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Compiled Reports of World Bank Land Acquisition Research in Indonesia

The Macroeconomic Cost of Indonesia's Land Acquisition Delays

1. The problem the Indonesian government has in acquiring land for infrastructure imposes a cost on the country. The size of the cost is uncertain, but it probably amounts to several billion dollars. We arrive below at a very rough estimate of $5–10 billion.

2. This estimate has two parts. The first is a guess at the amount of infrastructure Indonesia is missing, or gets later than otherwise, because of the land problem. Although land is needed for new ports, airports, railways, water-drainage canals, power plants, and power-transmission lines, we simplify by ignoring everything but roads. We consider a road building program and suppose that the new roads would be built more quickly if the land problem were solved. Specifically, we assume that it would take 10 years for Indonesia to increase its stock of roads by 5 percent under current policy and that it would take only 5 years if the land problem were solved. Thus we assume that the problem of land acquisition delays but doesn't permanently prevent the construction of roads.

3. The second part is an estimate of the amount by which roads increase Indonesia's wealth (the present value of its future GDP). Here we use César Calderón and Luis Servén's research relating a country's rate of economic growth to the quantity and quality of its infrastructure. This research suggests that the stock of roads would increase Indonesia's average annual rate of economic growth by about 5 basis points. Building the roads sooner means that this small acceleration happens sooner. Assuming a baseline growth rate of 5 percent and a discount rate of 10 percent, this increase in growth translates into an increase in Indonesia's wealth of $9 billion.

4. From this must be subtracted the costs, in present values, of building these roads sooner rather than later, and of maintaining them in the meantime. We assume that the roads cost $0.5 million a kilometer to construct and $20 thousand a kilometer each year to maintain. Subtracting the present value of the additional costs from the estimated increase in wealth, we get an estimate of about $7 billion.

5. Obviously the estimate is extremely rough and the true value could be quite different. It could be billions less if the land problem had a much smaller effect on road building than we have assumed. It could be billions higher if the true discount rate was, for example, 7 percent instead of 10 percent. We express the estimate as a range, $5–$10 billion, to indicate, informally, that it is very rough.

6. The attached table sets out the assumptions in more detail. The emailed spreadsheet contains the numerical calculations. Corrections, suggestions, and other comments are welcome.

Table of assumptions

Parameter or issue	Assumption	Comment
Infrastructure industries affected by land-acquisition problem	Roads	We may be able to incorporate other industries in the estimate.
Total length of roads in Indonesia now	339,000 km	Indonesia Public Expenditure Review 2007
of which paved	205,000 km	
Additional road building that is considered	5 percent of existing stock (17,000 km)	Arbitrary guess for the moment. We assume that the effect of solving the land problem is an immediate, but transitory, increase of this amount in the length of roads in Indonesia.
Years to build under status quo	10 years	
Years to build in absence of land-acquisition problem	5 years	
Proportion of new roads that is paved	Same as existing proportion (61 percent)	This assumption is easy to change, but should be consistent with the assumptions about cost mentioned below.
Indonesia's current GDP	$375 billion	
Long-term baseline growth rate	5 percent	
Increase in growth rate if new roads are built	5 basis points	Calderón and Servén (2004). The estimates used are world-average elasticities of growth with respect to paved and unpaved roads. We may be able to use estimates based on Indonesian or regional data.
Discount rate (real)	10 percent	Rough guess.
Average cost of construction per kilometer of new roads	$0.5 million	Based in part on information provided by Greg Wood and Sally Burningham
Average annual cost of maintenance per kilometer of new road	$20,000	Based in part on information provided by Sally Burningham and the Implementation Completion Report for the Eastern Indonesia Region Transport Project (page 13) (but made more conservative).

