Indonesia: Timely Land Acquisition for Infrastructure Development

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I. Introduction

José V. Zevallos

This report consists of four technical papers that were prepared for the International Workshop on Land Acquisition for Projects in the Public Interest (11 March 2010) and subsequently revised and improved.

The first paper, “Land Acquisition for Toll Roads in Indonesia: Why is it Still Slow”, by Lis Nainggolan, examines the factors that have delayed land acquisition for the Trans Java Toll Road (TJTR) project (a priority project that links Jakarta to Surabaya) and recommends measures to avoid delays in the future. The factors that contributed to delays include:

- **Opposition of the land owners to the road alignment.** Decisions on the road alignment were often made without considering the potential social impacts of various alternatives and without proper consultations with the Project-Affected People (PAP) and local authorities.

- **Inadequate budgets.** Some sections of the TJTR were designed and approved without good estimates of the cost of compensating for and mitigating the adverse impacts of right of way acquisition. The value of affected land was estimated on the basis of the NJOP – Nilai Jual Objek Pajak (i.e. STVO – Selling Value of Taxable Objects), which tends to be below the current market value of the affected properties. As a result, budget allocations were not sufficient to compensate land owners according to the market value of their properties. Budget deficits had to be covered using the budget for the next fiscal year, which delayed land acquisition.

- **Disagreements about land values.** The valuation methodology used to assess the value of land within the Right of Way (RoW) created problems during the negotiations. Licensed appraisers used a “cluster approach” to value the land affected by the project. Under this approach, each village is considered a “cluster,” and a range of land values are calculated for each cluster. Land appraisers do not value properties individually, but determine the minimum and maximum value of land within a cluster or village. Due to budget limitations, the price offered to the land owners was usually the minimum or close to the minimum. As a result, the land owners often reject the offers, which prolonged the negotiation process.

- **Inadequate compensation.** Land owners were offered compensation for the loss of land and other assets on the land. However, they were not compensated for other losses such as the following: monetary losses caused by relocation; transactions costs (such as the cost of registering new properties, in cases where persons have to replace the property taken for the project); losses caused by the interruption of businesses; and severance damage (the reduction of value of a person’s residual land caused by the taking of the land required for the project).

1 José V. Zevallos is a Social Development Specialist at the World Bank.
**Land speculation.** The lack of transparent compensation procedures facilitated the intervention of land speculators, who slowed down the negotiation process. In several instances, land speculators represented affected communities for a fee. Speculators took advantage of the communities’ distrust of the government and persuaded PAP to ask for compensation levels that were higher than what the available budget could accommodate, contributing to deadlock in negotiations. This happened, for example, in one sub-section of the Semarang-Solo and Pejagan-Pemalang section, where speculators intervened with the PAP and the negotiation became deadlocked.

The paper makes the following recommendations for avoiding conflicts and delays during the land acquisition process:

- Project design and decisions on the road alignment must take into account: a) concerns expressed by affected communities during the consultation process; and b) findings of environmental and social impact assessment for road projects.

- Project budgets should be based on an adequate estimation of the value of the land and other assets to be affected by projects, as well as the cost of covering other losses of land owners and other displaced persons (relocations costs, business interruption, income/livelihood losses, etc.).

- Compensation procedures need to be fair and to be perceived as fair by the public. Internationally accepted valuation standards should be used to determine the market value of affected assets (land, structures, plants and other assets).

- Consider paying a premium (on top of the market value of the land) to create an incentive for negotiated settlements and to avoid court cases. This premium would not be paid if the case goes to court (i.e. if the land owner rejects the government’s offer).

- Establish a clear legal process in cases where land owners reject the government’s offer. In cases where the compensation is consigned with the court, allow the affected land owners to withdraw the compensation without giving up their right to appeal. If there is an appeal, the court would decide if additional payments are in order.

The second paper, “Timely Land Acquisition for Infrastructure Development: International Practices Relevant for Indonesia”, by Sopon Pornchokchai, reviews international practices in land acquisition for infrastructure projects. The paper discusses the methods used to value the land and other assets affected by projects and to determine the compensation that should be provided to property owners and other displaced persons. The paper presents practices from 13 different countries\(^2\) and discusses some innovative concepts for land valuation and land acquisition that have special relevance for developing countries.

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\(^2\) Australia, Brunei Darussalam, Cambodia, Canada, Japan, Malaysia, The Philippines, South Africa, Thailand, USA and Vietnam.
Common international practices in land acquisition for projects in the public interest include:

- Property owners are compensated for (1) loss of land and other assets on the land, (2) severance (reduction of value of a person’s residual land caused merely by the taking of another part of the person’s property), (3) injurious affection (reduction of value of a person’s residual land caused by the intended use of the land taken) and (4) disturbance (relocation costs and lost revenue).

- In most countries compensation is determined on the basis of International Valuation Standards (IVS) or similar standards, such as those of the USA or the UK. However, in many developing countries real property valuation can be challenging due to limited data availability.

- Delays in the implementation of infrastructure projects are often related to inadequate systems to compensate property owners and other displaced persons.

- The provision of compensation and assistance to slum dwellers can help avoid conflicts and construction delays. However, the use of public funds for this purpose can be a sensitive issue for other taxpayers. A case study of an informal settlement shows that it is financially feasible to compensate slum dwellers while paving the way for a profitable development that delivers public benefits.

- Informal settlements should be relocated, and settlers compensated and assisted in their efforts to gain access to formal housing if the project that causes their displacement is worthwhile to the public. If not, they should be allowed to stay where they are.

- Road projects raise land values and, therefore, have the potential to generate profits. If these profits are realized, higher compensation can be paid to the land owners whose properties are acquired for road construction.

The paper makes the following recommendations:

- Land acquisition procedures for projects in the public interest must be clearly explained to the affected persons, so that they can understand them and know what to expect.

- The land and other assets affected by projects should be valued in a professional, fair and transparent manner, so it is acceptable to the all parties involved.

- The market value of the land taken for projects, and how it is calculated, must be understood by all parties involved. An additional payment to cover transaction costs and to provide an incentive over and above an amount that covers all quantifiable losses, can facilitate land acquisition and help avoid costly project delays.
A single property acquisition authority (responsible for all aspects of property acquisition, including valuation, negotiation with property owners, provision of resettlement sites, referral services, etc.) can help ensure consistency in property valuation and in the provision of compensation to the owners. Such an authority would provide a platform for the pooling of knowledge and resources from different institutions. Specific tasks, such as valuation, can be outsourced, as long as a quality assurance system is in place.

In countries where data on land values and real estate transactions is limited, a Real Estate Information Center (RSIC) should be established to develop a database for land valuation, taxation and other purposes.

A reporting system of transaction prices should be established to facilitate the determination of the market value of properties. All transaction prices should be reported, and penalties should be imposed for failure to report accurately. People can be encouraged to report accurately by reducing stamp duties (for the changes of ownership) and transfer fees and by charging high fines to those who fail to report accurately. A property gain tax (tax on the amount of value exceeding the original acquired value) might also be introduced to encourage accurate reporting.

Private properties with a value exceeding a certain amount (e.g. one billion rupiah) should be valued by an independent appraiser or valuation firm prior to sale. The value appraised would be used for taxation purposes.

Information on property prices transacted must be disclosed to the public. The disclosure of transacted prices will not violate business confidentiality inasmuch as the business is transparent.

In cases where there are no public records or the public records are not reliable, field research should be conducted to obtain data on an adequate number of comparable properties. In such cases, public authorities must absorb the additional costs of data collection.

The feasibility of the actions listed above depends on the degree of understanding of valuation practices by the public, and the acceptance and support of politicians. Politicians can benefit from improvements in valuation and compensation practices, to the extent that they facilitate land acquisition for infrastructure development.

The third paper, “Land Valuation in the Context of Land Acquisition for Public Use”, by Okky Danuza, provides an overview of the Indonesian Valuation Standard (SPI), which sets the standards for property valuation in Indonesia, and the current system for certifying Indonesian appraisal professionals. The paper discusses various methodologies that are used by Indonesian appraisers, describes the steps in carrying out property appraisals, and explains the methods are most appropriate for particular valuation activities. Finally, the paper proposes a methodology for the valuation of losses that should be subject to compensation in the context of land acquisition for public use.
The paper compares market transactions in which the seller can refuse to sell his or her property and transactions for projects in the public interest, in which the seller can be forced to sell. In a regular market transaction, if the buyer needs a particular piece of land (for example, to extend his or her house), the buyer would have to make an attractive offer to the seller. The offer would have to cover the market value of the property, plus any transaction costs and other costs, such as moving expenses. In addition, the seller would have to offer an additional payment to incentivize the seller to sell. Without an additional payment, the transaction offers no net benefit to the seller.

In cases of land acquisition for public use, however, the government frequently offers low compensation rates with the argument that the land take has a public purpose and that it has budget constraints. In such cases, landowners are likely to refuse to sell their properties, which can delay land acquisition and project construction.

When land is acquired for public use, the main issue is not whether a community or a property owner is willing to give up its rights, but rather how much compensation is adequate for the community or property owner to become willing to give up those rights. In this regard, the paper makes the following recommendations:

- Compensation should be paid for the loss of physical assets (land, buildings, plants, crops, etc.) and or non-physical costs and losses (transaction costs, moving costs and business interruption).

- The minimum amount of compensation for the loss of land should be the market value of the land. When estimating the market value, the effects of the development plan on land values should not be taken into account.

- Appraisals of the value of plots of land affected by project should be carried out plot by plot. It is not appropriate to undertake a mass appraisal based on zoning patterns because the value of any individual plot of land is very specific.

- Since land acquisition for public purpose represents a special case in which the seller does not intend to sell but the buyer is forced to buy, all transaction costs should be charged to the buyer.

- The payment of a premium (an amount in addition to the market value of the land) can facilitate land acquisition for public purposes. Compared to a normal transaction, the payment for land and other property acquired for public purposes should logically be above market value, because the buyer is forced to buy such property, while the land owner is normally not planning to sell it and may not be willing to do so. In some countries, such as Malaysia and Australia, the compensation is not based on market value and other losses and costs for the affected persons; instead, the land owners are offered a “special value” or premium.

- The compensation for the loss of buildings and plants should be closer to insurance value than to market value. Insurance valuation is based on the replacement cost of the object being valued—that is, the cost to rebuild the structure or infrastructure.
This type of valuation does not take physical, functional, or external depreciation into account.

- In appraising the value of crops, the appraiser must distinguish between perennial crops and seasonal or annual crops. For perennial crops (orchards, pasture) one can apply the Income Approach, calculating a net income projection for the remaining economic life of the plants and trees, but excluding the value of land, improvements, and installations, which should be calculated separately. For seasonal or annual crops, it may be possible to allow the owner or renter to harvest before acquiring the land. If this is not possible, one should calculate the income that is likely to be obtained from the harvest that season.

- Valuation of losses in the context of land acquisition for public use should take into account non-physical losses, such as moving costs and business interruption.

- Moving costs can be standardized in every acquisition plan once the location to which owners are most likely to move has been determined. Moving costs per household can be adjusted based on the number of persons who need to move and the dimensions of the existing constructions and establishments.

- The calculation of losses due to the disruption of an ongoing business essentially involves the calculation of the reduction of income due to the move.

- Determining adequate compensation values in the context of land acquisition in the public interest is a new responsibility for Indonesian appraisers. Clear and standardized operating procedures and adequate training are needed to guarantee fair valuation of government-acquired land. The presence of established procedures and well-trained professional appraisers will guarantee fair valuation that will be acceptable to both land owners and governmental institutions.

The fourth paper, “Consignment in Land Acquisition”, by Arie Hutagalung, provides an overview of land acquisition for projects in the public interest in Indonesia with a focus on a specific aspect of the process: the consignment of the compensation payment with a court in cases where an affected land owner has rejected the compensation offered by the government institution that requires the land. The consignment of the compensation payment has become a common practice in cases where the government and the land owner cannot reach a mutual agreement on land compensation during the negotiation time frame established by the existing regulations on land acquisition for projects in the public interest.

The paper presents some key facts about the practice on consignment and describes current cases of consignment (in the Surabaya-Madura Bridge project and in several sections of the Trans Java Highway project). Some of the key findings of the paper are listed below:

- Current regulations on consignment can force land owners to accept unfair compensation. Article 10 PR Section 2 PR 65/2006 allows the consignment of land compensation in the local district courts if after 120 days there is no agreement.
between the Land Acquisition Committee and the land owners. These provisions can be used to threaten land owners and to force them to accept the price offered by the government entity requiring the land, even when that compensation is not adequate.

- Current regulations on consignment are not sufficient to resolve disagreements on compensation. Under current regulations, consignment is allowed if at least 75% of the affected landowners support the project or 75% of the total land required has been acquired. If none of these conditions are met, the government entity requiring the land must continue the negotiations with the landowners or initiate expropriation proceedings under Law 21/1960. However, expropriation appears to be politically impractical because it requires presidential approval. Law 21/1960 has only been applied once, in the case of the Senen Project for Hotel Ping Noy construction.

- The current regulations on consignment are inconsistent with existing laws. According to Article 67 RHNLA 3/2007, after the compensation is consigned, the entity acquiring the land can take possession of it, construction work can proceed, and the owner and/or other occupants of the property may be evicted after the issuance of a decree by the regent, mayor or governor. However, current regulations do not specify any mechanism for transferring ownership from the affected owner to the government. The clearance of the land before it has been transferred to the government violates Article 28 H of the Indonesian Constitution of 1945, which guarantees that the right of ownership cannot be taken over haphazardly by anyone, including the State. The action of land clearing after the compensation has been consigned also violates Article 5 of Law Number 20 of 1961 regarding Expropriation of Land Title and Other Objects Above the Land (“Law 20/1961”). This law states that each land owner has full rights to the property and the assets on the land until a Presidential Decree regarding land title expropriation is enacted. In addition, the consignment of the compensation is not a legal reason to annul a land title. According to articles 27, 34 and 40 of the Basic Agrarian Law (Law Number 5 of 1960, “Law 5/1960”), land titles may be terminated in the following cases: the land is damaged, the term of the land title has expired, legal obligations of the land title holder according to prevailing law and regulations have not been fulfilled, the land title holder voluntarily relinquishes the title, land has been lawfully expropriated for public interest purpose, or the land has been left in idle conditions by the title holder.

- The land owners whose compensation has been consigned can take legal actions and delay projects. The land owners may submit a letter of objection to the court regarding land clearing after consignment. If this occurs, the position of government is very weak because, under the Basic Agrarian Law, any land which is under dispute is frozen, which means that any and all activity related to the land must cease until the dispute is settled. Therefore, the land owner’s objections, based on the provisions of the Basic Agrarian Law, could delay project implementation. The land owners also have the right to pursue legal action against the government based on Article 406 of the Indonesian Criminal Code, claiming destruction of private property without permission of the owner.
Current regulations on consignment do not offer adequate protection to the affected landowners and other occupants of the land affected. The land owners and other occupants who are evicted can lose their permanent residence or livelihoods. Item 2 of the General Elucidation (Explanatory Memorandum) to Law 20/1961 states that the local government may provide temporary shelter for people affected by expropriation. However, this provision does not apply when the compensation is consigned with the court.

The paper proposes the following legal reforms to overcome the problems listed above:

- The government must enact a Land Acquisition Law that includes provisions related to consignment. Due to the sensitive nature of consignment as a precondition for taking possession of the land required for projects in the public interest, it should be properly legislated, as part of a law, and not just as part of a regulation. Current regulations on consignment can be construed as the State’s right to “confiscate”. Given that private property is protected by laws, consignment rules must also be part of a law. Consignment procedures must be carefully drafted to ensure consistency with legislation of higher or equal levels.

- Landowners should be able to withdraw the compensation consigned in the court without giving up their right to receive an additional payment through the courts, if the payment consigned does not constitute fair compensation. The withdrawal of the compensation would enable the affected land owner to use it to acquire a replacement property while her/his case is resolved through arbitration (see recommendation 4) or by the court, which would later decide whether the land owner is entitled to an additional payment.

- Establish agrarian courts to deal with agrarian land disputes. The government should consider establishing agrarian courts, since land cases are abundant and adjudicating such cases requires special knowledge of agrarian law.

- Establish a process to resolve disagreements about compensation after consignment. The new Land Acquisition Law should establish the process to be followed to determine if the land owners should receive an additional payment, in addition to the amount consigned to the local district court. Such a process is missing in current regulations on land acquisition, which skips directly to the process of land confiscation once compensation has been consigned to the local district court.

- Develop procedures to resolve disputes on compensation through mediation. Disputes on the amount and the form of compensation can be solved through mediation, which can take place before the compensation is consigned in the district court. Mediation is less costly than court cases and can help the party that needs the land and the land owner to reach a settlement quickly. If mediation fails to produce a settlement, or if one of the parties fails to participate in the mediation, the compensation offered by the institution requiring the land would be consigned in the district court. This court, or an agrarian court, would decide if the landowner is entitled to an additional payment, based on the professional appraisal of the value of
the losses suffered by the land owner. Regardless of the court’s decision, any party that disagrees with it would have the right to appeal to a higher court.
II. Land Acquisition for Toll Roads in Indonesia: Why is it Still Slow?

Lis Nainggolan

Since the mid-1990s, the Government of Indonesia has been planning to build the Trans Java Toll Road (TJTR). With a total length of 657.83 km, the TJTR is part of an effort to expand the national road network system. During 2006-2008, concession agreements were signed for ten sections of the TJTR (see Annex). However, the land acquisition process has been slow. As of February 2010, only 28% of the land required had been acquired. The only section of road for which land acquisition has been completed is the 35 km Kanci-Pejagan segment.

The slow pace of land acquisition and toll road construction has proven to be a substantial barrier for the government in its attempts to make critical transportation investments. In 2009, the government announced plans to accelerate the construction of toll road networks by involving private investors in the acquisition of land for these roads. Under this plan, the GOI continues to purchase the land for toll road construction, but the funds for the purchase may come from either the government or from the private sector investors.

This paper focuses on the case of the TJTR to illustrate the main factors that delay toll road projects in Indonesia. The TJTR is a priority development in the road network that links Jakarta to Surabaya. Currently, 148 km of toll road are built, representing only 19.3% of the total distance, while the remaining 617 km is scheduled for completion by 2014, during this government term.

In particular, this paper examines land acquisition as one of the factors that has contributed to delays in the implementation of the TJTR project. Of the entire project, only the Kanci-Pejegan Toll Road has not suffered delays. Land acquisition for this 35 km section was conducted within 1.5 years. Several problems observed in the other sections were avoided: there was an adequate budget, the compensation offered to land owners was fair, there were few incentives for land speculation, the speed of the project did not provide time for land speculation to develop, there were relatively few people adversely affected by land acquisition, and the authorities actively engaged with Project-Affected People (PAP) to address the few social issues that arose during the land acquisition process.

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3 Lis Nainggolan is a Social Development Consultant, World Bank. Harlans Muharraman Fachra, Civil Society Specialist with GeRAK, an Indonesian NGO, provided some of the information used in the report.

4 Toll Road Investment Opportunities in Indonesia, 2008 Edition, Introduction

5 The factors that facilitated land acquisition of the Kanci-Pejegan Toll Road were the following:
   - There was strong financial support from the parent company (Bakrie Land)
   - The private sector investor did not dispute the compensation payments when P2T (land acquisition committee) reached a consensus with the affected people
   - The P2T team under the head of local government (Bupati) and the Land Provision Team (TPT) under the DG Highway, MoPW were cohesive as a team and took proactive steps to solve issues with affected people
   - The acquisition process was rapid and thus land speculators were unable to buy land or otherwise influence the valuation process
The findings of this paper are based on a review of relevant documentation and discussions with government officials.  

A. Issues in the Land Acquisition Process

According to current regulations, land acquisition for projects in the public interest involves eight main steps: 1) preparation and planning, 2) issuance of location determination (SP2LP), 3) identification of affected persons and assets, 4) valuation of affected assets, 5) consultations with affected people and dissemination of project information, 6) negotiation and payment, and 7) consignment of the compensation payment (if negotiations fail). The sections below describe these steps and the types of issues that delay land acquisition, using examples from the TJTR.

1. Preparation and planning

In the preparation and planning phase, two issues stand out as frequent causes of delays: (a) the lack of an adequate assessment of the potential social impacts of right of way acquisition; and (b) the method used to calculate the cost of land acquisition.

All toll road projects require an environmental assessment (AMDAL), which must identify and address all adverse impacts to the physical, biological and social environment. As part of the AMDAL, project affected people should be identified, along with affected land and other assets.

In practice, however, the alignment of the toll road tends to be determined without an adequate assessment of the social impacts of right of way acquisition and without proper consultations with the Project-Affected People (PAP) and the authorities of the respective district. The lack of of a proper assessment and consultations led to conflicts and delays. Two cases illustrate this point: the Cirebon section of the Cikopo/Cikampek-Palimanan toll road; and the Kendal-Kaliwungu section of the Batang-Semarang section. In both cases, the project planners did not take into consideration the potential social impacts of right of way acquisition under the chosen alignment of the toll road and failed to conduct proper consultations with the affected people.

- The section is inter-urban with 70% of land in non settlement areas, affecting fewer families and making it easier to negotiate land purchases.

6 Consultations were conducted in Jakarta, Semarang, Tegal, Pekalongan and Surabaya. Interviews were conducted with staff of the Directorate of Land Acquisition for Toll Roads, Directorate General of Highways, Ministry of Public Works, the project managers of the land acquisition for toll road project in Semarang, Tegal, Pekalongan District, the head of the land acquisition committee of Semarang District, and staff of the land acquisition division of the toll road project in Semarang municipality. Telephone interviews were also conducted with the project managers of the land acquisition for toll road projects in Surabaya and Mantingan.
In the case of the Cirebon section, a number of villages rejected the development and the disputes related to land acquisition led to social unrest, particularly in Babakan Village. The first *musyawarah* (deliberation) for the Cirebon section was held on February 2, 2010, when the section had already been designed. According to the design, this section affects 76 plots of land, including an Islamic boarding school (*pesantren*) in the Babakan village. The toll road passes through the school property and divides it into two parts (the school building and an agricultural area that generates income for the school). The representatives of the school expressed their opposition to the project and rejected the compensation offer. In addition, they mobilized a large number of students who protested against the project. This problem was not anticipated by the project planners. The impact of the project on the Islamic school was not considered before choosing the road alignment.

Other landowners in the Babakan village opposed the project and claimed that they had been properly informed about the impacts of the road. They had heard that under the initial road proposal they were not affected. When the landowners were offered compensation for their properties (at a range of Rp60-90,000/m²), none of them accepted it (they asked for around Rp 300,000 to Rp 1 million/m²).

On March 12, 2010, the independent assessor was brought to Babakan to explain the basis of price determination, but the people insisted on their asking price. The strong resistance in Babakan village affected the stance of landowners in other localities. These landowners protested the price offered, although earlier they had accepted the compensation. In Ciwaringin village, adjacent to Babakan village, there are about 303 plots of land and 67 plots have been compensated; however, those who were compensated came back to ask for the same price as in Babakan.

The land value assessor was brought to explain to the community how they calculate land values. However, most landowners rejected the government’s compensation offer so that, up to now, only about 35% of the required right of way for Cirebon toll road has been acquired.

The situation has become a snowball in that each village is waiting for the result of the bargaining strategies of the other villages. For example, in Kempek village, of 167 plots of land, only 2 landowners agreed with the compensation offered.

The lengthy land acquisition process for the Cirebon toll road development is an example of how the lack of a proper assessment of social impacts and poor dissemination of information on the project, the impacts of right of way acquisition, and the compensation methods leads to delays and disputes.

In the case of the Kendal-Kaliwungu sub-section, the impact of the project on some big industries was not properly assessed because of an inadequate initial survey. The alignment of the toll road prepared by the central government was rejected by the district authorities because the proposed project would impact an industrial estate owned by the district. Due to these issues, the project must now revise the design on the basis of proper consultations with PAP and the respective district, and on the basis of a proper survey. These cases show that the failure to
adequately assess the social impacts of the right of way and consult with PAP can result in significant delays.

