

LAND ACQUISITION FOR DEVELOPMENT FOR THE PUBLIC INTEREST

Presidential Regulation No. 71 of 2012 on the Implementation of Land Acquisition for Development for the Public Interest (“Perpres 71/ 2012”) has been amended by Presidential Regulation No. 40 of 2014 on The First Amendment to Perpres 71/2012 (“Perpres 40/2014”) Presidential Regulation No. 99 of 2014 on the Second Amendment to Perpres 71/2012 (“Perpres 99/2014”) and Presidential Regulation No. 30 of 2015 on the Third Amendment to Perpres 71/2012 (“Perpres 30/2015”) which were issued by the President of the Republic of Indonesia in March 2015.

The following are the changes to Perpres 71/2012 under Perpres 40/2014:

1. Perpres 40/2014 adds new provisions on the operating costs and support costs of land acquisition for development for the public interest by the specially assigned State Owned Legal Entity/ State Owned Business Entity and land acquisition for constructing oil and gas upstream infrastructure which refers to Minister of Finance Regulation No. 13/PMK.02/2013 TAHUN 2013.
2. Perpres 40/2014 also increases the total land area that the Institution can acquire directly from the landowners by way of a sale and purchase or exchange or other method agreed to between the parties, from initially 1 Ha to 5 Ha.

Under Perpres 99/2014, the following changes have been made to Perpres 71/2012:

1. Under Perpres 71/2012, the procurement and appointment of an Appraiser was conducted by the Land Procurement Implementation Team Leader (Ketua Pelaksana Pengadaan Tanah), but under Perpres 99/2014, the procurement of/tender for an Appraiser is now carried out by the institution, although the authority to appoint the tender winner remains with the Land Procurement Implementation Team Leader. Perpres 99/2014 has added that for a procurement with a contract value of more than IDR 50 million, the assessment of participants’ qualifications will be conducted using the post-qualification method (metode pascakualifikasi), ie the assessment will be carried out after the bid documents have been submitted.
2. Perpres 99/2012 also extends the time limit for the payment of compensation in cash to the landowners, from 7 (seven) working days under Perpres 71/2012 to 14 (fourteen)

working days as of receipt of the validation (ie a written request to pay) from the Land Procurement Implementation Team Leader or the appointed official.

3. Lastly, under Perpres 71/2012, any land acquisition carried out before the promulgation of Perpres 71/2012 was to be settled using the procedure under the previous land acquisition regime (ie under Perpres 36 of 2005) and had to be completed by 31 December 2014. However, Perpres 99/2014 extended the deadline for one more year, ie until 31 December 2015, as long as 75% of the total area of the land had been acquired by 31 December 2014. The procurement of the remaining land must follow the Perpres 71/2012 land acquisition regime.

Lastly, the following are the changes to Perpres 71/2012 under Perpres 30/2015:

1. Under Perpres 30/2015, the definition of “Institution” now also covers “a Business Entity granted a proxy under an agreement with a state institution, a ministry or a non-ministry government institution, provincial government, regency/municipal government or a State Owned Legal Entity (Badan Hukum Milik Negara) or a State Owned Business Entity (Badan Usaha Milik Negara) specially assigned by the Government to provide infrastructure for the public interest”. Previously, a Business Entity could not apply the procedure for land acquisition for the public interest under Perpres 71/ 2012 as the term of institution was limited only to: a) ministries; b) non-ministry government institutions; c) provincial governments; d) governments; and e) State-Owned Legal Entities/State-Owned Entities specifically assigned to provide infrastructure by the Government.
2. Perpres 30/2015 has added a new provision stating that the funding for Land Acquisition for the Public Interest may be derived from the budget of the Business Entity which needs the land which will be reimbursed from the National State Budget and/or the Regional Budget after the land has been acquired. The reimbursement can be calculated as a return on the investment.
3. Perpres 30/2015 has also added that incomplete acquisitions of land designated as Development Locations or with Development Location Designation Approval (Surat Persetujuan Penetapan Lokasi Pembangunan (SP2LP)), or some other form of designation as a Development Location, can be completed under Perpres 30/2015.