

Draft Bill of the Long-Awaited Land Acquisition for Public Interest Law

Overview

The Law on Land Acquisition for Public Interest has been eagerly awaited both by those involved, or looking at, Indonesian infrastructure development, as well as by the public at large. Finally, a Draft of the Bill on Land Acquisition for Public Interest ("Bill") has emerged from the National Land Agency (BPN), which is expected to be submitted to the House of Representatives (DPR) in the near future, suggesting that the long-awaited Law may finally be passed.

The Bill replaces Presidential Regulation No. 36 of 2005, as amended by Presidential Regulation No. 65 of 2006, on the Acquisition of Land for Public Interest, which are repealed pursuant to Article 42 (b). However, Law No. 20 of 1961 on the Revocation of Rights to Land and Items Situated Thereupon, and its implementing regulations will remain in force as long as they are not contrary to, and have not been replaced by the Bill.

A number of significant changes are introduced by the Bill, which will greatly expedite and simplify the acquisition process. Such as, that the objection process is streamlined, with a 14 day deadline to file an objection to the High Court of the jurisdiction where the land is situated, and a 30 day deadline for the High Court to issue a decision, which is final and binding.

This edition of the Indonesian Law Digest will highlight key features of the Bill and provide analysis of the Bill's provisions.

Purpose

The Bill aims to resolve the longstanding issues faced by Indonesian infrastructure development projects, namely, the lengthy delays and the associated uncertainty that have resulted in under-investment and sub-par infrastructure that is widely viewed as holding-up economic development. The goal is to make the required land available, in a timely manner, for the urgently needed public purpose development projects.

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The more generic purpose of the Bill is set out in the preamble and in Article 3, focusing on the need to accelerate the land acquisition process so as to enable development. Additionally, the Bill makes it its mandate to balance the interests of the public, which will benefit from the infrastructure development, with the interests of the parties that are affected by the acquisition. And, to resolve this balance, by paying fair compensation to those who are adversely affected.

Additionally, to address an issue that has emerged under the current legislative framework, the Bill seeks to prevent

speculation of land that has in the past occurred following the announcement of public works projects.

Applicability

Land

Pursuant to Article 4 (1) the Bill applies to the acquisition of land for development for the public interest. Such development being undertaken, and later owned, according to Article 6 (1), by central or by local government, or by legal entities appointed by such.

Development for public interest is defined in Article 6, and, pursuant to Article 6 (2) comprises of:

- a) Public roads (non-toll roads), rail, water or sanitary sewers;
- b) Reservoirs, dams, irrigation channels, and other irrigation construction;
- c) Seaports, airports, railway stations and terminals;
- d) Landfills;
- e) Public safety facilities, such as flood embankments, lava retention and channelling structures, and other facilities to mitigate natural disasters;
- f) Nature reserves and cultural reserves;
- g) Electricity generation, transmission, substations and distribution installations;
- h) Provision of housing for the poor;
- i) Other development, as determined by the President;

An additional requirement being contained in Article 7, namely that any such developments have to be in accordance with the Spatial Planning.

Parties Entitled to Compensation

Article 23 lists the parties entitled to receive compensation as being:

- a) Land rights holders (with land title certificate or without);
- b) Customary law community that is affected by the development of their customary land;
- c) Nadzir for Wakaf land (Nadzir is a person who is entrusted to manage land from a charitable endowment under Islamic Law);
- d) Users of State land; and
- e) Owners of buildings, plants or other objects relating to land.

Proposal for Development

Prior to the acquisition of land a proposal has to be prepared, pursuant to Article 8, containing: the purpose and objective, layout and location, required area, funding sources, and an environmental feasibility analysis.

To determine the location of the development, under Articles 9 (1) though (4), an application needs to be submitted along with the proposal to the regent/mayor/Governor of Jakarta (provincial governor if spanning multiple regencies/municipalities, National Land Agency (BPN) if spanning multiple provinces). With such location determination being made in accordance with spatial planning, management of land, land ownership and utilization, and environmental concerns.

Prevention of Speculation

Once land is identified as being subject to acquisition for the public interest it becomes impossible to transfer any rights in that land, pursuant to Article 9 (5). The three exceptions to this being: i) inheritance, ii) court decisions, and iii) with written permission from the regent/mayor/Governor of Jakarta.

Acquisition

Small-Scale Exception

Article 36 contains an exception for purchases of land of 1 hectare or less, similar to the one currently present in Article 20 of Presidential Regulation No. 36 of 2005, as amended by Presidential Regulation No. 65 of 2006 on the Acquisition of Land for Public Interest. This exception allows the purchase of such small parcels of land to be made without the involvement of an Acquisition Committee, however, should the involvement of the Committee be deemed necessary, the standard procedures can still be followed.

Acquisition Committee

Pursuant to Article 10, a Land Acquisition Committee will be established, consisting of the regent/mayor/Governor of Jakarta and the National Land Agency (BPN). The Committee will conduct and release research with regards to the features and legal status of the land, facilitate the determination and payment of compensation, and otherwise assist with the acquisition of land. The Secretariat of the Committee will be located at the District Land Office.

