

LAND PROCUREMENT FOR PUBLIC INTEREST DEVELOPMENT IN INDONESIA

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Abstract

This research aims to identify the rules and processes of land procurement for public interest development in Indonesia. The researcher used a descriptive qualitative method and obtained data through library research. The primary data consists of regulations on land procurement for public interest development. The research concludes that regulations for land procurement in Indonesia for public interest development can be found in various levels of legislation, including laws and government regulations. The process consists of four steps: planning, preparation, implementation, and submission of the results.

Abstrak:

Penelitian ini bertujuan untuk mengidentifikasi peraturan dan proses pembebasan lahan untuk pembangunan kepentingan umum di Indonesia. Dalam penelitian ini peneliti menggunakan metode deskriptif kualitatif, dan memperoleh data melalui studi kepustakaan. Data primer terdiri dari peraturan-peraturan tentang pengadaan tanah untuk pembangunan kepentingan umum. Berdasarkan penelitian ini disimpulkan bahwa peraturan pengadaan tanah di Indonesia untuk pembangunan kepentingan umum dapat ditemukan dalam berbagai tingkatan peraturan perundang-undangan, termasuk undang-undang, peraturan pemerintah, dan peraturan menteri. Proses pengadaan tanah untuk pembangunan untuk kepentingan umum terdiri dari empat tahap, yaitu perencanaan, persiapan, pelaksanaan, dan penyerahan hasil.

A. Introduction

The Indonesian Constitution gives the Indonesian government the mandate to create a prosperous society for all Indonesian society. In order to implement the mandate, the Indonesian government, no matter who the leader is, has to organize the development, including development for public interest. Based on Collins Dictionary (2019), public interest is defined as the welfare or

well-being of the general public, or appeal or relevance to the general populace. Another definition of public interest can be found in Law Number 2 of 2012 on Land Procurement for Public Interest Development. This law defines public interest as the interest of the nation, state, and society that must be realized by the government and used for the greatest benefit of the people.

In the process, the development for public interest should be supported by land on which the development will be located. Nevertheless, the process of land procurement is a significant obstacle in the development process. It is not a simple task as commonly perceived. In many cases, land procurement for public interest development can trigger conflicts in society. Based on this fact, it is important to understand the rules and procedures of land procurement for development in the public interest.

B. Methods

The writers use descriptive qualitative method because the data that the writer uses are in the form of words. To get the data needed to complete this journal, the writers use library research. The primary data that the writer uses are the regulation concerning land procurement for public interest development.

C. The Rules of Procurement for Public Interest Development in Indonesia

The rules for land procurement for public interest development consists of several regulations, from the top level to the lower level, namely law, government regulation, presidential regulation, and ministerial regulation. In more detail, the main regulations for land procurement for public interest development in Indonesia are explained as follows.

1. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles

In relation to the land procurement, Article 18 of the Law No. 5 of 1960 stipulates that in the public interests, including the interest of the nation and the state, as well as the general interest of the public, land rights may be revoked with the payment of adequate compensation and in accordance with the procedure laid down in the law. The provision of Article 18 of Law No. 5 of 1960 doesn't clearly regulate the process of the land procurement for public interest development in Indonesia. It only regulates the basic principles that the land rights can be revoked to be used for the public interest, including the nation and state interest as well as the common interest of the people, after the entitled party has been given adequate compensation and in accordance with the method regulated by the law.

2. Law Number 2 of 2012 concerning Land Procurement for Public Interest Development

Based on the provisions of Law No. 2 of 2012, land procurement for public interest development are carried out based on 10 (ten) principles, namely the principle of humanity, the principle of justice, the principle of expediency, the principle of certainty, the principle of openness, the principle of agreement, the principle of participation, the principle of welfare, the principle of sustainability, and the principle of harmony.

Law No. 2 of 2012 stipulates that the government and/or local authorities shall guarantee the availability of land and funds for public interest, namely the interest of the nation, the state and the public, which shall be realized by the government and used as much as possible for the prosperity of the people. The materials also stipulate that the entitled party, namely the party who controls or owns the object of land procurement, must release its land at the time of land procurement for development in public interest, after the compensations have been given for them or based on a final court decision.