More on the econometric approach

7. We assume that Indonesia's GDP grows at a rate that depends on, among many other things, the quantity and quality of its roads. Specifically, we use Calderón and Servén's (2004) results. The dependent variable in their model is the rate of growth of output y, measured as a change in logs. They estimate an equation of the following form:

$$\Delta \ln y = \alpha \ln(R/A) + \beta(P/R) + \cdots$$

8. where R is the total length of roads in thousands of kilometers; P is the length of paved roads in thousands of kilometers; A is the area of the country in square kilometers; and the ellipsis indicates a set of control variables.[1]

9. If we denote the total and paved lengths of missing roads by R' and P', respectively, the effect on growth of the missing roads can be written as

$$\Delta(\Delta \ln y) = \alpha \ln \frac{R'}{R} + \beta\left(\frac{P'}{R'} - \frac{P}{R}\right).$$

10. Calderón and Servén's estimates imply values of 0.011 for α and 0.00366 for β.

[1] To be precise, Calderón and Servén estimate an equation in which the relevant independent variables are composite measures of the quality and quantity of a country's infrastructure stock. The weight of roads in their composite measure of quantity is 0.5, and the weight of the ratio of paved roads to total roads in their composite measure of quality is 0.56. The values of the coefficients α and β given in the text are calculated by multiplying the coefficients reported in Calderón and Servén (2004) by these weights.

Legal, Budgetary and Institutional Factors underlying Land Acquisition for Infrastructure Projects in Indonesia

I. Legal Framework

A. Land Rights

- The Basic Regulations on Agrarian Affairs, Law No. 5 of 1960 (the Law), is the corner stone of the legal system on land rights in Indonesia. It was enacted to achieve a just and prosperous society (Elucidation at I refers) and to supersede the former colonial agrarian legal framework which included the *domain principle* that granted ownership of the land to the colonial Government. The Law parts away from this concept and mandates that ownership of the land should rest with individuals and associations of individuals rather than with the State or Government. The Law recognizes the unique *hak ulayat* relationship of the Indonesian nation with the land, water and airspace that constitute the Republic of Indonesia, and provides Government with the powers to grant the right of ownership over land solely to Indonesian citizens and juridical persons, *hak milik*. Finally, the Law also recognizes certain specified rights for the use of the land for a prescribed period of time. These are the right of exploitation, *Hak-guna-usaha*, the right of building, *Hak-guna-bangunan*, the right to use, *Hak pakai*, the right to lease, *Hak sewa*, the right of opening-up of land, *Hak membuka Tanah*, the right of collecting forest products, *Hak memungut hasil hutan*, and other rights as may be regulated by law. **One must keep in mind these several and diverse rights on land since they have a direct bearing in how compensation is calculated when the right is to be acquired through negotiations (Perpres 36 as amended) or compulsory acquired (Law No.20 of 1961)**

B. Revocation of Rights on Land for Public Purposes

- The Constitution does not include the **right of eminent domain**, i.e., the right of the State to revoke rights on land and objects thereon from its rightful holder(s) for public purposes and against payment of compensation (compulsory acquisition or expropriation). Instead, this right is embedded in article 18 of the Basic Regulations on Agrarian Affairs, Law No. 5 of 1960 as further implemented by Law No. 20 of 1961 on the Revocation of Rights on Land and the Objects Thereon. The exercise of the **right of eminent domain** is further regulated by Government Regulation No. 39 of 1973 and the Instruction of the President of the Republic dated 17 November 1973.
- The **right of eminent domain** has been seldom used in Indonesia. In brief, the process for exercising the right is long and protracted aimed at protecting the individual right holders from unjust excesses of power by Government. Curious enough, **the doctrine of the right of eminent domain as a principle of Law was developed in the world precisely to provide for the protection of land rights as inalienable rights. In Indonesia, however, the right is applied only in extreme cases. The consensus or negotiated approach is the preferred method for acquisition of land rights for public purposes.**

- Under the legal framework for applying the **right of eminent domain**, Only the President of the Republic has the right to revoke land rights for public purposes against payment of compensation, and only after negotiations have failed to reach agreement for the acquisition of the land rights by the Government from the rightful holder(s), and under recommendation from the Head of Region, Minister of Agrarian Affairs and Minister of Justice and other related ministers. The High Court may be requested by the affected right land holder to intervene to decide exclusively on the adequacy of the compensation being proposed to be paid. However the decision on revocation of land rights is not subject of being reviewed by the courts. (Elucidation Article (4) a.)
- Kepress (Presidential Decree) No. 55 of 1993, Perpres (Presidential Regulations) 36 of 2005 and Perpres 65 of 2006 outline the type of activities that can be deemed to fall within the concept of **public purpose.** Article 3 of Perpres 36, as amended, provides for the current list of activities that are deemed to be for **public purpose**. While the main trust of these Presidential Decrees is to regulate on the acquisition of land rights and payment of compensation through **negotiations** between the rightful land right holder and the Government, they also provide for the process to be followed for applying the **right of eminent domain** in case of failure in reaching agreement.
- It is noteworthy that for government to initiate the process for acquisition of land rights through negotiations under Kepres 55, the acquisition must be for a public purpose.
- **One can say with some degree of certainty that expropriation or compulsory acquisition of land rights is alien to the Indonesian culture. While the right of eminent domain is provided for in the legal system, there is not much experience in its application, or one could add, political will in applying it. The legal system favors the acquisition of land rights for public purposes through negotiations whereby the State must act in its capacity of a private juridical person – i.e., purchasing land rights – rather than exercising its right of eminent domain as a public juridical person, i.e., compulsory acquisition of land rights.**

