



Technical Assistance Consultant's Report

Project Number: 44140
Date: July 2013

TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Capacity Development for Social
Safeguard Preparation and Implementation in
Water Resource Management and Energy
(Indonesia)

WORKSHOP REPORT: ANALYSIS OF LAWS AND REGULATIONS FOR LAND ACQUISITION IN THE WATER RESOURCES AND ENERGY SECTORS

Prepared by ADB Consultant Team

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Asian Development Bank

Workshop Report

**Analysis of Laws and Regulations for Land
Acquisition in the Water Resources and Energy
Sectors**



Directorate for Water Resources and Irrigation, PPN/BAPPENAS
and

**ADB TA 7566-REG (Subproject): Capacity Development for Social
Safeguard Preparation and Implementation in Water Resources and
Energy in Indonesia**

July 16, 2013

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I. Purpose and Objectives of the Workshop

For the ADB TA 7566-REG (Subproject): Capacity Development for Social Safeguard Preparation and Implementation in Water Resources and Energy in Indonesia, the team of consultants that is providing assistance to the Directorate of Water Management and Irrigation at BAPPENAS has prepared a GAP Analysis and Compliance Recommendations on the Indonesian Social Safeguard Systems and the ADB's Safeguard Policy Statement for Involuntary Resettlement and Indigenous Peoples.

The purposes of this Workshop were the following:

- (i) to finalize the consultant's Gap Analysis and Compliance Recommendations for Government Agencies for acquiring land under the recently issued Law No 2 of 2012 on Land Acquisition for Development in the Public Interest, Presidential Regulation No 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest and BPN Regulation No 5 of 2012 on Technical Guidelines for Implementation of Land Acquisition;
- (ii) to review the consultants' guidelines for determining the eligibility for compensation of affected persons under the new law and presidential decree that can provide guidance to government agencies initiating projects funded by the ADB in the water management, Irrigation and energy sectors; and
- (iii) to discuss the appraised compensation for lost assets due to the land acquisition by Government Agencies.
- (iv) to provide follow up actions in regards to institutional capacity improvement to anticipate the remaining implementation issues of involuntary resettlement and indigenous peoples in particularly of those in the relevant sectors

II. Opening Remarks

2.1. Ir. Donny Azdan, MA., MS., Ph.D., Director, Water Resources and Irrigation, BAPPENAS

I would like to say thanks to all of you for attending this ' Workshop on the Analysis of the Laws and Regulations for Land Acquisition in Water and Energy Sectors', which is being held jointly by the Indonesian Government and the Asian Development Bank (ADB), coordinated by Directorate of Water Resource and Irrigation, Ministry of National Development Planning/ BAPPENAS as the Executing Agency.

Dear Participants,

Infrastructure development is one of the economic triggering factors in this country that is to improve public prosperity. However, in the implementation of infrastructure development there are many people who suffer losses. Particularly, they are the ones who live in the project locations and they have to release their assets in the public interest. Inappropriate asset replacement, loss of social livelihood, and cultural losses that were built a long time ago, as well as a lack of assistance in achieving a reasonable standard of living in the new location, is causing a decrease in the quality of life due to the infrastructure development.

Complexity in land acquisition, on the other side also becomes an obstacle in the related infrastructure development project implementation. Development of the Jatigede Dam Project is one of examples of a project that needed 10s of years to finish the land acquisition. Besides time losses, this issue also impacted the increased cost of the project that was a burden for the government. Another significant loss was the project funded by an international loan, the government was responsible for the commitment charge of the unused funds because of the late initiation of the physical development. Another rehabilitation project is the West Tarum Canal that has the objective to increase the basic water supply for Jakarta, funded by an Asian Development Bank (ADB)'s loan program in the Integrated Citarum Water Resources and Investment Program (ICWRMIP). This project initiated in 2009 and to be completed by the end of 2014. However at this time, the process for moving the people is still not yet completed. This issue has a significant impact because the rehabilitation component of the West Tarum Canal is one of the biggest components of the entire program.

Participants,

Besides these issues above, project implementation often has administration problems. As we all know, there are many infrastructure projects funded by loans from various development partners, each of them has different policies and regulations related to land

acquisition, community replacement, and also Indigenous People communities that are different from Indonesian government policy. Different perceptions of the impacted communities, replacement of assets, and forms of compensation become a long discussion that require much time. Therefore, it is necessary to have guidance for project implementation and also a policy in order to solve these issues.

Participants,

Government regulates the problems of land acquisition in Law No. 2 of 2012 about Land Acquisition for Development in the Public Interest, and supporting regulations consisting of Presidential Regulation No. 71 of 2012 about Implementation of Land Acquisition for Development in the Public Interest, and Head of the National Land Agency Number 5 of 2012 on Technical Guidelines for Implementation of Land Acquisition. With these regulations, the Indonesian Government has provided legal certainty for acquiring individual land or communal land for development, as well as providing guidance for the land acquisition process, and the provision of compensation for those whose land has been acquired in the public interest.

Through TA-7566: Strengthening and Use of Country Safeguard System, it is hoped that there will be improvement in government institutional capacity in carrying out social safeguards, especially in water resource and energy sector. One of the important component is that this TA is to analyze the related laws and regulations, the land acquisition process, the gap analysis between existing laws and regulation and the international practices among others the Safeguard Policy Statement (SPS) of the ADB, along with the recommended steps that must be covered for bridging these gaps.

Participants,

Finally, I would like to give my appreciation and thanks to all of you for your support and participation in providing suggestions and inputs for this study. With this I declare the opening of this workshop.

2.2. Syarifah Aman-Wooster, Senior Social Development Specialist, ADB Manila

Firstly, I would like to say thank you for this opportunity to give the opening remarks. We would like also to say thank you to all of you who are able to attend this Workshop on 'Diagnostic Analysis of the Laws and Regulations for Land Acquisition in Water and Energy Sectors' held by BAPPENAS and the ADB through TA 7566: TA 7566-REG: Strengthening Country Safeguard Systems/ CSS.

Purpose of this workshop is: (i) to discuss the analysis of laws and regulations for land acquisition and to have inputs from the participants and the expert from BPN; (ii) discuss the eligibility and entitlement matrix in integrated water resource management sector; (iii) a briefing from MAPPI about cost appraisers.

I would like to introduce the specialist team for this TA: (i) Bill Collier as Team Leader; (ii) Jeffry Anwar as Involuntary Resettlement specialist; (iii) Akhmad Safik as Legal Specialist; (iv) Mr. Hasto Atmojo Suroyo as Capacity Development Specialist; (v) Herman Soesangobeng as Indigenous Peoples Specialist, and Dela Herfyria Taufiq as the administrator. With me, there are Ms. Naning Mardinah as Social Safeguard Specialist and Ms. Helena Lawira as Water Resource Specialist from ADB IRM.

As recognized, resettlement is one of the crucial issues confronting development projects in Indonesia; including project's funded by the ADB. Meanwhile, most of the infrastructure projects such as water resource management, hydropower electricity (PLTA), geothermal and transmission, as well as road development and sanitation require land acquisition that have positive impacts and possibly also have negative impacts on a community.

As we all know, in the preparation and carrying out of infrastructure projects, engineers can design and implement them well, but if it is related to social, cultural and economic issues and involve a community then it is not easy. Especially if there is a need for the community to be relocated or assets acquired in the public interest. Moreover, the problem is more difficult if it happens in a poor community with vulnerable groups.

In early 2012, the Indonesian Government issued Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest. This was followed by the issuance of implementing regulations. This new law is designed to enable land acquisition process to be more democratic, have a clearer time schedule, provides protection for land rights holders for the physical and economic asset losses through fair compensation and at the same time ensuring the provision of land for development in the public interest.

The existence of this Law and regulations are a very important step and we can see that there are many similarities with the ADB safeguard principles as stated in ADB SPS 2009 document. On the other hand, there are also several differences, but the differences are not too significant and it is hoped these can be easily bridged. We hope this workshop will give inputs and feedback that can be used to solve legal analysis and the gaps, as well as how to handle these gaps.

ADB has the commitment to support strengthening and implementation of an effective Country Safeguard System/ CSS for member countries, including Indonesia with a focus on capacity development. This TA 7566 is part of the ADB's commitment to strengthen institutional capacity in implementing CSS that is focused on the water resources and energy

sectors. This workshop is a part of the assessment activity in the framework of capacity development.

ADB also considers the application of the safeguard system for clients/ borrowers in order to handle impacts such as social and environmental risks related to projects funded by the ADB through loan programs, at the national level, sub national level, sector, and even at the institutional level. This application can be carried out whenever the CSS is similar with the ADB safeguard policy and the Indonesia government has capacity as well as the commitment to implement laws, regulations, and procedure related to safeguards.

Sirs and Madams. Several months ago, at the ADB's 46th annual meeting, Ms. Armida Alisjahbana, Minister of National Development Planning/Head of BAPPENAS stated that Indonesian government was willing to use the CSS for projects funded by the ADB. The same issue was also stated by BAPPENAS in the CPRM meeting. In this context, output of the TA 7566 might be able to be used as a reference for the assessment of the equivalence of safeguards as part of the CSS implementation process. Even though, the gaps analysis between Indonesian Government regulations and the ADB Safeguard policy as well as the efforts in handling gaps that will be discussed later in this workshop also are very much needed as guidance in handling safeguards in project that are in the preparation phase, such as Flood Management in Selected River Basins.

Next steps of the TA 7566 are: (i) preparing of guidelines for land acquisition and resettlement implementation that are combined with SPS process and Law No. 2 of 2012 and the other supporting regulations; (ii) preparing training needs assessment and a manual for training and also a training schedule for participants from the water resource and energy sector; (iii) prepare knowledge products and best practice documents; and (iv) recommendations from this process for safeguard units (TOR, resources, coordination, etc.).

III. Presentations and Discussions

3.1. Legal Analysis of the Indonesian Social Safeguards (Case Study on Land Acquisition for Energy and Water Resources Project) by Akhmad Safik, Legal Specialist

The following information is from Akhmad Safik's Power Point Presentation in Indonesian that has been translated to English below and is partly in the format of the Presentation. He reviews the laws and regulations on land acquisition in Indonesia and examines the equivalence between the ADB's social safeguard policies and the Indonesian safeguard system based on these laws and regulations.

Laws and Regulations on Land Acquisition in Indonesia

- ▶ Permendagri No. 15 of 1975
- ▶ Keppres No. 55 of 1993
- ▶ Perpres No. 36 of 2005
- ▶ Perpres No. 65 of 2006
- ▶ UU No. 2 of 2012
- ▶ Perpres No. 71 of 2012

Land Acquisition for Public Purposes

1. Land acquisition for public purposes has to be carried out by Government and the acquired land will be owned by Central or Regional Government; if a state agency needing land is a state owned enterprise, the acquired land will be owned by the state owned enterprises.
2. Government has to undertake development for public use and it can cooperate with state owned enterprises, regional owned enterprises or private companies.

Law No 2/2012 and ADB Safeguard Policy: Most of the principles are similar

Screening

(ADB Safeguard Policy): to identify past, present, and future involuntary resettlement impacts and risks and determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.

(Law No 2/2012): Article 14 and 15 of Law 2/2012 provides the similar process of screening location and displaced persons

Public consultation:

(ADB Safeguard Policy): Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.

(Law No 2/2012): Article 16, 19 and 20 of UU 2/2012 requires public consultation with displaced persons

Grievance Redress Mechanism:

(ADB Safeguard Policy): There must be a mechanism for affected persons to express any objection to the government decision

(Law No. 2/2012): provides provision for the displaced persons to challenge the decision on the location determination at PTUN and to convey objection to the compensation at General Court.

Compensation

(ADB Safeguard Policy): Physical and economic losses of the displaced persons are compensated.

(Law No. 2/2012): provides compensation for physical losses as well as “appraisable losses” including non land right holder who is eligible for compensation

Remaining issues

First Issue:

(ADB Safeguard Policy): Improve the standard of living of the displaced persons

(Law No. 2/2012): compensates the displaced persons on all kind of losses

Second Issue:

(ADB Safeguard Policy): Assisting vulnerable groups and gender

(Law No. 2/2012): All displaced persons are treated equally without any different treatment for certain groups of the displaced persons

Third Issue:

(ADB Safeguard Policy): Transitional support

(Law No. 2/2012): UU 2/2012 does not officially provide support in transitional period after the land is taken by the Government

Fourth Issue:

(ADB Safeguard Policy): Negotiated resettlement

(According to Perpres 71/2012): the acquisition of land less than one hectare is based on “willing seller and willing buyer”

Fifth Issue:

(ADB Safeguard Policy): Monitoring, Evaluation and impact assessment

(Law No. 2/2012): No external evaluation that is needed to review the implementation of land acquisition independently

Potential Conflict of Law

- ▶ UU No 2/2012 vs. UU 51/1960 on Prohibition of land utilization without permission from the owner (private/state)

- ▶ UU No 2/2012 vs. UU 41/1999 on Forestry: Acquisition of forest land must be approved by Ministry of Forestry; however law 2 of 2012 seems simplify the process to accelerate the acquisition

Conclusion

- ▶ Provisions of law 2 of 2012 and its implementing regulations are mostly consistent with policy principles of Safeguard Policy Statement (SPS) of ADB.
- ▶ Detailed stipulations of Law 2 of 2012 are needed to provide better legal certainty.
- ▶ Rules that are still generally stipulated such as “appraisable objects” need more operational and detailed provision.
- ▶ The appraiser team must provide appraisal method on object and subject of land acquisition to Government and the displaced persons.
- ▶ Need harmonization among the related laws to provide legal certainty

Recommendations

- ▶ Document of land acquisition has to cover all detailed and clear as possible on compensation mechanism and transitional support for the displaced person to a new place in accordance with their choice and prevailing laws and regulations.
- ▶ Detailed guidelines and credible appraisal method that can be publicly verified are required.
- ▶ The phrase “appraisable loses” must be translated into more detailed provision to create legal certainty
- ▶ Detailed guidelines that accommodate efforts to restore income and to improve the living status, and mechanism to relocate the displaced persons and certainty that all displaced persons are properly compensated.

Discussion and Recommendations by Resource Persons and Participants

The questions by the participants and comments by Dr. Kurnia Toha (Resource Person):

1. Why is Gender never mentioned in the law and regulations?

There is not a gender issue in the new law, because everybody has the same rights (man/ woman, old/young). Therefore, it was not necessary to specifically state Gender when everybody has the same rights. There is still a debate on this issue among legal professionals

2. Losses caused by land acquisition need to be replaced by compensation, but it is still not clear about the compensation method because BPN is also waiting for the method?

The regulation of compensation for intangible losses is not yet regulated in detail.

3. What about mechanisms for complaints?

There are 3 grievance mechanism: Regional Government (Pemda), Civil Court Pengadilan Tata Usaha Negara/PTUN), and the National Court (Pengadilan Negeri/PN). There is a mechanism to complaint or file a suit in regards to:

- Local Government for Project Location Determination.
- Through the Administrative Court for Project Location Determination, as an executive decision.
- Through the General Court (State) for Compensation.
- Appeal is not done at the High Court level, but directly to the Supreme Court, because the level of High Court Judges Verdict tested only.

4. Why is Land of less than one hectare included in the law?

DPR does not want to put it in a different law, just a 1 (one) law, but BPN is concerned about all the people who are affected and impacted by a project. When the BPN proposed this issue to President then President approved it in the Presidential Regulation No 71.