Based on Law No. 2 of 2012, the land procurement for public interest must be carried out by the government and the land will subsequently be owned by the government or local government. If the land procurement for public interest is carried out by a state-owned enterprise, the land will be owned by the entity. The land procurement for public interest is carried out by 4 (four) basic steps, namely planning, preparation, implementation, and submission of results.

3. Law No 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Act Number 2 of 2022 Concerning Job Creation into Law

Law No. 6 of 2023 is an omnibus, which means that the law consolidates changes from various legalities into a single law. In relation to land procurement, Act number 6 of 2023 amended and added provisions to Law No. 2 of 2012.

These provisions include mechanisms for changing forest areas, the scope of development in the public interest, the role of the Ministry of Land Affairs in the land procurement process, the process of public consultation, the acceleration of land procurement, and the procedures and forms of compensation in land procurement.

4. Government Regulation Number 19 of 2021 concerning Implementation of Land Procurement for Public Interest Development as amended by Government Regulation Number 39 of 2023

The government regulation number 19 of 2021 is a regulation that implements the provisions of Act number 11 of 2020 concerning Job Creation. Government Regulation No. 19 of 2021 regulates more details about implementation of land procurement for development in public interest since the planning process to submission of result, including some provisions related to special treatment for national strategic projects.

In 2023, The Government Regulation No. 19 of 2021 was amended by Government Regulation No. 39 of 2023. The Government Regulation No. 39 of 2023 has amended various articles of Government Regulation No. 19 of 2021. The focus is on the some matters, including phases of the land procurement process, such as the planning, preparation, implementation, and compensation stages; the roles and responsibilities of various parties involved in the process, such as the state agency that needs land, the land office, the land valuation team, and the land rights holders; procedures for changing the status and obtaining permission for land acquisition from different types of land, such as state land, forest land, village land, customary land, agricultural land, and asset land.

D. The Process of Land Procurement for Public Interest Development

Based on regulations above, the process of land procurement for development in public interest consists of 4 (four) main steps, namely planning, preparation, implementation, and submission of the result. Each process will be explained below.

1. Planning

Planning is the initial stage in the process of land procurement for public interest development. In this stage, the agency requiring land must plan for land procurement by involving the Ministry of Land Affairs and/or related agencies. Planning for land procurement is based on regional spatial plans, national or regional development plans, strategic plans, and work plans of each agency that requires land. To plan for land procurement, the agency requiring land may appoints a professional agency and or expert.

This planning for land procurement is arranged in the form of document planning for land procurement, and should be assigned by the leader of the agency requiring land. The planning of the land procurement document is based on a feasibility study that includes a socio-economic survey, location suitability, costs and benefits analysis for regional and community development, estimated land value, studies on environmental and social impacts that may arise as a result of land procurement and development, and other studies that are needed. Hereinafter, the agency requiring land then submits the document to the governor, regent, or mayor.

The planning for land procurement is valid for a maximum of 2 (two) years, and can be updated by the agency requiring land if the term has passed.

2. Preparation

In the preparation stage, the governor begins to implement the preparation stage after receiving the planning for land procurement document from the agency requiring land. The governor then establishes a preparation team, which the members consist of the regent/mayor, officials from the province where the project will take place, the land affairs agency, and any other necessary agencies. The preparation team has several roles, such as implementing the announcement of development planning to the public, collecting initial data on the location of development planning, carrying out public consultations, preparing the development location, and announcing the determination of the development location.

The public is informed of the development planning for the project either directly at the project location or indirectly through printing press and/or electronic media. This activity is carried out within 3 (three) days after the team of preparation is established by the governor. Furthermore, the outcome of this activity is documented in a socialization report.

