

Assist and Support

According to ADB's safeguard, the severely affected people and vulnerable group of the affected land acquisition project must be treated carefully. Only vulnerable group that are also severely affected by the acquisition are eligible of special treatment. They will be assisted and supported while they are recovering to improve or restore their livelihood after the land is already acquired by the Government.

5.2. Equivalence/Gap Assessment for Strengthening Country Safeguard Systems (CSS) for Involuntary Resettlement

5.2.1. ADB Safeguard Policy Scope and Triggers for Involuntary Resettlement

ADB Safeguard Policy Scope and Triggers	<p>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.</p>
Key Element (1)	<p>Permanent physical and economic displacement as a result of involuntary acquisition of land (full or partial)</p>
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest</p> <p>Article 1:</p> <ol style="list-style-type: none"> 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	<p>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</p>

	impact of land acquisition that entitles for compensation.
Extent of equivalence	Partial Equivalence
Compliance 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	Law 2 of 2012 on Land Acquisition for Development in the Public Interest Article 1 3. "Land Rights Holders" means any party by whom objects of the acquired land are possessed/controlled or owned. 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.
Analysis	Temporary economic displacement will be compensated when the affected people can provide evidence of loss and the appraiser must be informed.
Extent of equivalence	Partial equivalence
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	Law 2 of 2012 on Land Acquisition for Development in the Public Interest <i>Article 1</i> 3. "Land Rights Holders" means any party by whom objects of the

	<p><i>acquired land are possessed/controlled or owned.</i></p> <p>4. <i>“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>
Extent of equivalence	Partial equivalence
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 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, buildings, plants, objects related to land, or others appraisable objects.</p>
Analysis	Only a phrase “other appraisable objects” that can be used to indicate that involuntary restriction is entitled for compensation.
Extent of equivalence	Partial equivalence
Compliance Recommendations	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.

5.2.2. 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
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	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:⁶⁰</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:⁶¹</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> <p style="text-align: center;"><i>The feasibility study shall include:</i></p>

⁶⁰ Wisnu Basuki, Law No 2/2012, Article 14, Paragraph 2, p. 10

⁶¹ Ibid, Article 15 (1), page 11.

- a. social-economic survey;*
- b. location feasibility;*
- c. analysis of cost and development benefit to the area and the community;*
- d. estimated land value;*
- e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction; and*
- f. other studies as necessary*

Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 2 – Provincial Governor):

Article 16

An Agency needing land together with the provincial government shall under the Land Acquisition planning documentation as intended by Article 15:

- a. make notification of the development plan;
- b. perform preliminary data collection of the location of the development plan; and
- c. hold a Public Consultation on a development plan.

Article 17

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.

Article 18

(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).

Presidential Regulation No 71 of 2012 (Phase 2 – Provincial Governor):

The Preparation Team mentioned in Article 8 Paragraph (2) has the tasks as in Article 10 as follows:

- 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; and
- f. Carry out other tasks that are relevant for the land acquisition for development in the Public Interest that are assigned by the Governor.

Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):

Article 28

(1) Inventory and identification of possession, ownership, use, and utilization of land as intended by Article 27 section (2) point (a) shall include:

- a. surveying and mapping on a parcel-by-parcel basis; and
- b. gathering data on the Land Rights Holders and the Objects of the Acquired Land.

(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.

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 is conducted, for fourteen (14) working days.

	<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> <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	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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

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

ADB Safeguard	Carry out meaningful consultations with affected persons, host
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Policy Principle 2	<p>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>
Key Element 1	Consultation
Legal provisions	<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>

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).

Article 19

(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.

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.

(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.

Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.

(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.

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.

(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.

(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.

- (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.

The consultations with the public will be held as stated in Article 20:

- (1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days.
- (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.

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.

If there are still objections to the location of the development, then as 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.

- (3) The team as intended by section (2) shall include:
 - 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

	<p>member;</p> <p>d. the Head of the Provincial Office of the Ministry of Law and Human Rights as member;</p> <p>e. the regent/mayor or a designated official as member; and</p> <p>f. an academic(s) as member(s).</p> <p>(4) The team as intended by section (3) shall have the duties to:</p> <p>a. make inventory of the problems due to which a reason(s) to object 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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant
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>

- (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.
- (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.

However, if there is still an objection of the location of the planned project, the Land Rights Holder (*pihak yang berhak*) can take the case to court as explained in Article 23 as follows:

- (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.
- (2) The State Administrative Court shall hold whether to accept or reject the lawsuit as intended by section (1) within thirty (30) working days of the receipt of the lawsuit.
- (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.
- (4) The Supreme Court must issue a decision within thirty (30) working days of the receipt of the petition for cassation.
- (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.

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

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:⁶²

⁶² Op.Cit., Wisnu Basuki, Law No 2/2012, Article 37, p. 21.

(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:⁶³

(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.

(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.

(4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.

(5) A final and binding decision of the district court/the Supreme Court

⁶³ Op.Cit., Wisnu Basuki, Law No 2/2012, Article 38, p. 22.

	<p>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:⁶⁴</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	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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

5.2.4. 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

⁶⁴ Op.Cit., Wisnu Basuki, Law No 2/2012, Article 39, p. 22.

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>
Extent of equivalence	Partial equivalence
Compliance 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> <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.</p> <p>(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 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' 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 management thereof is made by agreement of the parties.

	<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>
Extent of equivalence	<p>Equivalent except does not state the method to be used for the appraisal of the affected property</p>
Compliance Requirement	<p>Detailed procedures for the appraisal are required for compliance. (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 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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant
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> <ul 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</i></p>

	<p><i>land with the land of different location as agreed upon during the process of Acquisition of Land.</i></p> <p>d. shareholding; or</p> <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> <p>e. other forms as agreed upon by both parties.</p> <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.
Extent of equivalence	Partial Equivalence
Compliance 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.

5.2.5. 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.
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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> <ol style="list-style-type: none"> (1) Compensation can be in the following forms: <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. (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.
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 parties” provides the opportunity for negotiating the assistance stated in the social safeguards.
Extent of equivalence	Partial equivalence
Compliance 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 parties” provides the opportunity for negotiating the assistance stated in the social safeguards..
Extent of equivalence	Partial Equivalence
Compliance Requirement	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.
Extent of equivalence	Partial Equivalence
Compliance Recommendation	The other forms should be more clearly specified including those stated in the social safeguards above.

5.2.6. 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.
Extent of equivalence	Partial Equivalence
Compliance Recommendation	Improving the Standard of Living should be more clearly specified including those stated in the social safeguards above.

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

ADB Safeguard Policy Principle 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.
Legal provisions	<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</p>

Holders as stated in the minutes of agreement is given.

Article 38

(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).

(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.

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.

