

Job Creation Law : Land Procurement

The land acquisition process for infrastructure development often creates conflicts which lead to higher costs and projects being stalled. On 2 November 2020, the Government enacted the Job Creation Act Law No. 11 of 2020 ("Job Creation Act") which amends Law No. 2 of 2012 on the Land Procurement for Development for the Public Interest ("Land Procurement Act"). This amendment is one of the government's attempts to alleviate the many obstacles to executing infrastructure projects in Indonesia.

Highlights

1. Land Procurement Mechanism in Forest Areas

Although not entirely new, the changes made by the Job Creation Act to the Land Procurement Act include an outline of mechanisms for special land procurement in forest areas for development for the public interest, which were previously regulated in government and ministerial-level regulations.

Further, the Job Creation Act specifies objects of land procurement in forest areas, village treasury lands, endowment (*waqf*) land, *ulayat*/customary land, and/or land assets of the Central Government, Regional Government, State-Owned Enterprises, or Village-Owned Enterprises, the land status settlement process for which must be completed up until the location determination stage through the release of forest areas and borrow-use mechanism.

Specifically, for government priority projects, the mechanism will be initiated by the following parties:

Mechanism for the Change of Land Procurement Object	Government Agency	Private Sector
Release of Forest Areas	Yes	Yes
Borrow-Use	No	Yes

Hopefully this will provide ease of reference as well as clarity and legal certainty for land procurement activities for the public interest which will be in conformity with the government's goal of promoting investment, which have previously often met with obstacles in practice during the land procurement process in forest areas, *waqf* land, or *ulayat* land.

2. Additional Scope of Development Objectives for the Public Interest



The Job Creation Act has added several development objectives for land procurement for the public interest which align with the priorities of the 2020-2024 National Medium-Term Plan under Presidential Regulation No. 18 of 2020, which include economic and infrastructure resilience, namely for the development of:

- a. Upstream and Downstream Oil and Gas Industrial Estates;
- b. Special Economic Zones that are initiated and controlled by the Central Government, Regional Governments, State Owned Enterprises or Regional Government Owned Enterprises;
- c. Industrial Estates that are initiated and controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regional Government Owned Enterprises;
- d. Tourism Areas that are initiated and controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regional Owned Enterprises;
- e. Food Security Areas initiated and/or controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regional Government Owned Enterprises.
- f. the technology development zone initiated and/or controlled by the Central Government, Regional Government, State Owned Enterprises, or Regional Government owned enterprises

3. New Stakeholders in the Public Consultation

The previous provisions of the Land Procurement Act stipulated that public consultation on development planning needed to involve only those who owned or controlled the land to be released for development plans. Considering that the land may be used or managed by the state or regional government, the Job Creation Act involves in the public consultation not only the parties entitled to the land but also the government in the form of:

- a. Managers of State Owned Property/Regional Owned Property;
- b. Users of State Owned Property/Regional Owned Property.

As well as the additional stakeholders, the Job Creation Act also provides a time limit for public consultations. In the event that the entitled parties, managers of State Owned Property/Regional Owned Property, and users of State Owned Property/Regional Owned Property do not attend public consultations after being duly invited 3 (three) times, they are deemed to have approved the development plan.

These additions are expected to harmonize the development plans that utilize land which constitutes State Owned Property/Regional Owned Property and certain timetables so as to accelerate the development process, which is often delayed or postponed.

4. Land procurement for the public interest where the area covers no more than 5 (five) hectares

The Job Creation Act regulates that small scale land procurement (under 5 hectares) can be carried out directly by agencies requiring land and the parties entitled to the land, where the determination of location is carried out by the Regent/Mayor.

5. Determination of the location of development for the public interest

Under the Land Procurement Act as amended by the Job Creation Act, a longer period of time, three years which can be extended once for one year, is provided for a determination of location to take effect. The application for the extension of the period for the determination of the location must be submitted at least 6 (six) months prior to the end of the period.

6. Criteria for “Parties who possess State-Owned Land in Good Faith”

As regulated in the Land Procurement Act, the process of determining compensation for land procurement is carried out through deliberations with the parties entitled to the land, namely:

- a. holders of land rights;
- b. holders of management rights;
- c. overseers (*nadzir*), for endowment (*waqf*) land;
- d. owners of land formerly owned by custom (*adat*);
- e. customary law communities;
- f. parties who possess state land in good faith, among others abandoned land, former western rights land;
- g. the underlying holder of possessed land; and/or
- h. owners of buildings, plants or other objects related to land.

Through the Job Creation Act, the Government provide more clarity to what is meant by “parties who possess state land in good faith” as referred to in point (f), namely land:

- a. possession of which is recognized by statutory regulations;
- b. where there are no objections to the possession of the Land from the Customary Law Community, sub-district/village or as referred to by other names, or other parties either before or during the announcement period; and
- c. possession of which is proven by the testimony of 2 (two) reliable witnesses.

Conclusion

These new provisions on land procurement may provide some light for investors especially those engaged in natural resources and infrastructure. It is common knowledge that land procurement has been a costly and time consumed specter for investors who wish to venture into Indonesia. In addition to the foregoing, the existence of several new norms as provided under the Job Creation Act, especially in this section of land procurement, will certainly be a challenge for regulators in preparing implementing regulations and policies for each of the provisions stated in this Job Creation Act. This is of course reasonable when taking into account that land procurement is a very sensitive issue, especially when we often find conflicts between communities and business. It is to be hoped that regulators can wisely formulate a policy so that this Job Creation Act can be effective and beneficial for national development.

*The article above was prepared by **Maurice Maulana Situmorang** (Partner), **Dinda Triwijanarko** (Senior Associate) and **Widiarahmi Afiandari** (Professional Support Lawyer).*

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at dentons.hprp@dentons.com.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.