In Presidential Decree Number 71 of 2012 on the Acquisition of Land for Development in the Public Interest, an area less than one hectare should be acquired through direct negotiations between the agency needing the land and the owner/possessor of the land.

5. A Land Rights Holder who does not have this status?

Whoever used the land before the land was designated for a government agency project for acquisition will get compensation. However, it must be proven (photo).

6. Conflicts between Law No. 2 of 2012 and Law No. 51 of 1960?

There is an obligation for land rights holders to control their land, they should not let anybody use and control their land (for years), then blame it on the National Land Agency (BPN). In fact, there are many HGU and HGB holders for more than 20 years, but they only use some parts of the land and they abandon the remaining land. Law No. 51 of 1960 stated about entering somebody's land. Adverse possession – regulation to admit someone who occupied some land (with clear status and ownership) for years but the land rights holder does not care nor control their land.

In regards to State acquisition, all Ministries and Government Agencies shall be subject to the Law. 2/2012 rather than using other legal provisions. No later than 60 days after issuance the Project Location Determination, Secretary or other authorized officer shall immediately issue a permit.

According to Law no. 12/2012, the Project Location determination is by the existing authority to the governor, but there is an added a clause to permit delegation of authority to District Head (Bupati).

7. Indigenous land is a sensitive issue. This is land that has been given to them by their ancestors?

Special care must be taken in the appraisal to determine the land value of indigenous land; for example in Papua.

Indigenous land would be measured by their boundaries with the claim for the land which is bordered by other tribes: if relocation site is still within their boundaries, they do not call it as resettlement (it does not matter how far it is). If relocation is outside their boundaries (even only 1km), they would call it resettlement. About this issue, the important thing is that their rights are handled from the beginning of the process.

Peraturan Menteri Negara Agraria (PMNA) No. 5 of 1999 'Indigenous communities must be recognized by regional regulations (diPerdakan): PMNA was the answer for reformation. But this regulation is not effective so it could not be used and it needs to be revised. There is now a draft law (RUU Perlindungan Hukum Adat) on Protecting Legal Indigenous Communities and the Ministry of Forestry is the leading sector.

In the draft Land Law (RUU Pertanahan), the Indigenous Peoples (IP) land and ulayat land are recognized, but it should be proven whether that IP community still exists or not: The recognition of the Indigenous Peoples community is from the regional government (Pemda) and the National Land Agency must wait for the Regional Government. In fact, the Regional Government likes to give land to private companies rather than to their indigenous communities (IP).

A proposed Land court can be used as a media to handle this issue. More courage in the land sector related to Indigenous land is necessary.

8. Please clarify what should be done if the Regional Government needs land, for example 5 hectares?

If the land is for the public interest, then the Regional Government must use Law No. 2 of 2012.

9. How long does it take to acquire?

Enforcement of Law No. 2/2012 will shorten the time of the land acquisition process. The shortest 316 days, if neither party objected. The longest 522 days, if there are parties who objected.

10. West Tarum Canal project passes through three district governments (Bekasi Regency, Bekasi Municipality, and Karawang Regency). There are community needs to be replaced and appraisal provides difference value for each household. The problem is that they live next to each other and will get different compensations, it causes jealousy. The different value for compensation will make BPKP suspicious: In the WTC, actually it is state land but occupied by the communities and only 1 (one) household whose land is registered (Hak Milik). It is better if the Governor/ Head of Province determines the compensation. Moreover, the appraiser works independently without any government involvement. The amounts of compensations are different one from another, for example - a house in front of the main road might get a higher value rather than a house on the small road.

3.2. Eligibility and Entitlement for Compensation by Jeffry Anwar, Resettlement Specialist

The following information is from Jeffry Anwar's Power Point Presentation in Indonesian that has been translated to English below and is partly in the format of the Presentation.

Risks of Incorrect Project Eligibility and Entitlement:

- Civil work delayed
- Project cost expanded
- Public unrest and rejection
- Reputational risk elevated for agencies needing land

Eligibility and Entitlement:

Law No. 2 of 2012		Involuntary Resettlement Policy ADB SPS 2009
Land Rights Holders	a. Landholder b. Land concessionaries c. Wakaf organizers in the case of Wakaf land d. Ex-customary landowners e. Indigenous people f. Parties in possession of the state land in good faith	Land rights holders / building owners with legal titled Land rights holders / building owners with claims recognized under national law and regulation
Buildings, crops/plants owners and other assets related to land		APs lost land regardless their tenure status

Land Rights Holders and their Rights:

Land Rights Holders	Compensation
Land holders	Cash money, replacement land, resettlement or other form of compensation agreed
Land concessionaries	Cash money, replacement land, resettlement or other form of compensation agreed
Wakaf organizer Owners of ex customary land Indigenous people	Replacement land, resettlement, or other compensation forms agreed
Parties in possession of the state land in good faith	Cash money, replacement land, resettlement or other form of compensation agreed

Owners of buildings	Cash money
Owners of plants or other assets related to land	Cash money

Proposed Entitlement Matrix

- Goal: Describe the range of valuation of a project’s benefits to be given in the form of compensation resulted from project land acquisition and resettlement to the entitled parties who are eligible for it. It can be complement by livelihood restoration supports, transitional allowance, and other forms of support depending on the nature and scope of the impacts resulted from the project’s land acquisition and involuntary resettlement.
- Entitlement matrix is developed based on the law and regulations as well as on bilateral/ loan agreements.
- The proposed entitlement matrix is expected to stimulate the process for project entitlement suitable for the country system

Challenges in the Water Resources Sector

- What is the eligible compensation for the affected illegal squatters on state land?
- In the case of the associated impacts of the project for instance impact on downstream water users, who should be prioritized and eligible for compensation – as the project sees it the impacts are not generated from land acquisition and/or involuntary resettlement?

Challenges in the Energy Sector (PLN)

- Does a corrective action in the form of livelihood restoration support applied following a failure to comply category resulted from a due diligence decision on a willing seller willing buyer land acquisition situation ?
- What are the Involuntary Resettlement policy requirements for a project on voluntary land donation?
- For land restrictions for instance under High Voltage Transmission Line’s Right of Way, how should a fair compensation be calculated considering an existing sector approach perceived that it is no longer suitable for such compensation?

Comments by the Presenter on Eligibility and Entitlement

In regards to eligibility, the presenter highlighted no significant gap about who are the project affected peoples eligible for compensation between ADB SPS and the Law No. 2/2012 and its implementing regulations requirements. However it was mentioned in the discussion from the presentation on the legal gap analysis by the other team member that “providing compensation to illegal squatters resided on state land is prohibited and against

the law on revocation (UU 20 Year 1961). The law No. 2/2012 is contradictory with this Law no. 20 Year 1960. Therefore illegal squatters who are resided in State Land are not eligible for compensation. Legally, they even have to pay a fine according to the Law. Further more if they have resided on land which has already become a state asset such as in Citarum case, a land eviction instead of land acquisition is a proper term to describe that situation”.

The presenter explained that of the entitlement matrix proposed as mentioned earlier, the aim is not to make a standard. Moreover it is to start a process in developing the entitlement matrix that can satisfy both Law 2 /2012 and ADB Involuntary Resettlement Policy requirements. At this time, no one has implemented land acquisition using the Law No. 2/2001. This is prepared based on the cases relevant for energy and water resources sectors and hoping we can agree upon the entitlement in general. The presenter quickly highlighted key differences between the Law and the ADB SPS.

The Law does not specify risk of impoverishment severity for vulnerable groups. Yet it is in the entitlement matrix as it may be categorized as any losses that can be appraised. Therefore, MAPPI’s role is important to be able to identify these types of loses that are eligible for compensation.

Concerning the specific sectors such as energy and water resources, the challenge for instance in water resources is on the associated impacts. ADB’s Involuntary Resettlement requirement does not specify this clearly but it is covered under the environmental safeguards. It should be clearly addressed in the matrix. In the case of Citarum, there is a situation of which impact of involuntary resettlement in term of access limitation to water resources may affected persons who live downstream. How far should this be considered? How to measure the degrees of impacts caused under this category within the Land Acquisition / Involuntary Resettlement Entitlement Matrix under the new Law no. 2/2012?

For PLN, the issues are more on fair compensation of the affected person’s assets under the right of way (RoW) for the High Voltage Transmission Line (SUTT/SUTET). Under PLN’s current practice, compensations are regulated under the Ministry of Energy Decree No. 975K/4/MPE/1999. Yet, according to the Affected Persons, implementation of the regulation is perceived not to be sufficient and many protest against the development of SUTT/SUTET due to this compensation policy. Land under the ROW is only eligible for 10% of NJOP (PBB) compensation. PLN realizes this and is willing to adjust it but the regulation does not allow it. Under the new Law no. 2/2012 this type of loss is categorized as any appraisable loses. Again, MAPPI’s role is crucial to determine “fair” compensation value for this kind of loss.

Questions from the Participants and Recommendations by the Presenter and the Resource Persons

1. Question: Entitlement matrix is relevant and included in Law no. 2/2012 should only be from numbers 1 to 5. The rest should not be included. The attempts to add or expand the other type of losses in the entitlement matrix have been made since the 90's. I think this should be taken out as the Law does not include it.

Presenter responded to this question and used MAPPI presentation to describe what is stated in the entitlement matrix from 6-9 as examples of any appraisable losses. Yet it is simplified by economic losses and non-economic losses. Non-economic losses are indicated by the severity of the impacts and impact of land acquisition on the vulnerable groups. In terms of methods, it is covered under MAPPI. However, to be able to include this in the assessment and valuation, the severity and vulnerability should be in the TOR for MAPPI and the agencies needing the land can include these based on an inventory of loss results.

Recommendation: The Entitlement Matrix needs to be adjusted in accordance with what has been agreed to or explored based on the discussion. The result of this workshop can be used to develop a consolidated entitlement matrix for further internal sector discussions and facilitation to get more feedback and agreements reached for respective sectors/projects.

2. Question: In regards to the RoW as informed, many of PLN project implementers' have been accused by KPK (State Anti Corruption Commission) and some of them have been declared guilty and sent to a prison. Just to clarify, PLN does follow the Ministry of Energy as mentioned by presenter. Until there is a new regulation, PLN will stick to the Ministry's regulation.

Reply: The Okky Danusa (Presenter from MAPPI) responded to this question. Restrictions can create temporary and/or permanent losses. In principle this kind of loss should be assessed. MAPPI has a complete method for it. Yet the agencies needing land should have a legal basis to implement this assessment. In the Law this is what is called appraisable losses. This is a big box that can include many things; including this RoW.

In other countries these losses are treated as part of the total loss. Therefore, the Affected Persons are eligible for full compensation for the total loss. This may be used as a sample to determine what is "fair" compensation for these types of losses.

Recommendation: Further discussion is possible for the preparation of a ToR for "access restriction" affecting the Involuntary resettlement and the indigenous peoples that could be developed for the TA implementation of capacity development.

3. Question: Another issue, PLN is dealing with forest land. What law should we follow: This Land Acquisition Law or the Forestry Law that requires compensation by land swapping two times the amount of the uses by the project? Please clarify.

Reply by Kurnia Toha (Resource Person from the National Land Agency): For forest land, as the Law No. 2 is a lex-specialist, therefore the other sector has to use their requirement in accordance with the Law. For Forestry land – in 60 days, it should be released. Compensation should follow the requirement from the respective sector. This article in Law No 2 of 2012 is just to ensure that the forestry will not be a barrier to development in the public interest purposes.

Recommendation: This is clear from BPN. Yet, socialization may be needed to reach the specific sector such as forestry department and local governments.

4. Question: PLN is also dealing with land donations for PLTS (Pembangkit Listrik Tenaga Surya) that are donated by the local governments and even village land and private land. What should be the safeguard procedures for this kind of project using donated land?

Reply by the Presenter: the ADB Involuntary Resettlement Policy requirement may not be applied. However, there are other important aspects in regard to consultation, negotiation process and requirements to meet the replacement cost principle. Therefore, all the proper consultation and negotiation processes should be transparent and do not include the power of the state when involving the ‘willing seller willing buyer’ situation

Recommendation: For land donations and the negotiated land acquisition situation, this TA may also need to explore developing a practical guideline for minimum requirements to meet international safeguards on public communication policy and Free Prior Informed Consent (FPIC) when project affected Indigenous Peoples.

5. Question: For Tanah Adat (Indigenous Held Land), what would be the proper form of compensation? As the law mentioned it can be land for land and / or resettlement. How far should this be prepared?

Reply: For Tanah Adat from the expert from the Social Ministry, he responded that it is necessary to consider “orbit/boundaries” of the indigenous community if it is still within their own boundary. If development is affecting Indigenous Peoples within their own “orbit” therefore resettlement may not necessary.

To determine the boundaries of the lands for an indigenous community, this is usually determined through boundary and community outreach of the land, which is bounded by the claims of groups/tribes.

The boundary determination is by the collective consciousness of society, which is correlated with response to resettlement. As far as resettlement conducted within

their boundaries (orbitals), the indigenous peoples are not considered as resettlement. Meanwhile, if it is done outside the boundaries, despite a nearby location near, it is assessed as resettlement.

A Map of Indigenous boundaries is not the authority of the Social Ministry (Kementerian Sosial), so it must be done by BPN (National Land Agency).

Law 41/1991 has been gone under Judicial Review by the Constitutional Court, so not all of Agrarian Communities need a regional regulation to prove their existence.

At the present time the regulatory process being conducted in the draft law on Indigenous Peoples, the leading sector is Ministry of Forestry.

Establishment of Indigenous Peoples land claims should be done through the courts. Basic Agrarian Law 1960 assumes that indigenous / customary land will be lost, but the trend is going the international community increasingly recognizes it. Almost all land procurement-faced difficulties on confirming indigenous people's land, which is caused by the omission committed in the act of controlling land over a long period.

Yet, the Director of Water Resources is asked whether Mensos has the orbital map of Indigenous Peoples to be used as guidance? However, Indigenous Peoples Orbital Map is not available.

A participant from the World Bank responded that resettlement in the Law is one of compensation for eligible entitled land rights holders. Yet it does not clearly state how it should be managed as the law has a preference for cash compensation when resettlement is involved.

The person from MAPPI responded that this kind of need (resettlement) should be clarified in the TOR when conducting the estimation and valuation of the project.

A person from the ADB responded that there will be another workshop to discuss about this resettlement and compensation for indigenous peoples land as at this time we should focus more on Involuntary Resettlement.

3.3. Approach for Appraisal in the Framework of Compensation by Okky Danuza, MAPPI

The following information is from Okky Danuza's Power Point Presentation in Indonesian that has been translated to English below and is partly in the format of the Presentation.

Background

- Rationally, someone will release his/her land rights if he/she receives an appropriate compensation.

- Not only for public interest, but also for individual interest or company interest are willing to release their rights.
- Of course release with an agreed appropriate selling price. It is normal if the selling price is higher than the market price, because the buyer is willing to pay a higher price, remembering that they are in the position of the ones who need the land and there is no other option.