(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.

(4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.

(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 objection.

Article 39

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).

Article 40

The giving of Compensation for Objects of the Acquired Land shall be directly made to the Land Rights Holders.

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:

- a. landholders;*
- b. land concessionaires;*
- c. waqf organizers, in the case of waqf land;*
- d. ex-customary land owners;*
- e. indigenous people;*
- f. parties in possession of the state land in good faith;*
- g. land tenure holders; and/or*
- h. owners of buildings, plants or other objects related to land.*

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.

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. "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

	<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> <ul style="list-style-type: none"> 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. <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 (<i>musyawarah</i>) 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>
Extent of equivalence	Partial Equivalence
Compliance Recommendation	<p>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).</p>

5.2.8. 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> <ul 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</i></p>

	<p><i>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	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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

5.2.9. 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-
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	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> <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.</p> <p>(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.

(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.

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:

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.

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.

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

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

- a. money;
- b. substitute land;
- c. resettlement;
- d. shareholding; or
- e. other forms as agreed upon by both parties

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.

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>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>
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
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant
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</p>

	<p>National Land Agency are briefly stated:</p> <p>(2) The Land Acquisition Implementation Team as intended by section (1) shall include:</p> <ul 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.
Extent of equivalence	Equivalent, if the specified institutional arrangements refers to the implementing agency. If the institutional arrangements refers to the development of an institutions to provide assistance or security to those who were displaced, then it is not equivalent
Compliance 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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

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 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</p>

	<p>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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant
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> <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</p>

	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.
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

5.2.10. 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> <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</p>

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).

Once this data collection is completed, the next step is for Public Consultations as stated in Article 19:

(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.

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.

(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.

Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.

(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 .

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.

(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.

(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.

- (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.

The consultation with the public will be held as stated in Article 20:

- (1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days.
- (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.

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.

If there are still objections to the location of the development, then as 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
 - c. Other Land Rights Holder.
- (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.
- (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

	<p>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
Extent of equivalence	Equivalent

Compliance Recommendation	Compliant
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5.2.11. 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.
Extent of	Equivalent

Equivalence	
Compliance Recommendation	Compliant

5.2.12. 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>

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.

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.

“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 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.

(2) The Compensation deposited other than as intended by section (1) shall also be made towards:

a. the Land Rights Holders to Compensation whose whereabouts are unknown; or

b. the Object of the Acquired Land for which Compensation is to be given is:

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.

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.

Article 44

(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.

Analysis	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,
Extent of Equivalence	Equivalent
Compliance Recommendation	Compliant

5.2.13. 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</p>

	<p>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
Extent of Equivalence	Partial Equivalence
Compliance 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.

5.3. Equivalence/Gap Assessment for Strengthening Country Safeguard System (CSS) of Indigenous People in Indonesia

5.3.1. ADB Safeguard Policy Scope and Triggers for Indigenous Peoples

ADB Safeguard Policy Scope and Triggers	<p>The Indigenous Peoples safeguards are triggered if a project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as an ancestral domain or asset. The term Indigenous Peoples is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account. A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage</p>
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	under this policy.
Key Element (1)	A project directly or indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples or affects the territories or natural or cultural resources that Indigenous Peoples own, use, occupy, or claim as an ancestral domain or asset.
Legal provisions	<p>Law 2 of 2012 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 includes indigenous peoples and ex-customary land owners 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>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 land rights holders 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>Compensation for indigenous land shall be given in the form of substitute land, resettlements, or other forms as agreed upon by the</i></p>

relevant indigenous people.

Parties in possession of the state land that may be given Compensation shall be the state land users providing incompliance 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.

Presidential Regulation No 71 of 2012 (Phase 2 – Provincial Governor):

The initial data collection in Phase 2 will be as stated in Article 16 as follows:

The preliminary data collection at the location of the Development Plan as referred to in Article 10 letter b includes the preliminary data on the Land Rights Holders (*Pihak yang Berhak*) and the Land that is the Object of the Acquisition.

Those who are included in the Land Rights Holders are described in Article 17 as follows:

- (1) The Land Rights Holders as referred to in Article 16 are individuals, legal entities, social institutions, religious institutions or government institution that behold or control the land according stipulations in the legislation.
- (2) Land Rights Holders as referred to in paragraph (1) include:
 - a. Holders of the Land Rights (*pemegang hak atas tanah*);
 - b. Holders of the Right to Develop (*pemegang hak pengelolaan*);
 - c. Endowed Land Trustees (*nadzir untuk tanah wakaf*);

- d. Owners of former indigenous lands (*pemilik tanah bekas milik adat*);
- e. Indigenous Communities (*masyarakat hukum adat*);
- f. Parties in control of state lands in good faith (*pihak yang menguasai tanah negara dengan itikad baik*);
- g. Holders of basic control over land (pemegang dasar penguasaan atas tanah);
- h. Owners of buildings, land and other objects connected to the land (*pemilik bangunan, tanaman, atau benda lain yang berkaitan dengan tanah*).

The clarification of holders of land rights above is stated in Article 18 as follows:

The holder of land rights as referred in Article 17 paragraph (2) letter a, is an individual or institution in which the right is determined by stipulations in the regulations.

The clarification of the owner of former indigenous land (*adat*) above is stated in Article 21 as follows:

- (1) Owners of former indigenous land as referred in Article 17 paragraph (2) letter d is the holder of right of former indigenous land as regulated in stipulations on conversion in Agrarian regulations.
- (2) The ownership of the former indigenous land as referred to in paragraph (1) must be proven by:
 - a. Proof of land tax payment of the uncertified lands (*Petuk Pajak Bumi/Landrete, Girik, Pipil, ketitir, verponding Indonesia*) or any other written proof as referred in articles II, VI, VII in the stipulations on conversion in the Basic Agrarian Law (Law Number 5 of 1960);
 - b. Uncertified agreement on transfer of right with the signature of witnesses by the head of a customary group, head of village, or other administrative title that was issued prior to the application of Government Regulation Number 10 of 1961 on Land Registration by also attaching the basis for land ownership

of the transferred land;

- c. Signed letter proving ownership that was issued based on related Swapraja (previous local government) regulation;
- d. Letter from an authorized official on the granting of ownership rights either prior or since the application of the law Number 5 of 1960 on Basic Agrarian Legislation that does not assert the obligation to register the granted right, but all of the pertaining obligations have been fulfilled; or
- e. Record of land history that was prepared by the Office for Land and Building Tax Service along with the basis for land ownership of the transferred land.