Budget issues also cause delays land acquisition. Projects are designed and approved without good estimates of the cost of compensating for and mitigating the adverse impacts of right of way acquisition. The value of affected land is estimated on the basis of the NJOP – *Nilai Jual Objek Pajak* (i.e. STVO – Selling Value of Taxable Objects), which tends to be below the current market value of the affected properties. As a result, budget allocations are not sufficient to compensate land owners according to the market value of their properties as determined by an independent appraiser. The budget deficit must be covered using the budget for the next fiscal year, which results in delays in land acquisition.

2. Issuance of location determination

Delays in the issuance of the project’s location determination by the local government are common in infrastructure projects in Indonesia. It takes a long time to issue the location permits for projects that affect forests, railways or other state enterprises.

The issuance of the permit requires coordination by inter-governmental institutions, which often entails a complicated and long procedure. For example, some sections of the TJTR will impact forestry land owned by Ministry of Forests (in sections of Cikopo-Palimanan; Batang-Semarang and Semarang-Solo) and plantations owned by National Plantations of State Enterprises (in sections of Cikopo-Palimanan; Batang-Semarang; Semarang-Solo and Mantingan-Kertosono). In the case of projects with adverse impacts on forests, the project sponsors must get permits from the Ministry of Forests and acquire land to replace the affected forest. In the case of projects with adverse impacts on government-run plantations, the projects must get approvals from both regional and central authorities and get final approval from the Ministry of State Enterprises. All these processes require a high level of coordination, meetings and field surveys and are often further complicated by political considerations.

According to Presidential Regulations, the project location and potential impact must be discussed with the affected communities, and these discussions must be open to the media. If 75% of the affected communities agree with the plan, then the project can go forward; otherwise, the location of the project should be changed. All of the planning documents and some design details should be ready and available to the public as part of the consultation process. This must be done 14 days after the location is fixed. In most cases this step is omitted by the Land Acquisition Committee.

3. Identification of affected persons and assets

Identification of affected persons and assets is carried out by the LAC when the project has a budget for compensation, detail-engineering design, and land measurement with land markers. Without these elements in place it is risky for the LAC to perform a census of PAP and an inventory of affected assets. Delays in identification of affected persons/assets can occur for any of the following reasons:
- The allocation budget is delayed
- The allocated budget is inadequate to cover the affected villages/sub-sections
- The design has not been completed or released
- The land measurement has not been carried out by the land agency.

Each segment of the toll road may be divided into 2 to 5 sections, and each section may include several villages. The available budget should cover all sections of the toll road. In fact all the toll roads are planned in parts, leading to fragmentation of the project and delays in identifying all affected persons and assets. For example, in the Batang-Semarang section the census and inventory of assets have been delayed because the project needs to be redesigned and the investor does not have an adequate budget for doing so. In the Pemalang-Batang section, the LAC cannot finalize the census because the investor does not have an operational or compensation budget. In some sections of toll road the identification of affected people/assets is inadequate because the census is not carried out in all affected villages of each sub-section or in all sub-sections of the project.

4. Valuation of affected assets

The valuation methodology used to assess the value of land creates problems during the negotiations. Licensed appraisers use a “cluster approach” to value the land affected by the project. Each village is considered a “cluster,” and a range of land values are calculated for each cluster. Land appraisers do not value properties individually, but determine the minimum and maximum value of land within a cluster or village. Since the price offered by the LAC is usually the minimum or close to the minimum, the land owners often reject the offer.

The practice of offering the minimum land price within the range established by the appraiser is common due to budget limitations. This practice prolonged the negotiation process in almost all toll road land acquisition processes (see section 6 below).

5. Consultations with affected people and dissemination of project information

According to current regulations and guidelines, the results of the appraisal are submitted to the LPC and are used as the basis for the “deliberation” on the “form and/or the amount of compensation” between government institutions requiring the land and the owners affected. In practice, property owners do not receive sufficient information on the methods used to determine the value of the land and other assets affected by the project. This gives land speculators the opportunity to intervene.

6. Negotiation and payment

This step is the most crucial stage in the land acquisition process, and issues at this stage may result in deadlock and a significant delay of a project. Common issues are:

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7 BPN Implementation Guidelines No. 3/2007, Article 26, subsection (1); Articles 30 and 31.
Indonesia: Timely Land Acquisition for Infrastructure Development

- Unequal treatment to PAP because compensation rates vary widely, particularly for the loss of land. Meanwhile, project sponsor, PAP and auditors have different views on what constitutes “fair compensation.”
- Pressures from budget limits (set during the planning phase and based on the NJOP) force government entities to offer inadequate compensation for the loss of land (significantly below its market value), without considering the economic losses of PAP.
- Compensation offers are inadequate in other ways as well, since compensation is only paid for the loss of assets. Uncompensated losses may include: monetary loss caused by relocation; transactions costs (such as the cost of registering new properties, in cases where persons have to replace the property taken for the project); losses caused by the interruption of businesses; and severance damage (the reduction of value of a person’s residual land caused by the taking of the land required for the project).
- Lack of transparency may be found in compensation procedures. Landowners often negotiate without a clear idea of the market value of their land and their rights in cases of physical displacement, business interruption, loss of livelihood, etc.

The factors above generate conflict and block the negotiations. Other issues that may create a deadlock in negotiation and delay a project are:

- Investors who win concessions may not have adequate funds, as as happened in Pemalang-Batang and Batang-Semarang section (see Step I above).
- Land speculation may occur. For example, land speculators may step in and agree to represent communities for a fee. These speculators take advantage of the communities’ distrust of the government and persuade PAP to ask for compensation levels that are higher than what the available budget can accommodate, contributing to deadlock in negotiations. This happened in one sub-section of the Semarang-Solo and Pejagan-Pemalang section where speculators intervened with the PAP and the negotiation became deadlocked.
- Poor choices on the road alignment are a source of conflict when communities are not consulted. They may express disagreements during negotiation, when it is too late to address their concerns. This is an issue in the in Cirebon section and Batang-Semarang section.

Compensation funds are frequently not disbursed on time, which complicates the negotiations with the land owners and often results in project delays. The delays in the section of Pemalang-Batang and Batang-Semarang occurred because the investor did not provide the proper budget for compensation in a timely manner. Therefore the Land Acquisition Committee (LAC) was unable to meet the target date to release the land.

In cases where there are insufficient funds after the negotiations with the PAP have begun and the initial compensation agreements have been made, the project/land acquisition committee is forced to start the negotiations with the PAP all over again because of the time gap between the initial compensation agreement and the availability of compensation funds.
According to Article 48 and 67 of BPN Decree No. 3 of 2007, when negotiations do not result in an agreement within 120 calendar days, the project sponsor can deposit or consign with the court the amount of the final offer and take possession of the land required by the project. However, the land owner cannot withdraw the money from the court without relinquishing the right to seek additional compensation.

Consignment, as practiced today, can create problems for both the land owners and the project sponsors. Under the BPN Decree, land owners who are offered unfair compensation (i.e. compensation that does not fully cover their losses) have two options. The first is to accept the unfair compensation; the second is to fight in court. The second option is not really an option for land owners who need to use the compensation payment to purchase a replacement property. These land owners cannot wait for the case to be resolved by the courts. They must take the compensation even if they consider it unfair.

The current situation is also problematic from the point of view of the project sponsor or the government institution acquiring the land, because the BPN regulations on consignment are unclear and inconsistent with other legislation. In Indonesia, ownership of the land is unclear until the case is resolved by the courts—depositing the compensation funds with the court does not mean that the land belongs to the government. Moreover, once the funds are withdrawn from the court by the land owner, there is the perception that the land owner is in agreement with the price. The BPN regulation is inconsistent with the Indonesian Civil Code (Kitab Undang Undang Hukum Perdata), which states that the court can only accept money in consignment if that money is related to individual civil court cases. The regulation is also internally inconsistent because in another part of the regulation (Article 48-1) it states that consignment can only take place if the land has no clear owner, is in dispute, or is seized by the court. Additionally, the regulation is inconsistent with Law No. 20 of 1961, which states that ownership rights can only be finally turned over to the State after a decision is made by the President, payment of compensation is completed, and temporary shelter has been provided.

In other countries that permit the consignment of compensation payments if the land owners disagree with the compensation payment, such as Malaysia and Australia, the legal rights of the project sponsors are clear. They can take possession of the land required for projects after the compensation has been consigned in the courts, but this possession cannot be contested by the land owners on the grounds that it is in conflict with legislation of a higher level, as occurs in Indonesia. Also, in these countries the land owners who withdraw the compensation can still seek additional compensation in the courts.

Given the legal confusion and the risks to both affected owner and the party acquiring the land, consignment is not a good solution to failed negotiation. In practice it is mainly used as a threat by the acquiring institution to encourage PAP to agree to the offered price.

Consignment can be a good solution if (1) legal reforms are implemented to eliminate the contradictions that exist today; (2) the compensation system is improved, so that it ensures that land owners are fully compensated for all their losses; and (3) the land owners are allowed to
withdraw the compensation that is consigned in the courts without losing their right to seek additional compensation if they believe that the amount that was consigned does not constitute fair compensation.

The legal issues associated with the consignment of compensation when negotiation fails are:

- The amount of compensation offered to (and rejected by) affected owners is consigned in a court in the absence of a court case. As previously stated, this practice is in conflict with civil law and with Law 20 of 1961.
- Consignment of compensation does not resolve ownership issues. Affected landowners retain their property rights, and the right of way cannot be legally registered in the name of the government.

The social issues associated with the consignment of compensation when negotiation fails are:

- Consignment is often the result of failures in the compensation system. Consignment should be reserved for cases where the land owners are being unreasonable or in cases where ownership of the property affected by a project is unclear (for example, in cases of inheritance, or in cases where the owner cannot be found). Consignment should not be the result of unfair compensation offers that land owners are forced to reject.
- The land owners cannot withdraw the money consigned with the courts, without giving up their right to contest the compensation in court. This puts land owners who are not satisfied with the compensation and need to purchase a replacement property in a difficult situation. They must either accept unfair compensation or be left without the resources to purchase a new home.

In the case of the TJTR, consignment of the compensation payment has been used for acquiring land in the Semarang-Solo section, where seven of the two hundred land owners rejected the compensation. The seven land owners do not want to withdraw the money from the court because they think that withdrawing the funds will mean they agreed to the compensation offered. Land rights have not been transferred to the state, and the affected land owners have protested the land taking, indicating that the project had destroyed their property and occupied their land illegally. This dispute has delayed the project.

**B. Recommendations for Avoiding Conflicts and Delays**

Considering the experience and lessons of the TJTR discussed above, we offer the following recommendations:
1. Project design and decisions on the road alignment must take into account: a) concerns expressed by affected communities during the consultation process; b) findings of environmental and social impact assessment for road projects.

2. Feasibility studies must take into account: a) market value of the land affected; b) cost of covering other losses of land owners and other displaced persons (relocations costs, business interruption, income/livelihood losses, etc.). A licensed appraiser should be involved in the valuation of these losses, and the compensation costs should be included in the budget for land acquisition for the project.

3. Compensation procedures need to be fair and to be perceived as fair by the public. To accomplish this we recommend that a) internationally accepted valuation standards should be used to determined the market value of affected assets (land, structures, plants and other assets); b) PAP should be compensated for all their losses; c) compensation procedures should be transparent and land owners should know and be clear about their rights and obligations.

4. Project budgets should be based on an adequate estimation of the value of the land and other assets to be affected by projects, as well as the cost of mitigating adverse social impacts of projects. Project sponsors must demonstrate that they have adequate funds to pay the estimated compensation.

5. Consider paying a premium (on top of the market value of the land) to create an incentive for negotiated settlements and to avoid court cases. This premium would not be paid if the case goes to court (i.e. if the land owner rejects the government’s offer).

6. Establish a clear legal process in cases where land owners reject the government’s offer. In cases where the compensation is consigned with the court, allow the affected land owners to withdraw the compensation without giving up their right to appeal. If there is an appeal, the court would decide if additional payments are in order.
Annex 1. Sections of the Trans Java Toll Road*

<table>
<thead>
<tr>
<th>Toll road section</th>
<th>Length (km)</th>
<th>Concession agreement (CA)</th>
<th>Commencing of land acquisition process</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Batang – Semarang</td>
<td>75</td>
<td>July 2006</td>
<td>April 2007</td>
<td>Land Acquisition</td>
</tr>
<tr>
<td>6. Semarang – Solo</td>
<td>76</td>
<td>December 2006</td>
<td>January 2007</td>
<td>Under construction; land acquisition is ongoing</td>
</tr>
<tr>
<td>7. Solo – Mantingan</td>
<td>90</td>
<td>May 2008</td>
<td>October 2007</td>
<td>CA not signed; land acquisition is ongoing</td>
</tr>
<tr>
<td>8. Mantingan-Ngawi-Kertosono</td>
<td>87</td>
<td>May 2008</td>
<td>November 2007</td>
<td>CA not signed; land acquisition is ongoing</td>
</tr>
<tr>
<td>9. Kertosono – Mojokerto</td>
<td>41</td>
<td>June 2006</td>
<td>March 2007</td>
<td>Under construction; land acquisition is on going</td>
</tr>
<tr>
<td>10. Mojokerto – Surabaya</td>
<td>37</td>
<td>April 2006</td>
<td>Oct 2005</td>
<td>Under construction; land acquisition is ongoing</td>
</tr>
</tbody>
</table>

* No 7-10, based on Public Works data as of Feb 2010.

Annex 2. Trans Java Toll Plan Map

Note: the 10 main toll road projects of trans Java
--- blue: operating
… green: land acquisition process
… yellow: land acquisition and construction process
… red: bidding process
III. Timely Land Acquisition for Infrastructure Development: 
International Practices Relevant for Indonesia

Sopon Pornchokchai

This paper, prepared for the World Bank Indonesia Office, reviews international practices in land acquisition for infrastructure projects. Part A discusses the methods used to value the land and other assets taken for projects and to determine the compensation that should be provided to property owners. Part B presents practices from 13 different countries, based on interviews with leading real estate and valuation professionals. Part C discusses some innovative concepts for land valuation and land acquisition that have special relevance for developing countries, particularly in the ASEAN region.

A. Recommendations for Avoiding Conflicts and Delays

The valuation of losses occurring as a result of land acquisition must consider the following factors: 1) value of the properties (land and buildings) taken; 2) special value to the owner; 3) severance; 4) injurious affection; 5) betterment or enhancement; and 6) disturbance.

1. Value of properties taken

The value of a property depends on its market value, which is “the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm-length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion” (IVSC: 2009).

The compensation for the loss of land is usually based on the market value of the land in its existing use. In many instances, however, the value of the land in its existing use may be different than the value of the land according to its highest and best use. The “best use” of the land is the basis of compensation if it meets the following conditions:

- the best use is legal (it must be a permitted use according to planning and building regulations);
- the best use must be probable (it must be considered likely to occur in the marketplace);
- the best use must not be speculative, conjectural, unrealistic or improbable;
- the best use must be possible to imagine by a hypothetical purchaser who appreciates and understands all the problems involved in a change of use, but is nonetheless confident that the problems can be overcome or solved; and
- the best use can be carried out in a reasonably short time.

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8 Sopon Pornchokchai is the President of Agency for Real Estate Affairs which is an independent property consultancy specializing in valuation, survey, research and information services in the ASEAN Region. Dr. Pornchokchai is also the President of the Thai Appraisal Foundation, an advisor to the US Appraisal Foundation in Washington D.C., Thailand’s representative of the International Association of Assessing Officers as well as the representative of the International Federation of Real Estate (FIABCI) at the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP). Email: sopon@area.co.th
When valuing land affected by a project, any increase or decrease in its market value that is attributable to the project, or to the proposal to carry it out, must be disregarded. This means that land prices affected by the proposed scheme should not be used as evidence of the market value of the land to be taken for the scheme.

2. Special value to the owner

The notion that land has a special value to the owner is always hard to prove, although there are occasions where the notion does apply. This loss, like injurious affection (discussed below), has been the subject of a number of controversial and difficult to reconcile decisions, but the principle is now settled and a part of compulsory acquisition practice. The special value must be the result of some attribute that the land possesses that the owner is able to take advantage of, but the general market overlooks.

For example, a house was owned and occupied by an old woman who inherited the property from her parents when they died. In fact, she had been born in that house about 70 years before and she had been blind from birth. She has always lived in that house and is used to the location of everything in her house. If she has to leave, there should be some compensation due to its special value for her. This value could be difficult to estimate, but might equal to the hiring of a maid to help take care of her for a certain period of time.

3. Severance

Severance is the reduction of value of a person’s remaining land caused merely by taking (or severing) another part of the person’s land. The loss of value is related to the characteristics of the remaining land, not the activities planned or the facilities that are built on the part of the land acquired, as in cases of “injurious affection” (see below). Both “injurious affection” and “severance damage” relate to the loss of value of the land retained by a person after another part of the property is compulsorily acquired from that person.

While severance is paid when the loss of part of the land affects the value of the remaining land, it is not essential that the land acquired be directly connected to the severed portion prior to the acquisition, or that it be held under the same title of tenure as other land owned or leased by the dispossessed owner.

Severance can require compensation where:

- the reduction in size of the remaining land affects economic operation or viability;
- the reduction in size requires alteration or improvement to the residual land; or
- the fragmentation of land makes economic use more difficult.
4. Injurious affection

Injurious affection exists when part of the land is taken and the value of the rest of the land is reduced as a result of the change in land use on the land taken. In many cases, acquiring authorities intend to construct some facility with flow-on effects, which often influence property values, and the closer the property is to the facility, the greater the effect on value.

For example, a property owner whose land fronted a river near Sydney enjoyed the view from the rear patio of his house. The natural beauty of the scene was unspoiled until the water, drainage and sewerage authority decided to construct a sewerage pipeline on concrete supports through the rear of his property alongside the river bank. The effect on the value of the rest of the property was significant and negative. In another case, one part of a residential property was taken to construct an electricity sub-station. These facilities are usually considered to be ugly, they create low levels of noise, and they can attract lightning. Overall, the effect on the value of nearby properties is negative.

5. Betterment or enhancement

The terms “betterment” or “enhancement” refer to an increase in value of the land retained by a person, caused by the public work for which another part of the property was taken. Betterment arises only for the purposes of set-off. That is to say, betterment caused to some of a person’s retained land is set off against compensation payable for a reduction of the value of that person’s other land. Compensation should be paid for the loss of land only if the value of the remaining property after the taking is lower than it was prior to the taking.9

6. Disturbance

“Disturbance” refers to a person’s monetary loss caused by disruptions related to the taking of the person’s land or part thereof, including disruptions to the person’s business. At its simplest, “disruption” refers to relocation costs and lost revenue. Any uses of land above normal use for residence should also be compensated, as should additional costs involved in order for a business to be reestablished elsewhere. However, sometimes the taking of land can eliminate a landowner’s business completely.

Disturbance can arise from a partial taking of land and, therefore, can be considered along with injurious affection and severance. Usually, disturbance is distinct from injurious affection and severance because disturbance is not related to the value of the land. In a partial taking of land used for a business, the cost of re-establishing the business in a smaller area is not generally considered “severance damage.” However, in certain circumstances, it may be difficult to make the distinction.

9 In Thailand, the principle of betterment is no longer applied. Even if the value of a land owner’s remaining property increases, the government still compensates for the lost property. Exemption from betterment considerations encourages the land owners in any land acquisition project to accept the project. However, this policy implies some injustice to the public and to taxpayers.
Disturbance is the economic loss or costs which are either anticipated or sustained by the dispossessed owner as a natural consequence of the acquisition. The costs should not be too remote. They must be connected to the ownership of the land or interest in the land. Any renters whose businesses are lost due to the eminent domain claim should also be compensated.

In sum, all of the above kinds of losses of the land owners and renters should be compensated according to international valuation standards. It should be mentioned that international valuation standards do not cover the payment of a “premium” (a payment on top of the market value) to accelerate the acquisition process for projects in the public interest. Payment of such a premium depends on government policy. The payment of a premium is likely to be a good incentive only if the market value is properly calculated. In addition, the payment of a premium may be opposed by taxpayers.

B. International Practices

This section reviews key aspects of land acquisition for projects in the public interest in thirteen countries. The information is based on interviews with experts from 12 countries and the author’s personal knowledge of Thailand.10 The views of these experts on each aspect of land acquisition are presented in separate sections. A summary of the discussion on each aspect is presented at the end of the relevant section.

1. The principle of compensation for public land acquisition

Australia: Compensation must cover all losses (other than emotional loss) caused by the acquisition. The compensation should be sufficient to place the owner in the same financial position after the acquisition as he or she was before the acquisition.

Cambodia: According to Cambodia’s expropriation law, if any land or buildings acquired by the government, the government will compensate according to the market price of the property taken.

Canada: The Crown can acquire land for public infrastructure or other uses through its prerogative powers of sovereignty and the right of eminent domain. Legislative jurisdiction enables individual provinces to take private property with proper compensation for the affected property owners. The Expropriations Act, R.S.O. 1990, C. E.26 (Sec.13 (2)) states that where the land of an owner is expropriated, the compensation payable to the owner shall be based upon: the market value of the land; the damages attributable to disturbance; damages for injurious affection; and any special difficulties in relocation. The general principle of the legislation is to ensure a fair process for land acquisition.

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10 A total of 12 professionals from 12 countries were interviewed. They included professionals in the fields of valuation, real estate, and urban planning. Names, titles and contact information for those interviewed can be found in Appendix 1. Not every topic was addressed by each expert.
Japan: The national government and the local governments always compensate land owners according to the open market value of the land.

Malaysia: Compensation paid is the market value for the land taken plus damages for any injurious affection.

Nigeria: According to the Land Use Act 1978, the government compensates the affected legal owners based on the value of the land. The valuation is carried out by the government.

South Africa: Land taken in the public interest (through expropriation or eminent domain) is paid for.

Thailand: According to the Thai Constitution, compensation must be paid to those property owners whose land is taken under eminent domain. In addition, compensation for severance, injurious affection and disturbance is also taken into consideration. This is provided for in the Land Expropriation Act, 1987, as well as its 1991 amendment.

USA: The U.S. Constitution and most state constitutions state that property owners must be paid "just compensation." Generally, the courts have concluded that just compensation is compensation based on market value as indicated by an appraisal.

Vietnam: The government price is promulgated by the local government at the beginning of each year. In other to determine the market value for comparison for compensation purposes, the governments or the investors normally rely on appraisal firms.

Synthesis: In all of these countries, governments acquire land for projects according to procedures established by law. However, the appropriateness of these laws and regulations may have to be examined periodically and modified as necessary.

2. Coverage of compensation — relocation costs, economic losses, etcetera

Australia: The compensation covers the market value of the land taken, severance, injurious affection, disturbance (relocation expenses and justifiable economic losses as a result of the acquisition not elsewhere compensated). Payments apart from market value are understood as solatium or ex gratia payment for the nuisance of having one’s land acquired.

Brunei: Compensation is based on market value, and takes into consideration injurious affection, severance, change of residence or place of business, and approved improvements. Compensation must be fair and at a reasonable cost.

Cambodia: In addition to the compensation for the loss of assets, the government or the developer usually provides transportation to people who need to move to another location. A subsistence allowance may also be provided.

Canada: The expropriation of property by an expropriating authority often interferes with an owner's life, property and/or business. The entitlements to compensation under the
Expropriations Act are intended to ensure that the owner is made whole from all potential losses. In this regard, the owner will receive a payment for the lands taken by the authority, as well as compensation for any injurious affection accruing to the remaining lands. (Injurious affection is defined in the Expropriations Act as the loss in value to the owner's lands, or personal/business loss caused by the expropriation. In Ontario, there is also compensation for expenses businesses and private home owners. If compensation claims remain outstanding between the authority and the owner, there is a statutory provision that interest be paid by the authority at a rate of 6% per annum (if the inadequate payment can be proven). This interest begins to accrue from the date on which the lands are expropriated. Disputed compensation claims are arbitrated in proceedings before the Ontario Municipal Board.

India: Compensation covers the market value of the land on the date of publication of the notification for compensation; the damage, if any, sustained by the land owners at the time of taking possession of the land, by reason of the severing of such land from other land; the damage, if any, sustained by the land owners at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings.

Japan: Governments compensate land owners for land value, building value, relocation costs, economic losses caused by the move and other factors. The compensation for land and buildings is provided according to the current quotation of published sources. Economic losses and business losses are also taken into consideration.