C. Acquisition of Land Rights for Public Purposes by Consensus

- Perpres No. 36 of 2005, as amended by Perpres No. 65 of 2006, supersede the provisions of Kepress 55 of 1993. It constitutes the current enabling legislation for Government to acquire land rights for public purposes through the **consent of the lawful holder** of the land right. The consent can be withheld if no agreement is reached on the mode and amount of compensation to be paid. The process for compulsory acquisition is also included though as indicated under B above it has been seldom applied.
- Notwithstanding the stated objective of Law No. 5 of 1960, i.e., to achieve a just and prosperous society, if no agreement is reached on the purchase price **the right of the individual may prevail over the right of the society** to undertake an activity for public purpose.
- It is important to note that under the above-mentioned negotiation process the Government is acting in its capacity as a private juridical person rather than exercising its sovereign right of revoking the land right by applying eminent domain. It is only in extreme cases that the latter would be exercised, if at all.

- Perpres No. 36, as amended, introduces some important changes in the land acquisition process for public purposes, though in essence maintains the conceptual approach of Kepres No. 55. Amongst these the principal that the acquisition must be for a public purpose.for government to initiate the process for acquisition of land rights through negotiations under Kepres 55.
- In addition to these Presidential Decrees, Guidelines were issued by the Minister of Public Works in 2005 on how to apply Kepres No. 55, and by BPN regarding the application of Perpres 36 as amended, BPN No. 3 of 2007. Noteworthy is the fact that the implementing regulations issued under Keppres No. 55 *remain valid as long as they do not conflict with the provisions of Perpres No. 36.* This may allow to interpret that the Minister of Public Works Guidelines of 2005 relating to the application of Kepres 55, remain valid as long as they do not conflict with the provisions of Perpres No. 36 and the Guidelines issued by BPN No. 3 of 2007. **Is advisable for Government to clarify this matter and issue a set of national guidelines** on the application of the Presidential Decrees concerned, including those relating to the construction of toll roads and private sector participation.

D. Valuation and Compensation of land rights.

- The **process for determining the valuation** of the land rights and thus the mode and amount of compensation **is not as transparent** as one would expect in what constitute in fact a private sector transaction, i.e., purchase of a land right between a willing buyer and a willing seller.
- While Perpres 36, as amended, calls for an **independent valuation** of the land rights by a Land Appraisal Company (see next bullet point), in line with the underlining concept of Kepres No. 55, Perpres 36 provides for a **committee** to be formed in its majority by public servants to **negotiate the amount of compensation** to be paid applying **NJOP value** (i.e., tax assessed value) as the starting price. Further, Perpres 36 mandates that in the absence of Land Appraisal Company, a **Land Appraisal Team** would be formed in its majority by public servants to assess the value of the land right, being NJOP value the base for valuation. **There is an implicit conflict of interest in this approach in as much as the "willing buyer" assesses the value and negotiates the price**. The Presidential Decree establishes the NJOP (tax value) as the base value for negotiations. In most cases outside the large urban areas, NJOP is below the price the rightful right land holder could obtain in the market. **This allows for payment of compensation below the fair market value which is not in line with the above stated objective of achieving a just and prosperous society**.
- To address in part the above conflict of interest, Perpres No. 36 introduces a new concept to determine the valuation of the land rights, i.e., the **valuation to be done by an independent third party, i.e., a Land Appraisal Company.** However, the related provision is not mandatory and provides the Government with the discretional power to establish a Land Committee to assess the value if a Land Appraisal Company is not available. **Further, the transparency and independence pursued by introducing valuation by an independent third party is eroded since there is no obligation to make publicly available the report of the Land Appraisal Company prior to the negotiations**.