The clarification of the adat law community (*masyarakat hukum adat*) above is stated in Article 22 as stated below:

(1) The indigenous communities (*masyarakat hukum adat*) as referred to in Article 17 paragraph (2) letter must fulfill the following requirements:

- a. A group of people that are bound with their indigenous law as a collective community in association with certain adat law association (*persekutuan*) that acknowledges and implements provisions applicable to the association in their daily life;
- b. There is a specified tanah ulayat land (communal land rights) that becomes the place for living of the people of that indigenous community and they do their daily activities in that land; and
- c. There are instruments of indigenous law (*hukum adat*) on how to manage, control and utilize the indigenous land that are applicable and obeyed by the people who are part of the association of the indigenous law.

(2) The existence of the indigenous law community as referred to in paragraph (1), is acknowledged after conducting research and determined with regional regulations of the location.

In case there is a problem with not having the proof of ownership or control of a plot of land, then the indigenous people or those without the required documents then refer to Article 26 as follows:

	<p>In a situation where the proof of control (<i>penguasaan</i>) or ownership (<i>kepemilikan</i>) of the land as referred in Article 21 and Article 23 is absent then a written statement from the holder and trusted statement from at least 2 (two) witnesses who do not have family relationship with the holder down to second degree either in vertical or horizontal relationship, which confirms that the person who owns or possesses that land is sufficient.</p>
Analysis	<p>Land acquisition law provides stipulation that institution needing land has to prepare an inventory of the potential affected people including indigenous people.</p> <p>Presidential Regulation No 71/2012 clarified the meaning of indigenous peoples that is based on their culture and indigenous laws (<i>masyarakat hukum adat</i>), Article 22 (2) stated that their existence must be recognized by a regional regulation. However, only a few communities at present have received this recognition which negates much of the above protection.</p> <p>However, there is no mention in the law nor the Presidential Regulation on indirectly affects the dignity, human rights, livelihood systems, or culture of Indigenous Peoples.</p>
Extent of equivalence	Partial Equivalence
Compliance Recommendation	<p>A regional/district regulation must be issued recognizing the indigenous law community before the land acquisition takes place.</p> <p>A regulation is needed for respecting the dignity, human rights, livelihood systems or culture of the Indigenous Peoples.</p>
Key Element (2)	Self-identification as members of a group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy
Legal provisions	No Legal Provision
Analysis	Law 2 of 2012 does not go into detailed stipulation that focuses on what measures must be taken to deal with indigenous people. As regulated by PMNA (State Agrarian Minister Regulation No 5 of 1999), the customary people are not legally recognized without justification from a PERDA

	<p>(regional regulation).</p> <p>However, it can be referred to the provision on the affected indigenous people that may have lost their land due to the acquisition for development in the public interest.</p>
Extent of equivalence	Partial Equivalence
Compliance Recommendation	A regional/district regulation must be issued recognizing the indigenous law community before the land acquisition takes place.
Key Element (3)	Collective attachment to geographically distinct habitats or ancestral territories in the project and to the natural resources in these habitats and territories
Legal provisions	<p>Law No 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 – BPN):</p> <p>The first step in the actual acquisition of the land by the National Land Agency is this Inventory and Identification of Possession, Ownership, Use as well as the Benefits from the Land. To carry out this inventory, Article 28 provides information on the initial process:</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> <ul style="list-style-type: none"> a. surveying and mapping on a parcel-by-parcel basis; and b. 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><i>Elucidation of Article 28: Inventory and identification shall be conducted to ascertain the Land Rights Holders and Objects of the Acquired Land. The results of the inventory and identification shall contain the list of the nominated Land Rights Holders and the Objects on the Acquired Land. The Land Rights Holders shall include the items of name, address, and</i></p>

employment of the parties who possess/own the land. The Objects of the Acquired Land shall include the items of location, size, status, and type of use and utilization of land.

Presidential Regulation No 71 of 2012 (Phase 2 – Governor):

The clarification of the adat law community (*masyarakat hukum adat*) above is stated in Article 22 as stated below:

(1) The indigenous communities (*masyarakat hukum adat*) as referred to in Article 17 paragraph (2) letter must fulfill the following requirements:

- a. A group of people that are bound with their indigenous law as a collective community in association with certain adat law association (*persekutuan*) that acknowledges and implements provisions applicable to the association in their daily life;
- b. There is a specified tanah ulayat land (communal land rights) that becomes the place for living of the people of that indigenous community and they do their daily activities in that land; and
- c. There are instruments of indigenous law (*hukum adat*) on how to manage, control and utilize the indigenous land that are applicable and obeyed by the people who are part of the association of the indigenous law.

(2) The existence of the indigenous law community as referred to in paragraph (1), is acknowledged after conducting research and determined with regional regulations of the location.

In case there is a problem with not having the proof of ownership or control of a plot of land, then the indigenous people or those without the required documents then refer to Article 26 as follows:

In a situation where the proof of control (*penguasaan*) or ownership (*kepemilikan*) of the land as referred in Article 21 and Article 23 is absent then a written statement from the holder and trusted statement from at least 2 (two) witnesses who do not have family relationship with the holder down to second degree either in vertical or horizontal relationship, which confirms that

	the person who owns or possesses that land is sufficient.
Analysis	<p>Although Law 2 of 2012 does not explicitly mention collective attachment to geographically distinct habitats or ancestral territories in the project and to the natural resources in these habitats and territories, yet they do recognize the rights of ex-customary land owners and indigenous people for compensation as stated in Article 40 above.</p> <p>In the Presidential Regulation 71 of 2012 there is the possibility of the Indigenous Law Community to be recognized which would then also mean that there land is also recognized.</p>
Extent of equivalence	Partial Equivalence
Compliance Recommendation	To achieve compliance, the law and regulation should explicitly state the geographic area or ancestral territory to be included in the inventory and identification of these lands. Compensation should be given for these areas also.
Key Element (3)	Customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture
Legal provisions	<p>Presidential Regulation No 71 of 2012 (Phase 2 – Governor):</p> <p>The clarification of the adat law community (<i>masyarakat hukum adat</i>) above is stated in Article 22 as stated below:</p> <p>(1) The indigenous communities (<i>masyarakat hukum adat</i>) as referred to in Article 17 paragraph (2) letter must fulfill the following requirements:</p> <ol style="list-style-type: none"> a. A group of people that are bound with their indigenous law as a collective community in association with certain adat law association (<i>persekutuan</i>) that acknowledges and implements provisions applicable to the association in their daily life; b. There is a specified tanah ulayat land (communal land rights) that becomes the place for living of the people of that indigenous community and they do their daily activities in that land; and c. There are instruments of indigenous law (<i>hukum adat</i>) on how to manage, control and utilize the indigenous land that are