Malaysia: Compensation is paid for market value, severance and injurious affection damages. Costs related to removal or demolition of buildings and relocation expenses are also covered, as are accommodation works (temporary shelters).

Nigeria: The value of land and properties varies from location to location. The value of the land and property losses is covered in the compensation.

South Africa: Under the Expropriation Act, if land or a registered right to minerals is taken, market value plus the value of any financial loss, plus a solatium (ex gratia payment for the nuisance of having your land acquired) is paid. If a real right is taken (excluding registered mineral rights), compensation consists of a cash payment for the financial loss plus the solatium. In both cases, interest may be added. Under financial loss, any direct loss will be compensated. This includes, but is not limited to, relocation costs, loss of income, loss on forced sale of equipment, storage costs, unavoidable improvements, loss of goodwill and severance. Under the new Constitution, in addition to market value, compensation should further take into account the following:

- current use of the property;
- history of the acquisition and use of the property;
- extent of direct state investment and subsidy in the acquisition and beneficial building improvement of the property; and
- purpose of the expropriation.
Under the Restitution of Land Rights Act, a person or community dispossessed of property as a result of past racially discriminatory laws or practices is entitled either to restitution of that property or to redress.

Thailand: The loss of real estate, real property, and any other losses is compensated. In the past, there was no compensation to land owners who benefited from a conversion of land use that enhanced the value of remaining land. For example, if loss of property led to conversion of farmland to serviced land, the increased value of remaining land would be subtracted from compensation. This was because the land owners did not actually lose the value of their properties. However, compensation is currently paid to all those that lose their land.

USA: In addition to compensation for the loss of the real property itself, there may be other payments, including relocation costs (owner and tenants), expenses incidental to the transfer of title (e.g., recording fees, transfer taxes, documentary stamps, evidence of title, surveys, penalty costs for the pre-payment of mortgages, certain litigation expenses\(^1\)). While some jurisdictions pay for economic losses, in most jurisdictions the loss of business is not subject to compensation.

Vietnam: Compensation is paid mainly for the land value and the construction affected.

Synthesis: In most cases, it is a common practice for the authority to compensate for all physical losses of properties, including severance and injurious affection damages, as well as costs of removal or demolition and relocation. Compensation is at the market price of the real estate, and takes into account other losses. However, spiritual or personal value is not subject to compensation.

3. **Use of internationally-accepted valuation standards for compensation**

Australia: Market value principles are applied for value of land taken, and for other losses such as severance, injurious affection and disturbance.

Brunei: In Brunei Darussalam, compensation is based on the market value, which is usually determined by the comparison method.

Cambodia: The standard of valuation of properties for compensation purposes is currently under discussion. The government is in the process of forming a valuation group.

Canada: The Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) of the Appraisal Institute of Canada establishes requirements for appraisal, review and consulting assignments for clients by the appraisers. Appraisal for compensation is also under the standard CUSPAP practices. The CUSPAP meets the criteria of the Appraisal Foundation, which annually approves and adopts the Uniform Standards of Professional Appraisal Practice (USPAP) in the United States). Experts providing appraisal evidence for the arbitration of

\(^1\) Reasonable litigation expenses could include expenses incurred if a court determines that the agency cannot acquire the property by condemnation, or the condemnation is abandoned, or the court rules in favor of the property owner in an inverse condemnation situation.
compensation claims are generally required to be accredited members of a well-recognized appraisal organization that adheres to either CUSPAP or USPAP standards.

Japan: Compensation for lands is estimated by Japanese valuation standards, and licensed real estate appraisers estimate the compensation. But compensation for buildings is estimated by the original Japanese compensation standard, which requires that quantity surveyors act as consulting experts in estimating the compensation.

Malaysia: The Malaysian Valuation Standards are used. These standards are based on the International Valuation Standards.

The Philippines: The Philippine Valuation Standards are now in the process of being signed into law. These standards were drafted following the International Valuation Standards (IVS). In the meantime, the Philippine land laws, such as the Public Land Act, govern.

South Africa: Market value is defined in the Expropriation Act, which has provisions that are consistent with the IVS.

Thailand: A set of published valuation standards has been announced by the Securities and Exchange Commission. It specifies valuation methods in accordance with international standards. However, there is no particular standard for valuation for eminent domain purposes because Thai standards are still new. The valuation will determine the typical market value and consider additional losses if any such as severance, injurious affection and disturbance in accordance with the Land Expropriation Act.

USA: Professional appraisers are bound by the USPAP (the Uniform Standards of Professional Appraisal Practice). Sometimes additional rules come into play, such as the Uniform Appraisal Standards for Federal Land Acquisition, which is under the USPAP.

Vietnam: Vietnamese valuation standards and international standards are used to determine the compensation for land and buildings.

Synthesis: In most countries, there is at least a set of valuation standards, which is more or less similar to the international standards, and to standards for developed countries such as the USA and the UK.

4. Valuation when data availability is limited

Australia: Professional appraisers should use opportunity cost. That is, the appraiser should determine how much it would cost for the owner to be returned to a situation similar to the one in which he/she found himself/herself before the acquisition.

Brunei: Valuers’ local knowledge and experience of the property market are very important to support the judgment on how much to compensate, which can be derived from the qualitative research by expert ‘focus group’ meeting.
Cambodia: In Cambodia data availability is very limited. A valuation company has to collect data on its own and build its own database. Valuation in Cambodia is usually based on the sale comparison approach.

Canada: The availability of market data will determine the appropriate appraisal methodology. Some international buyers have non-disclosure privacy laws that prevent public knowledge of property selling prices. Without such data, it is difficult to apply a traditional valuation approach, such as the sales comparison approach, which complicates the valuation of vacant land. In this situation, an appraiser might consider an alternative measure, such as a development or residual analysis\textsuperscript{12} to abstract a land value estimate. Nonetheless, the specific property type and local market characteristics will largely determine the appropriate valuation methodology used in the appraisal process.

Japan: The current quotation policy stipulates that people disclose the actual transaction price. This information is considered a database convenient for valuation for compensation. It seems that this policy reduces conflicts and complaints with reliable data. Appraisers and real estate experts can be involved in compensation with valuation assignment.

Malaysia: Where market sales data is scarce or limited, the income approach and the cost approaches are adopted.

Nigeria: Perhaps it is necessary to find open market value of comparable properties elsewhere, and use the information for comparison based on certain factors like location and depreciation, such as the age of the properties and the like in the area where there is little information.

The Philippines: The approach used depends on the purpose of the valuation. If the valuation is to determine the market value for sales purposes, the government uses a direct market comparison of similar properties elsewhere in the market, in case of the absence of data in a particular area for valuation. Adjustments are made based on market preferences as determined from the experience of sales of similar properties. For large tracts of land not normally traded, the government uses the hypothetical development approach to arrive at the value attributed to the land. This must be done with care, since the hypothetical project has to be realistic and conform to the highest and best use of the land. Cost data are available for the cost approach, and financial data are available for the income approach.

South Africa: Where a functioning market does not exist, other valuation methods are permissible, including the cost approach.

Thailand: Data can be searched from other sources such as financial institutions, brokers, property managers, and the like. Field research, with an adequate number of comparable

\textsuperscript{12} Land residual technique is a method of estimating the value of land when given the Net Operating Income (NOI) and value of Improvements. It is used for Feasibility analysis and Highest and Best Use. Example: A property generates $10,000 net operating income ($15,000 rent less $5,000 operating expenses). The improvements cost $70,000 to construct and claim a 12% rate of return (10% interest plus 2% depreciation), which is $8,400. The remaining $1,600 income is capitalized at a 10% rate (divided by .10) to result in a $16,000 land value using the land residual technique. (Dictionary of Real Estate Terms, 6th edition, by Jack P. Friedman, Jack C. Harris and J. Bruce Lindeman, published by Barron's Educational Series, Inc.)
properties with little disparity, is needed. The residual approach or hypothetical development analysis is applied.

USA: In some states, such as New York, sales data are part of the public record, so authorities know what people pay for property. However, some states in the U.S. do not require reporting (e.g., Texas). In such a case, the MLS (Multiple Listing Services) of brokers and the price records of the Census Bureau can be used for comparison.

Vietnam: The valuation firms have to establish the data system by themselves; alternatively, they may request information from the Land Department.

Synthesis: Data availability varies among countries and within countries. In any case, there should be sufficient information for the analysis. This implies that a real estate information center should be established. All transaction prices should be reported, and penalties should be imposed for failure to report accurately. In cases where there is no public record, thorough field research with an adequate number of comparable properties should be conducted. Authorities involved must absorb additional costs of data collection. In addition, the residual approach or hypothetical development analysis and the cost approach can be applied if needed.

5. Institutional requirements for good valuation

Australia: Australia needs to have a single acquiring authority to ensure consistency in compensation determination for different government agencies. Alternatively, it needs to have a single procedural acquisition act that sets the standards of acquisition to be applied by all acquiring agencies.

Canada: Generally speaking, institutional requirements in Canada follow the standards of the CUSPAP (Canadian Uniform Standard of Professional Appraisal Practice) with some jurisdictional exceptions. The standards deal with the procedures for the development and communication of a formal opinion of value, and incorporate the minimum content necessary to produce a credible report that will not be misleading to the client, the intended users of the appraisal, or the public at large.

Japan: Professional appraisal experts are needed to ensure impartial valuation. Currently licensed real estate appraisers evaluate land values, while compensation consultants (quantity surveyors) estimate building and other values. Both of them are responsible for determining compensation of persons affected by public projects.

Malaysia: The Board of Valuers, Appraisers, and Estate Agents regulate the valuation profession. The Malaysian Valuation Standards are mandatory for all practicing valuers in Malaysia.

The Philippines: Good valuation starts with the licensing of valuers by the authority involved, which is the Professional Regulation Board for Real Estate Service in the Philippines. This will help ensure the standardization the practices of valuers in the compensation purposes.
Thailand: Every authority conducts land acquisition for public projects. There is still no pooling of resources or knowledge.

USA: The Uniform Appraisal Standards for Federal Land Acquisition in the USA provides good institutional support and guidance for valuation for compensation purposes. This model should be encouraged in developing countries as well.

Synthesis: There should be a single land acquisition authority to ensure consistency in compensation determination among different government agencies. Such an authority would provide a platform and opportunity for the pooling of knowledge and resources from different institutions.

6. Making valuation more transparent and understandable to the owners

Australia: The valuation report should be written in full and should contain complete supporting evidence for each item of compensation using non-technical language.

Brunei: To be fair, the appraised value should be broken down in details for what is being compensated, for example, land, buildings, other developments such as out-buildings, extra garages, etc. so that people can examine the validity in detail.

Cambodia: To achieve a transparent and understandable valuation, the valuer must have strong professional skills and has to respect the codes of conduct.

Canada: When property is expropriated in Ontario, the Expropriations Act requires that the expropriating authority serve the property owner with an appraisal report, which provides an estimate of market value for the lands taken (expropriated) and the estimated value of any loss in value to the remaining lands (injurious affection), typically within 30 days from the date that an expropriation plan is registered on the property's title of ownership. The process is intended by the legislation to be fair and transparent to all parties concerned.

Japan: It is important to enforce a plain law or policy. Valuation methods are not simple, so land owners may be unable to understand them well, but they can understand plain law and policy. Valuers must be trustworthy.

Malaysia: The powers are separated. The government agency that wants the land requires the Land Administrator to acquire the land. The valuation office of the Ministry of Finance values the land. Therefore, there is no conflict of interest, since all are independent bodies. In addition, the owner is allowed to engage a private valuer to provide a valuation report. The government reimburses the valuation fees. The owner is also entitled to make objections and appeals to the court for a nominal registration fee.

Nigeria: Aside from the government carrying out valuation on the affected areas, affected owners should also be allowed to carry out their own valuations, and a negotiation process between the former and the latter should be permitted.
Indonesia: Timely Land Acquisition for Infrastructure Development

South Africa: The Department of Land Affairs publishes information booklets. The persons being expropriated may also request access to expropriation valuation reports.

Thailand: There is an appeal process where a committee can reconsider the value appraised. In the case of disputes, people can go to court as well.

The Philippines: More transparency can be achieved by being consistent with the Philippine Valuation Standards (which is based on the IVSC). The Philippine Standards require the proper presentation of appraisal reports, which should explain the factors that were taken into consideration for arriving at the market value.

USA: Many jurisdictions in the U.S. give the property owner a copy of the government's appraisal. The negotiator then will explain the report to the owner. Actually, there may still be untruth because the value is appraised by the government. Therefore, the owner must determine whether the value is acceptable.

Vietnam: The authorities have to explain to the owners whose land is being acquired that the government is acquiring the land for public purposes and will compensate based on the market value.

Synthesis: A proper professional valuation must be conducted in order to be acceptable to the parties involved. To avoid conflict of interest, the agency that conducts the valuation and expropriation must not be the same as the authorities that will use the land.

7. Ways to facilitate timely land acquisition

Australia: Friendly negotiations are an alternative to traditional compulsory acquisition. Compulsory acquisition should only occur where a reasonable settlement cannot take place. In South Australia, the policy is to first buy the property on the normal market by approaching the owner and making an offer to purchase it at a reasonable price that represents the owner’s loss (the offer needs to be supported by a full acquisition valuation). The owner should be allowed to obtain his or her own independent valuation at a reasonable cost to be reimbursed by the government.

Brunei: All parties involved in the land acquisition process must work as a team, including project owners, project implementers, appraisers, managers in charge of the compensation payments, and relevant approving authorities.

Malaysia: Land acquisition is a complex process that takes away the fundamental right to property ownership. Therefore, there cannot be too many shortcuts. Due process of law and the access to one's rights must be given to the affected owners. Prior planning and development proposals by the acquiring authority could help in educating land owners about their rights and obligations.

Nigeria: Building approval plans should be fast tracked, and land acquisition should be made less cumbersome. The process could also be computerized in order to reduce errors.
The Philippines: How one might facilitate timely land acquisition depends on the location of the land, the type of property, and the status of the property. Due diligence should be carried out first, since there can be overlapping titles and restrictions or liens on the title. A real estate professional must be involved so as not to be "taken for a ride" by unscrupulous fly-by-night swindlers.

USA: Transparency is important. First, public hearings and public meetings are held to explain the project and the land acquisition process. Second, the land acquisition process should start as early as possible. Third, many agencies (and sometimes this is mandatory) are asked to inspect the property with the government's appraiser. In this way the owner can tell the appraiser what he/she thinks. This is an exchange of information for valuation purposes.

Vietnam: The government must let the investors negotiate the compensation with the land owners, to determine whether they can agree upon the acquisition without any compulsion. The government should support the investors in land acquisition from the landowners in offering adequate compensation based on proper valuation. The capital for compensation must be available at the compensation organizations so that it can be used when it is needed.

Synthesis: Land acquisition plans must be announced and explained clearly so that affected people can understand the entire process and know what to expect. Compensation based on fair valuation should be the first priority. At a later stage negotiators can help explain the process to the land owner and prevent any misunderstandings that might delay the acquisition.

8. Pros and cons of offering compensation above the market value

Australia: Many of the states offer solatium or ex gratia payment. This payment can be a set amount or a percentage of the compensation amount. It does not need to be accounted for; it just recognizes that the person has had the property acquired in abnormal circumstances and the additional payment recognizes that some losses are unquantifiable.

Brunei: Under Brunei's Land Acquisition Act, offering compensation above the market value is disallowed.

Cambodia: If the compensation is above the market value, people are less likely to resist land acquisition.

Canada: Authorities that offer compensation in excess of market value for property acquisition risk inflating the expectations of other property owners affected by the infrastructure project. In legal proceedings, such as arbitration at the Ontario Municipal Board, a counsel will use the settlement packages offered by the authority to other affected property owners as a means to reach a similar or greater level of compensation for their client. Establishing the market value for the lands taken and ensuring reasonable compensation for an owner results in a fair process and largely mitigates against a potential pitfall of inequality/inequity in compensation claims/payments.
Malaysia: The extra *solatium* had been used in the past in the UK. It is not clear how much extra should be paid. It is not certain that the extra compensation will help in terms of reducing objections. The affected owners will always argue that payments are insufficient. It is better to stick to a measurable yardstick, that is, market value.

The Philippines: Payments for contingencies or "tips" are necessary to facilitate the release of documents. This is usually called an "incentive" for a low-paid government worker to hasten the time for his or her work. It is not advisable to bribe a government employee to lower the taxes due in a transaction, since this can lead to problems with the parties involved in the transaction.

Thailand: This has still not yet happened in Thailand. Considering the high cost of project delays, paying more may mean paying less in the long run.

USA: The positive side of paying a premium is that there would be more settlements. The negative aspect is that the premium would constitute a "gift" for some people while the taxpayers pay the bill. In the USA, the compensation paid by the government covers other costs, including relocation or transaction costs which are considered part of the loss of the property taken.

Vietnam: The maximum compensation is market value.

**Synthesis:** The market value, and how it is calculated, must be understood by all parties involved. An additional payment—transaction costs, other costs, and/or an incentive over and above an amount that covers all quantifiable losses—can help avoid costly project delays. Additional payments can also help timely land acquisition, which will benefit the public at large.

9. **Ways to deliver compensation to owners**

Australia: If agreement is reached before compulsory acquisition proceeds, then the payment proceeds as a normal property settlement. If the compensation is delivered as a compulsory acquisition, then the money is paid to the court and the dispossessed owner makes an application to the court to get the money.

Brunei: Compensation payment is deposited in the owner’s bank account only.

Cambodia: Usually, the compensation is paid through the representative of the village, or the representative of the government/developer.

Canada: Section 25 of the Expropriations Act requires the authority to advance funds for the market value of the lands along with an appraisal report, within 30 days of the expropriation plan being registered on the property’s ownership title. The authority does not need to advance funds for injurious affection at that time; however, any funds withheld will accrue interest at the statutory rate of 6% annually.

India: The compensation payment is deposited by the central government in such manner as may be laid down at the bank or financial institution by rules made in this regard by the government.
with the competent authority. Payment must be deposited on behalf of the affected land owners before the entity that requires the land takes possession of it. As soon as possible after the amount has been deposited, the competent authority pays the compensation to the person or persons who are entitled to it, on behalf of the central government.

Japan: In Japan the compensation is delivered to property owners in cash. Occasionally, the compensation is paid in kind. For example, the compensation can consist of replacement property, such as vacant land near the acquired property.

Malaysia: The payment is made by the Land Administrator through checks payable to the owner either directly or through his lawyers.

Nigeria: The government pays directly to the affected owners through the Department of Lands Bureau.

The Philippines: Normally large payments are made through checks deposited in the bank account of the owner, after all the documents for a transfer of property ownership are in place.

South Africa: Compensation is paid when the offer is accepted by the persons being expropriated, subject to interest payments when there are delays.

Thailand: A major problem is that the compensation offered by the government tends to be lower than the compensation that the land owners expect. This is because some authorities simply use the government assessed value which is lower. If the owners reject the compensation offered by the government, the compensation payment is consigned in a bank and the owners can collect it any time. The owners can collect the compensation offered by the government and subsequently try to get an additional payment through the courts, when they feel that the original offer is unjust.

USA: Some utility companies provide their negotiators with "drafts" which allow them to pay the property owner on the spot. With the government, there are more checks and balances. If a check is hand delivered, it is most frequently delivered by some person other than the negotiator. Most government agencies mail the payments to the property owners.

Vietnam: Compensation payments are made by the local authorities.

**Synthesis:** The methods used to pay compensation are similar in most countries. Compensation can be paid directly by check or transferred to the land owners through a bank deposit.

### 10. Examples of unsuccessful compensation systems

Australia: South Australia’s Land Acquisition Act is an example of legislation that can potentially delay acquisition because of the lengthy procedures that must be followed from the date of the government’s announcement of a scheme until the date of acquisition.

Brunei: Delays occur when there is no money allocated for the land acquisition.
Cambodia: Delays in the delivery of the compensation happen frequently in cases where the affected owners do not have a clear family book or identity document. The owner must then verify his or her identity with the assistance of the local authorities.

India: In India the compensation process is tedious and time consuming. It can take from 2 to 3 years. All of the transactions in the area must stop immediately after notification. Then, in the case of a big intersection of highways, hotels and small businesses must relocate 0.5 – 2.0 kilometers away. What often happens is that wealthy business persons immediately purchase properties in the vicinity with their own funds, but small business persons can only purchase the property once they receive the compensation payment. By the time this happens, land prices may have tripled, and the compensation is inadequate, with the result that they go out of business.

Japan: In the past, when the real estate market fluctuates violently, property owners often complain about the adequacy of the compensation offered by the government. In Japan, public land acquisition was in trouble in the 1980’s under the bubble economy. Additionally, the amount of compensation was too high in the 1980’s and it pressed the government's finances. Therefore, some public projects could not be carried out or could be delayed, which was not good for the public.

Malaysia: Malaysia has been practicing the current system both before independence and now, so there are few cases of failure. Failure can be seen in when the period for each activity is not spelled out, or if the process gets stuck because of delays, particularly when paying compensation.

Thailand: There are quite a few public projects that have failed in the past. Public land acquisition plans were not really active, and delay in payment was also a problem. Failure occurred because compensation was based on the government-assessed value, which was much lower than the market value. However, this has been improved over time. Authorities might use lower appraisal values because they wanted to “play it safe,” fearing accusations of corruption if the price they paid was too high.

USA: There are some delays that affect land acquisitions. Sometimes people or groups take legal action against the project sponsor, saying that environmental laws have not been complied with, or that the project does not have a public use or necessity. These are not system failures but safeguards built into the laws. In many or most projects, the property owner must be paid prior to project construction. If payments are delayed, then the project is delayed. Again, it isn't a system failure but a safeguard to protect the property owner.

Synthesis: In most countries, some unsuccessful projects have been experienced. Failures are related to delay and inadequate amounts of compensation. These can result in the project falling behind schedule, or being unsuccessful overall.
11. Facilitating efficient compensation systems

Australia: Good supporting legislation, well-informed legal support, and adequately trained professionals in valuation and negotiation are needed.

Brunei: In order to facilitate efficient compensation systems, all the required information (prerequisites to payments) must be made available by both parties, and financial regulations and procedures must be followed by the entity responsible for providing compensation.

Cambodia: People usually do not object to relocation if the government or developer provides them compensation based on the market value of the affected properties, or relocates them to a suitable location, with a good environment and with good services and infrastructure, such as schools, markets, hospitals, electricity, garbage collection, drainage system, clean water, etc.

Canada: Efficient compensation systems require (1) a legislative framework for establishing a fair process for acquiring land for public use; and (2) valuation guidelines for estimating reasonable compensation for the owners' losses.

Japan: Appraisers need to improve their skills and be trusted to a greater degree by society.

Malaysia: The government or other institutions must publish sales information periodically. Qualified valuers must be paid by the government to represent land owners. Owners must also have access to legal costs. The time for each steps and stages involved in the compensation must be spelled out and adhered to.

Nigeria: Accurate valuation should be carried out on time.

South Africa: Efficient compensation systems require highly qualified professional valuers. Currently, valuation contracts are awarded on the basis of lowest cost. Analysis reveals systematic overcompensation as a result of poor valuations.

Thailand: There are not many development activities related to the process of facilitating efficient compensation. However, some could be undertaken to improve the efficiency of the compensation system, such as creating a reliable and transparent database on property transactions, and thorough and ongoing education of the public in the expropriation area on property valuation and property markets.

USA: The time to facilitate efficient compensation systems is before they are needed. The government agency that acquires the land needs to co-ordinate with the government financial agencies to develop a process to make timely and efficient payment. The finance agency will need documentation (e.g., appraisal, agreement with the property owner, proof that the correct person is being paid) from the acquisition agency before the government pays.

Vietnam: In order to facilitate compensation, the government and the investors have to pay compensation without delays, based on the market value of the assets affected and considering
Indonesia: Timely Land Acquisition for Infrastructure Development

economic losses, relocation expenses. In some cases it is necessary to build resettlement sites for displaced land owners.

**Synthesis:** Updated legislation to cover new issues in compensation will be needed to help create an efficient compensation system. Thorough planning on steps and stages in the compensation must be carried out and implemented with transparency. Some infrastructure needs should be satisfied at the beginning, such as creation of a good database.

**12. Observations on compensation of squatters on state or government land**

Australia: This is not applicable in Australia. From a theoretical point of view, the legal interest of squatters should be identified, and if they have a recognized legal interest then that interest should be compensated, even if it is only a partial interest in the land (i.e. a legal interest for a short duration of time).

