Surprisingly, every regulation issued both before and after 1999 has concentrated on "*musyawarah*" as the ideal form for conducting negotiations on the amount and form of compensation, but never on the 'public interest'. The bargaining position of the land acquisition committee, representing the government agency needing the land, is barely taken into serious consideration in the amendments regarding regulations on land acquisition. Moreover, even less attention is given to how spatial management (planning, implementation and oversight) should provide a basis for building a consensus on a sustainable land use system. In this light, land acquisition plays only a small role in the implementation of spatial management. By treating land acquisition

[780] "8.000 KK Bakal Tergusur Bandara Internasional Jabar: Gubernur: Penanganan Dampak Sosial Jadi Persoalan Penting" (Pikiran Rakyat, 22 October 2005). Cf. Hilman Hidayat, "Pembangunan bandara internasional Jabar masih 'menghitung kancing' (Bisnis Indonesia, 18 November 2005). The Majalengka District government as quoted in this article offers a different number. Approximately 15.402 (5.168 families) will be relocated; 356 hectares will be appropriated and 4.596 houses will be destroyed. In contrast, the airport would need 5000 hectares, double runways (900-1.800 hectares) and a parking lot for approximately 1000 vehicles.

as a separate system, the government has lost an opportunity to openly engage the public and land owners in the process of discussing the government's need to manage land use for "the majority of society" in the public interest.

It is equally clear that land acquisition is prohibited if it goes against the existing spatial plans (city-district or provincial). Spatial plans seem to provide justification for the choice of the "development" site and therefore they should inform the public on the future status of the land by itself. In this sense, spatial plans influence the tenurial security of individual citizens. It is therefore imperative that such plans are made in a transparent and participatory manner so that the general public is always well informed on what public interest development projects are being planned, where and when. The list provided by the Presidential Regulation 35/2006 provides a clear boundary on what makes up the public interest. From this perspective, any land acquisition process is to be considered a logical consequence of the democratically made spatial plan. If there is no such development or spatial plan, land owners should at least be involved in decisions regarding the future use of their land. On the other hand, in terms of spatial management, the government must be able to implement spatial plans and therefore acquire land, even if it goes against the wishes of individual land owners.

The extent to which the government is able or willing to change its ways in acquiring land for development purposes is a different issue altogether. Not surprisingly, little seems to have changed. Despite new laws and regulations, the processes and mechanisms for land acquisition seem to have remained constant: favouring private entities and government agencies and thereby putting land owners at a disadvantage in terms of their legal position and chances of retaining their claim on land or obtaining just compensation. This dire legal position is even worse as they play no role in the drafting and implementation of development and spatial plans, despite numerous provisions prescribing public participation.

Both during the New Order regime and during *Reformasi*, development has been the main form of legitimization of the government, demonstrating the government's ability to bring material benefits to the people. The power over the definition of "development" has been guarded by the state and has remained closely associated with the national interest.[781] The national interest in turn is closely linked to the belief that development depends on quality infrastructure and the continuous influx of foreign and domestic investment to support modern industry. In addition, it is worth noting that development continues to be mainly

[781] Victor Barber, op.cit. Section III (new order state capacity: growth, strength and weakness). p. 9

interpreted as any activity in the context of supporting and developing modern industry in and around urban areas in post-Soeharto Indonesia, as well as developing large scale agricultural plantations and exploiting natural resources. In this light, development in the public interest is focused on the bolstering of infrastructure upon which urban, industrial and plantation areas depend for growth. Understandably, notwithstanding regional autonomy and legal reform under *Reformasi*, laws regarding land acquisition have been designed to further such particular interests.