	<p>applicable and obeyed by the people who are part of the association of the indigenous law.</p> <p>(2) The existence of the indigenous law community as referred to in paragraph (1), is acknowledged after conducting research and determined with regional regulations of the location.</p>
Analysis	The Presidential Regulation states that an Indigenous Law Community can be recognized but this must be done with a district regulation (Perkab).
Extent of equivalence	Partial Equivalence
Compliance Recommendation	The requirement for a district regulation recognizing an Indigenous Law Community should be eliminated or a regulation issued that makes the process transparent and obtainable.
Key Element (4)	A distinct language, often different from the official language of the country or region. In considering these characteristics, national legislation, customary law, and any international conventions to which the country is a party will be taken into account.
Legal provisions	<p>Presidential Regulation No 71 of 2012 (Phase 2 – Governor):</p> <p>The clarification of the adat law community (<i>masyarakat hukum adat</i>) above is stated in Article 22 as stated below:</p> <p>(1) The indigenous communities (<i>masyarakat hukum adat</i>) as referred to in Article 17 paragraph (2) letter must fulfill the following requirements:</p> <ol style="list-style-type: none"> a. A group of people that are bound with their indigenous law as a collective community in association with certain adat law association (<i>persekutuan</i>) that acknowledges and implements provisions applicable to the association in their daily life; b. There is a specified tanah ulayat land (communal land rights) that becomes the place for living of the people of that indigenous community and they do their daily activities in that land; and c. There are instruments of indigenous law (<i>hukum adat</i>) on how to manage, control and utilize the indigenous land that are applicable and obeyed by the people who are part of the association of the indigenous law.

	(2) The existence of the indigenous law community as referred to in paragraph (1), is acknowledged after conducting research and determined with regional regulations of the location.
Analysis	The Presidential Regulation states that an Indigenous Law Community can be recognized but this must be done with a district regulation (Perkab).
Extent of equivalence	Partial Equivalence
Compliance Recommendation	The requirement for a district regulation recognizing an Indigenous Law Community should be eliminated or a regulation issued that makes the process transparent and obtainable.
Key Element (5)	A group that has lost collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance remains eligible for coverage under this policy.
Legal provisions	<p>Presidential Regulation No 71 of 2012 (Phase 2 – Governor):</p> <p>The clarification of the owner of former indigenous land (<i>adat</i>) above is stated in Article 21 as follows:</p> <p>(1) Owners of former indigenous land as referred in Article 17 paragraph (2) letter d is the holder of right of former indigenous land as regulated in stipulations on conversion in Agrarian regulations.</p> <p>(2) The ownership of the former indigenous land as referred to in paragraph (1) must be proven by:</p> <p>a. Proof of land tax payment of the uncertified lands (<i>Petuk Pajak Bumi/Landrete, Girik, Pipil, ketitir, verponding Indonesia</i>) or any other written proof as referred in articles II, VI, VII in the stipulations on conversion in the Basic Agrarian Law (Law Number 5 of 1960);</p> <p>b. Uncertified agreement on transfer of right with the signature of witnesses by the head of a customary group, head of village, or other administrative title that was issued prior to the application of Government Regulation Number 10 of 1961 on Land Registration by also attaching the basis for land ownership of the transferred land;</p> <p>c. Signed letter proving ownership that was issued based on related</p>

	<p>Swapraja (previous local government) regulation;</p> <p>d. Letter from an authorized official on the granting of ownership rights either prior or since the application of the law Number 5 of 1960 on Basic Agrarian Legislation that does not assert the obligation to register the granted right, but all of the pertaining obligations have been fulfilled; or</p> <p>e. Record of land history that was prepared by the Office for Land and Building Tax Service along with the basis for land ownership of the transferred land.</p>
Analysis	Although there is a clear process for recognizing the owner of former indigenous land, it does not state that being forced off the indigenous land should still be covered by the ADB Indigenous policy principles.
Extent of equivalence	Almost not equivalent
Compliance Recommendation	A regulation is required that states if the indigenous law community was forced off of their ancestral that they should be compensated.

5.3.2. ADB Safeguard Policy Principle 1 for Indigenous Peoples

ADB Safeguard Policy Principle 1	Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.
Key Element (1)	Screening
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Provincial Governor):</p> <p>In Part 3 for the second phase in Article 16 for the preparation of the land acquisition, the provincial government based on the land acquisition plan in Article 15 will:</p> <p>An Agency needing land together with the provincial government shall under the Land Acquisition planning documentation as intended by Article 15:</p> <p>a. announce the Development Plan;</p>

b. carry out preliminary data collection on the location of the Development Plan; and

c. have Public Consultations on the Development Plan.

Then, as stated in Article 17 the people in the affected area must be notified of the plan:

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.

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.

Law 2 of 2012 on Land Acquisition for Development in the Public Interest (Phase 3 - BPN):

Article 28

(1) Inventory and identification of possession, ownership, use, and utilization of land as intended by Article 27 section (2) point (a) shall include:

- a. surveying and mapping on a parcel-by-parcel basis; and
- b. gathering data on the Land Rights Holders and the Objects of the Acquired Land.

(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.

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 is 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 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.

(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.

Article 30

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 ground on which the Land Rights Holders to Compensation are determined.

Presidential Regulation No 71 of 2012:

The initial data collection will be as stated in Article 16 as follows:

The preliminary data collection at the location of the Development Plan as referred to in Article 10 letter b includes the preliminary data on the Land Rights Holders (*Pihak yang Berhak*) and the Land that is the Object of the Acquisition.

Those who are included in the Land Rights Holders are described in Article 17 as follows:

(1) The Land Rights Holders as referred to in Article 16 are individuals, legal entities, social institutions, religious institutions or government institution that behold or control the land according stipulations in the legislation.

(2) Land Rights Holders as referred to in paragraph (1) include:

- a. Holders of the Land Rights (*pemegang hak atas tanah*);
- b. Holders of the Right to Develop (*pemegang hak pengelolaan*);

	<p>c. Endowed Land Trustees (<i>nadzir untuk tanah wakaf</i>);</p> <p>d. Owners of former indigenous lands (<i>pemilik tanah bekas milik adat</i>);</p> <p>e. Indigenous Communities (<i>masyarakat hukum adat</i>);</p> <p>f. Parties in control of state lands in good faith (<i>pihak yang menguasai tanah negara dengan itikad baik</i>);</p> <p>g. Holders of basic control over land (pemegang dasar penguasaan atas tanah);</p> <p>h. Owners of buildings, land and other objects connected to the land (<i>pemilik bangunan, tanaman, atau benda lain yang berkaitan dengan tanah</i>).</p> <p>The definition of indigenous communities is in the previous section above.</p>
Analysis	<p>The screening procedures are stipulated by Law 2 Of 2013 in order to identify stakeholders specially those who are affected by the project including indigenous people.</p> <p>In Law No 71 of 2012 the indigenous communities are specified and defined. Though, a district/regional regulation is necessary for their recognition. Only a few Regional Governments (kabupaten) have issued this regulation which negates most of the statement above.</p>
Extent of equivalence	Partial Equivalence
Compliance Recommendation	The requirement for a regional regulation recognizing the indigenous community must be deleted from Presidential Regulation Number 71.