Initial data collection about development planning location is carried out by collecting initial data of the entitled party and the object of land procurement. The activity is carried out by the preparation team within a maximum of 30 (thirty) days. Furthermore, the outcome of this process is a temporary list of the entitled party and the object of land procurement. This

document is signed by the leader of the preparation team. And it will be used as material for public consultation. The results of the public consultation on development planning will be documented in an agreement concerning the location of development. Based on this document, the agency that requires land may request the governor to stipulate the location of development for a maximum of 5 (five) days. If the development requires land of no more than 5 hectares, the determination of the development's location must be submitted to the mayor or regent.

The determination of the development location is issued by the governor, or by the mayor or regent if the development requires land of no more than 5 hectares. The determination is valid for a maximum of 3 (three) years and can be extended for 1 (one) year.

3. Implementation

The implementation of land procurement for public interest development is carried out by the Minister of Land Affairs, and implemented by the head of the regional office of land affairs, a vertical agency of the Ministry of Land Affairs in province, as the chief of land procurement implementation. To implement land procurement, the head of the regional office of land affairs establishes a land procurement implementer. The members of this implementer consist of at least officials in charge of land procurement affairs within the regional office of land affairs, the head of the local land office at the land procurement location, provincial officials in charge of land affairs, the local sub-district head at the land procurement location, and the urban or rural village head, or another official at the land procurement location.

To implement land procurement, the chief of land procurement implementation forms a task force consisting of Task Force A which is responsible for collecting physical land procurement data objects, and Task Force B which is responsible for collecting juridical land procurement data. These activities are referred to as inventory and identification activities. In addition to Task Force A and Task Force B, the chief of implementer of the land procurement may form one or more task forces as needed for the implementation of land procurement. The chairman of the Task Force submits the inventory and identification results to the chief of land procurement implementation. The results will be announced at the urban or rural village office, sub-district office, and construction location within a maximum period of 14 (fourteen) days. The announcement of the result of the inventory and identification or the result of verification and correction will be used to determine the entitled party for compensation.

The final steps of the land procurement implementation process involve releasing the land procurement object and terminating legal relations between the entitled party and the land procurement object. To release the land procurement object, the entitled party must relinquish its rights to the country in front of the head of the land agency or the land official appointed by the chief of implementing land procurement. The release of the land procurement object rights should also be documented in the minutes.

4. Submission of The Result

The final stage of land procurement for public interest development involves submitting the result. During this stage, the chief of land procurement implementation relinquishes the result of land procurement to the agency requiring the land, along with the procurement data. This must be done within 14 days of the release of the right of the land procurement object.

Upon submission of the final result, the duties and responsibilities of the implementing land procurement come to an end. The agency requiring land may partially or fully carry out development after receiving the land procurement results from the chief of land procurement implementation.

E. Conclusion and Suggestion

1. Conclusion

Based on the explanation above, the land procurement for public interest development in Indonesia can be concluded as follows:

- a. The rules of land procurement for public interest development can be found in some of main regulations, from the highest level to the lowest level, namely Law No. 5 of 1960, Law Number 2 of 2012, Law No 6 of 2023, Government Regulation Number 19 of 2021 as amended by Government Regulation Number 39 of 2023, and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 19 of 2021.
- b. The process of land procurement for public interest development consists of 4 (four) main stages, namely:
 - 1) planning, which the end of result is land procurement document planning;
 - 2) preparation, consisting of several activities, includes the announcement of development planning, initial data collection of the development planning location, public consultation on development planning, determination of the location of development, and announcement of the determination of the location of development;
 - 3) implementation, consisting of several activities, include the appointment of an appraiser, deliberation on determining the form of compensation, provision of compensation, compensation custody, release of the land procurement object, and termination of legal relations between the entitled party and the land procurement object; and
 - 4) submission of the result, which the chief of land procurement implementation, relinquishes the results of land procurement to the agency requiring the land, along with the procurement data.

2. Suggestion

The land procurement process plays a significant role in the implementation of public interest development. Based on these circumstances, several suggestions are important for the government to take into account, namely:

- a. the government is required to adhere to the land procurement procedures outlined in the regulations and ensure that they are communicated effectively to the public; and
- b. the government must evaluate the procedure for land procurement for public interest development in light of changing societal circumstances.

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