- In essence Perpres No. 36, as amended, does not change nor intends to change the process for acquisition of land rights for public purposes through, the accepted practice of negotiations whereby Government holds a heavy hand in the process of valuation and in reaching agreement in the amount of compensation to be paid in the vast majority of cases.
- The type of land right being acquired determines the compensation to be **paid in a decreasing percentage** of the agreed valued of the land ranging from 100% for *Hak Milik* to 60% for lesser legal rights.
- Finally, the prescribed period of time for reaching agreement on the amount of compensation to be paid is extended to 120 days by Perpres 36, as amended.
- **One can conclude that the process of negotiations,** though well intended to protect individual rights**, as conceived and applied may also cause inequalities in the payment of compensation, lacks transparency, and contributes to delays in achieving the development objectives of the public purpose activity for which the land rights are being acquired. The process in essence could be seen as not assisting in achieving the stated objective of a just and prosperous society.**

E. Valuation and Compensation for Buildings, Houses, Crops and Trees

- Compensation for buildings and houses is to be done by applying regional prescribed standard prices for building materials with depreciation being applied, as established by the pertinent Government agency. Physical location of the affected assets is not factored in the valuation process, though we understand that prices for materials may vary from region to region. Crops and trees are also valued as per prescribed standard prices by the Head of Regional Agriculture Office.

F. Landless, Squatters, and Vulnerable People

- The current legal framework for acquisition of land rights either by applying the right of eminent domain (Law No. 20 of 1961) or through negotiations (Perpres 36, as amended) does not address the adverse effects of the taking of land for public purposes on those who do not have a legal right on the land being acquired for a public purpose or a vulnerable in the development process.

G. Limitations of the Legal Framework for Land Acquisition

- Compensation is provided **only to legal holders** of land rights.
- Compensation **only covers the cost** of acquiring the land rights.
- The type of land right being acquired determines the compensation to be **paid in a decreasing percentage** of the agreed price ranging from 100% for *Hak Milik* to 60% for lesser legal rights.
- **Neither compensation nor rehabilitation** measures are envisaged nor provided to legal holders to offset or mitigate the **adverse effects caused** on them **by displacement** (physical and economic) due to a public purpose project.
- **Landless and laborers** are **not** expected to be **compensated** regardless of the adverse effects that the acquisition of the land rights might cause on them (physical and economic) by a public purpose project.
- **Landless and laborers** are **not** provided with **rehabilitation** measures to offset or mitigate the adverse effects caused on them by displacement (physical and economic) due to a public purpose project.
- No special measure is being provided regarding the **treatment of vulnerable persons** being displaced by a public purpose project.
- No rehabilitation measure is envisaged for **squatters and others illegally** residing, working or cultivating the land whose rights are being acquired for a public purpose project.
- No rehabilitation measure is envisaged for **squatters and others illegally** residing, working or cultivating land assigned for a public purpose project and owned by Government or Government agencies.
- Method for valuation of the land rights (see para D above).
- Method for valuation of houses, building, trees and crops (see para E above).

H. Funding

- A main constraint being quoted for delays in acquisition of assets for infrastructure projects in Indonesia is the lack of adequate and timely funding, especially at the local level. It appears that substantial gaps exist between budgeted amounts and compensation to be paid through negotiations. This gap is in most cases caused by the use of tax value to determine the amounts to be budgeted. Of course the budgetary appropriations reflect less the real situation in those areas where the tax value is undervalued with regard to the market.
- The use of independent appraisals at the time of preparing the annual budgets may help to avoid or at least minimize the gap between what is budgeted and what in fact is to be paid. This is an issue of great importance that the Inter-Ministerial Group needs to look into and provide guidance both to the Central and Local governments.