Specific Definition based on Law No. 2 of 2012

- Acquisition of Land” (*pengadaan tanah*) means any activity to make land available by giving reasonable and fair compensation to the entitled party (Article 1 section 2).
- “Land Rights Holder” (*Pihak yang Berhak*) means any party by whom objects of the acquired land are possessed or owned (Article 1 section 3).
- “Object of the Acquired Land means land, above-ground and below-ground space, buildings, plants, objects related to the land, or others appraisable” (Article 1 section 4).
- “Public Interest” means the interest of the people, state, and society that must be realized by the government for best prosperity of the people (Article 1 section 6).
- “Compensation” means any reasonable and fair reward given to the land rights holder in exchange for acquisition of land (Article 1 section 10).
- “Land Appraiser” means any individual who makes an appraisal independently and professionally to calculate the value/price of the objects of the acquired land, and has received an appraising permit from the Minister of Finance and a license from the Land Administrator” (Article 1 section 11).
- Acquisition of Land in the Public Interest shall have the objectives to make land available for development to improve the welfare and prosperity of the people, state and society by guaranteeing the legal interest of the Land Rights Holder (Article 3).

Specific Definition based on Presidential Regulation No. 71 of 2012

- Public Appraiser is an appraiser who has obtained a license from the Minister of Finance to provide an appraisal service (Article 1 section 12).
- The space above and below the surface of the land is the space that is under the surface of the land and/or space that is located above the ground that is important directly related with the utilization of the land (Article 1 section 22).

General Definition based on the SPI

- Fair Replacement Value is the value to the owner based on equality with the market value of a property with consideration of the special elements such as non-physical losses from the property ownership, which affected the title transfer of the relevant property.
- Fair Replacement Value is the same meaning for Compensation Value as stated in Law No. 2 of 2012.

Problem

‘How much is appropriate compensation for community willingness to release their rights.’

Calculation principle is based on the appraisal perspective:

- Buyer (in this case the Government) is willing to buy even forced to buy.
- Seller (in this case Community) is not willing to sell but forced to sell.

Compensation Value > Market Value.

Respect for the principle of land rights

Physical (Market Value) + Non-Physical (Losses) = Rights

Compensation Value Component

Market Value + Losses = Premium

Appraisal Approach

Appraisal Value	Basic Calculation	Approach	Description
Physical Land	Market and non-market	-Market Data Approach -Income Approach	
Building	New Replacement Cost with adjustment	-Cost Approach	Depreciation calculation only use as physical adjustment condition
Plants	Market	-Income Approach -Market Data Approach -Cost Approach	Use DCF method for one cycles For non-commercial plant, use recommendation from related institution for not yet productive plants
Non-Physical: -Transaction cost	1. Transfer cost; 2. Clean up cost; 3. Related tax cost; 4. PPAT cost.	-Cost Approach	Based on social economic analysis held by expert consultant and/ or valid laws and regulation
-Compensation for waiting	Based on deposit interest of		Based on laws and regulations

(interest)	government bank		
-Remaining land losses	Market	-Market Data Approach	Based on laws and regulation
-Other physical losses	Renovation cost	-Cost Approach	Based on laws and regulations
-Losses for replacement of land rights release will be given premium: 1. Job losses or business losses include profession change 2. Emotional losses (solatum)	Market and non-market Additional that is calculated based on percentage of physical losses value example: 10%-30% of physical losses compensation	-Income Approach -Cost Approach	Based on laws and regulation Losses because of business stopped or business closed, example: petani tambak, restaurant, and garage.

Implementation Guidance

Basic appraisal used is the Fair Replacement Value. This value is understandable as value that is based on:

- Value to the owner, means control or ownership of property;
- Equality with the Market Value is one of the basics in establishing the Value by considering market data. For some properties that have limited data or do not have market data, thus the Market Value can be equal with the Value based on its potential (without viewing the importance of planned land acquisition).
- Special elements related to non-physical losses can be caused by the property owner being forced to release his title. Non-physical losses are other losses as stated in Law No. 2 of 2012, Article 33 letter f with its explanations.
- Property ownership: unlimited only for ownership rights, though it means control of a property in accordance with the rules of the valid law and regulations.
- Principle of value to the owner is market value based on landowner as one of hypothesized buyer applicants in the context of selling and willing to pay amount of money so that it is possible to use land for current use. Basically, this appraisal considers value to the owner and not value from the buyer's side.

- If the land use or other land characteristic is especially suited for land use as currently used by the land owner, so that the land becomes very valuable for the land owner compared to other persons in the market, then the land should be appraised not only based on market value but also considering its specific interest (example: commercial). Value for the owner consists of all the benefits from owning the land.
- Value to the owner of the land occupied by its owner is different than unoccupied land. If the land is occupied, then the appraiser must calculate the non-physical cost.
- Moreover, the compensation principal is that parties in the hypothesized transaction will not pay some money for future benefits that can be the result of the land that has not yet happened during the appraisal date. Because the land owner might also get benefits from their new land.
- Benefits that can be anticipated from land use can be used as appraisal guidance in calculation of the land's Market Value. However, that benefit is not a standard measurement from compensation calculation amount. Example: land used for housing in a developing environment becoming a commercial area, thus the potential land value will be seen to be based on the highest and best use (Highest and Best Use/HBU) at the date of the appraisal.
- Additional value must be calculated based on the risk that occurs in the potential losses to the owner and measured fairly. Fair Replacement Value must be higher than the Property Market Value, or at least similar with the compensation transaction value from a similar property condition (if the comparison is a similar property of the compensation transaction).
- 4 (four) elements which are not included in the PPPI compensation value include and not limited to:
 1. Resettlement development;
 2. Education programs and motivation support;
 3. Job opportunities;
 4. Business facility support.
- Main approach in implementing land acquisition is the Market Data Approach, where land value should not be based on the price wanted by the seller, but more on the fair price that will be paid by the buyer who really wants to buy from the seller who wants to sell but does not want to sell on the date of the appraisal.

- Market data at the location is analyzed to provide basic information, and can be used as market data in other locations with similar characteristics as a data control, or other data that does not yet definitely represent the market data.
- Example: market data at the compensation location has already experienced a fluctuated price that has already been affected by the development plan. In this condition, the appraiser must ensure similar and equal market data in another location as comparison data or data control.
- The use of land market data must be similar and equal to the appraised land. If the market data is not comparable, then there needs to be an adjustment for every comparison element.
- Stipulations of the regional planning and urban planning regulations are important for the appraiser to determine the Highest and Best Use (HBU) of the land and because the market data as a relevant comparison must be taken.
- Specific land value is for each parcel of land so that the appraisal in the framework of the land acquisition must be carried out individually.
- In order to implement individual appraisals that can be carried out both as an inventory and land data of the land to be acquired must be detailed and able to give sufficient information as the basis of the analysis on the aspects that need to be considered that will influence the land value.

Premium

- There is no exact method of premium calculation, but it is needed to be determined by the government.
- The USA implements a premium of 25% of Market Value (The Appraisal of Real Estate; Thirteenth Edition; Appraisal Institute).
- It is necessary to compare the premium on land acquisition for a purely public interest project and a project with a cooperation element with a Public Private Partnership (PPP).
- For example, a premium for pure public facility is 25% where as for a project in cooperation with a private company is 40% of the total physical value and non-physical value.
- Premium amount determination is necessary to be through individual analysis to have higher acceptability.
- Premium determination is not just for the owner of the land but also needs to consider other communities as taxpayers.

Assignment & TOR

- There is a variation in the TOR so that the appraisal results do not provide similarity in scope of work. This issue is possibly a result of:
 1. Preparation by the authority that prepares the data so that the appraisal can only be done through a zone system (mass appraisal).
 2. Different budget so that the TOR is adjusted based on the budget.
- Suggestion: there is a need to have a similar TOR and to involve MAPPI in preparing a minimum TOR.

Socialization

- Appraiser often is not involved in the socialization:
 1. Appraiser's assignment is after the socialization phase is completed.
 2. TOR does not require the appraiser to be involved in the socialization.
- Suggestion: the appraiser needs to be involved in the socialization to explain to community about the appraisal process that will be held.

Survey

- Community feels that they have never been surveyed:
 1. Community perception is that the survey is interviewing community who will be affected by land acquisition.
 2. Appraisal survey is basically to get a perspective of the condition of the physical objects condition and the comparative market data.
- Suggestion: It is necessary explain to the community about the appraisal process.

Data Provision

- Our country does not yet have a system or regulation that enables the valid transaction data and for it to be well managed, thus the appraiser will collect transaction data or offers from many sources where most of them are not legal sources.
- Transaction data for the location of the land acquisition is already influenced by project planning.

Questions from the Participants and Recommendations and Answers from Okky Danusa (Resource Person)

1. Question from BAPPENAS: Generally, in land appraisal, the NJOP (tax assessment) is used as the standard. The value of the land based on the NJOP is lower than the market value for the land. The NJOP should no longer be used for determining the compensation for acquired land. What is the legal basis for determining compensation?

Reply from the Presenter: NJOP is wrong and unusable. NJOP is the value for taxing the land.

Reply from the National Land Agency: Fair compensation includes the land, buildings, plants/trees and other objects related to the land. Use the market value of the land.

There is now available Assessment Guidelines for Land Acquisition

2. Question from BAPPENAS: In the implementation, socialization of the results with the affected community must be carried out?

Reply from the Presenter: The entitled parties must be informed of the findings. There must be socialization. All the information should be provided to the entitled parties and not just the agency needing the land.

Role of the appraiser should be involved since the formulation of the planning and budgeting.

3. Question from ADB participant: How comprehensive is the appraisal and the analysis of the value because all of the social and economic factors must be assessed?

Reply from the Presenter: As far as it is described in a given terms of reference from the respective agencies needing an appraiser, the assessment will be conducted. Therefore it is important during the planning phase that all of the impacts have been screened and identified. Based on the result, the scope of the assessment and valuation will follow.

The term "Loss compensation value" is replaced with the proposed "Fair Replacement Value (Fair Value Replacement). Economic value is more easily measured.

In Law No.2/2012 valuation is not just governed by zone, but those individuals (parcel by parcel), there is indeed at BPN decisive Directorate Land Value, but information of land value still within the limits of the Zone.

The issue is that at the present time the number of appraisers throughout Indonesia is about 3,000 persons and 80% are in the Greater Jakarta Area.

4. What about land speculation?

The Government is expected to provide valid transaction data to avoid speculation. If the Land Acquisition Location Permit has been issued, it has ensured that people can only sell the land to the Location Permit holder.

IV. Review of the Workshop Results

4.1. Synthesis of the Results of the Workshop

The workshop on Social Safeguards for land acquisition comes at a very opportune time because of the recent issuance of laws and regulations in Indonesia on land acquisition. These are:

- Law No 2 of 2012 on Land Acquisition for Development in the Public Interest,
- Presidential Regulation No 71 of 2012 on Implementation of Land Acquisition for Development in the Public Interest, and
- Head of the National Land Agency Regulation No. 5 of 2012 on Technical Guidelines on Implementation of Land Acquisition.

At the present time there has not yet been a government agency that has completed the land acquisition for development in the public interest using these new regulations since two supporting decrees were only issued in 2013 that were primarily concerned with the personnel carrying out the acquisition. Thus, this workshop on the Analysis of the Laws and Regulations for Land Acquisition in the Water and Energy Sectors that was sponsored jointly by the Directorate of Water Resources and Irrigation at the National Planning Agency and the Asian Development Bank.

The main aim of the Workshop was to review both the ADB's Social Safeguard policies for land acquisition and the new regulations issued in 2012 by the Government of Indonesia. This activity is especially relevant at this time in order to determine if there are gaps in the regulations and safeguards that may create difficulties in the implementation of land acquisition by projects partially funded by the Asian Development. Another major benefit is understanding the process of how to actually carry out land acquisition by government agencies that considers the social impact of this acquisition. This Comparison provides important information to the Government on social issues.

This workshop was conducted to get reviews from key government stakeholders both of the policy makers and implementers in order to finalize the gaps analysis of the laws and legal provisions Indonesia social safeguard system (involuntary resettlement and indigenous peoples) conducted by a team of consultants under ADB TA 7566-REG. A comprehensive inventory laws and legal provisions of the country related to involuntary resettlement and indigenous peoples has been prepared and shared. In depth analysis of the laws and legal provisions was provided in relation to involuntary resettlement policy principles and requirements stated in ADB Safeguards Policy Statement 2009. The workshop has confirmed the results of the analysis and highlighted anticipated key challenging implementation issues

in particularly to apply obligatory new land acquisition law No. 2 of Year 2012 and its implementing regulations along with the ADB SPS 2009 IR Policy Requirements.

Perhaps the most important result of this Workshop was the realization that the new regulations are much closer to the ADB's Social Safeguard Policies and in several aspects more progressive. The new regulations state that persons who occupy land without title to the land still have a claim on the land and must be compensated. Of course, the ADB's Social Safeguards stress this aspect but the new Indonesian regulations very clearly state who are the land rights holders for a number of categories that include indigenous peoples, persons possessing the land but not having title, etc. With these regulations, persons who are classified as squatters also have rights to compensation.

These new regulations have made several major advances in the procedures for land acquisition. For the first time, the land above and below the surface of the land must also be considered in the compensation and the acquisition of the land for development in the public interest.

Another article in the regulations makes possible the acquisition of land in the forest estate (kawasan hutan) by considering the Ministry of Forestry as just one of the government agencies controlling land without special considerations (Law No 41 of 1999) when the land is needed for development in the public interest.

Although the compensation for land claimed by indigenous communities is still dependent on the issuance of a district regulation recognizing the community, yet with a decision by the Constitutional Court this requirement is being reconsidered.

The Workshop identified that the main problem for land acquisition in the public interest is the need for guidelines on the appraisal of land, assets on the land, and other losses for compensation.

The resource person from the Land Appraisers Association (MAPPI) clearly stated that the law has completely deleted the use of the NJOP (land tax) as the standard for compensation and stressed that the basic appraisal now to be used is the Fair Replacement Value that is based on the market value, the non-physical losses. The appraisal considers the value to the owner/possessor and not the value from the buyer's side.

4.2. Achievement of the Objectives of the Workshop

As was stated by Dr. Donny Azdan, the Director of Water Resources and Irrigation at the National Planning Agency/BAPPENAS in his opening remarks:

Through TA-7566: Strengthening and Use of Country Safeguard System, it is hoped that there will be improvement in government institutional capacity in carrying out social safeguards, especially in water resource and energy sector. One of the important component is that this TA is to analyze the

related laws and regulations, the land acquisition process, the gap analysis between existing laws and regulation and the international practices among others the Safeguard Policy Statement (SPS) of the ADB, along with the the recommended steps that must be covered for bridging these gaps.

Based on the presentations by the TA-7566 Team at the workshop and the response of the participants and resource persons, substantial progress was made in the comparisons of the new Indonesian regulations for land acquisition in the public interest and the ADB's Social Safeguards.

As was clearly stated in the presentations, the questions and the responses of the presenters and resource persons, major progress was achieved in explaining the new regulations perhaps for the first time in a national workshop. The Team was able to provide analysis that the new Indonesian regulations have made major progress in approaching the level of Social Safeguards as stated by the ADB.

The workshop also made a major advance in stating that non-land title holders still must be compensated for their land and that the term now used is Land Rights Holders as stated by the resource person from the National Land Agency which includes those who in the past were stated as squatters.

The most important advance made in the workshop was the statements from MAPPI on compensation that it is now Fair Replacement Value rather than the previous NJOP (land Tax basis). Basically, the appraisal considers the value to the owner and not the value from the buyer's side.

4.3. Progress in Strengthening the Indonesian Safeguard System

Aside from filling the remaining gaps on Involuntary Resettlement legal provision and procedures, there needs to be capacity improvement to help respective government sectors and agencies needing land to prepare resettlement plans in-line with the country system and ADB IR Policy Requirements were also expressed in the workshop.

