



Compulsory Land Acquisition Law Enacted to Address Infrastructure Bottlenecks

Problems such as undue delay and land speculation in the acquisition of land for public infrastructure projects have long been holding up the effort to address the country's chronic infrastructure deficit. After a number of earlier attempts to remedy the situation by way of presidential regulation proved unsuccessful, the House of Representatives (DPR) has finally enacted a new Land Acquisition Law (Law No. 2 of 2012), which came into effect on 14 January 2012. With the force of statute, it is hoped that the new compulsory acquisition legislation will be able to successfully overcome the problems that the earlier regulations were unable to address.

The Land Acquisition Law requires the interests of landowners to be balanced against the interests of society in advancing infrastructure development, and establishes expedited procedures for dealing with objections so as to avoid infrastructure projects being delayed indefinitely. In addition, the legislation seeks to prevent land speculation following the announcement of projects -- something that proved to be a major problem under the earlier regulations. Of particular importance is that the different stages involved in compulsory acquisition are subject to time limits for completion.

The legislation provides that the right to compulsorily acquire land in the public interest resides in the government, while ownership of or title to land so acquired may be vested in the central government, local government or a state enterprise, as the case may be.

The law authorizes compulsory acquisition for a wide range of purposes, which range from roads and railways to slum clearance and public housing, and extends the scope of compulsory acquisition to, for instance, government information and telecommunication networks, and oil, gas, and geothermal infrastructure, which were not covered by the earlier presidential regulations.

The legislation places the onus for developing public interest projects on the Government, but takes cognizance of fiscal reality but providing that projects may be developed in collaboration with state, local government or private-sector enterprises.

Stages in the Compulsory Purchase Process

After the required land has been identified by the relevant state body ("**Relevant State Body**"), a Compulsory Acquisition Plan ("**Plan**") is prepared in accordance with the related spatial and other planning documents, and the findings of a feasibility study conducted in compliance with the prevailing statutory provisions. The Plan is then submitted to the provincial government, thus bypassing the regency/municipal level and thereby expediting the process.

The Relevant State Body and the provincial government are required to notify the public, and gather preliminary data on the land and parties entitled to compensation ("**Entitled Parties**"). This process must be completed within 30 working days as from the date of notification to the public. In a concrete manifestation of growing democratization, a public consultation process on the Plan must also be pursued (to be completed within 60 working days). The purpose of this is to secure the agreement of Entitled Parties and those likely to be affected to the Plan. Should an agreement be reached, the provincial governor is required to confirm the Plan within 14 days.

If an agreement is not reached by the end of the 60-day consultation period, a second public consultation process shall be held with the objectors. A period of 30 working days is allowed for completion of the second process.

If there are still objections after the end of the second consultation process, the Relevant State Body shall report to the governor, who will then establish a committee to study the objections. Herein lies one of the potential flaws of the legislation as, based on article 21, the team will be heavily weighted in favor of the government side. In fact, out of six institutions from which members are to be drawn, only one is non-governmental – academia. Thus, it is quite clear that academics sitting on such a committee will be heavily outnumbered by the representatives of government.

The committee is required to study the objections and come up with a recommendation as to whether they should be accepted or rejected within 14 days from the date of being established by the governor, who is then required to issue a determination in line with the committee's recommendation. However, in another potential flaw, the Law fails to specify a time period within which such determination must be issued.

Should there still be objections to the Plan after the issuance of the determination by the governor, the objectors are entitled to appeal to the local Administrative Court within 30 days of the issuance of the gubernatorial determination. The Administrative Court is then required to enter a decision within 30 days of the case's listing. From the Administrative Court, a further appeal may be brought directly to the Supreme Court within 14 days, thus bypassing the normal appellate court process. The Supreme Court is then required to hand down a decision within 30 days of the listing of the appeal.

Under article 25, a gubernatorial determination remains valid for two years, extendable for a further year, after which time it lapses and the process must be repeated in respect of any land that has yet to be acquired.

Implementation

The National Land Agency ("**NLA**") is charged with responsibility for actually carrying out the nuts and bolts of inventorying the owners/occupiers of the land and collecting other relevant data. This process must be completed within 30 days, and the results posted up at the village/sub-district office, district office and place where the land is located within not more than 14 days from the issuance of the NLA's findings. Objectors have a right of appeal against the findings to the NLA within 14 days from the date of announcement of the results, and the NLA must then recheck its findings and report back within another 14 days.

The final results of the inventorying process provide the basis for determining the Entitled Parties who will receive compensation.

Significantly for the prevention of speculation, following the issuance of a Gubernatorial Determination the Entitled Parties are prohibited from transferring title to any third party.

Valuation

The next stage in the process is for the NLA to appoint a legally qualified appraiser to value the land. Such appraiser is personally accountable for his or her valuation and is liable to criminal and/or civil sanctions in respect of any violation of his duties and responsibilities. The valuation of the land must be based on its value at the time when the Gubernatorial Determination was issued, which again helps reduce the risk of speculation. Compensation is payable in respect of the land itself, the space above and below the land, buildings situate and things growing on the land, and other appraisable benefits of the land. It is the appraiser's valuation that provides the basis for negotiations on compensation.

Article 35 affords additional protection for Entitled Parties. If a parcel of land is no longer functional after an acquisition, Entitled Parties must be compensated in full for the entire parcel of land even if the entire parcel was not actually acquired.

The legislation provides that the NLA is required to enter into negotiations on compensation with Entitled Parties within 30 days of receipt of the valuation from the Appraiser. Should no agreement be forthcoming, the Entitled Parties may appeal against the valuation to the local District Court within not more than 14 days after the conclusion of the negotiations. The District Court is then required to make a determination within 30 days. Should the Entitled Parties object to the District Court's decision, they may file an appeal directly to the Supreme Court within 14 days, thus bypassing the appellate court. Upon receiving such appeal, the Supreme Court is required to hand down a decision within not more than 30 days.

Article 40 stipulates that compensation must be provided directly to the Entitled Parties, rather than furnished on a communal basis – something that has provided fertile ground for injustice in the past.

Upon receipt of compensation, an Entitled Party is required to relinquish title to the land, and to deliver proof of ownership or title to the Acquirer through the NLA.

For implementation purposes, the Land Acquisition Law envisages the issuing of ancillary provisions by way of presidential regulation. These must be issued within one year counting from the date of promulgation of the legislation on 14 January 2012. It was recently reported in the media that the required presidential regulations are likely to be issued in March 2012.

Conclusion

While it will be necessary to wait for the presidential regulations to be issued in order to see how the Land Acquisition Law will operate in practice, there is no doubt that its enactment marks a major step forward in Indonesia's efforts to accelerate much needed infrastructural development. The legislation goes to significant lengths to protect the rights of landowners and occupiers, and recognizes the rights of the public and communities to be consulted about projects that affect them, while at the same time

ensuring that the rights of society are also recognized and upheld. Furthermore, it goes a long way to tackling the vexed question of “project inflation” resulting from speculation. However, given the long history of agrarian and land disputes in Indonesia, it would be brave indeed to suggest that the compulsory acquisition regime established by the legislation will be universally accepted.

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