I. Institutional Arrangements for Land Acquisition

- The use of a National Agency for land acquisition is a matter that needs further analysis. It may assist in addressing the funding aspects as well as implementing a uniform process for valuation of assets, compensation and provision of rehabilitation throughout Indonesia. As has been noted by others

concentrating in one agency such powers may have its downsides. It seems more appropriate for the Inter-Ministerial Group to outline basic principles and norms applicable throughout the country both for valuation of assets, budget preparation, compensation, provision of rehabilitation and a similar process for acquisition that will remove the existing causes for undue delays while providing fair treatment to all affected persons, which would be **in line with the above stated objective of achieving a just and prosperous society.**

J. Best Practices on Compensation and Rehabilitation

- The World Bank, the Asian Development Bank and other multilateral and bilateral financial entities have adopted policies dealing with the adverse effects on individuals, families and communities by the taking of assets to implement development projects. These policies include similar provisions and their aim is to improve or at least restore the livelihood of the affected persons to pre-project levels. These policies are of the most relevance to attain sustainable development. However few countries have adopted them as part of their domestic legislation. This anomaly creates a dual approach: projects funded by domestic or international commercial funding and those by the said multilateral and bilateral agencies. . For purposes of this Report we will refer exclusively to the policies of the World Bank and domestic legislation of selected member countries.
- In compliance with World Bank policies on Involuntary Displacement, its borrowers and project implementing entities undertake the legal obligation to provide compensation and rehabilitation measures to those directly displaced when assets are taken as a result of a World Bank-assisted project. Compensation for these assets must be made at replacement cost without depreciation. Rehabilitation measures are aimed at restoration at pre-project levels or improvement of livelihoods. The World Bank policy covers economic and physical displacement. It encompasses all those adversely affected whether they owned, lease, posses or illegally occupy the assets being taken. Borrowers in World Bank member countries in the East Asia and Pacific region are no exception to this requirement.
- It must be noted that most domestic legislation does not mandate compensation at replacement cost without depreciation nor include provision for rehabilitation assistance to illegal occupants of assets being taken. In as much as the World Bank loan agreements are deemed to be international agreements governed by international law, their provisions supersede those of domestic legislation. (General Conditions to Loan and Guarantee Agreements of the World Bank refer). Thus most World Bank borrowers are faced with the dilemma of applying domestic legislation breaching its obligations under an international agreement or applying the provisions agreed to with the multilateral agency.
- To breach the gap between domestic legislation of certain World Bank member countries and the above mentioned policy requirements, waivers to domestic legislation have been granted, on a case-by-case basis. A point in case is Vietnam. Alternatively additional compensation and or rehabilitation measures are granted to augment those set forth in domestic law. Such is the case of the Philippines among other member countries. In countries such as China the matter is obviated in rural areas whereby the commune rather than

individuals hold legal land use rights. Compensation and rehabilitation is provided to the commune rather than to individuals; the commune being entrusted with restoration and/or improvement of the livelihood of those being adversely affected. To further assist in this endeavor a Directive of the Central Government has recently augmented to 30% the amount of compensation for assets being taken. In addition, illegal possession of assets is not the norm in China. On the other side of the spectrum, India, for example, has incorporated in its domestic legislation the granting of rehabilitation measures due to displacement.

- The doctrine of eminent domain, i.e., the forced taking of assets for public purposes against payment of compensation is the legal process usually applied by governments in the East and South Asia regions. Among others, India, Philippines and Vietnam apply this legal principal.
- The amount of compensation rather than the expropriation can be challenged in the Courts as provided for in the domestic legislation of Philippines and India. Expropriation could be also challenged if the elements of public purpose would be absent from the application of the doctrine of eminent domain.

K. Recommended Issues to be addressed by the Inter-Ministerial Working Group

- Mandatory use of Land Appraisal Companies (LAC) for valuation of land, buildings, houses, crops and trees. Elimination of Land Appraisal Teams.
- Criteria for licensing LACs.
- Methodology for valuation of land, buildings, houses, crops and trees at market price (NJOP to be one of the comparables to determine market value).
- Transparency in the acquisition of land rights, buildings, crops and trees, i.e., making publicly available the LAC appraisal report to the affected persons prior to the negotiations as well as the minutes of negotiations.
- Revise the role of the Land Procurement Committees to expedite process.
- Provision of rehabilitation assistance to all displaced persons, including those illegally residing or cultivating.
- Special provisions on dealing with vulnerable persons in the development process
- Review and revise the funding mechanism to reduce the existing gap between what is being budgeted and what is actually being paid.
- Review and revise the process for valuation and acquisition of land rights and provision of compensation and rehabilitation measures to all displaced persons to minimize the use of negotiations and lack of transparency.
- Clarify if the Minister of Public Works Guidelines of 2005 relating to the application of Kepres 55, remains valid as long as they do not conflict with the provisions of Perpres No. 36 and the Guidelines issued by BPN No. 3 of 2007.
- The pros and cons of establishing a National Agency for Land Acquisition and Compensation.