The workshop suggested the TA team to consolidate the result of the policy gaps analysis, define eligibility and entitlements of its current review to be aligned and acceptable to both the current country safeguards system and ADB SPS 2009. The next workshop agenda is suggested to focus on Indigenous peoples gap policy analysis and institutional capacity improvement strategy to be a benchmark for the overall outcome of the TA.

The workshop has also highlighted important roles of BAPPENAS and BPN to help enable key government agencies at across regions to participate in the planning and implementation of proposed public interest development project. Under the new land acquisition law No. 2 of Year 2012, local governments together with agencies needing land and BPN area offices' roles are vital for successful land acquisition planning and implementation. The results of

the TA Team work for filling the gaps both on Involuntary Resettlement and Indigenous Peoples and consolidated entitlement matrix and eligibility discussed can be used to scale up socialization process of the being held nation-wide currently.

The Workshop clearly achieved its goals of analyzing the new Indonesian regulations for land acquisition in the public interest and comparing these regulations with the ADB's Social Safeguards. The Workshop also demonstrated that the Indonesian Country Safeguard System (CSS) has made major advances in the last couple of years and is now approaching the standards in the ADB's Social Safeguards. Thus, an important step has been taken in achieving the goal of TA 7566 in strengthening CSS in Indonesian by reviewing the new laws, by analyzing the level of the social safeguards in these laws, and by indicating what is still necessary for improving these CSS based on the comparison with the ADB's social safeguards for land acquisition.

4.4. Lessons Learned and Recommendations

The most important lesson is that having the Director, Water Resources and Irrigation of the National Land Agency to be deeply involved in the planning, implementation, attendance, and giving the keynote address is extremely important in achieving substantial results in the Workshop. With his presence though out the entire workshop and making very important statements about the need for social safeguards, this greatly raised the level of recognition of the importance of social safeguards in land acquisition for the participants, especially the representatives from various departments in the Government.

Appendix

Appendix A. Invitation, Agenda and List of Invited Persons for the Workshop



Jakarta, 12 Juli 2013

No : 4127 /Dt.6.1/07/2013
Lampiran : 1. Daftar Undangan
2. Agenda Acara
Perihal : Undangan Lokakarya

Kepada Yth.
Saudara/i (sebagaimana terlampir)
di tempat

Dalam rangka memperkuat kapasitas kelembagaan pemerintah, khususnya dalam pelaksanaan perlindungan sosial di sektor sumber daya air dan energi, Bappenas melaksanakan kegiatan TA 7566-REG: *Strengthening and Use of Country Safeguard System*. Sehubungan dengan itu, kami mengharapkan kehadiran Saudara/i pada :

Hari/tanggal : Selasa, 16 Juli 2013
Waktu : 13.00 – 18.00 WIB (dilanjutkan dengan buka puasa bersama)
Tempat : Hotel JS Luwansa, Jl. HR. rasuna Said Kav. C 22,
Kuningan, Jakarta Selatan
Agenda : "Lokakarya Analisa Peraturan Perundangan untuk Pengadaan
Tanah di Sektor Sumber Daya Air dan Energi"

Mengingat pentingnya acara tersebut diatas, kami mohon kehadiran Saudara tepat pada waktunya.

Demikian disampaikan, atas perhatian Saudara diucapkan terima kasih.



Direktur Pengairan dan Irigasi,

M. Donny Azdan, MA, MS, PhD

Tembusan Kepada Yth.

1. Bapak Deputi Bidang Sarana dan Prasarana (sebagai laporan).
2. Bapak Direktur Jenderal Sumber Daya Air, Kementerian Pekerjaan Umum

Jalan Taman Suropati 2, Jakarta 10310
Telepon : (021) 3926186 – Faksimili : (021) 3149641 – Situs web: www.bappenas.go.id

Lampiran I Surat Nomor : 4127/Dt.6.1/07/2013
Tanggal : 12 Juli 2013

DAFTAR UNDANGAN
"Lokakarya Analisa Peraturan Perundangan untuk Pengadaan Tanah
di Sektor Sumber Daya Air dan Energi"
Jakarta, 16 Juli 2013

1. Direktur Bina Program, Ditjen SDA, Kementerian Pekerjaan Umum;
2. Direktur Bina Teknik, Ditjen Bina Marga, Kementerian Pekerjaan Umum;
3. Direktur Pemberdayaan Komunitas Adat Terpencil, Kementerian Sosial;
4. Kepala Biro Perencanaan dan Kerjasama, Kementerian Energi dan Sumber Daya Mineral;
5. Kepala Biro Hukum dan Humas, Kementerian Energi dan Sumber Daya Mineral;
6. Bp. Prof. Dr. San Afri Awang, M.Sc., Kementerian Kehutanan;
7. Kepala Balai Besar Wilayah Sungai Ciliwung-Cisadane, Kementerian Pekerjaan Umum;
8. Kepala Balai Besar Wilayah Sungai Citarum, Kementerian Pekerjaan Umum;
9. Kepala Balai Besar Wilayah Sungai Ciujung-Cidurian, Kementerian Pekerjaan Umum;
10. Kepala Pusat Hukum dan Hubungan Masyarakat, Badan Pertanahan Nasional (BPN);
11. Kepala Puslitbang Badan Pembinaan Hukum Nasional, Kemenkumham;
12. Direktur Sumber Daya Energi, Mineral, dan Pertambangan, Kementerian PPN/Bappenas;
13. Direktur Energi, Telekomunikasi, dan Informatika, Kementerian PPN/Bappenas;
14. Direktur Tata Ruang dan Pertanahan, Kementerian PPN/Bappenas;
15. Direktur Otonomi Daerah, Kementerian PPN/Bappenas;
16. Kepala Bappeda Provinsi Jawa Barat;
17. Kepala Bappeda Provinsi Banten;
18. Direktur Perencanaan dan Pembinaan Afiliasi PLN, PT PLN (Persero);
19. Sdri. Ria Koespraptini, Manajer Lingkungan Senior, PT PLN (Persero);
20. Sdri. Marina Kurniati, Staf Ahi Bidang Lingkungan, PT PLN (Persero);
21. Ketua Komnas HAM;
22. Ketua Dewan Penilai, Masyarakat Profesi Penilai Indonesia, MAPPI;
23. Ketua Satuan Tugas REDD+;
24. JICA Jakarta Office;
25. World Bank Jakarta Office;
26. Ausaid Jakarta Office;
27. IRM ADB;

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Lampiran II Surat Nomor : /Dt.6.1/07/2013
 Tanggal :

AGENDA ACARA
"Lokakarya Analisa Peraturan Perundangan untuk Pengadaan Tanah
di Sektor Sumber Daya Air dan Energi"
 Jakarta, 16 Juli 2013

WAKTU	ACARA	PEMBICARA	Moderator
12.30-13.00	<i>Registrasi peserta</i>		
13.00-13.15	Sambutan dan pembukaan Direktur Pengairan dan Irigasi	Ir. M. Donny Azdan, MA., MS., Ph.D	
13.15-13.30	Sambutan dari Asian Development Bank (ADB)	Edimon Ginting	
13.30-13.45	Penjelasan mengenai TA 7566-REG : Strengthening and Use of Country Safeguard System	Syarifah Aman-Wooster	
13.45-14.05	Presentasi I: ' <i>Diagnostic Analysis Of Law And Regulation For Land Acquisition In Water And Energy Sectors</i> '	Akhmad Safik	Ir. Mohammad Zainal Fatah
14.05-14.25	Presentasi II: ' <i>Entitlement And Eligibility</i> '	Jeffry Anwar	
14.25-14.45	Presentation III: ' <i>Methods For Compensation</i> '	Ir. Okky Danuza, MSc. (MAPPI)	
14.45-15.15	<i>Istirahat</i>		
15.15-16.45	Diskusi		
16.45-17.00	Penutupan	Ir. M. Donny Azdan, MA., MS., Ph.D	
17.00-18.00	Menjelang Buka Puasa		
18.00-selesai	Buka Puasa Bersama		

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Appendix B: Consolidated Entitlements Matrix

Resulted from the ADB CSS Key Stakeholders Consultation Workshop Held by BAPPENAS
 and the ADB CSS Team

No	Type of Loss	Application	Entitled Persons	Compensation Policy
1	a. Permanent land loss	Homestead land, agriculture land, or vacant plot	a. Landholder b. Land concessionaries c. Wakaf organizers in the case of the case of Wakaf land d. Ex-customary landowners e. Indigenous people f. Parties in possession of the state land in good faith g. Land tenure holders	<ul style="list-style-type: none"> • Compensation at replacement value for land to be assessed by appraiser • No deduction for taxes and administrative cost. • If the remaining land is losing its economic value, the project will acquire the entire land at replacement value. • Financial assistance for the updating of the land ownership documents
			h. Tenants and leased holders	<ul style="list-style-type: none"> • 60 days of notice for agriculture land to harvest standing season crops. If notice cannot be given, compensation for share of crops to be assessed by appraiser
2.	b. Temporary Land Loss		a. Landholder b. Land concessionaries c. Wakaf organizers in the case of the case of Wakaf land d. Ex-customary landowners e. Indigenous people	<ul style="list-style-type: none"> • Compensation to be assessed by appraiser • Restoration of affected land • 60 days advance notice

			<p>f. Parties in possession of the state land in good faith</p> <p>g. Land tenure holders</p>	
			<p>h. Tenants and leased holders</p>	<ul style="list-style-type: none"> • 60 days advance notice • if notice cannot be given, provision of land rental value during the duration of temporary acquisition to be assessed by appraiser
3.	<p>a. Fully structures loss, or partially. Structures affected of which the remaining assets are no longer viable for use (categorized as fully affected)</p>	<p>Residential / Commercial structures and other assets</p>	<p>a. Owners of buildings</p> <p>b. Holders of the right to build;</p> <p>c. Holders of the right to use</p>	<ul style="list-style-type: none"> • Cash compensation for total of structure at full replacement cost or to be assessed by appraiser. • No deduction for depreciation, transaction cost or value of salvaged materials. • Provision of all taxes, registration costs, and other fees incurred for replacement structure • A 60 days' advanced notice to move before initiating the land clearing
	<p>b. Partial structure loss. Structures affected of which the remaining assets are still viable for use (categorized as partially affected)</p>	<p>Residential / Commercial structures and other assets</p>	<p>a. Owners of buildings</p> <p>b. Holders of the right to build;</p> <p>c. Holders of the right to use</p>	<ul style="list-style-type: none"> • Compensation proportional to the affected area to be assessed by appraiser • No deduction for depreciation, transaction cost or value of salvaged material.

				<ul style="list-style-type: none"> • A 60 days' advanced notice to move before initiating the land clearing
4	Relocation caused by land, structure and/ or business loss	Residential / Commercial structures and other assets	<ul style="list-style-type: none"> a. Owners of buildings b. Holders of the right to build; c. Holders of the right to use 	<ul style="list-style-type: none"> • Compensation at replacement cost to be assessed by appraiser • Moving/transfer allowance and subsistence / transactional allowance to be assessed by appraiser <p>When available to:</p> <ul style="list-style-type: none"> • Participate in resettlement program • Participate in Livelihood Restoration program • Relocation facilitation to help APs to find access to a rented house or to a low income-housing program within the village or nearby.
			d. Tenant / Lease Holder	<ul style="list-style-type: none"> • A 60 days' advanced notice to move before initiating the land clearing • if notice can not be given, provision of structure rental value to be assessed by appraiser

				<p>When available to:</p> <ul style="list-style-type: none"> Relocation facilitation to help APs to find access to a rented house or to a low income-housing program within the village or nearby.
5	Loss of Crops and Trees	Standing Crops and Trees	Owners of the Crops and Tree regardless their tenure status	<ul style="list-style-type: none"> Compensation to be assessed by appraiser for the value of harvest loss generated from the crops Compensation to be assessed by appraiser for the value of non-commercial standing tress APs are allowed to harvest prior to land clearance.
6	Permanent Loss of Livelihood	Sources of livelihood / Income	Business owners, tenants, leaseholders, employees, agricultural workers, hawkers/ vendors	<ul style="list-style-type: none"> Provision for lost of income / source of livelihood to be assessed by appraiser
7	Temporary Loss of Livelihood	Sources of livelihood / Income	Business owners, tenants, leaseholders, employees, agricultural workers, hawkers/ vendors	<ul style="list-style-type: none"> A 30 days prior notice provision regarding construction activities, including duration and type of disruption. Once income loss involved, provision for lost of income to be provided or to be assessed by appraiser.

8	High Risk of Impoverishment / Hardship	Resource and / or livelihood Base	<p>Vulnerable Affected Household regardless of severity of impacts</p> <p>(AHs living under poverty line, landless households, females, elderly or disabled household heads)</p>	<ul style="list-style-type: none"> To be assessed by appraiser <p>When available:</p> <ul style="list-style-type: none"> Participate in Livelihood Restoration Program Provided with opportunity for project related jobs
			<p>Severely Affected Households</p> <p>(AHs being physically displaced and/or losing 10% or more of their total productive, income generating asset)</p>	<ul style="list-style-type: none"> To be assessed by appraiser <p>When available:</p> <ul style="list-style-type: none"> Participate in Livelihood Restoration Program Provided with opportunity for project related jobs
9	Permanent restrictions of access used over land, structures, utilities, common property resource	Access used over land, structures, utilities, common property resource	All affected persons	<ul style="list-style-type: none"> Compensation at replacement cost to be assessed by appraiser
10	Temporary restrictions of access to use over land, structures, utilities, common property resources	Access to use over land, structures, utilities, common property resources		<ul style="list-style-type: none"> A 30 days prior notice Provision of alternative access where possible Restoration/enhancement of affected access used over land, structure, utilities, and common property resource

11	Any other loss not identified	Impacts identified caused by land acquisition and involuntary resettlement	All affected persons	<ul style="list-style-type: none">Appraiser to assess and determine value of once the type of losses identified
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Appendix C: Analysis of ADB's Social Safeguards, Law No. 2/2012 and Presidential Regulation No. 71/2012

Analysis of the ADB's Social Safeguards for Involuntary Resettlement, the Indonesian Law No 2/2012 and Presidential Regulation No 71/2012

DRAFT FOR DISCUSSION BUT NOT FOR CITATION

**Presented at the Workshop on Analysis of Laws and
Regulations for
Land Acquisition in the Water and
Energy Sectors**

Directorate for Water and Irrigation, PPN/BAPPENAS

and

**ADB TA 7566-REG (Subproject): Capacity Development for
Social Safeguard Preparation and Implementation in
Water Resource Management and Energy in Indonesia**

July 2013

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I. Purpose and Objectives of this Paper

The purpose of this paper is to carry out a diagnostic analysis of the ADB's Social Safeguards and the Indonesian Safeguards System for Involuntary Resettlement for Government Projects as represented by Law No 2 of 2012 on Land Acquisition for Development in the Public Interest and Presidential Regulation No. 71 of 2012 on the Implementation of Land Acquisition for Development in the Public Interest.¹ The objective of this analysis is to define the role of the Safeguard Polices of the Asian Development Bank within the implementation of Law No 2 and Perpres No 71.

The Asian Development Bank's Policy Paper on Safeguard Policy Statement of June 2009 provides the following information on their current policy on Involuntary Resettlement Safeguards.²

Objectives: To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.

Scope and Triggers: The involuntary resettlement safeguards covers physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.

