

Law on Land Procurement for Public Interests

Overview

After a long wait, Law No. 2 of 2012 on Land Procurement for Public Interests ("Law") finally came into force on 14 January 2012. It took approximately 30 days for the Law to be numbered after the Law was passed by the House of Representatives on 17 December 2011.

The Law does not replace Presidential Regulation No. 36 of 2005, as amended by Presidential Regulation No. 65 of 2006 on the Acquisition of Land for Public Interests, nor does it revoke Law No. 20 of 1961 on the Right of Revocation of Rights to Land and Items Situated Thereupon. Instead, the Law stipulates that lower regulations will remain in force as long as they are not contrary to the Law.

The Law introduces significant changes to the practice of acquiring land. These changes will expedite and simplify the acquisition process. For example, the objection process has been streamlined, and a court of first instance must hear a case within 30 days. In addition, there is a 14 day deadline to file an appeal to the Supreme Court, and another 30 day deadline for the Supreme Court to issue a decision that is final and binding.

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

Purpose

The Law aims to resolve longstanding issues faced by Indonesian infrastructure project developers, 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 necessary land available, in a timely manner, for urgently needed public purpose development projects.

The more generic purpose of the Law is articulated in the preamble and in Article 3, focusing on the need to accelerate the land acquisition process to enable development. In

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addition, the Law requires land acquisitions to balance the interests of the public, which will benefit from infrastructure development, with the interests of parties that are affected by the acquisitions. To resolve disputes over the proper balancing of these interests, the Law establishes fair procedures for handling objections, without delaying the land acquisition process indefinitely.

Additionally, to address an issue that emerged under the current legislative framework, the Law seeks to prevent land speculation after a public works project is announced.

Applicability

Government Institutions

As stated in Article 11, land procurement for public interests will be organized by the government. The acquired land will then be owned by the central or regional government, including state owned companies.

Concerned institutions are defined in Article 1 (1) as state institutions, ministries, government institutions non ministry, provincial government, regency government, and state legal entities/state owned companies receiving special government assignments. These institutions will own land procured according to the provisions of the Law.

Land

Article 10 establishes the type of projects covered under the Law. These projects include:

- a. National Defense and Security;
- b. Public roads, toll roads, railways, train stations, and train operational infrastructure;
- c. Reservoirs, dams, irrigation channels, drinking water pipes, drainage systems or sanitary sewers, and other irrigation construction;
- d. Seaports, airports, and terminals;
- e. Oil, gas, and geothermal infrastructure;
- f. Power plants, transmission, substations, and distribution installations;
- g. Government information and telecommunication networks;
- h. Landfills and waste management;
- i. Central and regional government hospitals;
- j. Public safety facilities;
- k. Central and regional government cemeteries;
- l. Public and social facilities, and public green spaces;
- m. Nature reserves and cultural reserves;
- n. Central/regional/village government buildings;
- o. City slum settlements and also rental housing for low income people;
- p. Central and regional government education infrastructure;
- q. Central and regional government sports infrastructure;
- r. Public markets and parking lots;

The Law has extended the scope of land procurement for public interests to more infrastructure projects than under Presidential Regulation No. 36 of 2005, as amended by Presidential Regulation No. 65 of 2006 on the Acquisition of Land for Public Interests. For instance, previously, government information and telecommunication networks,

as well as oil, gas, and geothermal infrastructure were not included. This means that these types of development projects now have government support when acquiring land, since they are classified as public interest projects.

Parties Entitled to Compensation

The Law stipulates a wide array of parties entitled to receive compensation, pursuant to Article 1 (2) and (3). Parties entitled to compensation are defined as parties who control and own acquired land and are entitled to reasonable and fair compensation. Pursuant to the elucidation of Article 40, the following parties may receive compensation:

- a. Land rights holders;
- b. Holders of land rights to manage;
- c. *Nadzir* for *Wakaf* land (A *Nadzir* is a person who is entrusted to manage *Wakaf* land. *Wakaf* is an endowment for charitable or religious purposes under Islamic law);
- d. Customary law communities that are affected by the development of their customary land;
- e. Indigenous people;
- f. Users of state land;
- g. Land tenure holders; and/or
- h. Owners of buildings, plants or other objects related to land.