Brunei: In Brunei Darussalam, squatters on state/government land are not compensated.

Canada: Technically, it could be argued that squatters have an interest in the land, but much would depend on the length of time of the occupancy. Since they wouldn't have clear title of ownership, unless of course, this was realized through adverse possession over a lengthy occupancy, one would probably impute economic rent (estimate a leasehold interest) for the demised area and a projected occupancy time, and then use a Present Value (PV) calculation to estimate appropriate compensation.

Japan: Almost all squatters are poor in every country in the world, so it is important to devise appropriate valuation standards and compensation policy reflecting local situations. Some sheltering or assistance during land acquisition must be provided based on the basis of maintaining common welfare of the people.

Malaysia: Squatters are occupiers that have no legal rights to the land. But squatting has a social cost. Land that is squatted on will fetch a lower value than land that is vacant. Squatter policies cannot be carried out through land acquisition alone. The government must have a squatter eradication policy at the national level. This will involve housing squatters in government housing. With this kind of policy in place, it will be easier to resolve such problems.

Nigeria: Squatters are illegal occupants; hence, the government does not particularly owe them compensation. Because they could become a menace to society, however, the government provides mass housing for them to meet their needs.

The Philippines: The relocation site offered to informal settlers has to be acceptable to them. Normally, the budget for relocation is five times the monthly minimum wage. That is, if the minimum wage is Php 8,470 per month (US$ 185), the disturbance fee is Php 42,350 (US$ 926) per family. Normally, there are about two families in a household.

South Africa: If squatters (illegal occupants) are poor people who have no other accommodation, they are protected and in many cases the court has to intervene before they are evicted.
13. Further suggestions

Brunei: For linear acquisition, the project alignment should preferably be “almost accurate” to minimized dispute on the coverage of compensation.

Cambodia: The expropriation law was just passed, and now the government has formed a committee for the appraisal of property for the purpose of property taxation and expropriation. In the near future, the compensation will become more effective, more efficient, and more transparent.

Japan: The situation of public land acquisition and the people's sensibility to it are very different around the world. Efforts to improve the compensation systems should take into account local circumstances and the experiences in other countries.

The Philippines: The Philippines does not have complete information on land ownership. A survey of all of the land in the Philippines has not yet been completed. This has been mandated by the Public Land Law.

C. Recommendations on Valuation and Acquisition

This section recommends some actions that could contribute to timely land acquisition for infrastructure projects in the public interest.

1. Compensation of slum (kampung) dwellers in Indonesia

In Jakarta, in the new Central Business District (CBD) of Kuningan, there are quite a few kampungs or low-income housing areas, located particularly in the area of Galunggang Road (North), H. R. Rasuna Said Road (East), Prof. Doctor Satrio Road (South and West), and Jenderal Sudiman (West) – see Figure 2. The clearing of this area to pave the way for the intensification of the new CBD would benefit the public at large, but would harm the slum dwellers, unless appropriate compensation measures are put in place.
Figure 2: Example of a Kampung for Public Land Acquisition

Source: Google Earth.
According to the table below, 10,000 housing units are estimated to be situated on the whole area of around 1,100,000 sq. meters, where an average lot size is estimated at approximately 110 sq. meters. A house in a kampung can be rented at approximately US$ 300 or 2.706 million rupiah per month. This is an estimate for the entire unit. However, there might be more than one rental unit in a house, or the owner of the house may occupy a section of the house and rent rooms to other persons or families.

<table>
<thead>
<tr>
<th>Items</th>
<th>Figures</th>
<th>Rupiah (mil) Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of a kampung (slum)'s housing units</td>
<td>10,000</td>
<td>Approximately</td>
</tr>
<tr>
<td>Land area of the settlements (sq.metres)</td>
<td>1,100,000</td>
<td>110 sq.metre per unit</td>
</tr>
<tr>
<td>Rent of a kampung house per month (US $)</td>
<td>300</td>
<td>2.706 for 120 sq.m net/unit</td>
</tr>
<tr>
<td>Annual rent for the whole settlements</td>
<td>36,000,000</td>
<td>324,720 =C4<em>100</em>12</td>
</tr>
<tr>
<td>Expenses, vacancy and losses</td>
<td>15%</td>
<td>Approximately</td>
</tr>
<tr>
<td>Net operating income</td>
<td>30,600,000</td>
<td>=C7*(1-C8)</td>
</tr>
<tr>
<td>Capitalization rate</td>
<td>10.0%</td>
<td>Typical</td>
</tr>
<tr>
<td>Value of the whole block (US $)</td>
<td>306,000,000</td>
<td>2,760,120 =C9/C10</td>
</tr>
<tr>
<td>Gross land value / sq.metre (US $)</td>
<td>278</td>
<td>2.509 =C11/C5</td>
</tr>
<tr>
<td>Value of a housing unit (US $)</td>
<td>30,600</td>
<td>276 =C11/C4</td>
</tr>
</tbody>
</table>

An annual income can then be calculated at US$ 36,000,000. If only 15% is for the expenses and losses of rent, then the net operating income (NOI) of 85% would be US$ 30,600,000. If 10% is perpetually used for the capitalization of this NOI, the total value of this block of kampungs would be US$ 306,000,000. If the building value is not taken into consideration because of the dilapidation, then the gross land value would be US$ 278 per sq. meter. Consequently, the value of each housing unit would be US$ 30,600.

The estimated land value of US$ 278 (2.509 million rupiah) per sq. meter is relatively low. The value of prime land on main H. R. Rasuna Said Road is estimated at US$ 1,663 (15 million rupiah) per sq. meter. This means that the value of prime land on the main road is 6 times higher than that in the kampung. Actually, the value of kampung land off the main road, with some road access, can be significantly higher than US$ 278 per sq. meter (up to 50% higher); however, kampung land in the inner area might be a lot cheaper due to limited accessibility. Therefore, US$ 278 is estimated for the entire block of kampung land.

Land value in a kampung is low because land has a limited use—mainly low or medium priced housing for lower income groups. In addition, there are some petty retail activities such as kiosks or small shops to serve the dwellers. It is believed that an urban kampung is a very good rental accommodation for people working in the city, because it allows them to live near their workplaces. Many kampung houses should be converted to rental room units, or converted to small apartment buildings where some access is allowed.
In addition, the low value of kampung land compared to the high value of land on the main road is also because of limited or little road accesses and zoning. Kampung areas have low “floor area ratio” (a low proportion of construction area to land area). This land cannot be converted to more profitable real estate development because of its existence as a kampung where many people live.

On the other hand, the value of land is very high already compared to existing uses, particularly in the case of land held by quasi-legal ownership or illegal squatter settlements. Some housing units might be very dilapidated and cannot be rented out, whereas all of the units are assumed to be rentable for this calculation. Therefore, this calculation is somewhat optimistic.

In addition, the 15% rate of expenses, vacancy, and loss is quite low. Furthermore, the capitalization rate of 10% during a perpetual period is also very optimistic. In the case of illegal squatter settlements or land with a quasi-legal land title or certificate, the rental opportunity might not last long—there might be an eviction or relocation in the future.

Therefore, this land value estimate is higher than that expected by property owners in a kampung. Few land owners are likely to be compensated for the loss of land because most of them do not have land rights. Those holding quasi-legal land ownership are likely to be compensated at lower rates than those with full land title or certificate. The estimated value of the land can be applied to land owners with land certificate. For squatters, the market value of the land is likely to be significantly lower, depending on market expectations on the amount of time that the land can be held. The market value is likely to be low if there is a threat of eviction in the near future.

In general, the value of property is the function of the NOI divided by the capitalization rate (\(V = \frac{I}{R}\)). In the case of illegal squatter settlements, where only a limited period of time can be applied due to the threat of eviction, the calculation is the NOI (I) multiplied by a multiplier.

\[V = I \times \text{Multiplier.}\]

\[\text{Multiplier} = \frac{1 - (1 / ((1 + i)^n)))}{i}\]

where \(i\) = capitalization rate (of 10%)

\(n\) = a period of years (e.g. 20 years)

In this case, the multiplier is \(\frac{(1-(1/((1+10\%)^{20})))}{10\%}\) or 8.51356372. Then this multiplier is multiplied by the I or NOI. If the I or NOI for the land of the entire block of kampungs is US$ 30.6 million (see table above), the value for 20 years will be US$ 260.5 million, which is around 85% of the open market value.

Consequently, the owners of illegal structures in a kampung would be very happy if they were to receive this amount of compensation for the land occupied by the structures. In Indonesia, as a general rule, persons without legal rights to land are not compensated for the land they occupy. In some cases, they are compensated for the value of the structures they occupy. In other cases, the owners of structures and the renters are offered resettlement assistance or low-
cost rental units, which can be considered compensation in kind. In general, a government must offer compensation or housing solutions to informal dwellers if it wants to clear the land peacefully and without resorting to forceful evictions.

The payment of higher compensation or the provision of alternative housing to informal dwellers (owners of structures and renters) can facilitate the conversion of the land occupied to kampungs to more profitable uses. Kampung dwellers cannot do this by themselves. The payment of compensation or the provision of adequate housing solutions can enable the government to convert the land use in a peaceful manner and without delaying the project.

As mentioned, the current land value of US$ 278 per sq. meter is very low compared to the value of prime land on the main H. R. Rasuna Said Road, which is estimated at US$ 1,663 per sq. meter. If the kampung land were vacant today, and ready for development, 60% of the land could be saleable. Therefore, the value of the saleable land is US$ 463.3 (278 / 60%). If infrastructure costs are estimated at 20% of the saleable land value, then the serviced and saleable land should be US$ 556 (463.3 * 1.2). If all of the soft costs (including profit, management costs, taxes, interests and the like) are estimated at 30% of the total value, this serviced and saleable land is then the remaining 70%. Hence, the value of the serviced land is US$ 794 (556 / 70%).

However, since these serviced and saleable land plots are located off the main road, which implies some less-privileged location for more profitable commercial uses, it is simply estimated to be some 30% below the value of land on the main road. Therefore, the final value of the land should be US$ 1,134 (794 / 70%) per sq. meter, which is still 68% of the US$ 1,663 per sq. meter on the main road. This land can be used for office space, high-rise and middle or high-priced residential development, and retail development as well. Therefore, it is very worthwhile to acquire urban kampung land for intensive city development.

Actually, the land value in this block could even be equal to the land on the main H. R. Rasuna Said Road because of the conversion of land to a planned and modern commercial zone. In the long run, land in this block, as in the center of the development, may have a higher value than the land in the existing main roads, since developments on the existing main roads would be in the periphery of the development.

As mentioned, of the total 1,100,000 sq. meters of land, 60% (660,000 sq. meters) can be saleable land. If a plot of commercial development on the main road nearby is approximately 15,000 sq. meters, this block of land can accommodate as many as 44 large buildings. This would be a new CBD within the existing CBD.

2. **Valuation of land occupied by squatter settlements in Indonesia**

Muara Baru is a squatter settlement located to the north of Jakarta, on the shores of Waduk Puit, a retention basin with drainage to the sea. Squatter settlements have occupied the area since 1998.
Fig.3: Muara Baru Squatter Settlement, North of Jakarta

This squatter settlement has an approximate land area of 100,000 sq. meters (50 metres by 2,000 meters). If 85% of the land is used, 85,000 sq. meters would be for building. This is very high density. If a make-shift dwelling is about 50 sq. meters, then there should be some 1,700 make-shift dwelling units.

It is estimated that a make-shift can be subdivided into two small rental units of some 20 sq. meters each. A make-shift dwelling unit at the front of the settlement can be rented at 150,000 rupiah per month (excluding electricity). On the average, a unit may be rented for 120,000 rupiah per month or US$ 0.67 per sq. meter per month.

The rent for the total 1,700 units (3,400 rental units) can be estimated at 4.896 billion rupiah per annum (3,400 rental units by 120,000 rupiah for 12 months). If the land is not converted, the value at 10% capitalization rate would be 48.96 billion rupiah. In other words, 3,400 make-shift rental units are worth 14.4 million rupiah (28.8 million rupiah for the 1,700 housing units).

If the make-shift dwelling unit cost is 450,000 rupiah per sq. meter, then the total cost is 29.75 billion rupiah (350,000 rupiah by 85,000 sq. metres). This means that the entire strip of land of 2 kilometers long is worth 19.21 billion rupiah or 192,100 rupiah per sq. meter (US$ 21.3 per sq. meter).
The dredging of Lake Pluit may require the relocation of the informal dwellers in Muara Baru. The compensation of 28.8 million per housing unit would be very attractive for the informal dwellers. It is expected that dredging will be worthwhile enough to satisfy the public at large. However, if it is not, it is better to let the current inhabitants stay so that the government can provide formal housing for them. In addition to that, the government could collect rent from the formal housing, if the informal dwellers are provided low-cost rental units.

Another option would be to increase the “floor area ratio” in part of the area currently occupied by informal housing, so that the current population of Muara Baru can stay at the current location. The rest of the area could be cleared for dredging.

3. A no-cost road development

In many cases, road projects are not financially feasible because of the high cost of land acquisition and road construction. Hence, few roads are constructed, resulting in inefficient logistics and transportation. However, there is a financially feasible way to develop new roads, as outlined below.

Normally, when a road is constructed, a strip of land is acquired for the construction, which consists of road surface, foot path and probably isles. In the case of the inner-city area in urban centers of Thailand, for example, if the cost of the road construction is 1, the land acquisition cost is 3 times that of the road construction cost, for a ration of 1:3. This proportion can become 1:2 in the case of an intermediate area of an urban centre, 1:1 in the case of the outer-city area, and even 2:1 in the case of rural areas.

The new concept proposed is that instead of acquiring a strip of land for road construction, the land along the proposed road should be acquired at the same time. If a road is 40 metres wide, two 40-metre wide strips along this proposed area will be acquired as well. When the road is constructed, the land along both sides of the road will appreciate in value, hence making this road proposal financially feasible.

In the case of an inner-city area, the appreciation can become 2.5 times the original value. If the construction cost is 1 and the land cost is 3, the normal total cost of the road is 4. However, if land on both sides is also acquired, then an additional land cost of 6 is assumed. Therefore, the total project cost is 10. Subsequently, after the road construction is completed, the value of land on both sides will appreciate from 6 to 15. There seems to be some profit of 5 resulting from this road construction. Better and more profitable potential uses can be realized.

Therefore, some portions of the land can be sold or leased for cost recovery of this road construction. This strip of land can be used for commercial or residential development. Definitely, authorities who do public service may not seek profits in public road construction. Some portions of the land can be allocated for a public park or greenery or rest areas as well.
**Figure 4: New Concept to Build a No-cost Road**

| Case 1: Inner-City |  
|-------------------|-------------------|-------------------|-------------------|
| Road=1*           | Land=3*           | Land=3*           | Land=7.5**        |
| **Project costs=10, Project Value=15, Profit=50%** |

| Case 2: Intermediate Area |  
|---------------------------|-------------------|-------------------|-------------------|
| Road=1*                   | Land=2*           | Land=2*           | Land=5**         |
| **Project costs=7, Project Value=10, Profit=43%** |

| Case 3: Outer-city Area |  
|-------------------------|-------------------|-------------------|-------------------|
| Road=1*                 | Land=1*           | Land=1*           | Land=2.5**       |
| **Project costs=4, Project Value=5, Profit=25%** |

| Case 4: Rural Areas |  
|---------------------|-------------------|-------------------|-------------------|
| Road=2*             | Land=1*           | Land=1*           | Land=3**         |
| **Project costs=5, Project Value=6, Profit=20%** |

**Project costs=Road Construction+Land cost for road and land beside**

**Project Value = 2.5 times of the original

According to the figure above, in all cases there exists a certain profit out of this type of development. This means that higher compensation can be paid to the land owners whose properties are acquired for road construction. Owners who can enjoy the new road may have to sacrifice some portion of their land for road construction. However, the value of the remaining land will increase substantially after this “sacrifice”. The increase can be double the previous value. Therefore, it is not actually a “sacrifice”, but it is a gain for the land owners.

4. **Redevelopment of prime public land**

Land acquisition can also be applicable to public land, particularly the parcels located in the prime or inner-city areas where high potential uses can be realized.¹³

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¹³ Peterson (2009: 98) wrote in his book, *Unlocking Land Values to Finance Urban Infrastructure*, that military land in Manila was converted to commercial uses in the metropolis.
Table 2: CBD / Inner City Public Land Development

<table>
<thead>
<tr>
<th>Details</th>
<th>Figures</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Building A New CBD</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area of the military compound (sq.metres)</td>
<td>1,600,000</td>
<td>Estimated</td>
</tr>
<tr>
<td>% of development area</td>
<td>60%</td>
<td>Typical</td>
</tr>
<tr>
<td>Net development area (sq.metres)</td>
<td>960,000</td>
<td>=C5*C6</td>
</tr>
<tr>
<td>Ratio of the development of 10:1</td>
<td>10</td>
<td>Buildable area : Lanc</td>
</tr>
<tr>
<td>Total buildable area (sq.metres)</td>
<td>9,600,000</td>
<td>=C7*C8</td>
</tr>
<tr>
<td>% of the total net lettable area</td>
<td>70%</td>
<td>Estimated</td>
</tr>
<tr>
<td>Total saleable area (sq.metres)</td>
<td>6,720,000</td>
<td>=C9*C10</td>
</tr>
<tr>
<td>Value of typical office space (US $ / sq.metre)</td>
<td>2,000</td>
<td>=2000</td>
</tr>
<tr>
<td>Years to be completed</td>
<td>8</td>
<td>Estimated</td>
</tr>
<tr>
<td>Capitalization rate</td>
<td>5%</td>
<td>Estimated</td>
</tr>
<tr>
<td>% discounted</td>
<td>0.677</td>
<td>=(1/(1+C14)^C13)</td>
</tr>
<tr>
<td>Net value of this development (US $ / sq.metre)</td>
<td>1.354</td>
<td>=C12*C15</td>
</tr>
<tr>
<td>Total value of the development project (US $)</td>
<td>9,096,721,026</td>
<td>=C11*C16</td>
</tr>
<tr>
<td>Office building’s construction cost / sq.m (US $)</td>
<td>800</td>
<td>Estimated</td>
</tr>
<tr>
<td>Total cost of the office building development</td>
<td>5,376,000,000</td>
<td>=C11*C18</td>
</tr>
<tr>
<td>% of the cost of the development project</td>
<td>70%</td>
<td>Estimated</td>
</tr>
<tr>
<td>Total hard costs (US $)</td>
<td>6,367,704,718</td>
<td>=C17*C20</td>
</tr>
<tr>
<td><strong>Total cost of this CBD land as land value</strong></td>
<td>991,704,718</td>
<td>=C21*C19</td>
</tr>
</tbody>
</table>

| **2. Building A Medium Income Living Quarter** |         |                             |
| % of the total net lettable area              | 75%     | Estimated more cue to being conco |
| Total saleable area (sq.metres)               | 7,200,000 | =C9*C24                     |
| Value of typical condominium (US $ / sq.metre) | 1,300  | Estimated                   |
| Typical unit area (sq.metre)                  | 40      | Estimated                   |
| No. of units which can be accommodated        | 180,000 | =C25*C27                    |
| Average unit price                            | 52,000  | =C26*C27                    |
| Years to be completed                         | 8       | Estimated                   |
| Capitalization rate                           | 5%      | Estimated                   |
| % discounted                                  | 0.677   | =(1/(1+C31)^C30)            |
| Net value of this development (US $ / sq.metre) | 880    | Estimated                   |
| Total value of the development project (US $) | 6,335,216,429 | =C25*C33                   |
| Office building’s construction cost / sq.m (US $) | 450    | Estimated                   |
| Total cost of the office building development | 3,240,000,000 | =C25*C35                  |
| % of the cost of the development project     | 70%     | Estimated                   |
| Total hard costs (US $)                       | 4,434,651,500 | =C34*C37                   |
| **Total cost of this piece of land as land value** | 1,194,651,500 | =C38*C36                   |

The table above is an example of the preliminary financial data of for a piece of land in Bangkok, which is currently a military compound. On the right (east) of the site, is Vibhavadi Rang Highway, with Don Muang Tollway on top of it. On the left (west), is Pahonyothin Road with the BTS Skytrain on top of it. The possible success of this project will help expand infrastructure development in the hub of the city.

According to the above calculation, if this parcel of land is used for office development as the location of a new central business district (CBD), the value of the land would be US$ 991.7 million or around US$ 620 per sq. meter. If it is developed as a medium-income living quarter, the value of the land would be US$ 1.195 billion or US$ 747 per sq. meter. The value of the two developments might be some 17% difference from each other. Office development would entail a higher risk because of the existing huge supplies in the market; on the other hand,
residential developments in this area are needed. Likely, in the development, the highest and best use will be chosen.

Consequently, the possibility of developing a large public land area, which is considered a guided development scenario, will help supply more road networks and a new infrastructure to the city at large. Adjacent private land can also be acquired, or a large investment scheme could be worked out that would help boost the economy at large.

5. Property acquisition authority

An organization should be established to be responsible for the entire process of property acquisition. This task should not depend on the authorities involved but should be centralized in order to pull together all expertise and resources. This organization should work for any land acquisition project nationwide, pooling fragmented resources and experience from different organizations.

The tasks of this authority would include the execution of land acquisition plans requested by the authorities involved, valuation, negotiation with the property owners and the like. Their own professionals can take care of the tasks or out-source the services to private service providers. In addition, the tasks outlined below should be included.

The first task is to set up a relocation fund. During the process of relocation, property owners may need to sell their land to the government or they may need a loan for the relocation or for other related activities resulting from the land acquisition. The authority should have a relocation fund that can be used for these purposes as needed. Normally, relocation costs must be paid by the government. However, to set up a new business or residences elsewhere, people may need cash in the form of loan to help facilitate a smooth transition.

The second task is the provision of some temporary resettlement sites, where shelter can be built to provide for those in need. There may be a need for an amount of money to be allocated to property owners so that they can acquire temporary housing in urgent cases of public land acquisition.

The third task is referral services. Some persons affected by land acquisition might be senior citizens who have no relatives. They may need a nursing home or other accommodation (if they are too poor) instead of a house. In this case, the authority can refer the affected person to an appropriate institution instead of providing a house.

The fourth task is to conduct negotiations with persons affected by land acquisition, particularly the property owners. Negotiation may be conducted by professional negotiators under the execution of this authority. If owners are willing to sell their properties, compulsory land acquisition would become unnecessary. Negotiations need to be transparent, and the land owners need to be well informed about their rights and obligations, as well as the market value of the land and assets being sold.
The fifth task is to conduct training on public land acquisition for staff members of this authority and other government organizations involved in land acquisition. Course contents might include:

- Principles of Land Acquisition
- Principles of Real Estate Negotiation
- Communications in Real Estate Acquisition
- Alternative Dispute Resolution
- Bargaining Negotiations
- Negotiating Effectively with a Diverse Clientele
- Conflict Management
- Cultural Awareness
- The Appraisal of Partial Acquisitions
- Easement Valuation
- Reviewing Appraisals in Eminent Domain
- Residential Relocation Assistance
- Business Relocation

6. Real estate information center

There should be public investment in a property information centre on a self-sustained basis. This implies that information must be valuable cum saleable with commercial value to interested parties. Although data and information on valuation are an integral part of professional valuation, it must be understood that proper analysis of data is important as well. In addition, it is not necessary to have comprehensive information about an area in order to value a single piece of property.

Information on property prices transacted must be publicized and transparent. The disclosure of transacted prices will not violate business confidentiality inasmuch as the business is transparent. The public should have the right to know the exact prices transacted. This would be a good database for valuers as well as for preventing economic crimes. For example, in the USA, if one cheats the authorities by providing the wrong/lower cost of a house bought in order to pay less tax, their neighbor can sue him. The misconduct of one person can affect others.

In order to encourage the disclosure of prices transacted, a property gain tax (tax on the amount of value exceeding the original acquired value) might be studied and introduced so that it would be fair for property holders. Private properties with a value exceeding a certain amount (e.g. one billion rupiah) should be valued by an independent valuer or valuation firm prior to sale. The value appraised would be used for taxation purposes.