Policy Principles:

1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular

¹ The consultant made editorial changes in the translation of Law No 2 of 2012 which is an excellent translation by Wishnu Basuki. This translation was on-line and thus this author has used his translation but with a few editorial revisions. The consultant was given by an international organization the translation of Government Regulation No 71 which is an inadequate translation and this consultant has made extensive revisions in the English translation.

² Involuntary Resettlement Safeguards, ADB Safeguard Policy Statement, June 2009, P-17)

attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
8. Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
9. Disclose a draft resettlement plan, including documentation of the consultation process in

a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.

10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.

II. Diagnostic Analysis of the ADB’s Safeguard Policy, Law No. 2/2012 and Perpres No 71/2012

2.1. ADB Safeguard Policy Scope and Triggers for Involuntary Resettlement

ADB Safeguard Policy Scope and Triggers	Scope and Triggers: The involuntary resettlement safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.
Key Element (1)	Permanent physical and economic displacement as a result of involuntary acquisition of land (full or partial)
Legal provisions	Law 2 of 2012 on Land Acquisition for Development in the Public Interest Article 1: 2. “Acquisition of Land” means any activity to make land available by giving reasonable and fair compensation to the Land Rights Holders. 3. “Land Rights Holders” (<i>Pihak yang Berhak</i>) means any party by whom objects of the acquired land are possessed/controlled or owned (<i>menguasai atau memiliki</i>). 4. “Object of the Acquired Land” means land, above the surface and below the surface of the land, buildings, plants, objects related to land, or others appraisable objects.
Analysis	Law 2 of 2013 is focusing on physical displacement rather than other displacements including economic displacement. However, the law can be interpreted that economic displacement is also considered as the impact of land acquisition that entitles for compensation.
Recommendations	Since Law 2 of 2012 and its implementing regulation states more clearly on the physical displacement rather than economic and non-physical displacement, developing a detailed guidelines on land acquisition is very important to ensure that economic and non-physical displacement as a result of involuntary resettlement and restriction is clearly entitled just compensation (<i>ganti kerugian yang adil</i>).
Key Element (2)	Temporary economic displacement as a result of involuntary land

	acquisition
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest</p> <p>Article 1</p> <p>3. “Land Rights Holders” means any party by whom objects of the acquired land are possessed/controlled or owned.</p> <p>4. “Object of the Acquired Land” means land, above the ground and below the ground space, buildings, plants, objects related to land, or others appraisable objects.</p>
Analysis	Temporary economic displacement will be compensated when the affected people can provide evidence of loss and the appraiser must be informed.
Compliance Recommendations	The land acquisition committee has to provide comprehensive information on the land acquisition project particularly to those who are temporarily affected by involuntary resettlement.
Key Element (3)	Permanent or temporary physical and economic displacement and Compensation for losses as a result of involuntary restrictions on land use
Legal provisions and National Policy	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest</p> <p><i>Article 1</i></p> <p><i>3. “Land Rights Holders” means any party by whom objects of the acquired land are possessed/controlled or owned.</i></p> <p><i>4. “Object of the Acquired Land” means land, over ground and underground space, buildings, plants, objects related to land, or others appraisable objects.</i></p>
Analysis	<i>Only a phrase “other appraisable objects” that can be used to indicate that involuntary restriction is entitled for compensation.</i>
Compliance Recommendations	The land acquisition committee has to provide a comprehensive information on land acquisition project particularly to those who are temporarily affected by involuntary resettlement.
Key Element (4)	Permanent or temporary physical and economic displacement and Compensation for losses as a result of restrictions on access to legally designated parks and protected areas
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest</p> <p>Article 1</p> <p>3. “Land Rights Holders” means any party by whom objects of the</p>

	<p>acquired land are possessed (controlled) or owned.</p> <p>4. “Object of the Acquired Land” means land, above the ground and below the ground, buildings, plants, objects related to land, or others appraisable objects.</p>
Analysis	<p>Only a phrase “other appraisable objects” that can be used to indicate that involuntary restriction is entitled for compensation.</p>
Recommendations	<p>Developing a detailed guidelines on land acquisition is very important to ensure that economic and non-physical displacement as a result of involuntary restriction is legally protected and clearly compensated.</p>

2.2. ADB Safeguard Policy Principle 1 for Involuntary Resettlement - Screening

ADB Safeguard Policy Principle 1	Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.
Key Element (1)	Project screening
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 1-Government Agency needing land):</p> <p>As stated in Part 2 Article 14, paragraph 1, “an agency or institution needing land will prepare a plan for Acquisition of Land in the Public Interest that as in Paragraph (2) of Article 14 states:³</p> <p style="padding-left: 40px;">Land Acquisition plan in the Public Interest as intended by section (1) shall refer to the Regional Spatial Planning and the development priority as stated in the Medium-Term Development Plan, the Strategic Plan, and the Working Plan of the relevant Agencies.</p> <p>Article 15 Paragraph 1 provides detailed information on the land acquisition plan that shall have at least the following information:⁴</p> <ul style="list-style-type: none"> a. the objectives and purposes of the Development Plan ; b. consistency with the Regional Spatial Planning and the National/Regional Development Plan; c. land location; d. land size needed; e. general description of the land status; f. estimated period of the implementation of Acquisition of Land; g. estimated period of the implementation of construction; h. estimated land value; and i. budget plan. <p>However, in Paragraph 2 in Article 15 it states that the plan will be based on a feasibility study (<i>studi kelayakan</i>) in accordance with the laws and regulations. In the Elucidation of 15(2) the Law states that:</p>

³ Wisnu Basuki, Law No 2/2012, Article 14, Paragraph 2, p. 10

⁴ Ibid, Article 15 (1), page 11.

	<p><i>The feasibility study shall include:</i></p> <ul style="list-style-type: none"><i>a. social-economic survey;</i><i>b. location feasibility;</i><i>c. analysis of cost and development benefit to the area and the community;</i><i>d. estimated land value;</i><i>e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and</i><i>f. other studies as necessary</i> <p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 2 – Provincial Governor):</p> <p>Article 16</p> <p>An Agency needing land together with the provincial government shall under the Land Acquisition planning documentation as intended by Article 15:</p> <ul style="list-style-type: none">a. make notification of the development plan;b. perform preliminary data collection of the location of the development plan; andc. hold a Public Consultation on a development plan. <p>Article 17</p> <p>Notification of the development plan as intended by Article 16 point (a) shall either directly or indirectly be provided to the community living at the planned location of development in the Public Interest.</p> <p>Article 18</p> <p>(1) Preliminary data collection of the location of the development plan as intended by Article 16 point (b) shall include the preliminary data gathering of the Land Rights Holders and the Objects of the Acquired Land.</p> <p>(2) Preliminary data collection as intended by section (1) shall be made within thirty (30) working days of the notification of the development plan.</p> <p>(3) The results of preliminary data collection as intended by section (1) shall be used as data to hold a Public Consultation on a development plan as intended by Article 16 point (c).</p> <p>Presidential Regulation No 71 of 2012 (Phase 2 – Provincial Governor):</p>
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	<p>The Preparation Team mentioned in Article 8 Paragraph (2) has the tasks as in Article 10 as follows:</p> <ol style="list-style-type: none">a. Inform the people about the Development Plan ;b. Conduct initial data collection on the location of the Development Plan ;c. Conduct Public Consultations for the Development Plan ;d. Prepare the Location Determination for the development;e. Announce the Location Determination for the development in the public interest; andf. Carry out other tasks that are relevant for the land acquisition for development in the Public Interest that are assigned by the Governor. <p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>Article 28</p> <p>(1) Inventory and identification of possession, ownership, use, and utilization of land as intended by Article 27 section (2) point (a) shall include:</p> <ol style="list-style-type: none">a. surveying and mapping on a parcel-by-parcel basis; andb. gathering data on the Land Rights Holders and the Objects of the Acquired Land. <p>(2) Inventory and identification of possession, ownership, use, and utilization of land as intended by section (1) shall be conducted within thirty (30) working days.</p> <p>Article 29</p> <p>(1) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced at the urban/rural village administration office, the subdistrict office, and at the place where Acquisition of Land is conducted, for fourteen (14) working days.</p> <p>(2) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced in stages, in part or in whole.</p> <p>(3) The announcement of the results of the inventory and identification as intended by section (2) shall include the subjects of title, size, location, and map(s) of the parcel of land of the Objects of the Acquired Land.</p>
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	<p>(4) Where the Land Rights Holders does not receive the results of the inventory as intended by section (3), he/she may file an objection with the Land Administrator within fourteen (14) working days of the announcement of the results of the inventory.</p> <p>(5) Where there is an objection to the results of the inventory as intended by section (4), verification and improvement thereof shall be made within fourteen (14) working days of the receipt of the filing of an objection to the results of the inventory.</p> <p>(6) The inventory and identification shall be made in accordance with the laws and regulations.</p> <p>Article 30</p> <p>The results of the announcement or verification and improvement as intended by Article 29 shall be confirmed by the Land Administrator and shall constitute the grounds on which the Land Rights Holders to Compensation are determined.</p>
Analysis	<p>The screening for the land acquisition process is a very important measure that any agency needing land has to prepare a well documented plan to acquire land. Later, this screening is very crucial when public consultations are held by the government along with the agency concerned.</p>
Recommendation	Compliant

2.3. ADB Safeguard Policy Principle 2 for Involuntary Resettlement - Consultations

<p>ADB Safeguard Policy Principle 2</p>	<p>Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.</p>
<p>Key Element 1</p>	<p>Consultation</p>
<p>Legal provisions</p>	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 2 – Provincial Governor):</p> <p>Article 16</p> <p>An Agency needing land together with the provincial government shall under the Land Acquisition planning documentation as intended by Article 15:</p> <ul style="list-style-type: none"> a. announce the development plan; b. carry out preliminary data collection on the location of the development plan; and c. have Public Consultations on the development plan. <p>Article 17</p> <p>Notification of the development plan as intended by Article 16 point (a) shall either directly or indirectly be provided to the community living at the planned location of development in the Public Interest.</p> <p><i>Elucidation of 17: Direct notification shall be, among others, through socialization, in person, or notice. Indirect notification shall be, among others, through print media or electronic media.</i></p> <p>Article 18</p> <p>(1) Preliminary data collection of the location of the development plan as</p>

	<p>intended by Article 16 point (b) shall include the preliminary data gathering of the Land Rights Holders and the Objects of the Acquired Land.</p> <p>(2) Preliminary data collection as intended by section (1) shall be made within thirty (30) working days of the notification of the development plan.</p> <p>(3) The results of preliminary data collection as intended by section (1) shall be used as data to hold a Public Consultation on a development plan as intended by Article 16 point (c).</p> <p>Article 19</p> <p>(1) A Public Consultation on the Development Plan as intended by Article 18 section (3) shall be held to achieve agreement on the location of the Development Plan with the Land Rights Holders.</p> <p><i>Elucidation of Article 19 (1): In the Public Consultation, the Agency needing land shall explain, among others, the Development Plan and Compensation calculation method the Appraiser may apply.</i></p> <p>(2) A Public Consultation as intended by section (1) shall be convened involving the Land Rights Holders and the affected community and held at the place of the Development Plan in the Public Interest or at the agreed-upon place.</p> <p><i>Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.</i></p> <p>(3) Involvement of the Land Rights Holders as intended by section (2) may be through representation by a power of attorney of and by the Parties Entitled to the location of the Development Plan .</p> <p><i>Elucidation of Article 19 (3): "Power of attorney" means a power of attorney to represent at the Public Consultation sessions in accordance with the provisions of laws and regulations. "Of and by the Parties Entitled" means that the attorney in-fact and the grantor of power are both from the Land Rights Holders.</i></p> <p>(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.</p> <p>(5) Upon the agreement as intended by section (4), an Agency needing land shall file with the governor an application for confirmation of the location.</p> <p>(6) The governor shall confirm the location as intended by section (5) within fourteen (14) working days of the receipt of the application for</p>
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	<p>confirmation by the Agency needing land.</p> <p>The consultations with the public will be held as stated in Article 20:</p> <p>(1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days.</p> <p>(2) If within a sixty (60) working day period of the Public Consultation on a Development Plan as intended by section (1) there is a party objecting to the planned location of development, a Public Consultation shall be repeated by engagement of the objecting party within thirty (30) working days.</p> <p><i>Elucidation of Article 20 (2): A party objecting to the planned location of development shall present his/her objections in writing along with the reasons therefor.</i></p> <p>If there are still objections to the location of the development, then as explained in Article 21 the procedures are:</p> <p>(1) If in the repeated Public Consultation as intended by Article 20 section (2) there are still parties objecting to the planned location of development, the Agency needing land shall report such an objection to the local governor.</p> <p>(2) The governor shall form a team to make a study of the objections to the planned location of development as intended by section (1).</p> <p><i>Elucidation of Article 21 (2): Study of the objections to the planned location of development” means a study of objection documentation presented by the Land Rights Holders.</i></p> <p>(3) The team as intended by section (2) shall include:</p> <ul style="list-style-type: none">a. provincial secretary or designated official as chairman serving concurrently as member;b. the Head of the Provincial Office of the National Land Agency as secretary serving concurrently as member;c. an agency in charge of the regional Development Planning as member;d. the Head of the Provincial Office of the Ministry of Law and Human Rights as member;e. the regent/mayor or a designated official as member; andf. an academic(s) as member(s). <p>(4) The team as intended by section (3) shall have the duties to:</p> <ul style="list-style-type: none">a. make inventory of the problems due to which a reason(s) to object
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	<p>arise;</p> <p>b. hold a meeting or make clarification with the objecting party; and</p> <p>c. make a recommendation whether the objection is accepted or rejected.</p> <p>(5) The study findings of the team as intended by section (2) shall be made by a recommendation whether the objection to the planned location of development is accepted or rejected within fourteen (14) working days of the receipt of the application by the governor</p> <p>(6) The governor upon the recommendation as intended by section (4) shall issue a letter of the acceptance or rejection of objections to the planned location of development.</p>
Analysis	Public consultation is an important step to justify the public use activities that must represent the meaning of public. This does not mean only a formal step that goes to acquisition of land but also to create an ownership of public good that will benefit people/public at the most.
Recommendation	None
Key Element 2	Establish a Grievance Redress Mechanism
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Provincial Governor)</p> <p>Based on the above decision of the Governor whether to accept or reject the objections to the planned location, the location of the project will be decided as stated in Article 22 below:</p> <p>(1) Where the objection to the planned location of development as intended by Article (21) section (6) is rejected, the governor shall confirm the location of development.</p> <p>(2) Where the objection to the planned location of development as intended by Article (21) section (6) is accepted, the governor shall notify the Agency needing land to submit the planned location of development elsewhere.</p> <p>However, if there is still an objection of the location of the planned project, the Land Rights Holder (<i>pihak yang berhak</i>) can take the case to court as explained in Article 23 as follows:</p> <p>(1) Where upon the confirmation of the location of development as intended by Article 19 section (6) and Article 22 section (1) there is still an objection, the Land Rights Holder to the confirmed location may file a lawsuit with the local State Administrative Court within thirty (30) working days of the issue of the location confirmation.</p> <p>(2) The State Administrative Court shall hold whether to accept or reject</p>