Land Procurement Process

The land procurement process, pursuant Article 13, has four stages: planning, preparation, acquisition, and handover.

Planning

Prior to the acquisition of land, concerned institutions, pursuant to Article 15 (1), are required to prepare a proposal stating: the purpose and objective of the development plan, compliance with spatial planning and the national and regional development plan, layout and location, required area, general description of the land status, estimated time to acquire land and execute the development plan, land price estimate, and funding sources.

As stipulated in Article 15 (2) and (4), the concerned institution must prepare the proposal according to feasibility studies that are made in accordance with the prevailing laws and regulations, and submit it to the provincial government.

Preparation

After submitting the proposal, the concerned institution and

relevant provincial government must take preparatory steps stipulated in Article 16. They are responsible for:

- a. Informing the affected community of the development plan. Notifications of the plan may be made in person, through public outreach (*sosialisasi*), or indirectly, using mass media or electronic media (Article 17);
- b. Preliminary data collection to verify the acquired land and entitled parties. (As stipulated in Article 18 (2), preliminary data collection must be completed within 30 workdays after the development plan is announced.);
- c. Holding a public consultation on the development plan. This step helps to acquire approval from the affected land owners and reach a consensus about the planned location. (As stipulated in Article 20, a public consultation must be completed within 60 workdays. If there is an objection from an affected party within the 60 day period, there must be another public consultation within 30 workdays).

In order to proceed with the land acquisition plan, the concerned institution, pursuant to Article 19 (5) must first secure a site determination from the governor. A site determination must be rendered within 14 workdays after an application for a site determination is submitted, unless an affected party objects to the development plan.

Under Article 24, a site determination will be valid for two years and can be extended for one year.

Pursuant to Article 21, if there are still parties who object to the plan after the repeated public consultation, the Governor will establish a special team. The team will be responsible for recording problems to find reasons for the objection; clarifying the objecting parties' issues with the development plan; and making a recommendation to the governor about whether the objection should be accepted or rejected. After receiving a recommendation, the governor is required to issue a decision to accept or reject the objection, within 14 workdays.

Acquisition

The National Land Agency (BPN), pursuant to Article 27, will be responsible for inventorying and identifying the possession, ownership, use and utilization of land (Inventory); completing a compensation appraisal; facilitating the determination and payment of compensation; and otherwise assisting with the acquisition of land.

Inventories that consist of surveying and mapping on a parcel-by parcel basis and gathering data on the entitled

parties and the objects of the acquired land as stipulated in Article 28, must be completed within 30 workdays. The results must then be announced within 14 workdays at the local village office or district office (Article 29).

As stipulated under Article 30, the announced verification results are the basis for determining entitled parties.

Valuation

The land and fixtures subject to acquisition will be valued by an independent appraiser, who is appointed by the Land Agency. Under Article 33, this valuation will involve an assessment of both material and immaterial damage that will be sustained as a result of the acquisition. As stated in Article 33, the appraisal includes: land; overhead and underground space; buildings; fixtures; and/or other appraisable losses.

It should be noted that projects such as subways that require underground space, will benefit the affected parties.

Form of Compensation

Compensation, pursuant to Article 36, can be either, or a combination, of:

- a. Monetary compensation;
- b. Replacement land;
- c. Resettlement;
- d. Share ownership (the elucidation of Article 36 (d) explains that affected parties may receive share placements in the relevant development activities or in its management); and/or
- e. Other forms of compensation agreed upon by both parties.

Pursuant to Article 40, compensation must be given directly to the parties entitled to compensation.

Article 35 provides additional protection for affected parties. If a parcel of land is no longer functional after an acquisition, affected parties are entitled to full payment for the entirety of their land, even if the entire parcel of land was not acquired.

Prevention of Speculation

Once land is identified as being subject to acquisition for public interests, it becomes impossible to transfer any rights in that land, pursuant to Article 27 (3). The landowner/controller are only permitted to transfer their land to the concerned institution that requires the land. This transfer process will be conducted by the land agency.