In order to disseminate the information, public records on property transactions should be made public to all (with some payment for users). This would facilitate property valuation and

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14 There are good courses run by the International Right of Way Association (IRWA: 2010) where the author has a mission to participate and speak at its annual conference every year.
make transactions transparent. In addition, websites containing price databases should be constructed.

Achieving this will require strong commitment on the part of the government. The main functions of the Center are directly related to property market information. The first step is to collect data; the second step is to collate and synthesize data for further uses. The third step is the analysis of the data. The fourth is to disseminate the information analyzed. This would help property owners, the government, and the public at large.

Fortunately it is not necessary to collect all possible data to create a valuable resource. Only a few items need to be investigated. For example, it is necessary to collect real estate launches and development projects from the field because they are a good market barometer. This will be used to understand the contemporary situation and to react promptly in the case of problems or discrepancies. Secondary information needed includes mainly the transaction records of all types of properties and the valuation reports in electronic form.

This property information center would be a critical source of information for the valuation of land for public acquisition and for other purposes.

**D. Concluding Remarks**

In general, property owners should be compensated for the following losses:

1. Market value of the properties (land and buildings) taken.

2. Special value to the owner. Some properties have some special value to the owner because they produce certain income or have special characteristics or significance for the owner.

3. Severance, which is the reduction of value of a person’s remaining land caused merely by the taking of part of the person’s land. For example, the reduction in size of the remaining land affects economic operation or viability, the reduction in size requires alteration or improvement to the remaining land, or the fragmentation of land makes economic use more difficult.

4. Injurious affection, which occurs when the value of the residual land is reduced by the intended use of the land taken.

5. Disturbance, which refers to relocation costs and lost revenue. Sometimes a taking of land can even eliminate a landowner’s business completely.

Major issues for consideration were identified through interviews with experts in related fields. The findings are as follows:

1. The Principle of Compensation for Public Land Acquisition: Governments acquire land for projects according to procedures established by law. However, the
appropriateness of these laws and regulations may have to be examined periodically and modified as necessary.

2. Coverage of Compensation—Relocation Costs, Economic Losses, etc: It is a common practice for the authority to compensate for all physical losses of properties, including severance and injurious affection damages, as well as costs of removal or demolition and relocation. The compensation is at the market price of the real estate and takes into account other losses. However, spiritual or personal value is not subject to compensation.

3. Use of Internationally-accepted Valuation Standards for Compensation: In most countries, there is at least a set of valuation standards, which is more or less similar to the international standards, and to standards for developed countries such as the USA and the UK.

4. Valuation When Data Availability Is Limited: Limited data availability implies that a real estate information center should be established. All transaction prices should be reported, and penalties should be imposed for failure to report accurately. In cases where there is no public record, thorough field research with an adequate number of comparable properties should be conducted. Authorities involved must absorb additional costs of data collection. In addition, the residual approach or hypothetical development analysis and the cost approach can be applied if needed.

5. Institutional Requirements for Good Valuation: It is proposed to have a single land acquisition authority to ensure consistency in compensation determination among different government agencies. Such an authority would provide a platform and opportunity for the pooling of knowledge and resources from different institutions.

6. Making Valuation More Transparent and Understandable to the Owners: A proper professional valuation must be conducted in order to be acceptable to the parties involved. To avoid conflict of interest, the agency that conducts the valuation and expropriation must not be the same as the authorities that use the land.

7. Ways to Facilitate Timely Land Acquisition: From the beginning, an expropriation project must be announced clearly with definite terms of implementation so that people can understand the entire process of public land acquisition. If possible, buying properties based on fair valuation should be the first priority. Negotiators can help later. Some social contribution to the owners can help facilitate timely infrastructure development.

8. Pros and Cons of Offering Compensation above the Market Value: The market value, and how it is calculated, must be understood by all parties involved. An additional payment—transaction costs, other costs, and an incentive over and above an amount that covers all quantifiable losses—can help avoid costly project delays. Additional payments can also help timely land acquisition which will benefit the public at large.
9. Ways to Deliver Compensation to Owners: Compensation can be paid directly by check or transferred to the land owners through a bank deposit.

10. Examples of Unsuccessful Compensation Systems: Some unsuccessful projects have been experienced in most countries. Failures are related to delay and inadequate amounts of compensation. These can result in the project falling behind schedule, or being unsuccessful overall.

11. Facilitating Efficient Compensation Systems: Updated legislation to be able to cover new issues in compensation will be needed to help create an efficient compensation system. Thorough planning of steps and stages in the compensation must be carried out and implemented with transparency. Some infrastructure needs should be satisfied at the beginning, such as creation of a good database.

12. Observation on Compensation of Squatters on State or Government Land: Since squatters are illegally occupying land, they are not entitled to compensation. However, payment to the squatters may help accelerate a project and minimize its costs. On the other hand, this may be a sensitive issue for other taxpayers.

This study makes the following recommendations for action:

1. Compensation for Slum (Kampung) Dwellers: A case study is presented in order to visualize the possibility for land acquisition. It is financially feasible to compensate to urban kampung dwellers to pave the way for more profitable development for all.

2. Valuation of Squatter Settlements for Relocation: Informal settlements should be relocated, and settlers compensated and assisted in their efforts to gain access to formal housing if the project that causes their displacement is worthwhile to the public. If not, they should be allowed to stay where they are.

3. A No-Cost Road Development: Road projects raise land values and, therefore, have the potential to generate profits. If these profits are realized, higher compensation can be paid to the land owners whose properties are acquired for road construction.

4. Redevelopment of Prime Public Land: The development of a large public land area can help supply more road networks and new infrastructure in urban areas.

5. Property Acquisition Authority: A national Property Acquisition Authority should be established to be responsible for the entire process of property acquisition. This organization would be involved in any land acquisition project nationwide, pooling fragmented resources and experience from different organizations.

6. Real Estate Information Center: A Real Estate Information Center should be created to help establish a database for valuation, taxation and other purposes. It would be the repository of information for valuation of land for public acquisition, and for other
purposes. Hence, it will help facilitate the land acquisition. Its contributions to timely land acquisition would include:

- The establishment of a property information center can generate important benefits for all, at a relatively low cost, particularly considering the gigantic amount of real estate investment per annum.

- The establishment of a reporting system of transaction prices would facilitate the determination of the market value of properties. In addition, some additional measures are needed to encourage people to report accurately by reducing stamp duties (for the changes of ownership) and transfer fees and to punish those who fail to report accurately by charging them high fines. Quality control and independent valuation of properties worth more than a certain value should also be mandatory.

- An ad-hoc authority should be established to pull the resources and carry out valuation and land acquisition. Specific tasks, such as valuation, can also be outsourced. Quality assurance of outsourced jobs is important.

- Training and study visits to different countries should be conducted, particularly on the topics of negotiation, communications, dispute resolution, bargaining, conflict management, cultural awareness, valuation, and compensation.

The feasibility of these actions depends on the understanding of valuation practices by the public, and the acceptance and support of politicians. Politicians can benefit from improvements in valuation and compensation practices, to the extent that they facilitate land acquisition for infrastructure development. When these projects materialize, the popularity of the politicians who supported the projects tends to increase. If there is strong political support for improving valuation and compensation practices, land acquisition can be more timely and successful.

In the end, after preparing a plan for timely land acquisition in a given project, a scrupulous evaluation of the execution of each step and stage must be conducted in order to ensure the soundness of the project. The lessons of successful projects can then be transferred to future land acquisition projects. This process will be a cost-effective use of funds spent in land acquisition projects.
Bibliography


Appendix 1: 
List of contributors to the paper

The following professionals from 12 countries generously contributed to this paper. They are my professional colleagues in the field of valuation, real estate and urban planning. Allow me to acknowledge their names and contact addresses below:

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IV. Land Valuation in the Context of Land Acquisition for Public Use

Okky Danuza

This paper begins with an overview of the history of the profession of appraisers in Indonesia and the current system for certifying and classifying Indonesian appraisal professionals. Part B is an overview of the Indonesian Valuation Standard (SPI), which sets the standards for property valuation in Indonesia. Part C discusses various methodologies that are used by Indonesian appraisers and describes the steps in carrying out appraisals for land alone and for land and structures. Part C also discusses some of the complexities of property appraisals and which methods are most appropriate for particular valuation activities. Part D, the final section, discusses the compensation of affected people when land and structures are acquired to carry out a public investment projects in Indonesia. The paper concludes with a proposed methodology for valuing compensation in the context of land acquisition for public use.

A. Professional Appraisers in Indonesia

1. History and organization of the profession

Indonesia’s Expropriation Law (Law No.20/1961 on the Revocation of Rights to Land) defines ‘appraiser’ as someone who estimates property values, using standard and approved methods. In the 1970s the first appraisal company was established. In 1980 the appraisers organized themselves into an association of appraisal companies known as Gabungan Perusahaan Penilai (GAPPI) – Association of Appraisal Agencies. Following closely on this development a professional organization known as the Indonesian Society of Appraisers (Masyarakat Profesi Penilai Indonesia—MAPPI) was established in 1981.

In Indonesia, professional appraisers are responsible for the following functions:

- Valuation to determine the economic value of both tangible and intangible assets (encompassing both Fixed Asset Valuation and Business Valuation, including goodwill, trademark and patent rights)
- Project Valuation
- Valuation of Technical Feasibility
- Valuation and Development Consultancy, including Project Feasibility Study
- Valuation and Project Monitoring
- Valuation and Investment Broker and Advisory Services

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Indonesia: Timely Land Acquisition for Infrastructure Development

- Valuation and Property Information Technology System
- Valuation of Property Consultancy, including Property Financial Advisory Services
- Property Management

MAPPI, the professional association, currently identifies several kinds of members, depending on their levels of training and expertise. These are:\(^3\):

- Associate Member or “MAPPI-P”
- Registered Member or “MAPPI-T”
- Certified Member or “MAPPI-S”
- Honorary Member
- Extraordinary Member

According to MAPPI’s Annual Report (Rakernas MAPPI 2010), its membership as January 1, 2010 comprised:

- Associate members: 741
- Registered members: 876
- Certified members: 307
- Honorary members: 10
- Extraordinary members: 21
- Total: 1,955

These types of membership in MAPPI are recognized in the National Standard of Work Competence (Standar Kompetensi Kerja Nasional Indonesia – SKKN), which defines the following levels of qualified appraisers:

- Assistant Appraiser: Members of MAPPI - P
- Medium Appraiser: Members of MAPPI - T
- Public Appraiser: Members of MAPPI - S

Each level of appraiser must meet particular training and experience qualifications, as outlined below:

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3 MAPPI-P: an individual who works or has background in appraisal or in a field directly related to appraisal, and meets all the requirements stated in the association’s by-laws.
MAPPI-T: an individual who is a professional appraiser, and who works as an appraiser or in a field directly related to valuation; who has qualifications competence and experience; and who meets all the requirements stated in the association’s by-laws.
MAPPI-S: an individual whose profession and/or work is as an appraiser, and who has an Appraiser Certificate issued and/or legalized by MAPPI, and who meets all the requirements stated by the association’s by-laws.
Certified members are granted titles according to regulations issued by the Central Executive Board.
Honorary member: an individual who has high professional merit and is recommended by the Central Executive Board and Regional Executive Board.
Extraordinary member: an individual interested in appraisal but who has no qualifications as an appraiser, and who meets all the requirements stated in the association’s by-laws.
2. Professional licensing

Indonesia has a complex and well regulated system of professional licensing. The Ministry of Finance is the supervisory institution for Public Appraisers in Indonesia; the agency that oversees Public Appraisers in Indonesia is the Office of Public Appraiser Services (Kantor Jasa Penilai Publik—KJPP), as governed by the Finance Minister’s Regulation No. 125/PMK.01/2008. MAPPI, the professional association of appraisers, is also charged with carrying out certification and testing of Appraisers.

Before one can be licensed by the Ministry of Finance to be a Public Appraiser, then, one must first receive an Appraiser Certificate from MAPPI. To receive this certification, the applicant must pass the Appraiser Certification Test conducted by MAPPI, which conducts this test nationwide and sets standards for qualification and competence.

Before applying to become a Public Appraiser, an individual must be a registered member of MAPPI, having passed the Basic Appraisal Course (P1P2) and Advanced Appraisal Course (P3P4), and must have at least 2 years of experience. After that, separate certification tests are administered for certification as a Property Appraiser or Business Appraiser. The responsibilities of Property and Business Appraisers are as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Appraiser grade</th>
<th>Certification classification</th>
<th>MAPPI Membership and experience</th>
<th>Examination s passed</th>
<th>Working Scope</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Certified Appraiser</td>
<td>S-Certification</td>
<td>MAPPI-S and Public Appraiser 3 years experience</td>
<td>Appraiser Certification Test</td>
<td>All properties</td>
<td>Create, supervise, and sign appraisal reports on all kinds of property, according to established area(s) of expertise</td>
</tr>
<tr>
<td>2.</td>
<td>Middle Appraiser</td>
<td>B-Certification</td>
<td>MAPPI-T 2 years experience</td>
<td>P3-P4</td>
<td>Property in the appraiser’s area of expertise</td>
<td>Responsible for and signer of reports on simple property. Acts as Executive Manager, reports to Public Appraiser</td>
</tr>
<tr>
<td>3.</td>
<td>Assistant Appraiser</td>
<td>A-Certification</td>
<td>MAPPI-P 1 year experience</td>
<td>P1-P2</td>
<td>Simple property</td>
<td>Field Executor. Writes reports for simple property appraisal. Reports to the Manager</td>
</tr>
</tbody>
</table>

4 To issue the certification, MAPPI forms a Board of Examiners of Appraiser Certification Test (DP-USP). This Board is appointed by the Indonesian Society of Appraisers (MAPPI) Central Executive Board, and has the authority to conduct the test and examine the test results, which are included in the Decision Letter of the Central Executive Board of the Indonesian Society of Appraisers.

5 The Ministry of Finance actually recognizes three categories of Public Appraiser, based on the qualified individual’s area of expertise and official certification status: Property Appraiser (P-classification); Business Appraiser (B-classification); and Property and Business Appraiser (P & B classification)
### Classification of Appraisers and their Fields of Service

<table>
<thead>
<tr>
<th>Classification</th>
<th>Areas of Valuation and Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Appraiser (P)</td>
<td>• Land and buildings&lt;br&gt;• Plants and machinery&lt;br&gt;• Vehicles and heavy equipment, communications equipment, medical equipment, laboratory equipment, utilities’ equipment, office equipment, etc.&lt;br&gt;• Agriculture, animal husbandry, forestry, fisheries&lt;br&gt;• Mining</td>
</tr>
<tr>
<td>Business Appraiser (B)</td>
<td>• Corporate valuation&lt;br&gt;• Share valuation&lt;br&gt;• Securities and derivatives&lt;br&gt;• Financial interest and liability&lt;br&gt;• Intangible assets&lt;br&gt;• Economic damages&lt;br&gt;• Fairness of transactions</td>
</tr>
</tbody>
</table>

Source: Ministry of Finance Regulation PMK 125

Currently as many as 303 appraisers have qualified as Public Appraisers. Of these, 262 have registered their classification:

- Registered Property Appraisers: 187
- Registered Business Appraisers: 34
- Registered Property and Business Appraisers: 41

After being licensed, Public Appraisers must operate as part of a business called an Office of Public Appraiser Services (KJPP). These offices can be individual or partnerships. Partnerships require at least two Public Appraisers, and can also have partners who are not Public Appraisers. However, these cannot represent more than 40% of the total number of partners. Records of licenses issued by the Ministry of Finance reveal that there are currently 105 offices (28 individual offices and 77 partnerships).  

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B. The Indonesian Valuation Standard (SPI)

1. Functions of the valuation standard

In Indonesia, as worldwide, economic crises and rapid market changes have created an increased demand for reliable valuations by Appraisers who meet a standard that is transparent yet can also adapt to development needs. The standard used in Indonesia is the Indonesian Valuation Standard (SPI). This standard establishes basic procedures and practices followed by professional appraisers. It was created within the context of the International Appraisal Standard issued by the International Valuation Standard Committee (IVSC).

The SPI plays an important role for the Appraisers and for the users of appraisal services, including government agencies and other related agencies such as banks, financial institutions, the stock exchange, etc. For the appraisers, the SPI provides guidelines for valuation, while for the users of appraisal services it provides guidance for understanding and using the appraisal results. For the government and other related institutions, the SPI can serve as a standard for the supervision of appraisal professionals in Indonesia. Appraisers who operate in Indonesia must be licensed by the Government and are obliged to abide by the SPI.

The SPI has the following objectives:

- Encourage Appraisers to carefully determine and understand the needs and requirements of the intended users, and to provide adequate valuation standards to fulfill the needs of the Appraiser.
- Encourage the consistent use of appraisal norms and assumptions in basic valuation, and the selection of the method of appraisal that is right for the needs of the principal.
- Assist the Appraiser to reach professional competence by setting standards that are in line with international guidelines.
- Assure that valuation reports are comprehensive and not misleading, and that they contain information that is easy to understand and useful to the readers.
- Assure that the references published in the appraisal report contain clear, accurate and adequate information, so that the report is not confusing.

It is important to emphasize that the SPI does not provide detailed guidance on theory and methodology of valuation, but rather describes the standards of valuation practice, including the formation, interpretation and reporting of information relevant to a particular valuation exercise.

2. History of the SPI

Indonesia is represented by MAPPI in the International Valuation Standards Commission (IVSC). MAPPI is one of the 48 associate members of IVSC, an organization that represents 43 nations. As a member of IVSC, MAPPI has ratified the use of the IVS as the reference point for valuation standards in Indonesia.
SPI 2007, currently in use, is the result of revisions of earlier versions. The 2007 version is consistent with the principle that changes to the standards are inevitable, but should be made only when they are necessary, and they should be implemented in a gradual fashion. Thus, SPI 2007 is published in ‘loose leaf’ format, so that updates can be integrated easily.

SPI 2007 is an adaptation of the 2005 International Valuation Standards (IVS) 7th edition in terms of its organization and content. Since its 2000 edition, the SPI has been based on the IVS. This practice recognizes Indonesian Appraisers need to be equipped with international-level valuation standards so that they will be on an equal footing with international appraisers. Thus SPI is consistent with guidelines used at international level. However, the SPI also includes local content to provide guidelines for various local matters, in line with relevant laws and regulations.

Since Indonesian Appraisers rely on international-level valuation standards so that they will work at the same level as their peers internationally, the Standardization Agency, through the Committee of Indonesian Valuation Standards Committee (KPSPI) plays an important role in improving and updating the SPI. The KSPI keeps abreast of developments in the International Valuation Standards and monitors regulations and policies issued by the Ministry of Finance, Central Bank, the Capital Market Supervisory Agency (BAPEPAM), and other professional standards, such as the Accounting Standards of the Indonesian Accountant Association (IAI).

3. Content of the SPI

The SPI states that every standard must be perceived as part of the whole, and that all parts are interlinked. This means that in some cases, divergences from the guidelines or alternative approaches may be allowed. In such instances the Appraiser must explicitly state the irregularity and alternative being carried out in the valuation report, provide reasons for that irregularity or alternative, and, if necessary, give an estimate of the potential impact of the irregularity or alternative being taken on the validity of the valuation.

The organization of SPI 2007 parallels that of the International Valuation Standards (IVS) and consists of six main sections, which are summarized below.

1) Introduction: Explanations of the general context, purpose and objectives, format and application of the Indonesian Valuation Standards.

2) Concepts and General Principles of Valuation/Appraisal: Comprehensive discussion of the conceptual framework, including the concepts of property, value, market value, highest and best use (HBU), valuation approaches and various other important concepts. These concepts are basic to the profession and practice of appraisal/valuation and the application of the standards. This section also describes concepts related to property types covered by the SPI, including real property, personal property, company/business agency property, and financial interest.

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8 Previous Indonesian Valuation Standards were published in 1994, 2000 and 2002.
3) **Ethical Codes of Conduct of Indonesian Appraisers (KEPI):** This section describes the duties of the professional Appraiser who carries out a fiduciary duty to the community. In order to fulfill their duties, Appraisers not only need technical skills, but must also be recognized by their communities for their integrity, honesty and objectivity in the exercise of their profession. For that reason Appraisers must not only meet the professional qualifications required by the SPI, but must also comply with the ethical principles established in the Ethical Codes of Conduct of Indonesian Appraisers (KEPI), which serve as the moral foundation for the Appraiser in doing his/her job.

4) **Standards:** The Indonesian Valuation Standards form the heart of the SPI, and are permanent. Standards in this section form the foundation of the Valuation Application that serves as the guide to establishing the valuation basis. This section comprises:

- **SPI 1 – Market Value Basis of Valuation.** Provides a general definition of Market Value and criteria corresponding to the definition and application of Market Value in the valuation of property appropriate for Market Value estimation.

- **SPI 2 – Bases Other than Market Value.** Identifies and explains the basics of valuation based on other than Market Value, and sets out criteria for valuation based on other than Market Value.

- **SPI 3 – Valuation Reporting.** Discusses requirements of reporting that are consistent with the best practice of professionals, and identifies the important elements to be included in the valuation reporting.

These standards form the foundation of PPI (Indonesian Valuation Application) and PPPi (Indonesian Valuation Application) Guidelines set forth in subsequent sections.

5) **Indonesian Valuation Application – PPI:** This section provides guidelines on the valuation application for financial reporting purposes and for valuation related to mortgage security. This section comprises:

- **PPI 1 – Valuation for Financial Reporting.** Explains the principles used in valuation for financial reporting and other business purposes, defining application of fair value accounting in this context.

- **PPI 2 – Valuation for Secured Lending Purposes.** Provide guidelines for Appraiser in preparing valuation for the purpose of debt guarantee and providing the framework for execution of valuation for such a purpose.

- **PPI 3 – Valuation of Public Sector Assets for Financial Reporting** Explains principles used in valuation for financial reporting of public sector assets and
other related accounts of the Government in the context of the implementation of fair value accounting.

6) **Indonesian Valuation Application Guidelines – PPPI:** This section provides guidelines for valuation of various types of property, requirements that must be met in performing valuation, guidelines for various special situations in valuation, application of Indonesian Valuation Standards in business situations, and provision of specific services.  

To summarize, then, the three main elements of the Indonesian Valuation Standards are (1) Standards (SPI); (2) Valuation Application (PPI); and (3) Valuation Application Guidelines (PPPI). All valuations made on the basis of the Indonesian Valuation Standard must comply with the principles and procedures contained in the Indonesian Valuation Standard:

MAPPI’s Board of Appraisers oversees the application of the SPI by its members. The main tasks of the Board of Appraisers are to:

- Monitor compliance of the members and their business services to the Ethical Codes of Conduct of Indonesian Appraisers (KEPI) and Valuation Standards.
- Protect the members and their business services in carrying out valuation activities, provided that they do not violate the ethical codes (KEPI) and valuation standards (SPI).
- Impose sanctions on members who violate the ethical codes and valuation standards.

**C. Valuation Process and Methods**

1. **Valuation process**

Valuation is the central process in appraisal. The Appraiser performs a valuation, then expresses an opinion on the on the economic value of a property at particular moment. The stages of the valuation process are as follows:

<table>
<thead>
<tr>
<th>DEFINITION OF THE ASSIGNMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify Real Estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRELIMINARY ANALYSIS, DATA SELECTION AND DATA COLLECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL DATA</td>
</tr>
<tr>
<td>Region, city and neighborhood</td>
</tr>
<tr>
<td>Social</td>
</tr>
<tr>
<td>Economic</td>
</tr>
<tr>
<td>Governmental</td>
</tr>
<tr>
<td>Environmental</td>
</tr>
</tbody>
</table>

Absorption Rate

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9 See Appendix 1 for details
2. Valuation methods

Under the IVS, there are three approaches for property valuation:

1. Market Data Approach
2. Cost Approach
3. Income Approach

3. Market Data Approach

The Market Data Approach (or sales comparison approach) recognizes that property prices are determined by the market. Market value can, therefore, be calculated from a study of market prices for properties that compete with one another for market share. When data are available, the market data approach is the most direct and systematic approach to estimating value.
After sales data are gathered and verified, one or more units of comparison are selected and analyzed. Units of comparison use two components to produce a factor (e.g., price per square meter) that reflects precise differences between properties.

To make direct comparison between a comparable property and the subject property, a valuer considers possible adjustments based on differences between in the elements of comparison. Adjustments can narrow the differences between the comparable properties and the subject property.