	<p>the lawsuit as intended by section (1) within thirty (30) working days of the receipt of the lawsuit.</p> <p>(3) The objecting party to the decision of the State Administrative Court as intended by section (2) may within fourteen (14) working days file a petition for cassation with the Supreme Court of the Republic of Indonesia.</p> <p>(4) The Supreme Court must issue a decision within thirty (30) working days of the receipt of the petition for cassation.</p> <p>(5) The final and binding court decision shall be the basis on whether or not to continue the Acquisition of Land for Development in the Public Interest.</p> <p>Law No 2 of 2012 on Acquisition of Land for Development in the Public Interest (Phase 3 – BPN):</p> <p>The third step in the land acquisition by the National Land Agency is the dialog with the Land Rights Holders on the form and amount of compensation as is stated in Article 37 below:</p> <p>(1) The Land Administrator shall conduct a dialog with the Land Rights Holders within thirty (30) working days of the submission of the results of appraisal of the Appraiser to the Land Administrator for determination of the form and/or the amount of Compensation under the results of appraisal of Compensation as intended by Article 34.</p> <p>(2) The results of agreement in the negotiations as intended by section (1) shall constitute the basis upon which Compensation to the Land Rights Holders as stated in the report of agreement is given.</p> <p>In the situation where the Land Rights Holder do not agree in the negotiations with the National Land Agency, there will be according to Article 38 as below:</p> <p>(1) Where there is no agreement on the form and/or the amount of Compensation, The Land Rights Holders may file an objection with the local district court within fourteen (14) working days of the negotiation on determination of Compensation as intended by Article 37 section (1).</p> <p>(2) The district court shall decide on the form and/or the amount of Compensation within thirty (30) working days of the receipt of the filing of the objections.</p> <p><i>Elucidation of Article 38 (2): For consideration in the making of a decision on the amount of Compensation, the interested parties may</i></p>
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	<p><i>procure an appraisal expert witness for his/her opinion to be heard for comparison in the assessment of the Compensation.</i></p> <p>(3) The objecting party to the decision of the district court as intended by section (2) may within fourteen (14) working days can file a petition for cassation with the Supreme Court of the Republic of Indonesia.</p> <p>(4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.</p> <p>(5) A final and binding decision of the district court/the Supreme Court shall constitute the basis for payment of Compensation to the party filing an objection.</p> <p>In the situation where the Land Rights Holders both do not accept the compensation and do not file an objection, then they must accept the compensation as stated in Article 39 below:</p> <p>Where the Land Rights Holders reject the form and/or the amount of Compensation but do not file an objection within such period as intended by Article 38 section (1), the Land Rights Holders shall by operation of law be deemed to accept the form and the amount of Compensation as intended by Article 37 section (1).</p>
Analysis	<p>The dispute on determining the location of public use project can be brought to the Administrative Court and appeal directly to the Supreme Court whereas dispute on compensation is the jurisdiction of District Court and can be appealed directly to the Supreme Court.</p>
Recommendation	None

2.4. ADB Safeguard Policy Principle 3 for Involuntary Resettlement – Improve Livelihoods

ADB Safeguard Policy Principle 3	Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.
Key Element 1	Improve, or at least restore, the livelihoods of all displaced persons
Legal provisions	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (General Provisions):</p> <p>The objective of the land acquisition is stated in Article 3 as follows:</p> <p style="padding-left: 40px;">Acquisition of Land in the Public Interest shall have the objectives to make land available for development to improve the welfare and prosperity of the people, state and society by guaranteeing the legal interest of the Land Rights Holder.</p>
Analysis	<p>Article 3 of law 2 of 2012 that stipulates the purposes of land acquisition activities does not state any “livelihood restoration” or “livelihood improvement” of the entitled parties and states a protection “only” for “legal interest” for the entitled parties. How are the “economic, social, cultural and other interest” of the Land Rights Holders?</p> <p>The objectives of the land acquisition law are very important since it must be translated into more detailed provisions in many implementing regulations.</p>
Recommendation	To provide a land acquisition implementing guidance that ensures protection not only for legal interest but also economic, social and cultural interest for the entitled parties (Land Rights Holders)
Key Element 2	Replacement value
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>The amount of the compensation will be based on the value of the objects at the time of the official determination of the location for development in the public interest as stated in Article 34 below:</p> <p>Article 34</p>

(1) The Compensation value that is appraised by the Appraiser as intended by Article 33 shall be the value at the time of announcement of the location confirmation of development in the Public Interest as intended by Article 26.

(2) The amount of Compensation upon the results of appraisal of the Appraiser as intended by section (1) shall be submitted to the Land Administrator by virtue of the minutes.

(3) The amount of Compensation upon the results of appraisal of the Appraiser as intended by section (2) shall constitute the ground on which determination of Compensation is negotiated.

In the situation where the National Land Agency acquires only a portion of the land parcel and the remainder is no longer functional from the Land Rights Holder, then they can claim compensation for the remainder of the land as stated in Article 35 below:

Article 35

Where a certain parcel of land affected by the Acquisition of Land results in the remaining portion not being functional to its allocation and use, the Land Rights Holders may claim Compensation for his/her parcel of land as a whole.

Elucidation of Article 3: "Not being functional" means that a parcel of land becomes unusable to the original allocation and use, for example, a dwelling house becomes divided so that any other part of it cannot be used as dwelling house. By reason thereof, the party who possesses/owns the land may claim Compensation for his/her land as a whole.

The form of the compensation is another improvement in this law that clearly provides several possibilities as stated in Article 36 below:

Article 36

The giving of Compensation may be made in the form of:

- a. money;
- b. substitute land;
- c. resettlements;

Elucidation of Article 36 (c): "Resettlements" means a process of replacing the Land Rights Holders's land with the land of different location as agreed upon during the process of Acquisition of Land.

- d. shareholding; or

Elucidation of Article 36 (d): "Shareholding" means placement of shares in the relevant development activities in the public interest and/or the

	<p><i>management thereof is made by agreement of the parties.</i></p> <p>e. other forms as agreed upon by both parties.</p> <p><i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i></p>
Analysis	<p>Even though the compensation is a must, the Government does not have a clear standard of replacement cost. In many countries, the compensation received from land acquisition project is based on “market value” or even higher than market value. However, the appraisers that are assigned “have an opportunity” to determine the amount of compensation based on market value. Another issue is that law 2 of 2012 does not provide or determine any method that must be used for the appraisal of the affected property.</p>
Recommendation	<p>Detailed procedures for the appraisal are required. (an appraisal method to compensate/indemnify affected property and other appraised objects owned/controlled by entitled parties)</p>
Element 3	<p>Prompt compensation</p>
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>Giving the compensation and the response of those who receive the compensation is stated in Article 41 as follows:</p> <p>Article 41</p> <p>(1) Compensation shall be given to the Land Rights Holders upon the results of appraisal as determined in the negotiation as intended by Article 37 section (2) and/or a decision of the district court/the Supreme Court as intended by Article 38 section (5).</p> <p>(2) Upon giving Compensation, the Land Rights Holders to Compensation must:</p> <p>a. release title(s);</p> <p>Presidential Regulation No 71 of 2012 (Phase 3 – BPN):</p> <p>The Compensation in the form of money only is carried out as stated in Article 76 as follows:</p> <p>Article 76</p> <p>(1) Monetary compensation as referred in Article 74 paragraph (1) letter a should be given in Rupiah denomination.</p> <p>(2) The monetary compensation as referred in paragraph (1) is carried</p>

	<p>out by the government institution that requires the land based on the validation of the Head of the Land Acquisition Implementation Team or appointed officials.</p> <p>(3) The monetary compensation as referred to in paragraph (2) must be distributed at the same time as the Entitled Parties relinquish their rights.</p> <p>(4) The payment of the compensation as referred in paragraph (2) should be distributed within 7 (seven) working days since the determination of compensation form by the Land Acquisition Implementation Team.</p>
Analysis	The compensation will be handed over by the agency needing land to the affected persons or their representative after all administrative and land acquisition process has been accomplished.
Recommendation	None
Element 4	Benefit sharing schemes
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN)</p> <p>The form of the compensation is another improvement in this law that clearly provides several possibilities as stated in Article 36 below:</p> <p>Article 36</p> <p>The giving of Compensation may be made in the form of:</p> <ol style="list-style-type: none"> a. money; b. substitute land; c. resettlements; <p><i>Elucidation of Article 36 (c):</i></p> <p><i>“Resettlements” means a process of replacing the Land Rights Holders’s land with the land of different location as agreed upon during the process of Acquisition of Land.</i></p> <ol style="list-style-type: none"> d. shareholding; or <p><i>Elucidation of Article 36 (d):</i></p> <p><i>“Shareholding” means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i></p> <ol style="list-style-type: none"> e. other forms as agreed upon by both parties.

	<p><i>Elucidation of Article 36 (e):</i></p> <p><i>Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i></p>
Analysis	The provision on benefits sharing is very general. It does not provide detailed operational measures how the benefits can be enjoyed by the affected people.
Recommendation	More information is needed on the form, amount and procedures for benefit sharing both in the ADB equivalence requirement and the CSS for Indonesia.

2.5. ADB Safeguard Policy Principle 4 for Involuntary Resettlement – Provide Needed Assistance

ADB Safeguard Policy Principle 4	Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
Element 1	if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities;
Legal provisions	<p>Law No 2 of 2012: The form of the compensation is another improvement in this law that clearly provides several possibilities as stated in Article 36 below:</p> <p>The giving of Compensation may be made in the form of:</p> <ol style="list-style-type: none"> a. money; b. substitute land; c. resettlement; d. shareholding; or e. other forms as agreed upon by both parties <p><i>Elucidation of Article 36 (c): Resettlements” means a process of replacing the Land Rights Holder’s land with the land of a different location as agreed upon during the process of the Acquisition of Land.</i></p> <p><i>Elucidation of Article 36 (d): Shareholding” means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i></p> <p><i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i></p> <p>Presidential Regulation No 71 of 2012</p>

	<p>The distribution of the compensation can be in various forms is stated in Article 74 as follows:</p> <p>(1) Compensation can be in the following forms:</p> <ol style="list-style-type: none"> a. Money; b. Substitute Land; c. Resettlement; d. Shares (in the infrastructure); or e. Other forms agreed to by both parties. <p>(2) The form of the Compensation, as referred to in paragraph (1) whether in one of the forms mentioned above or combination of forms of Compensation, the distribution is in accordance with the value determined by the Appraiser.</p>
Analysis	Law 2 of 2012 and Presidential Regulation No 71 do not actually state in detail the assistance but the “other forms agreed to by both parities” provides the opportunity for negotiating the assistance stated in the social safeguards.
Recommendation	The other forms should be more clearly specified including those stated in the social safeguards above.
Element 2	Transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities;
Legal provisions	Same as in Element 1 above.
Analysis	Law 2 of 2012 and Presidential Regulation No 71 do not actually state in detail the assistance but the “other forms agreed to by both parities” provides the opportunity for negotiating the assistance stated in the social safeguards..
Recommendation	The other forms should be more clearly specified including those stated in the social safeguards above.
Element 3	Civic infrastructure and community services, as required.
Legal provisions	Law 2 of 2012 and Presidential Regulation No 71 do not actually state in detail the assistance but the “other forms agreed to by both parties” provides the opportunity for negotiating the assistance stated in the social safeguards. Same as in Element 1 above.
Analysis	Same as in Element 1 above.
Recommendation	The other forms should be more clearly specified including those stated in the social safeguards above.

2.6. ADB Safeguard Policy Principle 5 for Involuntary Resettlement – Improve Standard of Living

ADB Safeguard Policy Principle 5	Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.
Element 1	Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards.
Legal provisions	Same as in 5.2.5 above.
Analysis	Same as in Element 1 above.
Recommendation	Improving the Standard of Living should be more clearly specified including those stated in the social safeguards above.

2.7. ADB Safeguard Policy Principle 6 for Involuntary Resettlement – Negotiated Settlement

<p>ADB Safeguard Policy Principle 6</p>	<p>Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p>
<p>Legal provisions</p>	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN)</p> <p>Article 37</p> <p>(1) The Land Administrator shall conduct a negotiation with the Land Rights Holders within thirty (30) working days of the submission of the results of appraisal of the Appraiser to the Land Administrator for determination of the form and/or the amount of Compensation under the results of appraisal of Compensation as intended by Article 34.</p> <p>(2) The results of agreement in the negotiation as intended by section (1) shall constitute the ground upon which Compensation to the Land Rights Holders as stated in the minutes of agreement is given.</p> <p>Article 38</p> <p>(1) Where there is agreement on the form and/or the amount of Compensation, The Land Rights Holders may file an objection with the local district court within fourteen (14) working days of the negotiation on determination of Compensation as intended by Article 37 section (1).</p> <p>(2) The district court shall decide the form and/or the amount of Compensation within thirty (30) working days of the receipt of the filing of objection.</p> <p><i>Elucidation of Article 38 (2): For consideration in the making of a decision on the amount of Compensation, the interested parties may procure an appraisal expert witness for his/her opinion to be heard for comparison in the assessment of Compensation.</i></p> <p>(3) The objecting party to the decision of the district court as intended by section (2) may within fourteen (14) working days therefrom file a petition for cassation with the Supreme Court of the Republic of Indonesia.</p> <p>(4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.</p> <p>(5) A final and binding decision of the district court/the Supreme Court shall constitute the ground for payment of Compensation to the party filing an</p>

	<p>objection.</p> <p>Article 39</p> <p>Where the Land Rights Holders reject the form and/or the amount of Compensation but do not file an objection within such period as intended by Article 38 section (1), the Land Rights Holders shall by operation of law be deemed to accept the form and the amount of Compensation as intended by Article 37 section (1).</p> <p>Article 40</p> <p>The giving of Compensation for Objects of the Acquired Land shall be directly made to the Land Rights Holders.</p> <p><i>Elucidation Article 40: The giving of Compensation must in principle be given directly to the Party Entitled to Compensation. Failing him/her, the Land Rights Holders may by operation of law assign the powers to other party or successor. The attorney-in-fact may only receive the powers from one person entitled to Compensation. Those entitled shall be, inter alia:</i></p> <ul style="list-style-type: none"><i>a. landholders;</i><i>b. land concessionaires;</i><i>c. waqf organizers, in the case of waqf land;</i><i>d. ex-customary land owners;</i><i>e. indigenous people;</i><i>f. parties in possession of the state land in good faith;</i><i>g. land tenure holders; and/or</i><i>h. owners of buildings, plants or other objects related to land.</i> <p><i>As regulated, Compensation shall be given to the landholder. In the case that the right to build or the right to use over the land is not his/her own, Compensation shall be given to the holder of the right to build or the right to use over the building, plants or other objects related to land owned by or belong to the him/her, whereas Compensation for his/her land shall be given to the title holder or the concessionaire. Compensation for indigenous land shall be given in the form of substitute land, resettlements, or other forms as agreed upon by the relevant indigenous people.</i></p> <p><i>Parties in possession of the state land that may be given Compensation shall be the state land users providing in compliance with or not in violation of the provisions of laws and regulations. For example, ex-right holders (whose tenure has expired) still using or utilizing the relevant land, parties in possession of the state land on a lease basis, or other parties using or</i></p>
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	<p><i>utilizing the free and unclaimed state land not in violation of the provisions of laws and regulations. "Land tenure holders" means parties holding means of proof issued by the competent official documenting the existence of the relevant land tenure, for example, the holders of deed of sale and purchase of unretitled land, the holders of deed of sale and purchase of uncertified customary titles/rights, and the holders of dwelling permits. In the case that the buildings, plants, or other objects related to land have not yet held or are owned without a Land Title, Compensation shall be given to the owners of the buildings, plants, or other objects related to land.</i></p> <p>Article 41</p> <p>(1) Compensation shall be given to the Land Rights Holders upon the results of appraisal as determined in the negotiation as intended by Article 37 section (2) and/or a decision of the district court/the Supreme Court as intended by Article 38 section (5).</p> <p>(2) Upon giving Compensation, the Land Rights Holders to Compensation must:</p> <p>a. release title(s); and</p> <p>b. deliver evidence of possession or ownership of Objects of the Acquired Land to the Agency needing land through the Land Administrator.</p> <p>(3) Evidence as intended by section (2) point (b) shall be the only means of proof which is lawful, final and unchangeable in the future.</p> <p>(4) The Land Rights Holders to Compensation shall be liable for the truth and legality of the evidence of possession or ownership delivered.</p> <p>(5) Any claim by other parties against the Objects of the Acquired Land that have been delivered to the Agency needing land as intended by section (2) shall be the responsibility of the Land Rights Holders to Compensation.</p>
Analysis	<p>The value of compensation that is made by appraisers and deliberation/negotiations between land acquisition committee and affected people on the form of compensation should be carried out in transparent and accountable way. More than that, the appraisers should explain what appraisal method they are using to determine the values of all appraised objects because the method determines the result of the appraisal therefore, there must be a mechanism to ensure that the appraisal values of affected properties is accepted by the affected people.</p> <p>Since the negotiation/deliberation (musyawarah) will only discuss the form of compensation, this mechanism assumes that the result of the appraisers provide compensation that fulfill the expectation values from the affected people.</p>