Handover

The land agency may begin to transfer the acquired land to the concerned institution after the affected parties have been compensated, or compensation has been entrusted to the district court for further collection by the entitled party, and the affected parties have transferred proof of ownership, as stipulated under Article 41 (2) of the Law.

The land acquisition process may be bypassed under certain circumstances. Pursuant to Article 49, infrastructure construction may begin immediately in emergency circumstances due to natural disasters, wars, escalating social conflicts, and epidemics.

Objections

Pursuant to Article 23 in conjunction with Article 38, two courts have jurisdiction over land acquisition cases under the Law. These courts are State Administrative Courts for cases challenging a governor's site determination, and District Courts (*Pengadilan Negeri*) to hear disputes over compensation issues. In addition, Article 29 allows entitled parties to file an objection with the Land Agency on matters related to the disclosure of inventory and its results.

State Administrative Courts

Under Article 23, parties affected by an acquisition have 30 days to file an objection with a state administrative court after a site determination is issued. The state administrative court then has 30 days to issue a decision. The deadline to file a cassation appeal is 14 workdays. After receiving a cassation appeal, the Supreme Court must issue a decision within 30 days.

It should be noted that land acquisition cases reviewed under the Law override the appeal process to the State Administrative High Court, to make the review process faster and more efficient.

District Courts

Under Article 38, parties affected by the acquisition have 15 days to file a suit with a district court after a consensus to determine compensation is issued. The district court then has 30 days to issue a decision. The deadline to file a cassation appeal is 14 workdays. After receiving a cassation appeal, the Supreme Court must issue a decision within 30 days.

Land acquisition cases reviewed by a district court may be appealed directly to the Supreme Court, disregarding the

normal appeals process to the High Court.

Pursuant to Article 42 in conjunction with Article 43, compensation will be entrusted to a district court for further collection by a land owner. The act of entrusting funds to a district court will be proof that the land owner is no longer entitled to the land. It should be noted that this provision is also in line with current court practices provisioned in Article 1404 of the Civil Code (*Konsinyasi*).

Land Agency

Pursuant to Article 29, objections may be filed with the Land Agency for two reasons. The first reason is that the affected parties have not received the inventory, which is supposed to be published in the local village office or district office. The second reason is an objection to the inventory results.

Objections must be submitted within 14 workdays after the results are announced. The Land Agency has 14 days to verify and correct the inventory results.

Funding

Financing for the land procurement process, pursuant to Article 52, will come from the State Budget and Regional Budgets. Funding may also be derived from state owned company funds and other sources in accordance with the relevant laws and regulations.

Article 52 is rational and in accordance with the government's responsibility for protecting state assets, as stipulated in legislation such as Law No. 1 of 2004 on State Treasury, and also Government Regulation No. 6 of 2006 on Management of State/Regional Assets, as amended by Government Regulation No. 38 of 2008, which requires the government to secure state assets.

However, in practice, the government does not have sufficient funds to acquire land for public interests. This is why private participation in public infrastructure development was allowed under Presidential Regulation No. 67 of 2005 on Public Private Partnerships on Infrastructure as amended by Presidential Regulation No. 13 of 2010 and Presidential Regulation No. 56 of 2011.

Article 52 implies that funding for acquiring land in a public private partnership can come from private sources. This type of provision is allowed under Presidential Regulation No. 56 of 2011. However, it should be noted that private partners will not own the land they funded at the end of the partnership.

Conclusion

The Law marks a shift from respect for land rights to a consideration of balancing public interests with those of the parties affected by an acquisition. This shift has been a contentious issue, and will more than likely continue to be controversial when the law is implemented. 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 caused by uncertainty in the land acquisition process.

In addition to the significant changes highlighted in the Overview and the Purpose sections above, Article 10 limits the type of projects categorized as public interest under the Law. If other types of public oriented projects surface when the Law is implemented, it is most likely that interested parties will not receive the same government support as projects categorized in Article 10 when acquiring land. 🏠