Property Indication Value = Market data for similar/comparable properties +/- Adjustments

4. Cost approach

The Cost Approach establishes value by estimating the cost of acquiring land and building a new property, minus depreciation of the existing property.

Property Value (Land and Buildings) = Land value + (Cost of new replacement/reproduction buildings – Depreciation)

The “Cost of new replacement” (or “replacement cost”) of a building is the cost of building a similar structure, but using modern construction methods and materials. “Reproduction cost” is the cost of duplicating the structure completely.

Replacement cost is the approach most often used, because it uses modern materials and features, eliminating functional obsolescence, such as rooms of an undesirable size or high maintenance construction materials.

In estimating property value using the cost approach, depreciation is subtracted from the total value. Depreciation is the loss of value due to any cause. Land normally does not depreciate, unless it is degraded by erosion, improper use, or perhaps zoning changes.

The depreciation of buildings is generally caused by three factors:

- **Physical Deterioration**, i.e., loss of value caused by the length of use, weather damage, and other maintenance problems
- **Functional Obsolescence**, i.e., loss of value associated with features that have been discounted by the market (unfashionable design features, outdated plumbing, electrical or heating systems, etc.)
- **Economic or External Obsolescence**, i.e., loss of value caused by external factors, such as the social change, the characteristics of surrounding properties, environmental conditions, zoning regulations, etc.
5. **Income approach**

The income approach values property according to the net income that it can potentially generate. This approach is used for the valuation of income-generating property such as apartments, office buildings, agricultural properties, etc. The appraiser estimates the net income that can be obtained from the asset assuming that it is operated in the most profitable way and subtracting operational costs. The residual value or net value of the asset now and into the future is used to impute the value of the property at the date of valuation. The net present value of a property can be calculated using the Direct Capitalization method or Discounted Cash Flow method.

6. **Land valuation**

Before discussing valuation of assets in the context of land acquisition for projects in the public interest, it is necessary to describe how appraisals are generally done for land, buildings, and agricultural property. A critical first step is to determine whether the appropriate valuation mechanism is market data approach, cost approach, or income approach, as defined above. The first step in a land appraisal, then, is to perform a preliminary survey the land. Depending on the data available, the appraiser can determine which of these methods should be used to determine acceptable Market Value of the land.

Land has value because it has two sources of potential exploitation—physical and economic. So land valuation basically requires appraising ‘property interests’ and ‘property rights’ attached to the land.

In order to value the physical potential of land, the appraiser must collect data and information on the existing natural resources, mineral resources, man-made/artificial resources, and other resources, based on both the particular plot of land and on the zone or area of which the land is part.

In valuing the economic potential of land, the appraiser must consider both the “financial value” (land value) of a plot of land, and the “total economic value” (TEV) of an area of land.

Land valuation requires the application of many valuation principles, including the principles of Anticipation, Change, Supply & Demand, Substitution, and Balance.

Land valuation cannot be separated from the principle of “Highest and Best Use,” which considers how land is or might be developed. For that reason, when doing appraisal, an Appraiser needs to know about the Building Coverage Ratio, Building Density Zoning, and Building Line (setback) of the valuation subject. In order to assess the potential of the land, restrictions affecting building on the land must be fully understood. For example, a property that is zoned for commercial or multi-family dwelling construction will be valued very differently than one that is restricted to single family dwelling construction.

The five approaches outlined below may be used for land valuation.
a) **Direct Market Comparison Approach:** Sales data for the same type of land and buildings are analyzed and compared. By adjusting the data according to factors related to valuation, the appraiser can determine the market value of the land being appraised. Using the cost approach, one can determine the market value of the buildings and the land on which they are located, summing these to determine total market value of the property.

b) **Land Residual Technique:** This technique is used when the market value of the buildings is fixed because they are relatively new.

Formulas:

\[
\text{Building Market Value} \times \text{Building Capitalization Rate}^{10} = \text{Building Net Income}
\]

\[
\text{Property Net Income} - \text{Building Net Income} = \text{Land Net Income}
\]

\[
\text{Land Net Income} \times \text{Land Capitalization Rate} = \text{Land Market Value}
\]

c) **Extraction Method.** This method may also be used when property and building market values are fixed.

Formulas:

\[
\text{Building New Reproduction Cost} - \text{Building Depreciation} = \text{Building Market Value}
\]

\[
\text{Property Market Value} - \text{Building Market Value} = \text{Land Market Value}
\]

d) **Allocation Method or Ratio of Total Value to Site Value.** This method is to determine the particular percentage/ratio between property value and land value, based on the data available. This method is used if in particular location the ratio between property market value and land market value is correlated. In Indonesia this method is rarely applicable. However, it was used in the past when modest housing was funded by home ownership credit.

e) **Land Development Method.** In this method land market value is obtained from subtracting the cost of building and costs related to land development/land division into lots from the sales value of fully-developed land. By considering the value of time and money, the market value of raw land can be calculated.

The applicability and limitations of the five methods vary:

a) **Comparison of Market Data (Direct Market Comparison Approach):**

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10 Building capitalization is the interest rate added up with interest return rate on the building.
- This is the most common method used in land valuation provided that the comparative data of vacant land is available.
- If data is not available, or is inaccurate, unreliable or insufficient, this approach can result in inappropriate value estimation.

b) **Land Residual Technique:**
- Applicable if data on land transactions is unavailable or unreliable, but the value of the buildings on the land can be determined. It is also an applicable technique for valuation when the property meets the principle of HBU (Highest and Best Use)
- This approach uses assumptions about capitalization rate of land \( R \), net operating income of property \( NOI \), etc that can cause inaccuracy in determining land value.

c) **Extraction method:**
- Applicable if estimates of the value of buildings can be determined.
- Errors in determining depreciation can introduce inaccuracy into the land valuation.

d) **Allocation Method (Ratio of Total Value to Site Value)**
- Generally applicable when comparative data for vacant land is unavailable
- Not applicable as the only method used in a land appraisal, it is usually appropriate only for cross checking.

e) **Land Development Method**
- Applicable if the valuation object has development potential.
- Uses assumptions about sales plans, discount rate, etc that can cause inaccuracy in determining land value.

Regardless of the valuation method used, a number of factors can affect land value. These are outlined below.

a) **Physical Characteristics:** Basic physical features must be considered in valuing land, including dimension, form, frontage, width, depth, topography, and other attributes such as drainage, pollution rate, climate and view.

b) **Legal Considerations and Location:** Legal considerations include ownership of the land itself, as well as zoning and other usage regulations. Facilities, infrastructure, and available public services in the location, and in comparison with other cities must also be considered. Attributes such as school quality, fire protection, road lighting, and tax rates may make comparison with other properties difficult.

c) **Comparative Data:** In addition to seeking out market data for comparison, sales of vacant land must also be analyzed.
d) **Comparative Elements:** Comparative elements that should be considered include the following:

- **Conditions of the sale**, including the method of financing, may often affect the price. For example, when vacant land is sold using other than cash, the seller may finance the sale. If the buyer can obtain more favorable terms by borrowing from the seller rather than from a third party, the buyer may be willing to pay a higher price than market conditions might indicate. In such a case, the sales price should be adjusted to reflect these circumstances.

- **Timing of the sale** is the second element that most frequently impacts the price and requires an adjustment to the valuation. Changes in market conditions might affect the price of vacant land more dramatically than they would affect the value of developed property.

- **Adjustment for location** is the most important adjustment in land valuation. The value of seemingly comparable properties may vary substantially depending on where each property is located.

- **Physical features** of the land being valued and comparable land should be analyzed with regard to the potential impact of these features on land use. The extent to which the dimensions, form, topography, etc., may affect the value must be analyzed. In analyzing differences in physical features, one can use multivariate regression analysis to estimate the effect of specific features of property (square footage, access to electricity, topography, etc.) on market value.

e) **Comparative Units for Land Valuation:** Normally the appraiser compares data for factors that are the most influential on market value. Using comparative units of property can help in this process. Important factors in identifying units for comparison are zoning and usage potentials. For example, if there is little disparity in the price per square meter compared to the price per meter of frontage, the right market unit to be used is the price per square meter.

f) **Adjustments:** Analyzing comparative data usually involves adjusting comparative sales price data in order to make the comparative data similar to the property being valued. This adjustment can be made by adding or subtracting the comparable property sales price according to the appropriate percentage. When the appraiser is not able to find adequate sales data, comparative data that needs significant adjustment is usually not applicable. When considering various comparative factors that may have required adjustment, it is necessary to give the greatest weight to the sales data that needs the least adjustment.

g) **Other Considerations:** Appraising vacant land usually requires more specific experience than does the appraisal of developed property, because there are fewer real estate transactions involving vacant land. Besides being traded, land may also be rented, sometimes for very long periods. Therefore it is quite important to estimate
rental prices. A developer needs to include land value as the cost component of the end product. For that reason, many feasibility studies include the appraisal of vacant land. Banks and other creditors often use land as a guarantee in their cost structures.

Vacant land used for comparative data should be similar to the property being valued in its location, physical characteristics, and use potential. The importance of location has been discussed previously. The nearer the comparative data location is to the property being valued, the more credible will be the comparative data obtained.

A range of government actions such as taxation, and redevelopment, require an estimate of land value, so these activities may necessitate a formal land appraisal. Many court actions or decisions also involve land as part of court settlement, making accurate valuation is quite important. The most reliable approach in appraising land is to refer to the market, or to use the comparative sales data approach. Conceptually, this approach is not very different from the Comparative Sales Data Approach used in appraising property. The difference is the scope of the appraisal.

7. Building valuation

The approaches used in building valuation are:

- **Market Data Approach:** can be used if the house is of standard type in an area or housing complex.

- **Cost Approach:**
  - Calculate land market value as if land were vacant land using market data approach
  - Calculate building and facility market value using cost approach
  - Property Market Value = Land Market Value + Building & Facility Market Value

The factors that influence the value include:

- Appropriateness to the environment (for example, a luxurious house in a middle class environment, or a modest house in a lavish environment)
- Land plotting and asset identification
- Construction design
- Use of residential property for home industry
- Location of access roads, and whether they are for public or private use
- Whether land boundaries are based on a certificate and fences/pole /land boundary in the field. Construction with no appraised certificate is not included in the valuation process
- Depreciative factors such as high voltage, presence of a cemetery, flooding, buildings located in a T-intersection, houses with swifts (swallow species), etc.
8. Agricultural property valuation

To make sure that the valuation of Agricultural Property is reliable and accurate, the service provider needs appraisers who have knowledge and understanding of the physical and economic elements that affect the productivity of farms, and the value of commodities produced on such land. Diverse commodity types subject to various types of production practices and techniques are characteristic of Agricultural Property. In general, the valuation of Agricultural Property involves the combination or merging of diverse assets such as land, plants or crops, constructions or improvements, equipment, and other facilities. The general principles of valuation (KPUP) are applicable to the valuation of Agricultural Property, as they are to the valuation of other Real Property.

For Agricultural Property, the characteristic and type of land are the main determinants of the types of agricultural activities and commodities that can be produced on the property. Land use may be unchanged for an extended period (for example, a plantation may have produced bananas for 25 years). However, production on other Agricultural Properties may vary year by year in terms of income and profit, depending on the crop produced and various farming conditions. In such a case, income from the property will vary from year to year, depending on the commodity or crop produced and its market cycle. Investments and improvements on a particular Agricultural Property can generally be divided into several parts, with the following definition generally fall into the following categories:

- **Non-Planting Assets** are the facility, infrastructure, and other supporting factors, including manufacturing facilities (if any), that are an inseparable part of the agricultural entity.

- **Planting Assets** are the commercially cultured plants or crops that grow on the land and are managed based on the cultivation technique generally used in that area.

- **Industrial Forest Use Rights (Forestry/Timberland)** apply to land on which trees are grown and periodically harvested after its growing period (10-20 years or more). For Agricultural Property the consideration is that this property is capable of producing timber, although it needs quite a long period of growing time.

- **Cropping Farms** are Agricultural Property used to develop a commodity that can be harvested in one or more annual cycles. Property used for seasonal crops may be able to grow more than one type of commodity in the same year, with or without. Examples are non-staple food crops or horticultural groups. **Note**: Some commodities are annual crops that are cultivated on farms in one cycle each year, per contract settlement or in the absence of market support conditions. While sometimes this crops may remain after harvest, they should not be considered a permanent crop but rather a perennial.

- **Special Purpose Property** includes additional land required for the practice of agriculture, such as land area for permanent constructions such as crop or machinery storage. There may be other kinds of special purpose property depending on the
commodity being cultured. Examples include a truck used for transporting goods and special property needed for a chicken farm, flower breeding and culture, or horse herding and training.

- **Plantation Property** is land that is developed for some extent, with one or more crops being cultured, along with facilities and infrastructure managed as a unit according to the general standards of plantation management.

- **Irrigated Land** is land that is used over an extended period of time for the cultivation of crops that require water that cannot be provided by rainfall alone.

- **Perennial Plantings** are crops that are harvested repeatedly over a plant growth period that is greater than a single year. Examples are tree crops such as palm oil, rubber, and other perennial plants. Perennial plantings require significant investment capital in order to develop crop value, and may be subject to depreciation.

Several principles and considerations are particular to the valuation of Agricultural Property. These are outlined below.

- **Market Value should be used as the main basic valuation standard (see SPI1)**
  - In applying Market Value for Agricultural Property, the Appraiser must be able to show that the valuation is based on market transactions and information.
  - For financial reporting purposes, Appraisers can assign the Market Value according to the requirements of the International Accounting Standard (IAS) or PSAK, PPI 1.

- **If the basis of valuation is other than the Market Value, the Appraiser must make this clear**
  - During the process of value estimation based on other than Market Value for financial reporting purposes, depreciation scheduling or taxation purposes, the Appraiser must guarantee that the basis of valuation is clearly defined and transparently calculated.

- **When valuing Agricultural Property that includes elements of non-real property such as livestock, crops and other equipment (elements not attached to the land), the Appraiser must understand when crops or other commodities are considered Real Property and when they are classified as Personal Property.**
  - An example would be timber which is part of Real Property when it grows as plants, but becomes Personal Property when it is cut down.
  - A similar case is palm oil seeds. When still in poly bags they are Personal Property, but after being planted permanently they become Real Property.

- **The Appraiser must understand concepts fundamental to Agricultural Property, such as culture techniques, productivity, the market for the commodity being planted, and its market cycle.**
In appraising Agricultural Property, the physical and environmental aspects of the property are important. These include climate, soil type, production capacity, water availability for irrigation, and adequate food supply for livestock.

External factors must be taken into account, including the availability of supporting facilities such as warehouses, processing facilities, and the transportation system.

The most important factor in a valuation will vary depending on the type of crop being managed. The Appraiser should consider simultaneously the effect of internal and external factors to determine the valuation factors that are most appropriate, and to determine the business use that is the most appropriate and best for the property.

To determine Market Value, an analysis of the Highest and Best Use on the Agricultural Property is necessary. This determination is always related to:

- The guarantee that the existing use of the Agricultural Property will be sustainable, especially if other emerging land uses such as urban expansion might be more appropriate, and
- Whether use of the land for agricultural purposes will be prolonged.

If the Appraiser is instructed to disregard uses other than the existing land use, the valuation need not provide a Market Value indication for the property. However, this fact must be revealed in the valuation report (see SPI 2-3.11 Market Value for the Existing Use).

- **Stable income estimation for Agricultural Property must be based on production pattern, market cycle and the market area where the commodities are found.**
  - Cash flow on Agricultural Property is the function of the production cycle and commodity market cycle. The Appraiser must understand the effects of these cycles on cash flow. Valuation of Agricultural Property must be consistently based on income stability.
  - Income from a commodity depends on its existing market price. When the commodity market of an Agricultural Property is faces unstable condition such as overwhelming price fluctuation, the Appraiser must take into account the effect of this instability on the value, of the property.

- **When appraising Agricultural Property, the Appraiser will be valuing assets of varying types and associated with various commodities. Therefore the Appraiser must clearly state whether the value of each component is its contribution as part of the whole, or whether it is being assigned a separate value as an independent component.**
  - Many components of a property might have a value as a separate part that is bigger or smaller than its value as part of the whole asset. The Appraiser must determine whether each component will be appraised separately or as part of the whole property.
  - Agricultural Property might be managed to produce more than one type of commodity, depending on different physical conditions of the property or management decisions. In appraising Agricultural Property that has more than one plant or commodity being developed and harvested at different times, the
value of each commodity must be based on its contribution to the whole value of the Property and not on a separate value.

- The production of crops might also require the development of non-biological assets such as office facilities, housing construction, storage space, machinery and equipment, and supporting facilities. Non-biological assets developed in support of the main (biological) asset are an inseparable part of the operation. Therefore the value of these non-biological assets should be based on their contribution to the total value of the Property, and this value depends on the cost structure and other parameters. In particular, if the value of a non-biological asset is in its use, such as its contribution to business value, the development of the non-biological asset cannot be considered indicative of separate asset development.

- A manufacturing or processing unit on the property should also be seen as part of the whole property if it has a direct link to the main property (crop or commodity). Sometimes, however, this facility may be appraised separately and its value integrated with that of the main property. The Appraiser should put the emphasis on the value of the main property, and the value of the manufacturing or processing unit also needs to be specified.

D. Valuation for Compensation

1. Background

   Logically a person would give up property rights in exchange for proper compensation. In practice, however, a community is often not satisfied with the compensation that is settled on. The term “compensation” is frequently interpreted to mean a definite loss to the owner. On the other hand, the compensating party may sometimes consider the compensation demanded by a community to be too high. Eventually a proper sale price must be agreed upon. Often the sale price is higher than the market value because the buyers are willing to pay over market value because they need a particular piece of property badly, or because they can identify no alternative. In cases of government acquisition, however, the government frequently hides behind a claim of public use and budget constraints at a low compensation rate that truly represents a loss to the affected community as landowners.

   Outside the realm of acquisition for public use, a landowner may, for example, sell a property because a neighbor wants to extend his or her house. In these cases, agreement will be reached on a proper sales price. This price will often be higher than the market value, because the buyer is willing to pay more to acquire a particular piece of property for which no alternative can be found.

   In the case of acquisition for public use, as in the example above, the main issue is not whether a community (or owner) is initially willing to give up its rights, but rather how much compensation is adequate for the community to become willing to give up those rights. To answer this question, there are several questions must be answered first, including:

   - What are the units that can be compensated (objects of compensation)?
• What are the principles of calculating value?
• How will valuation methods or approaches be applied?

2. Objects of compensation

Presidential Regulation No. 36/2005 on provisions of land for realizing the development for public interests, as amended by Presidential Regulation No. 65/2006, includes some regulations than can be referred to help answer the question of which objects require compensation, as listed below.

• Article 1 Paragraph (3): Procurement of land is every activity to obtain land by means of giving compensation to the party releasing or giving up the land, building, plant and materials related to land.
• Article 1 Paragraph (11): Compensation a substitution to physical and/or non-physical losses resulting from the provision of land for party having land, building, plants and/or other materials related to the land, which can provide the continuation of life better than the social and economic life before the provision of land.
• Article 12: The compensation in the framework of land acquisition shall be granted to: (1) land title; (2) building; (3) plants; (4) other materials related to the land.

With reference to the above regulation, then, valuation objects for the purposes of compensation within the framework of land acquisition are: land; buildings; plants; other items related to land; and all losses of both a physical and non-physical nature related to the land, buildings, plants, and other items related to land (e. g., business interruption, etc.).

3. Principles for calculating value/compensation

In order to determine compensation, the appraiser must determine what type of valuation is suitable for the purpose. Determining value within the framework of land acquisition for public use is a special case as compared to the usual market transaction. In a normal (arm’s length) transaction, the final price that is agreed upon is the Market Value. The Indonesian Valuation Standards (SPI) and International Valuation Standards define Market Value as:

The estimated amount of money for which a property should exchange on the date of valuation, between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing wherein the parties had each acted knowledgeable, prudently, and without compulsion.

Based on the above definition of Market Value, we see that the principles of Market Value are:

• Willing buyer
• Willing seller
• Both buyer and seller have knowledge about the property’s uses and benefits
• Voluntary transaction
Compared to a normal transaction, land acquisition for public use possesses these features:

- Buyer (in this case the Government) intends to buy, or may even be forced to buy.
- Seller (in this case a person or a community) may not willing to sell, but is forced to sell.

Taking these differences into consideration, the transaction price for public land acquisition tends be higher than the Market Value, due to the buyer’s unwillingness to sell. These circumstances may also be seen in the process of land acquisition by private institutions (for example land acquisition by a developer planning a housing development).

In determining whether compensation above market value is appropriate for cases of land acquisition for public use, Presidential Regulation No.36/2005 as amended by Presidential Regulation No. 65/2006 includes regulations that can be referred to:

- Article 1 Paragraph (11): Compensation a substitution to physical and/or non-physical losses resulting from the provision of land for party having land, building, plants and/or other materials related to the land, which can provide the continuation of life better than the social and economic life before the provision of land.

- Article 3 Paragraph (1): The relinquishment or delivery of land title as meant in Article 2 is done on the basis of principles of respecting to land title.\(^{11}\)

It is very clear in the regulation, then, that giving up rights in land should be based on two principles that have great influence on the way compensation is appraised. These are:
- Principle of respect for land rights
- Principle of providing better continuation of life

4. Principle of respect for land rights

In order to observe the principle of respect for land rights, each case of land acquisition must be settled with proper compensation, which is determined from the starting point of a minimum compensation derived from Market Value. In understanding the principle of proper compensation, it may be helpful to consider the “Eminent Domain” clause of the Constitution of the United States. This clause states, “Nor shall private property be taken for public use, without just compensation.” This clause is the one that grants the government the right to acquire a plot of land for public use, but this taking must be done with just (or proper) compensation.

When comparing regulations applied in the United Stated and in Indonesia, then, we see that both nations require respect of land rights, which are universally recognized. Similarly, the

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\(^{11}\) In this context, “land title” is understood to include a variety of land rights, not just a legally registered title document.
payment of just and proper compensation for land acquired for public use applies universally as well.

In examining the experience of the United States, we observe that many land acquisition cases have been brought to court, resulting in some rulings that can be used as general reference points, such as:

- “Just compensation” means “fair market value” so that it is very clear that compensation must be based on Market Value.
- If only parts of a parcel of land are subjected to land acquisition, the loss affecting the remaining land must also be compensated.
- Market value does not consider the increase or decrease in land value that may result from the construction project that will be built and from the land acquisition activities themselves.

In Indonesia’s neighboring country, Malaysia, the basis of compensation for land acquisition for public use is based on:

- Market Value of the land or property
- Any Special Value that is higher than the Market Value of the land or property
- Damage due to division of the land
- Loss due to nuisance
- Cost of permits, clearing out, moving and other related activities

The table below compares regulations in several countries related calculating compensation for land acquired for public purposes.

Table: Calculation of Compensation in Selected Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Grounds</th>
<th>Value Basis</th>
<th>Special Value*</th>
<th>Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Law on Land Admin 1986/1998</td>
<td>Value of Usage</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>India</td>
<td>Law on Land Acquisition 1894</td>
<td>Market Value+</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Law on Land Acquisition</td>
<td>Market Value +</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Australia</td>
<td>Law on Land Acquisition 1969/2003</td>
<td>Market Value +</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>Presidential Regulation 36-</td>
<td>Real Value</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2005/65-2006</td>
<td></td>
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</tr>
</tbody>
</table>

* Special Value = Premium
Hence by applying the principle of respect for land rights, it is clear that in every case of compensation the minimum amount of compensation is the Market Value of the Property. Market Value is understood not to include the effects of the development plan, which could either increase or decrease the property value. However, since land acquisition for public purpose represents a special case, in which the seller does not intend to sell but the buyer is forced to buy, the costs and losses due to this transaction will be charged to the buyer.

In sum, the compensation valuation for land acquired for public use consists of:

- Market-value-based appraisal of the property without regard to effects of the development project plan. In Presidential Regulation 36 this is referred to as physical loss.

- Valuation of losses due to the transaction of acquisition. In Presidential Regulation 36 this is referred to as non-physical loss.

5. The principle of providing better continuation of life

The principle of providing better continuation of life means that in every process of land acquisition the property owner is not only paid for the market value of the property and the losses due to the transaction, but must also receive an additional amount.