5.3.3. ADB Safeguard Policy Principle 2 for Social Impact Assessment

ADB Safeguard Policy Principle 2	<p>Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and inter-generationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse</p>
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	impacts on Indigenous Peoples.
Key Element 1	Undertake social impact assessment that covers cultural and gender-sensitive issues
Legal provisions	<p>Law No 2 of 2012:</p> <p>Article 15</p> <p>(1) Land Acquisition plan in the Public Interest as intended by Article 14 section (1) shall be prepared in the form of Land Acquisition planning documentation that contains at least:</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><i>Elucidation of Article 15 (1):</i></p> <p><i>Preparation of Land Acquisition planning documentation may be made together with the Agency needing land and the relevant technical agency(ies) or with the assistance of professional institutions designated by the Agency needing land.</i></p> <p>(2) The Land Acquisition planning documentation as intended by section (1) shall be prepared under the feasibility study made in accordance with the laws and regulations.</p>

Elucidation of Article 15 (2):

The feasibility study shall include:

- a. social-economic survey;*
- b. location feasibility;*
- c. analysis of cost and development benefit to the area and the community;*
- d. estimated land value;*
- e. environmental impacts and social impacts that may arise out of the Acquisition of Land and construction;and*
- f. other study as necessary.*

(3) The Land Acquisition planning documentation as intended by section (2) shall be certified by the Agency needing land.

(4) The Land Acquisition planning documentation as intended by section (3) shall be submitted to the provincial government.

Presidential Regulation No 71 of 2012:

This Land Acquisition Plan as referred to in Article 5 must be based on a feasibility study as stated in **Article 6** below:

- (1) The documents for Land Acquisition as referred in Article 5 paragraph (1) shall be prepared based on a feasibility study, which covers:
 - a. Socio-economic survey
 - b. Location suitability
 - c. Cost benefit analysis
 - d. Land value estimation
 - e. Social and environmental effect of the land acquisition and the construction
 - f. Other necessary studies
- (2) Social-economic survey as referred in paragraph (1) letter a is conducted to create an analysis on the social-economic condition of the people that might be affected by the Land Acquisition process.

	<p>(3) Location Suitability as referred in paragraph (1) letter b, is conducted to analyze the location's physical suitability for the development plan that will be implemented in the public interest and is inserted into the map of the plan for the development location.</p> <p>(4) Benefit Cost analysis for the area and the people as referred in paragraph (1) letter c is conducted to analyze the costs incurred and the development benefits for the area and the people.</p> <p>(5) Land value estimation as referred in paragraph (1) letter d is conducted to estimate the compensation value of the acquired land.</p> <p>(6) Social and environmental impact as referred in paragraph (1) letter e is conducted to analyze the environmental impacts or other relevant environmental documents that are in accordance with the prevailing regulations.</p> <p>(7) Other necessary studies as referred in paragraph (1) letter f is the result of studies that are specifically needed other than the ones referred to in paragraph (1) letter a to letter e, which could be a study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development in the public interest.</p>
Analysis	<p>The social and impact assessment is mandated by law 2 of 2012 and provided with more detail in Presidential Regulation No 71 of 2012. Although both the law and the Presidential Regulation do not specify in detail the options the Indigenous Peoples prefer. However, any social impact study would cover these impacts and options.</p>
Extent of equivalence	<p>Almost equivalent</p>
Compliance Recommendation	<p>One recommendation would be more specific on the social and economic benefits for indigenous communities and the options preferred by the indigenous peoples.</p>

5.3.4. ADB Safeguard Policy Principles 3 for Consultations with Affected Indigenous Peoples Communities

<p>ADB Safeguard Policy Principle 3</p>	<p>Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples’ active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples’ concerns.</p>
<p>Key Element 1</p>	<p>Meaningful consultations with affected indigenous Peoples Communities and Indigenous Peoples organizations</p>
<p>Legal provisions</p>	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest:</p> <p>Once this data collection is completed, the next step is for Public Consultations as stated in 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>

(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 .

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.

(4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.

(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.

(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.

The consultation with the public will be held as stated in Article 20:

(1) A Public Consultation on a Development Plan as intended by Article 19 shall be held within sixty (60) working days.

(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.

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.

If there are still objections to the location of the development, then as 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.

Presidential Regulation No 71 of 2012:

The Public Consultation on the Development Plan is initiated in Article 29 as follows:

- (1) Public consultation of the Development Plan as referred in Article 28 paragraph (2) is carried out to obtain agreement with the Land Rights Holders.
- (2) The Preparation Team will conduct Public Consultations on the Development Plan at the office of village officials or office of sub-district office at the location, or at a location that the Preparation Team and the Entitled Parties have agreed upon.
- (3) The Public Consultation as referred in paragraph (2) can be done in stages and more than 1 (one) time according to the local situation.
- (4) The Public Consultation as referred to in paragraph (3) is conducted within 60 (sixty) working days starting from the signing of the temporary list as referred in Article 28 paragraph (1).

In case there are special impacts because of the development, then as stated in **Article 30** the following:

- (1) In the development where there are planned specific impacts, the Public Consultation can also involve the public who are directly impacted.
- (2) The Preparation Team will conduct the Public Consultation as referred to in paragraph (1) of the Development Plan at the office of the village officials or office of the sub-district office at

the location, or at places that the Preparation Team and Entitled Parties have agreed upon.

The Land Rights Holders and the impacted community members are invited to participate in the Public Consultation is stated in **Article 31** as follows:

- (1) The Preparation Team invites the Entitled Parties as referred to in Article 29 and the affected community as referred in Article 30 to be present at the Public Consultation.
- (2) The invitation, as referred to in paragraph (1) is conveyed directly to the Land Rights Holders, as referred in Article 29, and the affected communities as to referred in Article 30 within 3 (three) days prior to the commencement of the Public Consultation.
- (3) In proving the acceptance of the invitation, there should be a receipt of acceptance signed by the Land Rights Holders and the affected communities or the village officials or other name.
- (4) In a situation where the Entitled Parties whereabouts/ address/ location are not known, then the notification is given through:
 - a. Notification at the local village office or other administrative title or sub-district of the site; and
 - b. Printed or electronic media.