If spanning multiple regencies/municipalities, pursuant to Article 11, a Provincial Land Acquisition Committee consisting of the provincial governor and the BPN will coordinate and provide guidance and supervision to the local levels of government in their land acquisition efforts. Similarly, under Article 12, a National Land Acquisition Committee, consisting of the BPN, will coordinate when multiple provinces are spanned by a project. The Secretariat of the Committees will be located at the provincial BPN, and the BPN, respectively.

The Committee, under Article 39, will then provide regular reports on the progress of land acquisition to the regent/mayor/Governor of Jakarta and Head of the District Land Office (additionally to the provincial governor and Head of provincial BPN if spanning multiple regencies/municipalities, and additionally to the Minister of Home Affairs and the Head of the BPN if spanning multiple provinces).

Under Article 13, the Committee will be the ongoing point of contact for those affected by the land acquisition, providing information and collecting public input on the development goals and plans, acquisition procedures, and compensation. And, additionally, under Article 17, it will facilitate negotiations between the parties acquiring the land and those affected.

Identification

The Land Acquisition Committee will identify and thoroughly (as enumerated in Article 14 (2)) document the land that will need to be acquired pursuant to Article 14. The results of this research, pursuant to Article 15, will be compiled into a map and a list of the land parcels along with their owners and other relevant information (as set out in Article 15 (2)). And posted at the Village Office, the District Land Office, and on the internet, for 7 days, and/or at least 2 times through the mass media; in order to give an opportunity for interested parties to file objections under Article 15 (4), which will be considered if filed during the above-mentioned 7 day period.

Valuation and Form of Compensation

The land, and its contents, subject to acquisition will be valued by an independent appraiser, holding a license from the National Land Agency (BPN), appointed by the acquiring and the affected parties, with the facilitation of the Land Acquisition Committee, pursuant to Articles 18 and 19. Under Article 20, such valuation will involve an assessment of both the material and immaterial damages that will be

sustained as a result of the acquisition. Further guidelines on carrying out the assessment will be addressed by implementing regulations.

Compensation, pursuant to Article 24 (1), can be either, or a combination, of:

- a) Monetary;
- b) Replacement land; and/or
- c) Resettlement.

Or, pursuant to Article 24 (2), shares in the project, in accordance with further statutory provisions.

Following the independent appraisal, the Committee will issue a decision, in accordance with Article 22, regarding the acquisition and the amount of compensation to be paid.

Objections

Parties affected by the acquisition have 14 days to file an objection with the local High Court regarding the amount and form of compensation, under Article 30. The Court then has 30 days to issue a decision, which will be final and binding, in accordance with Article 31. Notably, regarding the deadline, the Bill fails to address the situation when the High Court fails to render its decision within 30 days.

An area of contention has emerged during the drafting of the Bill in regards to the potential inclusion of a provision that would allow construction to commence prior to any objections regarding compensation being resolved. Such a provision would essentially separate the price determination and the acquisition processes, so as to prevent holdout landowners from delaying projects. However, the streamlined court decision process described above should ensure that any objections are resolved within 44 days, making the issue of whether construction can commence prior to the resolution of objections moot in practice.

Acquisition

Under Article 25, the Land Acquisition Committee will instruct the parties acquiring the land to pay those who are entitled to compensation within 60 days, in the event of monetary compensation. And within a period agreed-upon by both parties for non-monetary compensation. For compensation in the form of resettlement, temporary accommodation has to be provided for a maximum of 1 year, pursuant to Article 25 (2).

The various forms of non-monetary compensation are set out in Article 26, while resettlement is addressed in Article 27 (requiring consultation with the affected parties, and the provision of satisfactory housing, facilities and infrastructure).

Monetary compensation procedures are further set out in Article 28.

Finally, under Article 29, the affected parties have to submit evidence of ownership or control of the land to the acquirer, and then to release their land rights to the State. Whereupon, under Article 38, the transfer of the land has to be registered.

Costs

The costs of acquiring the land, including compensation and the various aspects of the above-described process, pursuant to Article 35, will be borne by the party seeking to acquire the land. As such, the Land Acquisition Committee will be funded by the acquirer, with further provisions to be set out in later regulation.

Conclusion

The Bill is a marked shift from the respect for land rights to a consideration of balancing the interests of the public with those of the parties affected by the acquisition. As such it has already proven to be a contentious issue, and will more than likely continue to be so as it is passed into Law and then implemented in practice. Nevertheless, this dramatic change is long overdue, and, at this point is urgently required in order to enable Indonesia to commence the numerous essential infrastructure development projects that have been delayed both due to the lengthy and complex land acquisition process, and also due to under-investment - which, in turn, is caused by the uncertainty of the land acquisition process.

In addition to the significant changes highlighted in the Overview and the Purpose sections above, Article 6 (2) (i) grants the President broad discretion to designate projects as being for the public interest, and therefore to subject land to the mandatory acquisition procedure under the Bill. This can be considered a positive feature of the legislative scheme, since it allows the government the needed flexibility to push-through the needed development, while limiting the discretion to the highest levels of government - thereby preventing the potential for abuse at the lower levels of government.

The Bill only focuses on the substance, and, as such leaves the finer technical points unresolved. Therefore, a number of technical regulations are envisioned to fully implement the new legislative scheme. This, in turn, means that it will likely be some time yet before the new scheme of land acquisition is applicable in practice. 