As a comparative illustration, consider the case of a homeowner who wishes to buy a neighbor’s property, but the neighbor does not wish to sell. The buyer would offer more than the market value of the land, the transaction costs, and moving costs. The neighbor needs that additional incentive to sell, because without an additional payment, the transaction offers no net benefit to the seller.

In the case of a private transaction, then, a community may benefit substantially for selling its property to a motivated buyer, such as a housing developer. In many such cases this kind of land transaction may result in a significant improvement in the welfare of the seller.

When land is acquired for public use, the principle of providing better continuation of life is commonly applied as well. What this principle means is that the affected property owner will receive additional payment or benefits over and above the market value of the property and losses caused by the transaction.

In some countries, such as India, Malaysia, and Australia, this principle is also followed, so the value basis is not Market Value plus Loss, but rather a Special Value, which includes the addition of a premium. Since Presidential Regulation 36/2005 includes the principle of providing better continuation of life, valuation for compensation in Indonesia will follow the same pattern.

In sum, then, valuation in the framework of compensation for land acquired for public use includes:
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- Market Value-based valuation/appraisal of physical property
- Appraisal of the loss due to the acquisition transaction
- Determination of an appropriate premium to provide a better continuation of life

The following section discusses how to apply valuation methods to determine appropriate compensation for these three categories.

6. Application of valuation methods and approaches

The application of established valuation approaches within the framework of compensation for appraisal raises special considerations, as outlined below:

- Application of the Market Approach specifically for compensation
  ✓ Comparative data must be used with great care, making certain that the data is not affected by land acquisition activities.
  ✓ Price trends for a location that has the same characteristics but is not affected by land acquisition should be available as “data control”.

- Application of the Cost Approach specifically for compensation
  ✓ Economic/external depreciation due to land acquisition must not be calculated.
  ✓ Functional depreciation due to the principle of Highest and Best Use (HBU) needs to be considered carefully, primarily if the existing construction is still in use

- Application of the Income Approach specifically for compensation
  ✓ Cash flow is projected without taking the land acquisition process into consideration.
  ✓ Basic year projections must be free of acquisition effects.

- Application of the Land Development Technique specifically for compensation
  ✓ The development scenario should not take the land acquisition process into consideration.
  ✓ Cash flow is projected without taking the land acquisition process into consideration.
  ✓ Basic year projections must be free of acquisition effects.

The Valuation Method used will vary according to the object being valued. The categories of objects to be valued are:

- Real Property (Physical Assets)
  ✓ Land
  ✓ Buildings & Facilities
  ✓ Plants
  ✓ Other things related to the land required to restore to the owner a property of at least the same quality as that owned prior to the land acquisition.
- Cost & Loss (Non-Physical Losses)
  - Transaction costs
  - Moving costs
  - Loss of on-going business (business interruption)
  - Other losses of special nature, subjective and difficult to calculate.

- Premium

  In Presidential Regulation 36, however, there is a basic regulation on the calculation of compensation that can obscure the valuation process, because it is unclear what the relationship is between this provision of the Regulation and Market Value. Article 15 Paragraph (1) indicates that the calculation of the amount of compensation is based on:
  
  a. Tax Object Selling Value (NJOP) or concrete/real value by observing the tax object selling value in the current year on the basis of valuation by land price appraisal institution/team appointed by the committee;
  
  b. Selling value of building estimated by regional apparatus responsible for the construction sector;
  
  c. Selling value of plants estimated by regional apparatus responsible for the agricultural sector.

  Using Tax Object Selling Value as the basis of calculation will likely not yield the proper compensation value. It is commonly understood that the Tax Object Selling Value is often not the same as the Market Value, but may be higher or lower than Market Value. Means of establishing real property value should be precisely defined in the explanation or regulation, along with a definition of Market Value, so that conflicts about the meaning of real value can be avoided.

  Selling value of buildings and plants are obviously comparable to Market Value of these items, but in fact the value of buildings and plants for the purpose of compensation is closer to insurance value than to market value.

7. Valuation of physical assets

Land Valuation

  Because the value of any individual plot of land is very specific, it is not appropriate to undertake a mass appraisal based on zoning patterns. While this approach is commonly applied in establishing Tax Object Selling Value, appraisal in the framework of land acquisition must be done individually.

  In order to perform individual appraisal, the inventory and data collection for the land that will be acquired must be thorough, and must provide adequate information to be used in determining land value. Factors to be considered in land appraisal are:

  - Geographical conditions of the land (Valuation Object)
    - Geographical characteristics
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- Rural and urban areas
- Demographic, social and cultural aspects of the community
- Density of population and construction
- Zoning
- Layout of the land and structures

- Economic factors
  - Regional economy
  - Main characteristics of the area and environment
  - Industrial progress and development
  - Community purchasing power

- Property market
  - Quantity of available property
  - Price
  - Level of competitiveness
  - Supply and demand

- Valuation Object
  - Location
  - Legality
  - Physical characteristics of the base property and associated constructions
  - Accessibility
  - Existing zoning and related policies
  - Utilities and environmental facilities

In these as in other aspects of appraisal, Market Value is still applied. However it is well understood that land valuation in the context of land acquisition for public use is subjected to additional special considerations including the following:

- Using sales or supply data from a location also affected by the land acquisition plan can compromise the validity of the valuation.
  - It is necessary to use comparative data from areas not affected by the acquisition plan, but having geographical, economic, and property market conditions that are the same as those where the valuation object is located.
  - Despite the lack of historical transaction data, the Appraiser must make every effort to obtain relevant data so that there will be a full description of the value before any effects due to the acquisition plan. This information must then be compared with land price trends in other comparable areas.

- Highest and Best Use (HBU) analysis must be done with the assumption that the land is vacant, and must consider the possibility of consolidation of the plot with others.

Building Valuation

Although in the valuation of buildings and infrastructure one can normally use the market approach or the income approach, these are not recommended if the valuation is for the purpose of determining compensation. Valuation for compensation is quite similar to valuation for insurance purposes and for insurance valuation the accepted value basis is Reinstatement
Value—that is, the cost to rebuild the structure or infrastructure. This type of valuation does not take physical, functional, or external depreciation into account.

Since the objective of compensation is to allow the property owner to rebuild, using an insurance value basis is appropriate. If the owner is to rebuild a comparable structure, the concept of depreciation is not relevant. New reproduction or replacement cost is defined as:

*The estimation of the amount of money that will be spent to replace the construction/substitution of new property: these expenditures will include the cost of materials, labor wages, supervision cost, contractor cost, including benefits, cost of technical workers including all expenditures related to transportation, insurance, installation cost, entry cost, Value Added Tax (if any), but not included overtime wages and bonuses.*

Using this value basis, the only valuation approach that can be used is the Cost Approach, applying any of these methods:

- Quantity Survey Method: thoroughly calculating the wages and materials
- Unit In Place Method: calculating based on the parts of the constructions/establishments
- Square Meter Method: calculating the cost per square meter (or per other measurement unit), using standard or comparative costs
- Index Method: if the initial cost is identified beforehand, adjustments can be made based on changes in the price index.

*Crop Valuation*

In appraising the value of crops, the appraiser must distinguish between perennial crops and seasonal or annual crops. For perennial crops (orchards, pasture) one can apply the Income Approach, calculating a net income projection for the remaining economic life of the plants and trees, but excluding the value of land, improvements, and installations, which should be calculated separately.

For seasonal or annual crops, it may be possible to allow the owner or renter to harvest before acquiring the land. If this is not possible, one should calculate the income that is likely to be obtained from the harvest that season.

*Valuation of Non-Physical Losses*

Non-physical losses can be grouped as follows:

- Transaction costs
- Moving costs
- Loss of ongoing business (business interruption)
- Other losses of a special nature, subjective and difficult to calculate.
Transaction costs are basically very clear. These should not be charged to the land owner, but to the government directly.

Moving costs can be standardized in every acquisition plan determining the location to which owners are most likely to move. Once that determination is made, moving costs can be calculated based on the number of people to be moved and the dimensions of the existing constructions and establishments.

Calculation of losses due to the disruption of an ongoing businesses essentially involves the calculation of the reduction of income due to the move. Losses are calculated to accumulate until the income is back to normal.

**Premium**

There is no established method for calculating a premium. In the United States, the appraiser applies a 25% premium (Appraisal of Real Estate; 13th edition; Appraisal Institute). By contrast, in countries such as Brunei and Vietnam compensation above market value is not allowed, so no premium is paid.

The premium paid could vary according to the type of project. For example, the premium for private public partnership (PPP) projects might be higher than for other projects in the public interest that do not have private sector involvement. This might mean that the premium for regular government projects could be 15%, while the premium for the private public partnership could be 20%.

**Summary Remarks on Compensation Valuation**

One of the main constraints in developing public infrastructure is land acquisition, and the main problem in land acquisition is reaching an agreement on compensation. Basically an owner will give up property rights if he or she believes that the compensation received is just and proper.

Compared to a normal transaction, the payment for land and other property acquired for public purposes will logically be above market value, because the buyer is forced to buy such property, while the land owner is normally not planning to sell it and may not be willing to do so.

Compensation is paid for:

- **Physical Assets (Real Property)**
  - Land
  - Buildings & facilities
  - Plants and crops
  - Other things related to the land.

- **2. Non-Physical Costs and Losses**
  - Transaction costs
  - Moving costs
In Indonesia, Valuation is a well established financial industry, not unlike banking and capital trading and marketing. However, determining compensation value for land acquired for public use is a new responsibility for Indonesian Appraisers. Clear and standardized operating procedures and adequate training are needed to guarantee fair valuation of government-acquired land. The presence of established procedures and well-trained professional appraisers will guarantee fair valuation that will be acceptable to both land owners and governmental institutions.

***
Bibliography


International Valuation Standards Committee (2007), *International Valuation Standards (IVS)*.


## Appendix 1: Structure of Indonesian Valuation Standards

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<th>Sales Comparison</th>
<th>Discounted Cash flow</th>
<th>Cost Approach</th>
<th>Residual Method</th>
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<td><strong>Commercial Properties</strong></td>
<td></td>
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<tr>
<td>Commercial income generating property (offices and apartments for rent, shopping centers)</td>
<td>Check Approach. Data used must be comparable</td>
<td>Main Approach. Use 10-year projection, or until income is stable</td>
<td>Not recommended</td>
<td>Not recommended</td>
</tr>
<tr>
<td>Hotel, Golf Course</td>
<td>Check Approach. Data used must be comparable</td>
<td>Main Approach Use 10-year projection, or until income is stable</td>
<td>Not recommended</td>
<td>Not recommended</td>
</tr>
<tr>
<td>Commercial property not generating income (shop-house, strata title unit)</td>
<td>Main Approach Data used must be comparable</td>
<td>Main Approach Use for multiple units in the same development location, to reflect selling period</td>
<td>Not recommended</td>
<td>Not recommended</td>
</tr>
<tr>
<td>Property at building stage/not finished yet</td>
<td>Not recommended</td>
<td>Main Approach. Remaining building cost</td>
<td>Calculation of total building cost, including what has been and what will be spent (mandatory)</td>
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<td><strong>Non-Commercial Properties</strong></td>
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<td></td>
</tr>
<tr>
<td>Property not generating income (house)</td>
<td>Main Approach Data used must be comparable</td>
<td>Main Approach Use when the unit to be appraised is one several in the same location, to reflect selling period</td>
<td>Checking Approach</td>
<td>Not recommended</td>
</tr>
<tr>
<td>Property at building stage/not yet finished</td>
<td>Not recommended</td>
<td>Not appropriate</td>
<td>Main Approach. Total building cost, including what has been and what will be spent</td>
<td>Main Approach. Use in DCF form when the property to appraise has development potential</td>
</tr>
<tr>
<td>Vacant land with development potential</td>
<td>Checking Approach. Data used must be comparable</td>
<td>Checking Approach Use to support residual method</td>
<td>Checking Approach Use to calculate the cost of infrastructure or other development (if any) on the land</td>
<td></td>
</tr>
<tr>
<td>Vacant land with no development potential</td>
<td>Main Approach Data used must be comparable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial Structure</td>
<td>Checking Approach. Data used must be comparable</td>
<td>Main Approach Use when property is rented</td>
<td>Main Approach Use when property is occupied by the owner</td>
<td>Not recommended</td>
</tr>
<tr>
<td>Machinery and tools, office supplies</td>
<td>Main Approach. Data used must be comparable</td>
<td></td>
<td></td>
<td>Checking Approach</td>
</tr>
<tr>
<td>Vehicles and heavy equipment</td>
<td>Main Approach. Data used must be comparable</td>
<td></td>
<td></td>
<td>Checking Approach</td>
</tr>
<tr>
<td>Plantations, mining and fish ponds</td>
<td>Main Approach</td>
<td></td>
<td></td>
<td>Checking Approach</td>
</tr>
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</table>
V. Consignment in Land Acquisition

Prof. Mrs. Arie Hutagalung SH. M.LI and team

This paper provides an overview of land acquisition for projects in the public interest with a focus on a specific aspect of the process: the consignment of the compensation payment with a court in cases where an affected land owner has rejected the compensation offered by the government institution that requires the land. Consignment has become a common practice in cases where the government and land owner cannot reach a mutual agreement on land compensation during the negotiation time frame established by regulation.

The first part of this paper presents some general facts about consignment and how it is regulated in Indonesia. The second part describes some current cases of consignment in land acquisition. The third part clarifies some aspects of the current regulation which have caused delays in land acquisition and have had negative social effects, especially related to consignment. The last part of the paper suggests some policies which may facilitate land acquisition in Indonesia.

A. Overview of Consignment and Land Acquisition

1. Definitions and regulations of consignment

In the Indonesian language dictionary *Kamus Besar Bahasa Indonesia*, the word “consignment”\(^2\) is defined as, first, the delivery of goods to be sold by the receiver of the goods; and secondly, custody of money. In *Black’s Law Dictionary*, consignment is defined as the act of consigning goods for custody or sale, also termed (archaically) *consignation*.\(^3\) Consignation is defined as a debtor’s delivery of money to an authorized third party after the creditor refuses to accept the payment.\(^4\)

The application of consignment in Indonesian law consists of:

a) Private law

In Article 1404 of the Civil Code, consignment is the placement of cash in the custody of District Court by the Debtor after a cash payment offered by the same is rejected by the Creditor. If the creditor refuses to receive the payment, then the debtor can offer cash payment of the amount due; and if the creditor refuses to accept this, the debtor can put the money or the property in escrow of the Court. Such an offer followed with a deposit (which constitutes the consignment) shall release the debtor and apply as a payment by

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the debtor, provided that such offer has been made in accordance with the law, while the property in the escrow will remain on the creditor’s account.

b) Public law

There is no explicit definition of consignment in any regulations regarding agrarian law. Consignment is currently addressed only in the land acquisition regulations.

2. Definitions and regulations related to land acquisition


Land acquisition is any activity to obtain a plot of land by providing compensation to the parties who transfer or relinquish their land, as well as compensation for the buildings, plants and other items related to the land (vide Article 1 PR 65/2006). Land acquisition for public interest purposes is conducted by the Central Government or Local Government, and involves the transfer or relinquishment of land rights. When land acquisition is not for projects in the public interest, it should be carried out through sale and purchase, land exchange or any other manner that is settled voluntarily by the concerned parties (vide Article 2 PR 65/2006). A project in the public interest is one that benefits most of the community and that is carried out by and owned by the Central or Local Government. Such projects include:

- roads, highways, railways, mineral water or clean water pipelines, water waste and sanitation pipelines;
- water reservoirs, dams, irrigation dams, and any other water buildings;
- ports, airports, train stations and terminals;
- public safety facilities, such as flood control dams, lava control dams, and others;
- waste management facilities;
- natural and cultural reserves;
- power plants, transmission lines, and electric power distribution apparatus (Vide Article 5 PR 65/2006)

3. Consignment in land acquisition

Consignment that is done in land acquisition is regulated differently than consignment regulated in Indonesian Civil Law. Generally, in Indonesian Civil Law, consignment is conducted to clear the debt of a debtor to a creditor while consignment in land acquisition is conducted to pay the compensation for land without the land owner’s agreement so that the land can be used for a project in the public interest.
When land is acquired for projects in the public interest, the compensation to the affected landowner can be consigned to the local district court if either of the following conditions is met:

- If there is no agreement/consent after 120 days of deliberation between the Panitia Pengadaan Tanah (Land Acquisition Committee—“LAC”) and the land owners, the LAC will determine the amount of compensation and consign such compensation to the local district court whose jurisdiction covers the area of affected land (*vide* Article 10 Section 2 PR 65/2006).

- If there is any ownership dispute regarding the land ownership after land compensation determination, the LAC will consign such compensation to the local district court whose jurisdiction covers the area of related land (*vide* Article 10 Section 3 PR 65/2006).

If conditions in item b above are applicable, the LAC may conduct consignment as soon as possible. If the conditions in item a above are applicable, the LAC may conduct consignment by meeting additional conditions as specified in Article 37 of RHNLA 3/2007, which states as follows:

a. If the location of the project may not be altered as mentioned in Article 19 section 3 RHNLA 3/2007 then the development project should obtain approval from 75% of the land owners who inhabit the project’s location and are affected by the land acquisition for the project development as mentioned in Article 34.

   If this condition is fulfilled, the government agency that requires the land will pay compensation to the land owners who disapprove of the project development and prepare Minutes of Payment of Loss Compensation or Minutes of Offer for Loss Compensation Payment (*vide* Article 37 Section 2 RHNLA 3/2007).

b. If after 120 days from the date of the invitation for the first deliberation the owners still reject the compensation offer made by the government agency, then:

   The LAC will prepare Minutes on Payment of Loss Compensation (*vide* Article 37 Section 3 RHNLA 3/2007). Based on these minutes, the LAC will instruct the government agency that needs the land to place the compensation offered at the district court which jurisdiction covers the location of the project (*vide* Article 37 Section 4 RHNLA 3/2007).

After the requirements of these regulations are fulfilled, the consignment of land compensation can be undertaken. There are other cases in which consignment to be may also be made, as provided in paragraph 10 Article 48 RHNLA 3:

a. The existence of the person who is authorized to receive compensation (land owner) is unknown
b. The land, the structure, the plants, or any other assets located on the land are objects of a court case, and the local district court and has not reached a final binding verdict
c. The ownership of the land is still in dispute and the dispute has not been settled yet
d. The land, the structures, the plants or any other other assets located on the land are placed under sequestration by the competent authority (vide Article 48 Section 1 RHNLA 3/2007)

After all of these requirements and conditions are met, the government agency that requires the land will submit a request to obtain a court order from the chairman of local district court whose jurisdiction covers the location of the development project regarding consignment of affected land owners’ compensation to the local district court. Such request of court order is submitted with attached related documents such as:

a. The name of the party authorized to receive the compensation that is consigned to the court
b. The invitation to receive payment of loss compensation in case the compensation is in cash, as mentioned in Article 44 section 2 RHNLA 3/2007
c. Other documents as mentioned in Article 48 Section 3 RHNLA 3/2007.

Article 48 Section 3 RHNLA 3/2007 and Article 67 Section 1 RHNLA 3/2007 mention that physical construction will be started after the relinquishment/release of land title, structure, and plants by the affected land owner, or after the land compensation has been consigned to the Court. If the loss compensation is deposited at the District Court, the Regent/Mayor or Governor for area within the Jakarta Capital City Special Region will issue to decree to begin the physical construction (vide Article 67 Section 2). In fact, the process of consignment in land acquisition cases varies from project to project, and implementation of these regulations has raised many issues that will be mentioned in the next section.

B. Current Issues/Cases regarding Consignment

1. Surabaya-Madura (Suramadu) bridge project

The National Surabaya-Madura Bridge (Jembatan Nasional Surabaya-Madura), also known as the Suramadu Bridge, is a bridge with three cable-stayed sections constructed between Surabaya in the province of East Java and the town of Bangkalan on the Indonesian island of Madura. The 5.4-km bridge is the longest in Indonesia and the first bridge to cross the Madura Strait. This first toll bridge in Indonesia has two lanes in each direction, plus an emergency lane and a dedicated lane for motorcycles. The bridge was built by a consortium of the Indonesian companies PT Adhi Karya and PT Waskita Karya in cooperation with China Road and Bridge Corp. and China Harbor Engineering Co. Ltd. The total cost of the project, including connecting roads, has been estimated at 4.5 trillion rupiah (US$445 million).
Construction began on August 20, 2003. Work on the bridge halted at the end of 2004 due to lack of funds, but was restarted in November 2005. The main span of the bridge was connected on March 31, 2009, and the bridge was opened to the public in June 10, 2009. To have an objective and effective valuation for compensation, this task was assigned to an independent institution named Sucofindo. However, a number of local residents still disagreed with the offered price. Therefore, given the difficulties of reaching consensus on the compensation, the land acquisition committee consigned the compensation to the District Court of Surabaya.

At the time of consignment, land already acquired for construction of the bridge totalled 130,856 m² from a total target acquisition area of 131,369 m², or 99.52%. The remaining land, which had not been acquired, was 513 m². This area belonged to six persons. Before consigning the compensation, the LAC had taken many steps to resolve the dispute. They had measured the plots of the six land owners, deliberated the compensation issue in hearings with the participation of the Local Representative Council of Surabaya and the six land owners, organized special meetings with the land owners to try to settle the dispute, and exchanged correspondence with the same land owners. Because none of these steps resulted in consensus, all of the members of the LAC agreed to consign the compensation offered to the six land owners to the District Court of Surabaya. This was possible because consignment is allowed under Article 37 RHNLA 3/2007 in cases where the development project has obtained 75% approval from the local community/land owners affected by land acquisition, and no agreement/consent is reached with the remaining land owners after 120 days of deliberation between LAC and these land owners.

One day before the eviction of the six land owners was to be carried out by the Municipality of Surabaya, working with the Surabaya Police Department, four of the land owners decided to accept the compensation that had been consigned in the custody of Surabaya District Court. The reasons behind that decision varied from person to person. One of them said that he was tired and had lost the strength to defend his land. However, he admitted that he only wanted the local government to provide more transparency in the land acquisition process because he thought the local government’s actions were not straightforward. According to the First Assistant to the Municipality Secretary, Sutadi, the land owners were not charged any fees during the process of transferring land compensation that was consigned in the District Court of Surabaya, nor were any costs imposed. The District Courts requested only a letter of land and/or building ownership at the time of the compensation transfer. The amount of land compensation consigned by the LAC was the same as the amount offered by the LAC and previously rejected by the land owners.

When the land had to be occupied to begin construction of the project, there were still two land owners who had not accepted the compensation package. These land owners, Mustofa and Sundari, remained in disagreement with the compensation offered. On the day of eviction, Mustofa was in attendance at the Surabaya Administrative Court for his claim against the Head of Surabaya Municipality to discuss the application of consignment. In his absence, his family defended the land and refused to move. The Head Unit of Criminal Investigation (Kepala Satuan Reserse Kriminal) of the District Police (Polda) of Surabaya engaged Mustofa’s family members

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in discussion and the Mustofa’s family members decided to release the land and all assets on that land.

Meanwhile, Sundari defended her land from being taken. She challenged the evidence that proved the Municipal Government of Surabaya owned her land, and she also questioned the right of the Municipal Government to undertake the eviction. In Sundari’s case, she was offered compensation only for the assets on the land, because she was unable to show legal evidence of land ownership. Sundari indicated that she had a letter of land ownership that was issued by the Provincial Land Office of East Java, and she was in the middle of the proceedings to obtain certification of the land that she had inhabited for 40 years. Despite all of these circumstances, her land was taken by the Municipal Government of Surabaya, but she submitted her claim to the District Court of Surabaya regarding the legal evidence of land ownership.