Comparison of Public Sector and Private Sector Procedures for Land Acquisition

A. Overview

One of the most critical problems raised by stakeholders with regard to the provision of infrastructure in Indonesia is the difficulty of acquiring land. Land acquisition for infrastructure is carried out by the central government and by local governments. The process meets substantial delays for a number of reasons, such as ineffective procedures and lack of financing. Even though several legal instruments with regard to land acquisition for public purposes have been issued, based upon experiences, land acquisition still takes an unreasonable length of time. Land acquisition by private companies, however, is surprisingly fast compared to land acquisition by the Government.

This report focuses on the framework and challenges for land acquisition by the Government as well as comparison thereof with land acquisition by private sector.

B. Legal Framework

1. **Basic Regulation on Agrarian Affairs.** The basic provisions on land affairs are outlined in Agrarian Law No. 5/1960 (UUPA). This Law puts the rights of ownership as the highest and strongest right of land in Indonesia. By respecting this principle, however, the Law also governs that every rights of land shall have a social function, which means that there are certain events that should be prioritized towards private ownership.

   This Law explicitly states that eminent domain is no longer applied in Indonesia, as stipulated in the general elucidation. However, Article 18 stipulates that for public purposes, the Government is allowed to revoke the land rights from the land owner, which shall be carried out in accordance with the existing legislations.

2. **Presidential Regulation 36/2005 jo Presidential Regulation 65/2006.** For the purpose of infrastructure development in Indonesia, the President has issued regulation number 36/2005 (Perpres 36/2005), as amended by regulation number 65/2006. This Perpres stipulates that land acquisition is carried out by a land acquisition committee (P2T), established by Head of Region, which shall be based on negotiation. If negotiation fails, the P2T can determine the value of compensation based on independent appraiser, however its decision is not final upon the determination of price by P2T, the party who will acquire the land can put the money in the court.

   This Perpres has been implemented by BPN Regulation number 3/2007, which basically governs the technical procedures to be taken by P2T to exercise the land acquisition.

3. **Land Rights Expropriation.** As the implementation of Article 18 of UUPA, the Government has issued Law 20/1961 on land rights expropriation, which

generally governs that the Government, through the President, may revoke the land rights from the land owner by giving compensation, provided that the negotiation process has failed. This Law gives sole discretion to the Government to revoke land rights. However, due to political reason, this law is rarely implemented (only twice applied, namely: market project development in the Region of Senen (1962) and University of Indonesia project development in Ciputat (1965))

C. Land Acquisition by Private Sector

Land acquisition by private companies is a business to business transaction through negotiation with the basis of mutual consent (no compulsory acquisition). No requirement to follow complicated process as provided in Perpres 36.

In practice private companies will establish a single special land acquisition team dedicated to the project for negotiating with land owners. After the land has been fully acquired, the team will be dismissed.

Usually, a company has its own internal rules for land acquisition; however, in general, steps to be taken are the same. These steps are: approach the community, identify the land rights owner, negotiate, and conclude the transaction.

The company uses the NJOP (Tax Object Sale Value) as their basis for negotiation, but also takes into account the market value (local value).

D. Comparison between Land Acquisition by the Government and by Private Company

To make a comparison between the land acquisition by the Government and private company, we have conducted an observation towards several land acquisitions that have taken place in Indonesia.

To represent land acquisition by the Government, we have analyzed two big toll road concession projects: The Jakarta Outer Ring Road E1 Toll Road Development Project, which has been effectively operated since mid-2007, and Surabaya – Mojokerto Toll Road Development Project, which currently is still at the land acquisition stage. These two toll road projects are included in the suspended projects due to the economic crisis in 1997.

To represent the land acquisition by private companies, we have analyzed four companies, which conduct land acquisition process for their business purposes. These companies are: (a) PT WIKA Realty, an real-estate company, (b) PT Pembangunan Jaya, a development company, (c) PT Arutmin Indonesia, a minisng company, and (d) PT Kitadin, also a mining company.