The Preparation Team will explain about the planned Land Acquisition is stated in **Article 32** as follows:

- (1) The Preparation Team will explain about the Land Acquisition Plan in the public consultation as referred in Article 29.
- (2) The explanation as referred to in paragraph (1) includes:
 - a. Purpose of the Development Plan in the public interest;
 - b. Stages and timeline of the Land Acquisition;
 - c. The role of the appraiser in determining the compensation

value;

- d. The incentive that the holder of the land rights will receive;
- e. Objects that will be appraised for compensation;
- f. The form of the compensation; and
- g. The rights and responsibilities of the Land Rights Holders.

The process that will be carried out in the consultation between the Preparation Team and the Entitled Persons is stated in **Article 33** as follows:

- (1) In the Public Consultation, there should be a dialogue between the Preparation Team and the Entitled Parties, as referred to in Article 29, and the affected community as referred to in Article 30.
- (2) The public consultation as referred to in paragraph (1) may be conducted through representatives who hold the power of attorney from and by the Entitled Parties.
- (3) Entitled parties and the affected communities/people or the holders of the powers of attorney will be given the opportunity to address their views/responses on the location of the development plan.
- (4) The attendance of the entitled parties and the affected communities/ people or the holders of the powers of attorney as referred in paragraph (2) is proven by the attendance list.
- (5) The results of the agreement on the Development Plan's location that is achieved in the Public Consultation will be inserted into the report (Berita Acara) of agreement.

In the case where agreement is not achieved then it is stated in Article 34 as follows:

- (1) In the case of the Public Consultation among the Entitled Parties and the affected communities there is disagreement or objections to the location of the development plan, then the Public

	<p>Consultation must be repeated.</p> <p>(2) The repeated Public Consultation as referred to in paragraph (1) is organized within 30 (thirty) working days since the date of the report of agreement.</p> <p>(3) The agreement on the location of the development plan that is made in the repeated Public Consultation as referred to in paragraph (1) will be inserted into the report of agreement of the Public Consultation.</p>
Analysis	Public consultation is very clearly stipulated in Law 2 of 2012 and Presidential Regulation No 71 of 2012. However, indigenous people issues are not treated separately as other affected people that must participate in the public consultation.
Extent of equivalence	Almost Equivalent
Compliance Recommendation	The consultations are clearly meaningful but in the Law and Presidential Regulation they do not specifically state Indigenous Peoples but they are clearly included. The government has to ensure that affected indigenous people must be consulted in a special forum.
Key Element 2	In designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest:</p> <p>The compensation based on the appraisal will cover a number of objects, 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 one is 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>

- 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.

*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.*

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:

- (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 report.
- (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.

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:

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.

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.

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

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

- a. money;
- b. substitute land;
- c. resettlement;
- d. shareholding; or
- e. other forms as agreed upon by both parties

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.

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.

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).

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 Holders 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.

(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.

(4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.

(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.

Presidential Regulation No 71 of 2012:

The distribution of the compensation can be in various forms is stated in Article 74 as follows:

(1) Compensation can be in the following forms:

- a. Money;
- b. Substitute Land;
- c. Resettlement;
- d. Shares (in the infrastructure); or
- e. Other forms agreed to by both parties.

(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.

In the public dialog if the most important form for compensation is money then the situation is in Article 75 as follows:

(1) In the Public Dialogue as referred to in Appendix 68, the Land Acquisition Implementation Team gives priority to the Compensation in the form of money as referred to in article 68.

(2) The Land Acquisition Implementation Team determines the form of the Compensation based on the report (berita acara) of the agreement as referred to in Article 72 paragraph (1).

The Compensation in the form of money only is carried out as stated in Article 76 as follows:

(1) Monetary compensation as referred in Article 74 paragraph (1) letter a should be given in Rupiah denomination.

(2) The monetary compensation as referred in paragraph (1) is carried 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.

- (3) The monetary compensation as referred to in paragraph (2) must be distributed at the same time as the Entitled Parties relinquish their rights.
- (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.

The Compensation in the form of replacement land is carried out as stated in Article 77 as follows:

- (1) Compensation in the form of substitute land as referred to in Article 74 paragraph (1) letter b is given by the government institution through the Land Acquisition Implementation Team.
- (2) The compensation as referred in paragraph (1) is given by the government institution needing the land upon the written request from the Head of the Land Acquisition Implementation Team.
- (3) The replacement land as referred to in paragraph (1) is given to and under the name of the Entitled Party.
- (4) The acquisition of the replacement land as referred in paragraph (2) is carried out by buying the land or other agreed means subject to the stipulations in the regulations.
- (5) The compensation as referred to in paragraph (3) must be carried out the same time as the Entitled Party relinquishes their rights without waiting for the availability of the replacement land.
- (6) During the process of providing the replacement land as referred to in paragraph (4), the funds to purchase the replacement land is deposited at the bank by and under the name of the government institution needing the land Institution.
- (7) The process of providing substitute land as referred to in paragraph (3) is conducted within 6 (six) month since the determination of the form of compensation by the Land

Acquisition Implementation Team.

The Compensation in the form of resettlement is stated in Article 78 as follows:

- (1) The Compensation in the form of resettlement as referred to in Article 74 paragraph (1) letter c is to be provided by the government institution needing land through the Land Acquisition Implementation Team.
- (2) The Compensation in the form of resettlement as referred to in Article 74 paragraph (1) letter c is to be provided by the government institution needing land upon the written request from the Head of the Land Acquisition Implementation Team.
- (3) Resettlement as referred to in paragraph (1) is given for and under the name of the Entitled Party.
- (4) The Compensation as referred to in paragraph (1) is carried out at the same time with the Release of Rights by the Entitled Party without waiting for the completion of the development resettlement area.
- (5) During the process of resettlement as referred to in paragraph (5), the fund to provide resettlement is deposited at the bank by and under the name of the Government Institution.
- (6) The implementation of the provision of resettlement as referred to in paragraph (3) is carried out within 1 (one) year since the determination of the form of compensation by the Land Acquisition Implementation Team.

In case the form of Compensation with replacement land or resettlement, then public dialog is conducted as follows:

In the distribution of replacement land or resettlement as the form of Compensation, public dialogue as referred to in article 68 is to determine the location of the replacement land or of the resettlement.

The BPN monitors and evaluates the results of the Land Acquisition is

	<p>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	Both Law 2/2012 and Presidential Regulation No 71/2012 provide several different approaches for compensation that are designed to allow the land rights holders to select their preferred compensation and an opportunity to object to all of them and take it to court.
Extent of equivalence	Almost Equivalent
Compliance Recommendation	Almost Compliant. For indigenous communities, they should be informed of the options and the possibility for specific arrangements.
Key Element 3	In tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development.
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest:</p> <p>The Land Acquisition Implementing Team (<i>BPN Wilayah</i>) of the Land acquisition will hold Public Dialogs with the Land Rights Holders is stated in Article 68 as follows:</p> <ol style="list-style-type: none"> 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.