The First Assistant mentioned above indicated that the land taking can proceed even in cases where there are land owners who do not accept the terms of compensation. This is due to the fact that land compensation issues can delay project implementation for extended periods of time. In this case, building of the access road to Suramadu would have been postponed, altering the scheduled timeline. As long as there is no court summons, the occupation of the land and the eviction of the occupants can proceed. Land acquisition for the access road was finalized in December 2008 despite the disagreements, and bridge construction work was successfully completed in June of 2009.6

2. Trans Java Highway project

The Trans Java Highway Project is a tollway project linking West Java to East Java. This tollway consists of 11 segments: Cikopo-Palimanan, Palimanan-Kanci, Kanci-Pejagan, Pejagan-Pemalang, Pemalang-Batang, Batang-Semarang, Semarang-Solo, Solo-Mantingan, Mantingan-Ngawi-Kertosono, Kertosono-Mojokerto, and Mojokerto-Surabaya. The construction of this tollway was partly finished with the use of consignment as a mechanism to accelerate land acquisition in several sections. The consignment process undertaken in the Kanci-Pejagan and Semarang-Solo segments present a good case to highlight issues within the consignment process. For both the Kanci-Pejagan and Semarang-Solo segments, the process of consignment was used due to the fact that 1) the highway project had obtained the necessary 75% approval from the local community/land owners who were directly affected by land acquisition and 2) 120 days of deliberation had passed between the LAC and the land owners affected by the tollway project. Thus, both criteria for utilizing the consignment process were fulfilled.

6 Ibid.,
The Kanci-Pejagan segment was the fastest section to be completed in Trans Java Highway Project. The process of land acquisition began in January 2007 and in July 2009 construction work started. After the 120-day period of deliberation passed, there were seven people remaining who disagreed with the compensation package. The process of consignment was considered, but ultimately was not utilized. The LAC, the local government and the public institution that needed the land were able to reach a settlement with the seven landowners after they offered compensation that was a bit higher than that offered to the rest of landowners. Offering a higher compensation to some landowners is allowed by the existing laws and regulations as a step for obtaining their consent; however these agreements were unfair to the vast majority of other land owners. This could have caused social unrest, but there was no such unrest in this case. This section of this tollway was inaugurated by the President of Indonesian Republic on 26 January 2010.

The Semarang-Solo segment utilized consignment in the Semarang-Ungaran section. By the end of the 120-day deliberation period, the LAC had acquired 95.6% of the required land, but there were 31 land owners who disagreed with the compensation offered. The 31 land owners indicated that the LAC had pushed them to accept an unreasonable price. In one example, a land owner whose assets included a house with a store attached was offered compensation for the main building and the land only. The compensation was insufficient due to the fact that no economic value was assigned to the store from which the owner derived livelihood. Despite the disagreements and claims of the land owners, the LAC and Provincial Government of Semarang decided to go ahead with the consignment.

In general, the consignment process in this segment is conducted as follows:

a. If, after 120 days of deliberation, the land owner meets the conditions prescribed in the Article 37 Section 4 RHNLA 3/2007, the LAC will make the compensation payment or compensation payment offering along with the minutes of the events mentioned before.

Consignment is often used in cases where the land owner is unable to provide any evidence of land ownership. Land ownership evidence is very important because it shows that a plot of land is legally owned. However, not all land owners in Indonesia aware of the importance of such evidence, especially people who lives in remote areas. This eventuality is not covered by Article 48 Section 1 RHNLA 3/2007, so compensation for such a case cannot be consigned. Because these circumstances are not mentioned in Indonesian land acquisition regulations, confusion has resulted for those who apply the regulations, forcing them to be creative in implementing them.

b. After the step above, the head of the LAC issues the Decree regarding the “Determination of the Type and Amount of Partial Compensation for Land, Structures, and Plants.” This decree was issued for the development of Semarang-Solo Tollway in Sidomulyo Village, East Ungaran Subdistrict. The Semarang Regency and Nominative List, which names land owners who are eligible for compensation and location of each parcel of affected land, was also issued.
c. If a land owner continues to disagree with the Decree of the LAC, then the LAC writes a letter to the Land Acquisition Team (established for projects carried out by the Ministry of Public Works “LAT”) to instruct them to enter into the process of consignment for that parcel of land.

d. The LAT submits an application for to the local district court whose jurisdiction covers the area of related land requesting that the court issue a consignment order.

e. The chairman of local district court whose jurisdiction covers the area of related land issues a consignment order that states whether the land owner still disagrees and refuses to accept the land compensation, among other facts. If a consignment order is issued, the chairman may consign the compensation to the treasury of the local district court registrar. The compensation is kept in the treasury until the land owner withdraws it. In order to withdraw the compensation, the land owner must present valid evidence of ownership with a cover letter from the local government. The amount of compensation is the same amount that was previously offered by LAC and rejected by the land owner. If the land owner comes to court to withdraw the compensation, there is no further discussion regarding the amount of the compensation.

f. When all land compensation has been consigned, the regent, mayor, or governor for the area issues a decree to start the construction of the project.

In the case of the Semarang-Solo Tollway after the compensation was consigned, the Head of the Municipality issued a letter authorizing the commencement of construction work. In actuality, this letter has no legal basis due to the fact that the land owners, the LAC and the local government had not acquired the affected land owners’ approval to release the land to the agency implementing the highway project. Therefore there is no relinquishment of land title.

Based on basic principles of land law, before one can posses the land, one must conduct transfer of land title from the previous land owner according to customary law. By customary law, the transfer must be:

- transparent – the land conveyance has to be conducted by and before the customary chief (kepala adat) or head of the village; and

- in cash – the transfer of the land title from the previous land owner to the party who needs the land is executed simultaneously with full or partial payment of the land price from the buyer to the seller.

The weakness of the current regulations on land acquisition is that they do not specify that, after compensation has been assigned, the ownership of the land is legally transferred to the LAC and government agency that requires the land. In the case of the land acquisition, if the affected land owner does not want to release the land and does not agree or take the compensation which is consigned in the Court, then there is no transfer of land title. If the government institution uses or certifies use of the land, then such usage and possession may be
regarded as illegal because they violate the basic principles of land law. In particular, the law states that possession and use of the land by any person for any purpose must be based on land title according to Law Number 5 of 1960 regarding Basic Agrarian Law (“UUPA”), and the possession and use of land without legal basis is prohibited and will be subject to penal sanction.

In the case of the Semarang-Solo Tollway, the land owners who refused the land compensation consigned in the local district court remained on their property. When their property was cleared for construction, these land owners claimed that the leader of the LAC was not in compliance with Article 406 of Indonesian Penal Code regarding destruction of private property. Though the Land Acquisition Committee was acting on the instructions of the head of the municipality, the LAC still became the target of a lawsuit, which as of this writing has not been resolved.

C. Current Regulations Related to Consignment may have Negative Social Effects and also Delay Land Acquisition

From the cases described above, it seems that that current regulations related to consignment can have adverse impacts on communities if compensation is not adequate. Also, consignment does not lead automatically to timely land acquisition, since the land owners can still delay land acquisition by fighting the procedure in the courts. In the future, the government should overcome these issue to ensure that the land acquisition process is prompt and to protect the interests of the affected.

The parts of current regulations which cause negative social effects and sometimes delay land acquisition are outlined below.

1. **Current regulations on consignment have been insufficient in regulating compensation.** The most important issue related to land acquisition and the process of consignment lies in the amount of land compensation. The LAC, the local government, and the agency that seeks to acquire the land must provide compensation which is fair, reasonable and sufficient for the people who are affected by the land acquisition, and must begin new lives in other locations. Compensation, as regulated the Article 13 PR 65/2006, can consist of cash, land, resettlement or a combination from two or more types of these compensation methods. Other forms of compensation may be agreed upon by the parties, if necessary. In most development projects, compensation is paid in cash. The LAC rarely offers land owners compensation in kind, such as replacement land. Current regulations allow compensation in kind as long as it is agreed upon by the parties involved. The loss of income sources or livelihoods of the affected people is rarely appraised, and thus is not considered when calculating the compensation. This also may be caused by regulations that do not mandate compensation for all losses related to the land taking. People affected by land acquisition often feel that they are treated unfairly because of the lack of transparency in the determination of compensation.
2. **Current regulations on consignment can force land owners to accept unfair compensation.** Article 10 PR Section 2 PR 65/2006 allows the consignment of land compensation in the local district courts if after 120 days if:

a) there is no agreement between the LAC and the land owners and

b) the land owners continue to reject the compensation from the government agency from the date of the first invitation to deliberation until the consignment is ready to be conducted (*vide* Article 37 Section 4 RHNLA 3/2007).

These regulations can be used to threaten land owners, forcing those affected by land acquisition to accept the price offered by the LAC and the government, even when that compensation is not adequate. Another regulation that could be used to force land owners to accept the compensation offer is Article 37, Section 2, RHNLA 3/2007, which states that consignment can proceed in any project in the public interest whose location cannot be altered, as long as the project has obtained approval from 75% of the affected land owners. (Article 19, Section 3 RCNLI 3/2007).

3. **Current regulations on consignment are in conflict with legislation that protects human rights.** Article 36, Section 2, Law Number 39 of 1999, regarding Basic Human Rights (Law 39/1999), states that no person’s property may be taken over in a manner that is tyrannical and unlawful. Based on this article, the land owner should not be forced to release their land and accept an inadequate compensation offer. Article 71 of Law 39/1999 also states that the government is obliged and responsible to respect, protect, enforce and develop the basic human rights regulated in Law 39/1999, in addition to other prevailing laws and regulations, and international laws regarding human rights accepted by the Republic of Indonesia. Thus, both Article 37 Section 4 RNCLI 3/2007 and Article 10 PR Section 2 PR 65/2006 cause negative effects because they specify procedures that may disregard the basic rights of affected local communities/land owners based on Law 39/1999, and may raise people’s anger for the reason they are forced to give up their land and accept the price offered by the LAC and the local government.

4. **Current regulations on consignment are not sufficient to resolve disagreements on compensation.** Consignment is only allowed if a) the location of project development can’t be changed or replaced, and if 75% of the total land owners affected by the project development give their approval towards the project development or b) 75% of the total land needed for the project development has been acquired. If the LAC hasn’t acquired 75% approval from land owners or 75% of total land needed, the LAC may not consign the compensation, and land acquisition stops altogether.

When this occurs, current regulations provide only two ways to solve the problem. First, the LAC can continue negotiations with the land owners. However, there is no expiration period for the deliberations, so this deliberation is useless if land owners continue to refuse the compensation offer. Second, the LAC can choose to expropriate the land, which is an option permitted under Law 21/1960. However, this law is has been applied only once, in the case of the Senen Project for Hotel Ping Noy.
construction. Since expropriation allows the government to implement land clearing without negotiations with the land owner, it may provoke community anxiety and anger, as owners fear that compensation may not be equitable. In fact, the expropriation process is not only slow, but also politically impractical, since any expropriation also requires presidential approval.

5. The current regulations on consignment violate existing laws. According to Article 67 RHNLA 3/2007, after the compensation is consigned, construction work may proceed. After the consignment, the LAC can carry out the eviction of the occupants of the property based on a decree issued by the regent, mayor or governor. It is a basic principle of land law that land must be owned before it can be used, so the State should promptly take ownership before clearing for construction proceeds. However, the current regulations on land acquisition do not specify any mechanism for the State to actually assume ownership. If the LAC begins clearing land for construction work without taking ownership, these actions would violate Article 28 H Indonesian Constitution of 1945, which guarantees that the right of ownership cannot be taken over haphazardly by anyone, including the State. The action of land clearing/evacuation by the LAC after the compensation has been consigned also violates Article 5 of Law Number 20 of 1961 regarding Expropriation of Land Title and Other Objects Above the Land (“Law 20/1961”). This law states that each land owner has full rights to the property and the assets on the land until a Presidential Decree regarding land title expropriation is enacted. In addition, the consignment of the compensation is not a legal reason to annul a land title. According to articles 27, 34 and 40 of the Basic Agrarian Law (Law Number 5 of 1960, “Law 5/1960”), land titles may be terminated in the following cases: the land is damaged, the term of the land title has expired, legal obligations of the land title holder according to prevailing law and regulations have not been fulfilled, the land title holder voluntarily relinquishes the title, land has been lawfully expropriated for public interest purpose, or the land has been left in idle conditions by the title holder. These provisions apply to the Right to Own (Hak Milik), Right of Cultivation (Hak Guna Usaha), and Right of Building (HGB).

In light of the above, land owners whose compensation has been consigned may submit a letter of objection to the court regarding land clearing carried out by the LAC. In such cases, the position of government or LAC is very weak because, under the Basic Agrarian Law, any land which is under dispute is frozen, which means that any and all activity related to the land must cease until the dispute is settled. Therefore, the land owner’s objections, based on the provisions of the Basic Agrarian Law, could delay project implementation. The land owners also have the right to pursue legal action against the LAC according to Article 406 of the Indonesian Criminal Code, claiming destruction of private property without permission of the owner.

6. Consignment, as regulated in Article 1404 and 1405 of the Indonesian Civil Code, is not related to land acquisition. Articles 1404 and 1405 of Indonesian Civil Code refer to debts and receivables; those articles do not refer to compensation payment in
the event of land acquisition. Also, consignment of land compensation occurs without a written agreement. According to Maria Soemardjono, S.H., MCL., MPA, Article 1404 of the Indonesian Civil Code should not have been stipulated in PR 36/2005, PR 65/2006 and RHNLA 3/2007 as authority for consigning payment to a local district court subsequent to an offer of payment. This argument reasons that land acquisition is the sole privilege of the Government/Local Government as stipulated by the Administration Law, while the institution of offering payment in Article 1404 Indonesian Civil Code regulates civil law relationships between citizens and individuals. Thus the application of consignment in land acquisition represents an error, because it mixes a private law concept into an administrative law area that is categorized as public law. This gives the impression of forcing one’s interest, which is prohibited by the Law 39/1999 as mentioned in item 1 of this section.

7. **Compensation that is consigned may not be final solution.** The consignment of land compensation sometimes cannot give prompt relief to the land owners affected by the project development because the bureaucratic court procedures required to obtain the compensation are very complicated. The compensation that is received may not necessarily be as much as was offered and promised by the LAC to the land owner. In such cases, land owners sometimes try to reclaim their land. Alternatively they may sue the LAC and/or the local government or the party who needs to acquire the land for not in fact providing just compensation, thereby delegitimizing the process of consignment.

In the event that the affected land owners refuse to take the land compensation that has been consigned, they can submit a lawsuit after the land acquisition is completed. However, this action is not likely to stop the land taking because Article 72, section 2 RHNLA 3/2007 states that matters which appear after the end of land acquisition may not prevent the commencement of construction work. The bargaining position of the affected land owners is weakened by the fact that the land has already become part of the development project. The issue to be settled in court is not the land taking, but the amount of compensation. For these reasons, the land owners are likely to feel disempowered and forced to take what is offered instead of what they consider fair compensation. This may also cause discord within the community, and between the community, project owners, local government and the LAC.

Item 2 of the General Elucidation (Explanatory Memorandum) to Law 20/1961 states that a consideration by the local government, responding to an expropriation application by the party that needs to acquire the land, may determine temporary shelter for the people who are affected by the land expropriation should they lose their permanent residences or livelihoods. However this provision has never been executed, since expropriation has very complex effects and procedures.

8. **Current regulation of consignment does not protect the affected land owners in determination of compensation, nor in procedures for claiming the compensation in the court.** The decision on the amount and type of compensation in the case of consignment is based on a Nominative List which is determined by the LAC and the
Local Government, then made into a court stipulation. If this action applies to affected land owners who do not agree with the amount and/or type of compensation, this process constitutes the denial of an essential element of an amicable settlement mechanism, which is calls for a consensus agreement.\textsuperscript{7}

The existing regulations related to the process of taking payment which is consigned focus more on the project development and the land acquisition itself, but less on the protection of the land owners affected by the project development, who have the right to receive a reasonable, prompt and effective compensation.

These practices also violate Article 37 Law 39/1999, which mandates the provision of reasonable and prompt compensation in cases where land is expropriated and/or structures are demolished for public projects. Based on this Article, compensation must be reasonable and fair because basic human rights must be respected.

9. \textit{Current land acquisition regulations do not include local leaders, who can be key to a successful land acquisition process and prevention of consignment.} Public hearings are an important component of the land acquisition process because they provide an opportunity to deliver information on the rights and obligations of the affected land owners. Under the current regulations, public hearings and information dissemination involve the LAC and the public institution that requires the land. However, this communication normally takes place without the participation of traditional local leaders, who can help the land acquisition process run smoothly because they know local conditions well. With their knowledge, the LAC is likely to plan more effective public hearings, which can prevent unnecessary conflicts with the affected land owners. By bringing in key local leaders and indigenous elders, the LAC can also form a good relationship with the Head of Village, who can play an important role in successful land acquisition. For example, in the Trans Java Project, the Head of Village helped the LAC in disseminating information about the project to the affected land owners and assisted in preparing land ownership evidence. Current regulations, however, do not give a clear role to the Head of Village.

10. \textit{Current regulations suggest that appraisal is based only the tax value of the land, and not on market value of all the things upon the land that might become objects of valuation.} To determine the compensation to be provided to affected land owners, the LAC relies on the valuation carried out by an “appraisal institution” or an “appraisal team.” Appraisal institutions are licensed by the Land Agency and apply international valuation standards. Appraisal teams are formed by the local government and tend to use the Sale Value of the Tax Object (the values declared for tax purposes) as the basis for negotiations. The current regulations use the term “land appraisal,” which gives the impression that the appraisal assesses only the land value but does take the assets on the land into account. Current regulations also use the Sale Value of the Tax Object as a benchmark for land valuation and the market/real value (as appraised by appraisal institutions) is used only as “guidance,” and not disclosed to the affected land owners. In fact, in many neighboring countries, the market value

is used as a basis for the calculation of compensation. If this practice were adopted in Indonesia, the affected land owners and the institution requiring the land would be more likely to agree on a compensation payment acceptable to both parties. The negotiations would be more likely to succeed, which would contribute to faster land acquisition and project completion.

11. A Court order cannot be used to expropriate or force relinquishment of rights to land and/or assets. Article 67 RHNLA 3/2007 states that construction work can begin after the land owner has relinquished his property rights (rights to land and objects on the land) and his land title has been transferred to the government institution requiring the land. However in the last part of the same article, if the compensation is consigned, construction work can start after the issuance of a court order authorizing construction. This article is in conflict with the Law 5/1960 (Basic Agrarian Law) and its supplement regulations, as mentioned in Item 3. According to this Law, a court order is not a valid procedure to expropriate or force relinquishment of rights to land and/or assets, and cannot replace a legally binding court verdict.

12. Current land acquisitions regulations do not provide reasonable sanctions for violations of the land acquisition regulations. Sometimes violations are engaged in by parties involved in the land acquisition process. For example, members of the LAC often become land speculators, or court staff may deduct funds from the amount of compensation which is consigned. Current regulations do not provide sanctions for those who violate the regulations or who exploit the system. This might cause affected people or the general public to mistrust the land acquisition process, and will surely inhibit funding for infrastructure projects in Indonesia, due to the absence of legal certainty in the land acquisition process.

D. Proposals for Legislative Changes

The following are proposals for new legislation that can be enacted by the government. If enacted, these proposals may overcome the problems in the land acquisition especially in the process of consignment.

1. Government must enact a Land Acquisition Law that includes provisions related to consignment. Land acquisition and its implementation sometimes affect property rights. Due to the sensitive nature of the process, it should be properly legislated, as part of a law, and not just as part of a regulation. Current regulations on consignment can be construed as the State’s right to “confiscate.” Given that private property is protected by laws, consignment rules must also be part of law. Consignment procedures must be carefully drafted to ensure consistency with legislation of higher or equal levels. Consignment procedures need to be clearly described in the Land Acquisition Law, which should specify the institutions involved and the land owners whose compensation is consigned.

2. Landowners should be able to withdraw the compensation consigned in the court without giving up their right to fair compensation. Land owners who do not accept
the compensation offered to them during deliberations should be able to withdraw the amount consigned. This would enable the affected land owner to use the amount that is consigned to acquire a replacement property while her/his case is resolved through arbitration (see recommendation 4) by the court, which would later decide whether the land owner is entitled to an additional payment.

3. Establish agrarian courts to deal with agrarian land disputes. The government should consider establishing an agrarian court, since land cases are abundant and adjudicating such cases requires special knowledge of agrarian law. Arbitration on land cases may become precedents that indirectly regulate the modalities of consignment and complete positive Law.

4. Establish a process to resolve disagreements about compensation after consignment. The new Land Acquisition Law should establish the process to be followed to determine if the land owners should receive an additional payment, in addition to the amount consigned to the local district court. Such a process is missing in current regulations on land acquisition, which skip directly to the process of land confiscation once compensation has been consigned to the local district court.

5. Develop procedures to resolve disputes on compensation through mediation. Disputes on the amount and the form of compensation can be solved through mediation, which can take place before the compensation is consigned in the district court. Mediation can help the party that needs the land and the land owner to reach a settlement quickly. Mediation is less costly than court cases and has many other advantages. If mediation fails to produce a settlement, or if one of the parties fails to participate in the mediation, the compensation offered by the institution requiring the land would be consigned in the district court. This court, or an agrarian court, would decide if the landowner is entitled to an additional payment, based on the professional appraisal of the value of the losses suffered by the land owner. Regardless of the court’s decision, any party that disagrees with it would have the right to appeal to a higher court. The government agency requiring the land would be able to take possession of it, after consigning the compensation payment in the district court.

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8 Prof. Arie Hutagalung. *Perspektif Hukum Serta Instrumen Penyelesaian Sangketa* Disampaikan Dalam Acara Pelatihan Unit Khusus Penyelesaian Aset Bank Indonesia, Selasa 24 Maret 2009
Bibliography


President of Indonesia, *Presidential Regulation Number 36 of 2005 regarding Land Acquisition For The Development of Public Interest.*

President of Indonesia, *Presidential Regulation Number 65 of 2006 regarding Amendment to the Presidential Regulation Number 36 of 2005 regarding Land Acquisition for the Development of Public Interest.*

### Annex: Meeting on Land Acquisition for Projects in the Public Interest (11 May 2010, Grand Mahakam Hotel, Jakarta)

<table>
<thead>
<tr>
<th></th>
<th>Topic</th>
<th>Time</th>
<th>Presenter</th>
<th>Moderator</th>
<th>Notes</th>
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<tr>
<td>1</td>
<td>Registration</td>
<td>08.45 - 09.00</td>
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<td>Tea, coffee &amp; snack are available</td>
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<tr>
<td>2</td>
<td>Introduction: objectives of IDPL 4 Mission</td>
<td>09.00 – 09.05</td>
<td>Hongjoo Hahm, Task Team Leader IDPL4</td>
<td>Lis</td>
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<td>3</td>
<td>Progress &amp; status of the plans for policy reform to facilitate land acquisition for projects in the public interest</td>
<td>09.05 – 09.15</td>
<td>Deputy of Land Rights &amp; Registration, BPN</td>
<td>Lis</td>
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<td>4</td>
<td>Key issues of the draft law on land acquisition for projects in the public interest</td>
<td>09.15 – 09.35</td>
<td>Director, Land Management &amp; Provision for Government, BPN</td>
<td>Lis</td>
<td>Presentation materials will be distributed</td>
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<td>5</td>
<td>Follow-up indicators of IDPL 1-3</td>
<td>09.35 – 10.00</td>
<td>Jose and Sonny</td>
<td>Lis</td>
<td>Presentation materials will be distributed</td>
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<tr>
<td>6</td>
<td>Q &amp; A (refer to no. 3, 4 and 5 above)</td>
<td>10.00 – 11.00</td>
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<td>Lis</td>
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<td>7</td>
<td>Valuation of land affected by projects in the public interest</td>
<td>11.00 – 11.30</td>
<td>Okky Danusa, MAPPI</td>
<td>Sonny</td>
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<td>8</td>
<td>Q &amp; A</td>
<td>11.30 – 12.00</td>
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<td>Sonny</td>
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<td>9</td>
<td>Lunch</td>
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<td>10</td>
<td>International experiences on valuation of land and other assets affected by projects in the public interests</td>
<td>13.00 – 13.45</td>
<td>Dr. Sopon Pornchokchais</td>
<td>Sonny</td>
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<td>11</td>
<td>Q &amp; A</td>
<td>13.45 – 14.15</td>
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<td>Sonny</td>
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<td>12</td>
<td>Coffee break</td>
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<td>Prepare summary of the meeting</td>
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<td>Summary of the meeting and next</td>
<td>14.30 – 15.00</td>
<td>BPN</td>
<td>Lis</td>
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<td>15</td>
<td>Conclusion</td>
<td>15.00 – 15.10</td>
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<td>MoE/Bappenas</td>
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