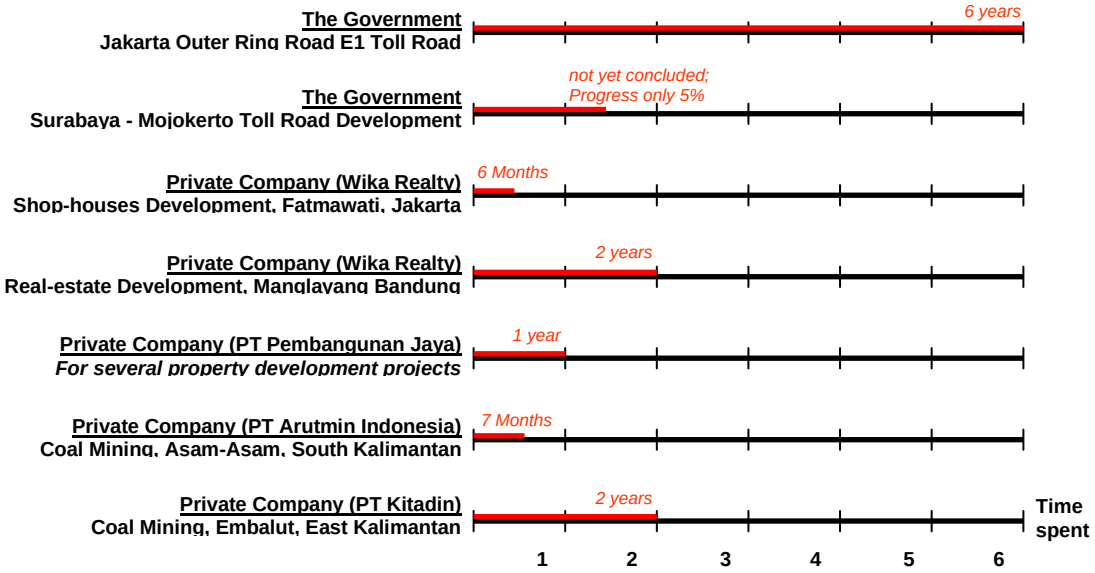
As a result of the general observation, one can conclude that the land acquisition by private company is much faster compared to land acquisition by the Government. The general practice can be summarized as shown in Table 1 and Table 2:

Table 1. Land Acquisition by the Government

Company/ Project	Year	Size of Land	Duration of Process	Note
By the Government				
Jakarta Outer Ring Road E1 Toll Road Development	1996-1997, 2002-2007	± 104 Ha	6 years	
Surabaya - Mojokerto Toll Road Development	2006-Now	± 346 Ha	Has taken 1,5 years	Progress only 5%
By Private Company				
PT Wika Realty – 1) Shop-houses Development, Fatmawati, Jakarta 2) Real-estate Development, Manglayang Bandung	2005 1995-1997	± 7000 m2 ± 20 Ha	6 months 2 years	
PT Pembangunan Jaya – *For several property development projects*	N / A	1 Cluster (6 Ha)	Maximum 1 Year	
PT Arutmin Indonesia – Coal Mining, Asam-Asam, South Kalimantan	2006	± 4000 Ha	7 Months	
PT Kitadin – Coal Mining, Embalut, East Kalimantan	2003-2006	± 2000 Ha	2 Years	

As shown above, we can make comparison between land acquisition by the Government and private company, as outlined in Chart 1.

Chart 1. Time Spent Comparison for Land Acquisition



Taking into account the understanding that in some cases private companies can conclude the land acquisition process within a short period of time, we have found basic differences between land acquisition by the Government and by private companies. Such differences can be seen in Table 2.