The result of the agreement during the public dialog as the basis

	<p>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> <p>a. The Entitled Party or delegated person agrees with the form of compensation;</p> <p>b. The Entitled Party or delegated person disagrees with the form of compensation; and</p> <p>c. The Land Rights Holder is not present and did not delegate authority.</p> <p>(3) The report as mentioned in paragraph (1) is signed by the Land Acquisition Implementation Team and Entitled Parties who are present or the delegated persons.</p>
Analysis	Although Indigenous Peoples are not specifically stated in these articles, yet they will be able to insist on “tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner.
Extent of equivalence	Almost Equivalent
Compliance Recommendation	In the public consultations, the Indigenous People should be informed of being able to request and demand culturally sensitive approaches.
Key Element 4	Establish a culturally appropriate and gender inclusive grievance mechanism
Legal provisions	<p>Law No 2 of 2012:</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</p>

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 Holders 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.

- (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.
- (4) The Supreme Court must render its decision within thirty (30) working days of the receipt of the petition for cassation.
- (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.

Presidential Regulation No 71 of 2012:

The result of the agreement during the public dialog as the basis for the compensation is stated in **Article 72** as follows:

- (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 (*berita acara*) of the agreement.
- (2) The report of the agreement as mentioned in paragraph (1) contains:
 - a. The Entitled Party or delegated person agrees with the form of compensation;
 - b. The Entitled Party or delegated person disagrees with the form of compensation; and
 - c. The Land Rights Holder is not present and did not delegate authority.
- (3) The report as mentioned in paragraph (1) is signed by the Land Acquisition Implementation Team and Entitled Parties who are present or the delegated persons.

If there is no agreement on the form and/or amount of the compensation, then stated in **Article 73** as follows:⁶⁵

- (1) In case there is no agreement on the form and/or amount of Compensation, the Entitled Party 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).
- (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.
- (3) The Land Rights Holders that are not satisfied with the District Court's decision as referred in paragraph (2) may appeal their

⁶⁵ Translation of Perpres 71/2012, Article 73, page 43

	<p>objection to the Supreme Court within 14 (fourteen) days.</p> <p>(4) Supreme Court must render its decision within 30 (thirty) working days since they first accepted the appeal.</p>
Analysis	<p>Although it is not called a “culturally appropriate and gender inclusive grievance mechanism”, the indigenous peoples can clearly object to and reject the inventory and the compensation as can other land rights holders. The article in both the law and the presidential regulation does not specify indigenous but they are clearly included.</p>
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

5.3.5. ADB Safeguard Policy Principle 4 for Ascertaining the Consent of Indigenous Peoples

ADB Safeguard Policy Principle 4	<p>Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities.</p>
Key Element 1	Consent of the Affected Indigenous Communities (Free, Prior and Informed Consent)
Legal provisions	<p>Presidential Regulation No 71 of 2012:</p> <p>This Land Acquisition Plan as referred to in Article 5 must be based on a</p>

	<p>feasibility study as stated in Article 6 (7) below:</p> <p>(7) Other necessary studies as referred in paragraph (1) letter f is the result of studies that are specifically needed other than the ones referred to in paragraph (1) letter a to letter e, which could be a study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development in the public interest.</p>
Analysis	<p>Free, Prior and Informed Consent is a fundamental approach when any project affects the customary area where they have been living for years. Especially when we refer to the International Covenant on Indigenous people. Since Indonesia does not ratify the covenant, the consent is not required by Law. However, in Presidential Regulation No 71 of 2012, it does state other necessary studies, including community culture and religious affairs that should be interpreted to include ascertaining the consent of indigenous peoples communities.</p>
Extent of equivalence	<p>Partial Equivalence</p>
Compliance Recommendation	<p>Legitimate representative of indigenous group must be informed and consulted when land acquisition occurs within a customary area.</p>
Key Element 2	<p>Consent for commercial development of the cultural resources and knowledge of Indigenous Peoples</p>
Legal provisions	<p>Presidential Regulation No 71 of 2012:</p> <p>The results of the inventory and identification will be submitted to the Head of the Land Acquisition Implementation Team is stated in Article 59 as follows:</p> <p style="padding-left: 40px;">The results of the inventory and identification as referred to in Article 56 and Article 57 is submitted by the Head of the Task Force to the Head of the Land Acquisition Implementation with a report of the meeting (berita acara) on the results of the inventory and identification.</p> <p>The Parcel Land Map and the nomination list are stated in Article 60 as follows:</p> <p>(1) The Parcel Land Map and the nomination list as referred to in</p>

	<p>Article 57 is announced in the office of the village (kelurahan/desa) administration, office of sub-district (<i>kecamatan</i>) administration and the location of development at least within 14 (fourteen) working days.</p> <p>(2) The announcement as referred to in paragraph (1) can be implemented in sequence, partially or as a whole.</p> <p>If the Land Rights Holder objects to the results of the inventory and identification, then as stated in Article 61 as follows</p> <p>(1) In case the Entitled Party objects to the inventory and identification as referred to in Article 59, the Entitled Party may appeal with an objection to the Head of the Land Acquisition Implementation no later than 14 (fourteen) working days after the announcement of the inventory.</p> <p>(2) In case the objection with the inventory and identification as referred to in paragraph (1) is accepted, the Head of the Land Acquisition Implementation verifies and revises the map and/or the nomination list.</p> <p>(3) The verification and revision as referred to in paragraph (2) is carried out finished within 14 (fourteen) working days after the receipt of the submission of the objection on the results of the inventory.</p> <p>(4) In case there occurs a difference in the measurement of the land between the result of inventory and identification and the result of verification, a revision of the measurement will be carried out in the form of a report on the inventory and identification.</p> <p>(5) In case the objection of the inventory and identification as referred to in paragraph (1) is rejected, the Head of the Land Acquisition Implementation will prepare a report on the rejection.</p>
Analysis	<p>The land rights holders that also include the indigenous peoples have the opportunity to object to the commercial development after the inventory and identification, and as stated above have the opportunity to object during the dialogue on the compensation.</p>

Extent of equivalence	Partial Equivalence. The Indigenous peoples have the opportunity to object to the commercial development though it is not stated about commercial development in the law and regulation.
Compliance Recommendation	The indigenous peoples must be informed about the purpose of the land acquisition including commercial development.
Key Element 3	Consent for physical displacement from traditional or customary lands
Legal provisions	Same as Key Element 2 above
Analysis	Same as Key Element 2 above
Extent of equivalence	Same as Key Element 2 above
Compliance Recommendation	Same as Key Element 2 above
Key Element 4	Consent for commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples.
Legal provisions	Same as Key Element 2 above
Analysis	Same as Key Element 2 above
Extent of equivalence	Same as Key Element 2 above
Compliance Recommendation	Same as Key Element 2 above

5.3.6. ADB Safeguard Policy Principle 5 for Avoiding Any Restricted Access to and Physical Displacement from protected areas and Natural Resources.