Recommendation	To ensure that the affected people at least maintain their livelihood status or get the same or better income, land acquisition committee should present a resettlement plan that describe the social economic status of the affected people before and after the resettlement (the expected result).
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2.8. ADB Safeguard Policy Principle 7 for Involuntary Resettlement – without title to Land

ADB Safeguard Policy Principle 7	Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
Legal provisions	<p>Law No. 2 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>As one of the most important articles, the persons/parties who are entitled to compensation for their land being acquired is stated in detail in Article 40 and especially the Elucidation of those who are entitled as stated below:</p> <p>The giving of Compensation for Objects of the Acquired Land shall be directly made to the Land Rights Holder.</p> <p>Elucidation of Article 40: <i>The giving of Compensation must in principle be given directly to the Party Entitled to Compensation. Failing him/her, the Land Rights Holder may by operation of law assign the powers to other party or successor. The attorney-in-fact may only receive the powers from one person entitled to Compensation.</i></p> <p><i>Those entitled shall be, inter alia:</i></p> <ol style="list-style-type: none"> <i>a. landholders (pemegang hak atas tanah)</i> <i>b. land concessionaires (pemegang hak pengelolaan)</i> <i>c. waaf organizers, in the case of waaf land (nadzir, untuk tanah wakaf)</i> <i>d. ex-customary land owners (pemilik tanah bekas milik adat)</i> <i>e. indigenous people (masyarakat hukum adat)</i> <i>f. parties in possession of the state land in good faith (pihak yang menguasai tanah negara dengan iktikad baik)</i> <i>g. land tenure holders (pemegang dasar penguasaan atas tanah), and/or</i> <i>h. owners of buildings, plants or other objects related to land (pemilik bangunan, tanaman atau benda lain yang kerkaitan dengan tanah)</i> <p><i>As regulated, Compensation shall be given to the landholder. In the case that the right to build or the right to use over the land is not his/her own, Compensation shall be given to the holder of the right to build or the right to use over the building, plants or other objects related to land owned by or belong to the him/her, whereas Compensation for his/her land shall be given to the title holder or the concessionaire.</i></p>

	<p><i>Compensation for indigenous land (tanah hak ulayat) shall be given in the form of substitute land, resettlements, or other forms as agreed upon by the relevant indigenous people (masyarakat hukum adat).</i></p> <p><i>Parties in possession of the state land that may be given Compensation shall be the state land users providing in compliance with or not in violation of the provisions of laws and regulations. For example, ex-right holders (whose tenure has expired) still using or utilizing the relevant land, parties in possession of the state land on a lease basis, or other parties using or utilizing the free and unclaimed state land not in violation of the provisions of laws and regulations.</i></p> <p><i>“Land tenure holders” means parties holding the means of proof issued by the competent official documenting the existence of the relevant land tenure, for example, the holders of deed of sale and purchase of unretitled land, the holders of deed of sale and purchase of uncertified customary titles/rights, and the holders of dwelling permits.</i></p> <p><i>In the case that the buildings, plants, or other objects related to land have not yet held or are owned without a Land Title, Compensation shall be given to the owners of the buildings, plants, or other objects related to land.</i></p>
Analysis	<p>The remaining issues of non-land right holder that does not qualify to receive compensation to the illegality of their status has been settled/solved by accommodating the non-Land Rights Holders as one of the Land Rights Holders.</p>
Recommendation	<p>None</p>

2.9. ADB Safeguard Policy Principle 8 Prepare a Resettlement Plan

ADB Safeguard Policy Principle 8	Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
Key Element 1	Prepare a resettlement plan on displaced persons entitlements and the income and livelihood restoration strategy
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>Although not stated as a resettlement plan, the compensation based on the appraisal will cover a number of objects which can possibly be considered a plan, some of which were not covered in the previous laws and regulations and represent a major improvement in the objects that are compensated; the main items are explained in the elucidation. These are specified in Article 33 below:</p> <p>Appraisal of the amount of Compensation by the Appraiser as intended by Article 32 section (1) shall be made on a parcel-by-parcel basis, including:</p> <ul style="list-style-type: none"> a. land b. space above and below the surface of the land c. buildings d. plants e. objects related to the land; and/or f. other appraisable losses. <p><i>Elucidation of Article 33 (f): "Other appraisable loss" means nonphysical loss equivalent to money value, for example, loss due to loss of business or job, cost of change of location, cost of change of profession, and loss of value of the remaining property.</i></p> <p>The amount of the compensation will be based on the value of the objects at the time of the official determination of the location for development in the public interest as stated in Article 34 below:</p> <ul style="list-style-type: none"> (1) The Compensation value that is appraised by the Appraiser as intended by Article 33 shall be the value at the time of announcement of the location confirmation of development in the Public Interest as intended by Article 26. (2) The amount of Compensation upon the results of appraisal of the Appraiser as intended by section (1) shall be submitted to the Land

	<p>Administrator by virtue of the report.</p> <p>(3) The amount of Compensation upon the results of appraisal of the Appraiser as intended by section (2) shall constitute the basis on which determination of Compensation is negotiated.</p> <p>In the situation where the National Land Agency acquires only a portion of the land parcel and the remainder is no longer functional from the Land Rights Holder, then they can claim compensation for the remainder of the land as stated in Article 35 below:</p> <p>Where a certain parcel of land affected by the Acquisition of Land results in the remaining portion not being functional to its allocation and use, the Land Rights Holder may claim Compensation for his/her parcel of land as a whole.</p> <p><i>Elucidation of Article 35: "Not being functional" means that a parcel of land becomes unusable to the original allocation and use, for example, a dwelling house becomes divided so that any other part of it cannot be used as dwelling house. By reason thereof, the party who possesses/owns the land may claim Compensation for his/her land as a whole.</i></p> <p>The form of the compensation is another improvement in this law that clearly provides several possibilities as stated in Article 36 below:</p> <p>The giving of Compensation may be made in the form of:</p> <ul style="list-style-type: none">a. money;b. substitute land;c. resettlement;d. shareholding; ore. other forms as agreed upon by both parties <p><i>Elucidation of Article 36 (c): Resettlements" means a process of replacing the Land Rights Holder's land with the land of a different location as agreed upon during the process of the Acquisition of Land.</i></p> <p><i>Elucidation of Article 36 (d): Shareholding" means placement of shares in the relevant development activities in the public interest and/or the management thereof is made by agreement of the parties.</i></p> <p><i>Elucidation of Article 36 (e): Other forms as agreed upon by both parties are, for example, a combination of two (2) or more forms of Compensation as intended by point (a), point (b), point (c), and point (d).</i></p>
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Analysis	In this plan for resettlement, the type and form of the compensations has been stated and that an appraiser will carry out the determination
Recommendation	None
Key element 2	Institutional arrangements
Legal Provision	<p>Law No 2 of 2012: A major change from previous laws and regulations on land acquisition has emerged in Phase 3 with the shift in control of acquisition from the Governor or Bupati/Regent to the National Land Agency with its provincial and kabupaten/kota (district) offices that are directly below the National Land Agency. As stated in Part Four on Land Acquisition Implementation on General issues in Article 27 below:</p> <p>(1) Based on the location confirmation for development in the Public Interest as intended by Article 26 section (1), an Agency needing land shall submit to the Land Acquisition Implementation to the Land Administrator(the National Land Agency/BPN).</p> <p><i>Elucidation of Article 27 (1): The Acquisition of Land shall in principle be implemented by the Land Administrator, which in its application, may involve or coordinate with the provincial governments or the district/city governments.</i></p> <p>As stated in the definitions of institutions and actions in this law (<i>Dalam Undang-Undang ini yang dimaksud dengan/in this law</i>), in Article 14 the Land Administrator is the following:</p> <p>“Land Administrator” means the National Land Agency of the Republic of Indonesia, a government institution that administers governmental affairs in the field of land.</p> <p>In Paragraph (2) of Article 27 the steps in the land acquisition by the National Land Agency are briefly stated:</p> <p>(2) The Land Acquisition Implementation Team as intended by section (1) shall include:</p> <ol style="list-style-type: none"> a. inventory and identification of possession, ownership, use, and utilization of land; b. appraisal of Compensation; c. negotiations on determination of Compensation; d. giving of Compensation; and e. disposition of the Agencies’ land.
Analysis	The Law No 2 of 2012 clearly states that the National Land Agency is in charge of the third phase of the land acquisition that includes the

	entitlements, income and livelihood restoration strategy.
Recommendation	Compliant for the institutions carrying out the acquisition
Key element 3	Monitoring and reporting framework
Legal Provision	<p>Presidential Regulation No 71 of 2012:</p> <p>The BPN monitors and evaluates the results of the Land Acquisition is stated in Article 115 as follows:</p> <p>The BPN carries out the monitoring and evaluation of the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in the Public Interest.</p>
Analysis	The Presidential Regulation states that there will be monitoring and reporting but does not make clear for how long nor does it state for the impacted people and the institutions.
Recommendation	None
Key element 4	Budget
Legal Provision	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Sources of Funds for Land Acquisition):</p> <p>The funds for the acquisition of land for development in the public interest are from the national and/or regional governments as stated in Article 52 on the Sources of Funding as follows:</p> <ol style="list-style-type: none"> (1) Funding for Acquisition of Land in the Public Interest shall be derived from the State Budget (APBN) and/or the Regional Budget (APBD). (2) Where an Agency needing land is a State-Owned Legal Entity/State-Owned Entity with special assignment, the funding shall be derived from the internal company or other sources in accordance with the provisions of laws and regulations. (3) Special assignment as intended by section (2) shall be under the provisions of laws and regulations. <p><i>Elucidation of Article 52 (2): "State-Owned Legal Entity" is, for example, the Oil and Gas Upstream Regulatory Body (BPMIGAS). "State-Owned Entity" is, for example, Perusahaan Listrik Negara (PLN) (State Electricity Company).</i></p> <p>Presidential Regulation No 71 of 2012:</p> <p>The funds for the land acquisition by the government institution is stated in Article 116 as follows:</p> <p>The funds to carry out the Land Acquisition for Development in the Public</p>

	<p>Interest by the Government Institution that needs the land is included in the budget document in accordance with the stipulations in the regulations.</p> <p>The fund for the land acquisition is from the national or regional budgets is stated in Article 117 as follows:</p> <p>The source of the funds to carry out the Land Acquisition for Development in the Public Interest is from the National Budget on Income and Expenses and/or the Regional Income and Expenses.</p> <p>If the land acquisition is carried out by a State Owned Legal Entity is stated in Article 118 as follows:</p> <p>(1) In case the Land Acquisition is carried out by a State Owned Legal Entity/Enterprise (<i>Badan Hukum Milik Negara/Badan Usaha Milik Negara</i>) that received special assignment, the source of the financing from within the enterprise or other sources according to the regulations.</p> <p>(2) The special assignment as referred to in paragraph (1) is in accordance with the regulations.</p>
Analysis	The law and regulation make clear that the financing is from the state or regional government budgets, except in the case of oil, gas and geothermal.
Recommendation	None
Key element 5	Time-bound implementation schedule
Legal Provision	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>The third step in the land acquisition by the National Land Agency is the dialog with the Land Rights Holders on the form and amount of compensation as is stated in Article 37 below:</p> <p>(1) The Land Administrator shall conduct a dialog with the Land Rights Holders within thirty (30) working days of the submission of the results of appraisal of the Appraiser to the Land Administrator for determination of the form and/or the amount of Compensation under the results of appraisal of Compensation as intended by Article 34.</p> <p>(2) The results of agreement in the negotiations as intended by section (1) shall constitute the basis upon which Compensation to the Land Rights Holders as stated in the report of agreement is given.</p> <p>Giving the compensation and the response of those who receive the compensation is stated in Article 41 as follows:</p>

	(1) Compensation shall be given to the Land Rights Holders upon the results of appraisal as determined in the negotiation as intended by Article 37 section (2) and/or a decision of the district court/the Supreme Court as intended by Article 38 section (5).
Analysis	The compensation is given within 30 working days if there are no objections. The entire process from Phase 1 to Phase 4 is estimated to take 2 years.
Recommendation	None

2.10. ADB Safeguard Policy Principle 9 for disclosing a draft Resettlement Plan

ADB Safeguard Policy Principle 9	Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.
Key element	Disclosure of the resettlement plan and consultation in Phase 2 (Provincial Governor) and Phase 3 (BPN) of Law No. 2 of 2012.
Legal Provision	<p>In Phase 2 (Provincial Governor) of Law No 2 of 2012 on Land Acquisition for Development in the Public Interest:</p> <p>Then, as stated in Article 17 the people in the affected area must be notified of the plan:</p> <p>Notification of the Development Plan as intended by Article 16 point (a) shall either directly or indirectly be provided to the community living at the planned location of development in the Public Interest.</p> <p><i>Elucidation of 17: Direct notification shall be, among others, through socialization, in person, or notice. Indirect notification shall be, among others, through print media or electronic media.</i></p> <p>The initial data collection is specified in Paragraphs (1), (2) and (3) in Article 18 as follows:</p> <ol style="list-style-type: none"> (1) Preliminary data collection of the location of the Development Plan as intended by Article 16 point (b) shall include the preliminary data gathering of the Land Rights Holders and the Objects of the Acquired Land. (2) Preliminary data collection as intended by section (1) shall be made within thirty (30) working days of the notification of the Development Plan. (3) The results of preliminary data collection as intended by section (1) shall be used as data to hold a Public Consultation on a Development Plan as intended by Article 16 point (c). <p>Once this data collection is completed, the next step is for Public Consultations as stated in Article 19:</p> <ol style="list-style-type: none"> (1) A Public Consultation on the Development Plan as intended by Article 18 section (3) shall be held to achieve agreement on the location of the Development Plan with the Land Rights Holders. <p><i>Elucidation of Article 19 (1): In the Public Consultation, the Agency</i></p>

	<p><i>needing land shall explain, among others, the Development Plan and Compensation calculation method the Appraiser may apply.</i></p> <p>(2) A Public Consultation as intended by section (1) shall be convened involving the Land Rights Holders and the affected community and held at the place of the Development Plan in the Public Interest or at the agreed-upon place.</p> <p><i>Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.</i></p> <p>(3) Involvement of the Land Rights Holders as intended by section (2) may be through representation by a power of attorney of and by the Parties Entitled to the location of the Development Plan .</p> <p><i>Elucidation of Article 19 (3): "Power of attorney" means a power of attorney to represent at the Public Consultation sessions in accordance with the provisions of laws and regulations. "Of and by the Parties Entitled" means that the attorney in-fact and the grantor of power are both from the Land Rights Holders.</i></p> <p>(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.</p> <p>(5) Upon the agreement as intended by section (4), an Agency needing land shall file with the governor an application for confirmation of the location.</p> <p>(6) The governor shall confirm the location as intended by section (5) within fourteen (14) working days of the receipt of the application for confirmation by the Agency needing land.</p> <p>The consultation with the public will be held as stated in Article 20:</p> <p>(1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days.</p> <p>(2) If within a sixty (60) working day period of the Public Consultation on a Development Plan as intended by section (1) there is a party objecting to the planned location of development, a Public Consultation shall be repeated by engagement of the objecting party within thirty (30) working days.</p> <p><i>Elucidation of Article 20 (2): A party objecting to the planned location of development shall present his/her objections in writing along with the reasons therefor.</i></p> <p>If there are still objections to the location of the development, then as</p>
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explained in Article 21 the procedures are:

(1) If in the repeated Public Consultation as intended by Article 20 section (2) there are still parties objecting to the planned location of development, the Agency needing land shall report such an objection to the local governor.