Table 2. Comparison between Land Acquisition by the Government and Private Company

Aspects	Land Acquisition by the Government	Land Acquisition by Private Company	Remarks
Implementing Institution	P2T, and other related Government Agencies	Single special team for certain project	• P2T carries out land acquisition with regional approach, not by section (projects); • The officers in P2T are taken from governmental agencies without release from their position, which renders P2T a second priority
Principles	Negotiation or compulsory acquisition	Negotiation	Compulsory land acquisition can only be exercised if the negotiation has failed and there is strong political will

Negotiation Basis for Compensation	Based on NJOP; Land valuation by independent appraisers is only used for the maximum price for compensation	Based on NJOP & Market Value	Land acquisition approach with NJOP (without taking market value into account) makes the negotiation process more difficult
Funding	Inflexible	Flexible	The funding for land acquisition by the Government shall follow the State/Regional Budget

E. Problems, Implications and Recommendations

The main problem faced by the government is lack of financing. Taking public and toll roads as examples, the Government does not have sufficient funds for financing both public and toll roads. In some regions, lack of funds is covered by local governments, where local governments take part in financing national roads with a certain percentage (80%-20%). The process is carried out through Perpres 36/2005 mechanisms.

Lack of the Government funds for land for toll roads is covered by the private sector through PPP schemes. Although the Road Law and Toll Road Government Regulation put the responsibility to provide land on the Government, in the Toll Road Concession Agreement (PPJT), the private sector is the one who finances the land, while implementation is carried out by Bina Marga (Public Works) with the facilitation of local governments through P2T. However, the problem now arises that in reality land price is much higher than that stipulated in PPJT. As an example, land price in Surabaya-Mojokerto section increased up to 10 times. Badan Pengatur Jalan Tol (BPJT) has proceeded yearly efforts to have the Government responsible to bear land price which is higher than as agreed. Recently the Minister of Finance issued a letter principally agree to bear the costs, and the Government is considering to put land-capping on it.

BLU is expected as another solution for land financing, but in practice this problem also occurs where private sector does not agree to pay interest. Currently BLU funds are idle in BPJT's account while at the same time BPJT has to pay interests to MoF.

Other problems are on the institution and procedures. P2T is considered as preventing the process, while the procedure in Perpres 36/2005 is considered as inefficient, while some are not implementable.

The summary of the land acquisition in Indonesia is summarized in the Table 3.

Table 3. Problems, Implications, and Recommendations

Procedures			
No	**Issue**	**Implication**	**Remarks**

a.	Procedures as set out in Perpres 36/2005 is not formulated in line with general legal principle	Some procedures cannot be legally implemented; e.g. the provision which states that construction can be started if the money has been put to the district court after price is determined by P2T	Need rewording on Perpres 36/2005, or put this provision into the higher hierarchy (Law)
b.	Compulsory land acquisition is rarely applied	Negotiation based process; The process takes long time	Difficult to be implemented due to political reasons
c.	Inventory: The administration of land ownership is not well organized; Many lands have double ownership (land certificate)	Dispute on land ownership	BPN should rearrange the process of land registration to avoid double ownership
d.	Compensation is only given to land right holder	No legal protection for other un-rightful residing (squatters, farmers, vulnerable, etc.) whose livelihood is closely related to the land	There should also be compensation/ other remedy for such un-rightful settlers
e.	No clear rehabilitation measurement	Affected people is not protected to mitigate the adverse effects caused on them by displacement	Rehabilitation measures need to be considered in accordance with international best practices
Institutional			
No	**Issue**	**Implication**	**Remarks**
a.	P2T fees based on percentage	does not encourage for price negotiation;	Should not base on percentage
b.	Honor for P2T is based on percentage (MoF Circular Letter No. 132/A/63/1996), This does not give incentive to P2T to negotiate in efficient price (higher price => higher honor)	P2T cannot work optimally	Revise the MoF Circular Letter No. 132/A/63/1996 by consulting to BPN (based on Article 7A President Regulation 65/2006)
c.	Regionally basis approach	Not effective	More effective if the approach is based on section
d.	Members double position in other Governmental agencies	The duty in P2T is not prioritized	Members of P2T should be non-active in their origin office
Funding			
No	**Issue**	**Implication**	**Remarks**
a.	General Land Acquisition: Through State/ Regional Budget mechanism	Inflexible; can not cover land price increase within a proper time	Should consider other mechanism, such as BLU concept as applied in toll road sector

b.	Toll Road sector land acquisition: Interest on revolving fund from MoF and BPJT	Hardly accepted by investors	Should revisit the interest policy
c.	Land acquisition funded by business entity: who should cover the outstanding payment if actual price is deviate from the initial estimated price?	Investor is discouraged if they have to cover such payment	Land acquisition is the responsibility of the Government