ADB Safeguard Policy Principle 5	Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and
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	monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared.
Key Element 1	Participatory approach for project in the public interest
Legal provisions	No legal provision
Analysis	This principle of participation is not required by Law because the law gives an authority agency needing land to prepare a project proposal that is based on the interest of the institution. After that, the process of land acquisition is carried out by regional government and land acquisition committee who are mainly government officials.
Extent of equivalence	Partial Equivalence
Compliance Recommendation	Transparent and participatory mechanism of land acquisition must be performed by land acquisition committee and related government offices.

5.3.7. ADB Safeguard Policy Principle 6 for an Indigenous Peoples Plan (IPP)

ADB Safeguard Policy Principle 6	Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures.
Key element	Indigenous People Plan (IPP)
Legal provisions	Presidential Regulation No 71 of 2012: This Land Acquisition Plan as referred to in Article 5 must be based on a feasibility study as stated in Article 6 (7) below: (7) Other necessary studies as referred in paragraph (1) letter f is the result of studies that are specifically needed other than the ones

	referred to in paragraph (1) letter a to letter e, which could be a study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development in the public interest.
Analysis	Since in Presidential Regulation No 71 of 2012, it does state other necessary studies, including community culture and religious affairs that should be interpreted to include ascertaining the consent of indigenous peoples communities, this could be used to require a Indigenous People Plan (IPP).
Extent of equivalence	Partial equivalence
Compliance Recommendation	Report and assessment on IPP must be coordinated with regional government and many other related institutions

5.3.8. ADB Safeguard Policy Principle 7 for Disclosing Draft IPP

ADB Safeguard Policy Principle 7	Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.
Legal provisions	<p>Presidential Regulation No 71 of 2012:</p> <p>This Land Acquisition Plan as referred to in Article 5 must be based on a feasibility study as stated in Article 6 (7) below:</p> <p>(7) Other necessary studies as referred in paragraph (1) letter f is the result of studies that are specifically needed other than the ones referred to in paragraph (1) letter a to letter e, which could be a study on the community culture, study on politics and security, or study on religious affairs to anticipate any specific impact due to the development in the public interest.</p> <p>Law No 2 of 2012:</p> <p>Article 19:</p> <p>(1) A Public Consultation on the Development Plan as intended by Article 18</p>

section (3) shall be held to achieve agreement on the location of the Development Plan with the Land Rights Holders⁶⁶.

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.

- (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.

Elucidation of Article 19 (2): "Affected community" is, for example, any community directly contiguous to the location of the Acquisition of Land.

- (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 .

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.

- (4) Agreement as intended by section (1) shall be stated in the form of minutes of agreement.

- (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.

- (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.

The consultation with the public will be held as stated in **Article 20**:⁶⁷

- (1) A Public Consultation on a Development Plan as intended by Article 19

⁶⁶ Land Rights Holders has been changed to Land Rights Holders

⁶⁷ Op.Cit., Wisnu Basuki, Law No 2/2012, Article 20 and Elucidation of 20, p. 13 & 14 with some editorial and translation revisions.

	<p>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>
Analysis	Since in Presidential Regulation No 71 of 2012, it does state other necessary studies, including community culture and religious affairs that should be interpreted to include ascertaining the consent of indigenous peoples communities, this could be used to require a Indigenous People Plan (IPP).
Extent of equivalence	Equivalent
Compliance Recommendation	Compliant

5.3.9. ADB Safeguard Policy Principles 8 for an Action Plan

ADB Safeguard Policy Principle 8	Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.
Key Element 1	Legal recognition
Legal provisions	No Legal provision
Analysis	Legal recognition is not an easy process and it takes time to accomplish. The process that is regulated by PMNA No 5 of 1999 requires an independent study funded by regional government that must be followed by a regional regulation bill on customary existence that would take involvement from all stakeholders to get the bill issued by regional

	government.
Extent of equivalence	No equivalence
Compliance Recommendation	Government should amend or replace PMNA 5 of 1999 with a stronger regulation that gives an opportunity to any customary group to file their claim in a court.

5.3.10. ADB Safeguard Policy Principles 9 for Monitoring

ADB Safeguard Policy Principle 9	Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports.
Key element	Monitoring and Evaluation
Legal provisions	<p>Law 2 of 2012 on Land Acquisition for Development in the Public Interest</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 Administrator.</p> <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:⁶⁸</p> <p style="padding-left: 40px;">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	After the acquisition of land for public use is accomplished, monitoring and evaluation is conducted through administrative and financial report approach. The evaluation whether the entire objectives of land acquisition

⁶⁸ Translation of Perpres 71/2012, Article 115, page 63

	is achieved is rarely or never heard. Acquisition of land by agency needing land is the indicator whether the goals of land acquisition has been achieved. However, BPN does have the responsibility of monitoring and evaluating the results of the land acquisition.
Extent of equivalence	Partly equivalence
Compliance Recommendation	Capacity building on M&E is important to acknowledge the gaps and to evaluate the results.

VI. Recommendations for Meeting ADB Compliance Requirements

6.1. Gap Analysis and Compliance Requirements for Involuntary Resettlement

These recommendations for the Compliance Requirements for ADB SPS 2009 (IR Policy Requirements) and Indonesia Improved Land Acquisition Law No. 2 of Year 2012⁶⁹ was Prepared by Jeffrey Anwar.

ADB SPS 2009 Involuntary Resettlement Policy Requirements - Compensation: Compensation at full replacement cost will be provided for loss of physical assets and economical losses as well as restriction of access to protected area and parks with reference to fair market value, transaction costs, interest accrued, transitional and restoration costs and other applicable payments without depreciation.	
Indonesia's Improved Land Acquisition Policy and Implementing Regulations	Gap Analysis and Compliance Requirements
The National Land Agency (Land Institute/ <i>Lembaga Pertanahan</i>) will appoint an Appraiser as stated in Article 31 below: ⁷⁰ (1) The Land Institute shall designate an Appraiser in accordance with the provisions of laws and regulations. Elucidation of Article 31 (1): The provisions of laws and regulations as aforesaid are the	No Gap in general in terms of the objects to value. The law counted both physical and non-physical losses including other appraisable losses. There are some small gaps in regards to meet full replacement cost requirement.

⁶⁹ It also covers its Implementation Policy and Guidelines – Presidential Decree 71/2012; Head of BPN Regulation No. 5/2012

⁷⁰ Op.Cit., Wisnu Basuki, Law No 2/2012, Article 31, Paragraphs 1 & 2, p. 19.