(2) The governor shall form a team to make a study of the objections to the planned location of development as intended by section (1).

Elucidation of Article 21 (2): Study of the objections to the planned location of development” means a study of objection documentation presented by the Land Rights Holders.

Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):

Once the inventory has been carried out, the next step is to announce the results of the inventory at the local office as stated in Article 29:

(1) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced at the urban/rural village administration office, the subdistrict office, and at the place where Acquisition of Land was conducted, for fourteen (14) working days.

(2) The results of the inventory and identification of possession, ownership, use, and utilization of land as intended by Article 28 must be announced in stages, in part or in whole.

(3) The announcement of the results of the inventory and identification as intended by section (2) shall include the subjects of title, size, location, and map(s) of the parcel of land of the Objects of the Acquired Land.

(4) Where the Land Rights Holder does not receive the results of the inventory as intended by section (3), he/she may file an objection with the Land Administrator within fourteen (14) working days of the announcement of the results of the inventory.

(5) Where there is an objection to the results of the inventory as intended by section (4), verification and improvement thereof shall be made within fourteen (14) working days of the receipt of the filing of an objection to the results of the inventory.

(6) The inventory and identification shall be made in accordance with the laws and regulations.

The third step in the land acquisition by the National Land Agency is the dialog with the Land Rights Holders on the form and amount of

compensation as is stated in Article 37 below:

- (1) The Land Administrator shall conduct a dialog with the Land Rights Holders within thirty (30) working days of the submission of the results of appraisal of the Appraiser to the Land Administrator for determination of the form and/or the amount of Compensation under the results of appraisal of Compensation as intended by Article 34.
- (2) The results of agreement in the negotiations as intended by section (1) shall constitute the basis upon which Compensation to the Land Rights Holders as stated in the report of agreement is given.

In the situation where the Land Rights Holder do not agree in the negotiations with the National Land Agency, there will be according to Article 38 as below:

- (1) Where there is no agreement on the form and/or the amount of Compensation, The Land Rights Holders may file an objection with the local district court within fourteen (14) working days of the negotiation on determination of Compensation as intended by Article 37 section (1).
- (2) The district court shall decide on the form and/or the amount of Compensation within thirty (30) working days of the receipt of the filing of the objections.

Elucidation of Article 38 (2): For consideration in the making of a decision on the amount of Compensation, the interested parties may procure an appraisal expert witness for his/her opinion to be heard for comparison in the assessment of the Compensation.

Presidential Regulation No 71 of 2012 (Phase 3 – BPN):

The Land Acquisition Implementing Team (*BPN Wilayah*) of the Land acquisition will hold Public Dialogs with the Land Rights Holders is stated in Article 68 as follows:

- 1) The Land Acquisition Implementing Team organizes the public dialogue with the Entitled Parties within 30 (thirty) working days since the Head of the Land Acquisition Implementing Team received the Appraisal as mentioned in Article 66 paragraph (3)
- (2) The public dialogue as referred to in paragraph (1) involves the participation of the government institution that is in need of the land.
- (3) The public dialogue as referred to in paragraph (1) is carried out directly for determining the form of Compensation based on the compensation appraisal as referred to in Article 65 paragraph (1).

(4) In the public dialogue as referred to in paragraph (1), the Land Acquisition Implementation Team submits the amount of Compensation as the result of Compensation appraisal as referred to in Article 65 paragraph (1).

The Head of the Implementation Team (*Kepala Wilayah BPN*) invites the Land Rights Holders for the Public Dialog is stated in **Article 69** as follows:

- (1) The Land Acquisition Implementation Team invites the Entitled Parties to the public dialogue on the determination of the compensation by setting the place and time of the public dialogue.
- (2) The invitation as mentioned in paragraph (1) is delivered at least 5 (five) working days prior to the public dialogue on compensation
- (3) The public dialogue as mentioned in paragraph (2) is chaired by the Head of the Land Acquisition Implementation Team or other appointed official.

The implementation of the public dialog is stated in **Article 70** as follows:

- (1) The implementation of the public dialog as mentioned in Article 68 can be divided into several groups with the consideration of the number of Entitled Persons, the time and the place for the public dialog on the determination of the Compensation.
- (2) In case there is not yet achieved agreement, the public dialogue as mentioned in paragraph (1) can be organized more than 1 (one) time.
- (3) The public dialog as referred to in paragraph (1) and paragraph (2) is carried out at the latest in 30 (thirty) working days since the submission of the appraisal from Appraiser to the Head of the Land Implementation Team.

In the case of the Land Rights Holders not being able to attend the public dialog is stated in **Article 71** as follows:

- (1) In case the Entitled Parties is hindered from attending the public dialogue as referred in Article 68, the Entitled Parties can give the authority to:
 - a. Anyone with blood ties horizontally, vertically up to the second degree or spouse of the Entitled Party who owns the land individually;
 - b. Anyone appointed in accordance with stipulations in the basic budget (*anggaran dasar*) for entitled party that is a legal entity; or

	<p>c. Other Land Rights Holder.</p> <p>(2) The Land Rights Holder can only delegate to 1 (one) person on 1 (one) or more parcels of land within 1 (one) location of the Land Acquisition.</p> <p>(3) In case the Land Rights Holder upon receiving a proper invitation could not attend nor delegate the invitation, the Land Rights Holder is assumed to accept the form and amount of Compensation as determined by the Land Acquisition Implementation Team.</p> <p>The result of the agreement during the public dialog as the basis for the compensation is stated in Article 72 as follows:</p> <p>(1) The agreement results at the public dialogue becomes the basis for the distribution of the compensation to the Entitled Parties, which will be included in the report (<i>berita acara</i>) of the agreement.</p> <p>(2) The report of the agreement as mentioned in paragraph (1) contains:</p> <ul style="list-style-type: none"> a. The Land Rights Holder or delegated person agrees with the form of compensation; b. The Land Rights Holder or delegated person disagrees with the form of compensation; and c. The Land Rights Holder is not present and did not delegate authority. <p>(3) The report as mentioned in paragraph (1) is signed by the Land Acquisition Implementation Team and Land Rights Holders who are present or the delegated persons.</p> <p>If there is no agreement on the form and/or amount of the compensation, then stated in Article 73 as follows:</p> <p>(1) In case there is no agreement on the form and/or amount of Compensation, the Land Rights Holder may appeal the objection to the local District Court within 14 (fourteen) working days after the signing report of the public dialogue as mentioned in Article 72 paragraph (3).</p> <p>(2) The District Court will decide on the form and/or amount of compensation within 30 (thirty) working days since the court received the objection.</p> <p>(3) The Land Rights Holders that are not satisfied with the District Court's decision as referred in paragraph (2) may appeal their objection to the Supreme Court within 14 (fourteen)</p>
Analysis	Both Law No 2 of 2012 and Presidential Regulation No 71 of 2012 have

	many articles on disclosure and consultation
Recommendation	None

2.11. ADB Safeguard Policy Principle 10 for Conceiving and Executing Involuntary Resettlement - Compensation

ADB Safeguard Policy Principle 10	Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.
Key element	Conceive and execute involuntary resettlement as part of development activity
Legal Provision	<p>As stated in the Considerations (<i>Menimbang</i>), the reasons for issuing a new Land Law for Development in the Public Interest as stated in the law are the following:</p> <ul style="list-style-type: none"> a. that to realize just, prosperous and welfare society under Pancasila and the 1945 Constitution of the Republic of Indonesia, the government needs to serve development; b. that to guarantee the realization of development in the public interest, land is needed through acquisition made by giving preference for the principles of humanity, democracy and justice; c. that the laws and regulations concerning acquisition of land for development in the public interest have not yet guaranteed the acquisition of land to serve development; d. that in consideration of point (a), point (b) and point (c), it is necessary to make a Law concerning Acquisition of Land for Development in the Public Interest;
Analysis	As stated in the preamble (<i>Menimbang</i>) of Law No 2 of 2012 on Land Acquisition for Development in the Public Interest, this law is for acquiring land by Government Agencies for development projects.
Recommendation	None

2.12. ADB Safeguard Policy Principle 11 for Paying Compensation and Providing other Resettlement Entitlements before Physical or Economic Displacement

ADB Safeguard Policy Principle 11	Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
Key element	Pay compensation before displacement
Legal Provision	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>Article 40</p> <p>The giving of Compensation for Objects of the Acquired Land shall be directly made to the Land Rights Holders.</p> <p><i>Elucidation of Article 40:</i></p> <p><i>The giving of Compensation must in principle be given directly to the Party Entitled to Compensation. Failing him/her, the Land Rights Holders may by operation of law assign the powers to other party or successor. The attorney-in-fact may only receive the powers from one person entitled to Compensation.</i></p> <p><i>Those entitled shall be, inter alia:</i></p> <ul style="list-style-type: none"> <i>a. landholders;</i> <i>b. land concessionaires;</i> <i>c. waqf organizers, in the case of waqf land;</i> <i>d. ex-customary land owners;</i> <i>e. indigenous people;</i> <i>f. parties in possession of the state land in good faith;</i> <i>g. land tenure holders; and/or</i> <i>h. owners of buildings, plants or other objects related to land.</i> <p><i>As regulated, Compensation shall be given to the landholder. In the case that the right to build or the right to use over the land is not his/her own, Compensation shall be given to the holder of the right to build or the right to use over the building, plants or other objects related to land owned by or belong to the him/her, whereas Compensation for his/her land shall be given to the title holder or the concessionaire.</i></p> <p><i>Parties in possession of the state land that may be given Compensation</i></p>

shall be the state land users providing in compliance with or not in violation of the provisions of laws and regulations. For example, ex-right holders (whose tenure has expired) still using or utilizing the relevant land, parties in possession of the state land on a lease basis, or other parties using or utilizing the free and unclaimed state land not in violation of the provisions of laws and regulations.

“Land tenure holders” means parties holding means of proof issued by the competent official documenting the existence of the relevant land tenure, for example, the holders of deed of sale and purchase of unretitled land, the holders of deed of sale and purchase of uncertified customary titles/rights, and the holders of dwelling permits. In the case that the buildings, plants, or other objects related to land have not yet held or are owned without a Land Title, Compensation shall be given to the owners of the buildings, plants, or other objects related to land.

Article 41

- (1) Compensation shall be given to the Land Rights Holders upon the results of appraisal as determined in the negotiation as intended by Article 37 section (2) and/or a decision of the district court/the Supreme Court as intended by Article 38 section (5).
- (2) Upon giving Compensation, the Land Rights Holders for Compensation must:
 - a. release title(s); and
 - b. deliver evidence of possession or ownership of Objects of the Acquired Land to the Agency needing land through the Land Administrator. (3) Evidence as intended by section (2) point (b) shall be the only means of proof which is lawful, final and unchangeable in the future.
- (4) The Land Rights Holders to Compensation shall be liable for the truth and legality of the evidence of possession or ownership delivered.
- (5) Any claim by other parties against the Objects of the Acquired Land that have been delivered to the Agency needing land as intended by section(2) shall be the responsibility of the Land Rights Holders to Compensation.
- (6) Any person in violation of the provisions as intended by section (4) shall be imposed a criminal sanction in accordance with the provisions of laws and regulations.

Article 42

- (1) Where the Land Rights Holders reject the form and/or the amount of

	<p>Compensation under the result of negotiation as intended by Article 37, or a decision of the district court/the Supreme Court as intended by Article 38, the Compensation shall be deposited with the local district court.</p> <p>(2) The Compensation deposited other than as intended by section (1) shall also be made towards:</p> <p>a. the Land Rights Holders to Compensation whose whereabouts are unknown; or</p> <p>b. the Object of the Acquired Land for which Compensation is to be given is:</p> <ol style="list-style-type: none"> 1. the subject of a court dispute; 2. in dispute over ownership; 3. subject to attachment by the competent official; or 4. encumbered to banks. <p>When Compensation and Release of Titles as intended by Article 41 section (2) point (a) have been made or the Compensation given has been deposited with the district court as intended by Article 42 section (1), the ownership or Titles to Land of the Land Rights Holders shall be forfeited and the means of proof is declared to no longer be valid and such land shall be in the direct possession of the state.</p> <p>Article 44</p> <p>(1) The Land Rights Holders to Compensation or the Agency acquiring land in the Acquisition of Land in the Public Interest may be given tax incentives. (2) Ancillary provisions concerning tax incentives shall be governed by the Government or the Regional Governments within their powers.</p>
Analysis	<p>Law 2 of 2012 and its implementing regulations clearly states that the compensation is paid before the displacement except if the compensation is in the form of substitute land, shares or physical relocation,</p>
Recommendation	<p>None</p>

2.13. ADB Safeguard Policy Principle 12 for Monitoring and Assessing Resettlement Outcomes

ADB Safeguard Policy Principle 12	Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.
Key element	Monitor and assess resettlement outcomes
Legal Provision	<p>Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 4 – Government Institution that needs the Land)</p> <p>In the final step in the land acquisition, the government institution that acquired the land must register the land as stated in Article 50 as follows</p> <p style="padding-left: 40px;">An agency acquiring land must register the land acquired in accordance with the provisions of laws and regulations.</p> <p>Although not part of Phase Four but to be carried out after the final step in the land acquisition is the monitoring and evaluation as stated in Article 51 as follows:</p> <p>Article 51</p> <p>(1) Monitoring and evaluation of the performance of Acquisition of Land in the Public Interest as intended by Article 13 shall be made by the Government.</p> <p>(2) Monitoring and Evaluation of the results of the handover of the Acquisition of Land in the Public Interest as intended by Article 48 section (1) shall be made by the Land Acquisition committee</p> <p>Presidential Regulation No 71 of 2012 (Phase 4 – BPN Transfers to Government Institution Needing the Land):</p> <p>The BPN carries out the monitoring and evaluation of the control, ownership, utilization and benefits of the results of the Land Acquisition for Development in the Public Interest.</p>
Analysis	Government only monitor in term of budget allocation and need more implemented provision to provide guidance on technical aspect
Recommendation	This is only partial because there is no provision or funding for long term monitoring of the results of the acquisition. Social and economic studies

	should be required to determine the long term outcomes.
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